

**OPPORTUNITIES AND CHALLENGES
FOR IMPROVING PUBLIC SAFETY
IN TRIBAL COMMUNITIES**

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON INDIAN AND INSULAR AFFAIRS

OF THE

COMMITTEE ON NATURAL RESOURCES

U.S. HOUSE OF REPRESENTATIVES

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**OVERSIGHT HEARING ON OPPORTUNITIES
AND CHALLENGES FOR IMPROVING PUBLIC
SAFETY IN TRIBAL COMMUNITIES**

**Tuesday, November 14, 2023
U.S. House of Representatives
Subcommittee on Indian and Insular Affairs
Committee on Natural Resources
Washington, DC**

The Subcommittee met, pursuant to notice, at 2:14 p.m., in Room 1334, Longworth House Office Building, Hon. Harriet Hageman [Chairwoman of the Subcommittee] presiding.

Present: Representatives Hageman, LaMalfa, Carl; and Leger Fernández.

Ms. HAGEMAN. The Subcommittee on Indian and Insular Affairs will come to order. Without objection, the Chair is authorized to declare a recess of the Subcommittee at any time.

The Subcommittee is meeting today to hear testimony on opportunities and challenges for improving public safety in tribal communities. Under Committee Rule 4(f), any oral opening statements at hearings are limited to the Chairman and the Ranking Minority Member. I therefore ask unanimous consent that all other Members' opening statements be made part of the hearing record if they are submitted in accordance with Committee Rule 3(o).

Without objection, so ordered.

I will now recognize myself for an opening statement.

STATEMENT OF THE HON. HARRIET M. HAGEMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Ms. HAGEMAN. The purpose of today's hearing is to hear from tribal leaders and from the Bureau of Indian Affairs about the opportunities and challenges for public safety in tribal communities. Everyone deserves to feel safe in their community, yet that is not the case for so many tribal reservations. Adequate public safety should not be seen as a privilege, it should be considered the status quo.

Adequate public safety and law enforcement in Indian Country has been a long-standing issue. Native people experience violence at a higher rate than other communities with four and five Alaska Native and American Indian adults having reported facing some form of violence in their lifetimes. That is an overwhelming 83 percent.

We all have a responsibility to see what we can do to better these circumstances. Today, we will look at three main issues that affect public safety and tribal communities: recruitment and retention of law enforcement officers, jurisdiction over crimes in Indian

Country, and how external issues such as the influx of illegal drugs have an impact on Indian Country.

The BIA and tribal law enforcement agencies have faced long-standing challenges to recruit and retain qualified law enforcement and public safety personnel. In fact, in meeting with various tribal members over the last 10 months, this has been one of the primary issues that they have raised with me as Chairman of this Subcommittee. There are many factors that drive this trend, but many of the people who have talked to me cite a lack of parity for pay and benefits compared to other Federal law enforcement agencies, the long background check approval periods, the number of qualified applicants that they are receiving, and the remote locations of many of these positions.

Ensuring barriers are removed so that everyone is on a level playing field is strongly needed. Jurisdiction over crimes in Indian Country is also complicated and could implicate tribal, Federal, state, or local authorities, depending on the perpetrator's identity and the nature of the crime. When there is a question over which government is able to investigate or prosecute, it is oftentimes that the period of investigation may be lost. When concurrent jurisdiction exists, there may be lengthy discussions over which government should prosecute a particular crime, and if only one government can prosecute and declines to do so for various reasons, justice may be denied.

The need for jurisdictions to work together on information sharing is also important. External factors that affect communities across the United States, like the influx of illegal drugs, can have an outsized impact on Indian Country. I am sure our witnesses will touch further on this devastating topic, but I do want to share a few statistics with you today.

The Albuquerque Area Southwest Tribal Epidemiology Center found that the Alaska Native and American Indian mortality rate for opioid use was 38.7 deaths per 100,000 in 2021, while the national average was 20.1 deaths per 100,000. So, it was almost double in Indian Country.

This past August, the U.S. Customs and Border Control reported seizures of 25,500 pounds of fentanyl from October 2022 to August 2023. That is an 800 percent increase from Fiscal Year 2019 and it demonstrates the problems associated with an open border. It is obvious that this is an epidemic-level issue for tribal communities, and this only touches on the influx of illegal drugs and does not cover the other external issues that can flow into tribal reservations and Native communities, particularly the crisis regarding missing and murdered Indigenous people.

The outsized impact on tribes is due to challenges they already face, like jurisdiction and the lack of law enforcement in their communities. There are opportunities to improve collaboration and coordination between enforcement agencies. We can work to find ways to recruit and retain qualified law enforcement officers and ease the impact of external issues on Indian Country.

We must do better, and I believe this conversation is the first of many to find solutions that it can improve public safety in Indian Country. Thank you to all of the witnesses for being with us today, and I look forward to our discussion.

With that, the Chair now recognizes the Ranking Minority Member for her statement.

STATEMENT OF THE HON. TERESA LEGER FERNÁNDEZ, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW MEXICO

Ms. LEGER FERNÁNDEZ. Good afternoon and thank you to our witnesses for joining us here today.

The timing of this hearing is particularly important as we are only 3 days away from yet another government shutdown. Republicans are fighting with each other while Democrats are committed to keeping our government open and serving our tribal communities. Democrats will provide the bipartisan votes to ensure the government stays open so tribal law enforcement is paid on time while they protect their communities.

Congress has chronically underfunded programs designed to promote and support the social and economic well-being and the safety of Native Americans for decades. We must remember that these are all intertwined. Tribes need the security that comes with consistent funding and when it comes to public safety, that couldn't be more important.

According to the Centers for Disease Control and Prevention, murder is the third leading cause of death among American Indian and Alaska Native women. The third leading cause. American Indian and Alaska Natives are 2.5 times more likely to experience violent crime than other races. On November 1, Congress received important findings and recommendations from the Joint Department of Justice and Department of the Interior's Not Invisible Act Commission, which is dedicated to the victims, survivors, and all those impacted by the crises of missing and murdered Indigenous persons.

One of the top findings of the Commission is how reliable and consistent funding is critical to address their safety needs in their communities. I encourage my colleagues to read the report which lays out steps Congress must take to improve public safety. I support the Commission's call for a decade of action and healing. Congress must systematically address the need for sustained action to address this crisis, not just with law enforcement but with a full range of social and economic programs needed to combat the deeply rooted issues that underline violence against Native people.

Madam Chair, I would like to enter the Not Invisible Act Commission's Report into the record. It is over 200 pages well worth reading.

Ms. HAGEMAN. Without objection.
[The information follows:]



The full report is available for viewing at:

<https://docs.house.gov/meetings/II/II24/20231114/116535/HHRG-118-II24-20231114-SD004.pdf>

Ms. LEGER FERNÁNDEZ. BIA has seen a 30 percent vacancy rate across all law enforcement positions. This is partly because of the remote location of tribal communities, lack of housing, and an overall lack of resources. To add to these challenges, BIA OJS is looking at recruitment and retention incentives, including pay parity for BIA law enforcement, so that it could be in line with other Federal law enforcement levels.

I support legislation for pay parity and retention incentives. But BIA needs sufficient funding. I would like to thank our appropriators, like Tom Cole, Rosa DeLauro, and Betty McCollum, and many more, who have seen and shepherded a growth in appropriations in recent years. However, we still have a funding shortfall of \$717 million. The Fiscal Year 2024 Interior appropriations bill provides \$618 million. That is \$100 million short of what our tribal communities need.

I just came from the Rules Committee where we discussed the Republican Commerce, Justice, and Science bill which decreases funding for improving tribal law enforcement by \$2.5 million. I recently met with the FBI who let me know that there are only 70 congressionally-funded agents across the country working in Indian Country, 14 of which are in New Mexico. Only 14 in New Mexico, only 70 nationwide.

Well, guess what the CJS appropriations bill would do to the FBI. It would cut it by \$400 million. As the main investigative body for crimes in Indian Country, this would be devastating. Our law enforcement is overworked, from the BIA to the FBI. They don't have the resources or manpower to protect sacred sites like in my district, the Petroglyphs at the Caja del Rio, or across Indian Country. I know every single tribal representative here knows of instances of tribal sacred sites that are being pilfered, and we must stop it.

The tribes here today, you are the ones who are the first to respond to a crisis in your community, but you have to cover hundreds of miles, often without the right and proper vehicles. So, we know we need to do better and I look forward to hearing from you today so that we can address the multiple causes of this crisis that is facing Indian Country.

Thank you very much, Madam Chair, and I yield back.

Ms. HAGEMAN. Wonderful. I will now introduce our witnesses for our panel.

The Honorable Bryan Newland, Assistant Secretary, Indian Affairs, U.S. Department of the Interior, Washington, DC; the Honorable Dustin Klatush, Chairman, Confederated Tribes of the Chehalis Reservation, Oakville, Washington; the Honorable Lloyd Goggles, Chairman, Arapaho Business Counsel, Northern Arapaho Tribe, Ethete, Wyoming; Mr. Jonodev Chaudhuri, Ambassador, Muscogee Creek Nation, Okmulgee, Oklahoma; and Mr. Chris Sutter, Police Chief, Tulalip Tribes, Tulalip, Washington.

Let me remind the witnesses that under Committee Rules, they must limit their oral statements to 5 minutes, but their entire statement will appear in the hearing record. To begin your testimony, please press the "talk" button on the microphone. We use timing lights. When you begin, the light will turn green. When you have 1 minute left, the light will turn yellow. And at the end of 5 minutes, the light will turn red, and I will ask you to please complete your statement. I will also ask all witnesses on the panel to testify before there is any Member questioning.

The Chair now recognizes the Honorable Bryan Newland for 5 minutes.

STATEMENT OF THE HON. BRYAN NEWLAND, ASSISTANT SECRETARY, INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. NEWLAND. Thank you, Madam Chair and Ranking Member Leger Fernández. Good afternoon. I want to thank you for the opportunity to testify this afternoon on behalf of the Department on tribal public safety.

My name is Bryan Newland and I serve as Assistant Secretary for Indian Affairs. The United States has a trust obligation to protect the existence of Indian tribes and also to protect the physical safety of their citizens, and at the Bureau of Indian Affairs, we play a crucial role in meeting this trust obligation.

Our work to protect tribal communities through law enforcement activities falls into three broad categories: policing, detention, and supporting tribal courts. The BIA provides law enforcement services through one of two paths, either direct law enforcement services or funding tribal law enforcement programs under self-determination contracts or self-governance compacts. Currently, we employ 352 uniformed police officers and criminal investigators that serve over 200 tribal communities across the United States.

This past March, the Department issued a report to Congress on law enforcement needs in Indian Country pursuant to the Tribal Law and Order Act. In that report, we explained that the BIA spends \$246 million on law enforcement, \$123 million for detention facilities, and \$62.8 million for tribal courts. But that report highlights the total estimated needs for public safety and justice programs in Indian Country are at \$1.4 billion for law enforcement, \$247 million for existing detention centers, and \$1.2 billion for tribal courts.

It is clear that there is a massive gap between present funding levels and needs for public safety in Indian Country and the Department has been working to address that gap. We have worked to improve our law enforcement recruitment efforts and to cut our attrition rate within our law enforcement officer ranks. One of the ways we have done this is to ensure BIA law enforcement officers have pay parity with their counterparts in other Federal agencies, and we are also working to reduce the time to hire for our own officers and to utilize all the hiring tools available to us under the law.

Correctional facilities are another important component of tribal justice systems. The BIA presently operates 26 detention facilities in good condition across the country, but we also have 23 facilities in poor condition. Replacement of those facilities will cost at least \$590 million.

The third way that we support public safety in Indian Country is through funding tribal justice systems. Tribal courts are an essential aspect of tribal sovereignty and there are approximately 400 tribal justice systems across the country today. Many tribes are working to establish healing to wellness courts to address substance abuse and mental health issues that drive recidivism. As a former tribal court judge myself, I have seen just how valuable these wellness courts can be.

Protecting and enhancing public safety in Indian Country is a difficult task, especially with the complex challenges facing both

tribes and Federal agencies. Three of the biggest challenges we face today are jurisdiction, illegal drugs, and lack of resources. For most law enforcement agencies in most circumstances, questions about jurisdiction and authority to act are relatively simple and straightforward.

In Indian Country, these questions are complicated. The authority to act often depends on a matrix of the ownership status of land and the tribal status of the individuals involved. This leads to transaction costs on officers working in Indian Country, which are often incurred before police work even begins.

Drug-related activity in tribal communities imposes health and economic hardship and is a major contributor to violent crime. The BIA conducts investigations on narcotics, gangs, human trafficking, and border violations in Indian Country and has a specialized national drug enforcement division.

As I also noted above, the availability of funding and other resources presents challenges to law enforcement in Indian Country. Many tribal communities are in rural areas. We ask law enforcement recruits to relocate to these communities where they are often hindered by a lack of available housing. Many officers also identify updating equipment and technology as one of the top priorities needed to support their safety. Due to the remoteness of these communities and poor roads, we often have to replace vehicles more quickly, and communication equipment is even more important for officer safety because these areas are remote, and these officers often work alone.

Addressing these challenges requires coordination across the government with tribal leaders, and it is a challenge we must meet to fulfill our trust responsibilities. I want to thank you again, Madam Chair, for having me back. It is always a pleasure to testify here. And Ranking Member and members of the Committee, I look forward to answering your questions.

[The prepared statement of Mr. Newland follows:]

PREPARED STATEMENT OF BRYAN NEWLAND, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Aanii (Hello)! Good afternoon, Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department). Thank you for the opportunity to discuss the opportunities and challenges of Tribal public safety.

Background

The United States has a trust relationship with each of the 574 federally recognized Tribes, and their Tribal citizens. Through these relationships, the United States has charged itself with obligations of the highest responsibility and trust—including the obligation to protect the existence of Indian Tribes and their citizens. This obligation is at its highest when it comes to protecting the physical safety and well-being of Indian people within Indian country.

The Bureau of Indian Affairs (BIA) plays a crucial role in meeting this obligation on behalf of the United States. Our work to protect public safety through law enforcement activities in Indian country falls into three broad categories: policing, detention, and supporting Tribal courts.

Policing in Indian Country

The BIA—Office of Justice Services (OJS) provides law enforcement services directly to Tribes by OJS personnel or through self-determination contracts or

compacts, also known as 638 contracts. BIA employs 352 uniformed police officers and criminal investigators serving over 200 Indian communities across the country.

OJS has several supporting operations and functions, which include the missing and murdered unit, victim assistance, drug enforcement, emergency management, internal affairs, land mobile radio program, Indian highway safety, Tribal justice support, and operation of the Indian Police Academy.

OJS also functions as a lead Federal stakeholder and advocate for public safety and justice matters affecting hundreds of Tribal communities across the country. We engage regularly with other federal stakeholders and Tribal governments to collaborate on how best to help address the unique public safety challenges faced by Tribal communities.

On March 24, 2023, the Department issued the Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice programs in Indian Country, 2020.

This report contains data for funding costs in Indian Country. Total BIA spending for law enforcement was \$246.3 million, \$123.1 million for detention facilities, and \$62.8 million for Tribal courts. The total estimated costs for public safety and justice programs is \$1.4 billion for law enforcement programs, \$247.7 million for existing detention centers, and \$1.2 billion for Tribal courts. These numbers demonstrate the continued need for investment to improve the ability of Tribal public safety systems to fully serve their communities.

The recruitment and retention of law enforcement officers and staff for Tribal law enforcement agencies continue to face unique challenges. These challenges include pay parity, the length of background investigations, lack of applicants, and officer wellness. Currently, our foremost strategy is addressing pay parity by increasing BIA law enforcement pay levels to match with other Federal law enforcement. To accomplish this, we completed an upgrade to our uniformed police officer positions during FY 2023, which increased career advancement opportunities, along with corresponding pay increases up to an additional \$30,000 annually for BIA law enforcement officers. We are also utilizing available hiring flexibilities and recruitment and retention bonuses to increase current staffing levels and better support those interested in fulfilling DOI's unique mission in Tribal communities.

The Department's Law Enforcement Task Force (Task Force) also recently released their 2023 report, which includes a list of findings and recommendations to improve all the Department's law enforcement programs. That list includes a finding from all Bureaus within the Department citing the length of time to complete background investigations as an impediment to filling open positions in a timely manner. The Task Force recommends streamlining the background investigation process to increase the timeliness of the hiring process. Our team meets on a weekly basis to ensure the hiring process and background checks move as quickly as possible.

The Task Force recommendations also include mentorship programs for new hires and ongoing culturally appropriate training opportunities. These two recommendations would assist incoming hires with retention and engagement with the community and visitors. The report also highlights the importance of wellness programs for law enforcement officers.

Law enforcement officers have a duty to protect and serve their communities, but that service exposes officers to a significant amount of stress and trauma. The past few years have been especially challenging with the COVID-19 pandemic. Combining these challenges with job demands, staffing challenges, and responding to high-risk calls requires an investment in resources such as culturally appropriate training and mentorship programs to assist in officer wellness and will increase officer retention.

Detention Centers

There are over 90 detention centers throughout Indian Country, and OJS staffs and operates a quarter of these facilities. The other detention centers are operated by Indian Tribes through 638 compacts, and there are a few that are fully funded and operated by Indian Tribes. Each facility is unique in operation and location.

Correctional facilities are important components of Tribal justice systems. The ultimate mission of OJS corrections is to ensure Indian Country facilities are operated in a safe, secure, and humane manner. To ensure these operation goals are met, the Department has requested additional funding to address critical infrastructure needs.

The Indian Affairs Division of Facilities Management and Construction and OJS regularly meet to determine detention facility center needs. The Facility Condition Index (FCI) rates detention facilities in good, fair, and poor conditions to determine which facility has the highest deficiency repair needs. To determine the FCI rating,

the deferred maintenance total is divided by the current replacement value and if the result is $>.10$, the location is given an FCI condition of poor.

The deterioration of facilities negatively impacts the health and safety of its occupants and impairs the use of the facility. When these facilities don't receive the proper maintenance, they fall into disrepair and ultimately become unsafe to use. This results in reduced service levels and have a detrimental impact to the safety of the Tribal community.

The average cost of facility replacement is \$26 million (bed count and location are primary factors) and there are currently 23 facilities considered in poor condition. BIA currently estimates that it will cost at least \$590 million to replace those facilities. There are currently eight detention facilities in one of the following stages: pre-planning, planning design, design-build or construction.

The Department supports the continued investment in Tribal justice systems, infrastructure, and law enforcement.

Supporting Tribal Courts

The OJS, Tribal Justice Support provides training, technical assistance, and funding for the operation, maintenance, and support of Tribal Justice Systems. Tribal courts are an essential aspect of Tribal sovereignty and are an opportunity for Tribes to run their own justice systems. There are approximately 400 Tribal justice systems throughout the Nation. These courts are partially funded through Public Law 638 Tribal Priority Allocations (TPAs). In addition to the TPA funds, the OJS/Tribal Justice Support Directorate provides "supplemental" funding to Tribal Justice Systems.

Tribal Courts are funded through several appropriations line items including: Violence Against Women Act special tribal criminal jurisdiction training and implementation; Tiwahe which primarily handles child dependency cases; Public Law 83-280 (P.L. 280) which provides funding to P.L. 280 jurisdictions; and the general operation and maintenance for all Tribal justice systems in the United States. For example, in 2023, 440 new Tribal justice positions were funded through the Tribal Court Assessment process. The Tribal Court Assessment process is articulated in 25 U.S.C. Sections 3611, 3612, and 3613 and allows Tribes the ability to identify and seek funding for their specific and unique needs. Of the 440 positions funded, 42 positions were funded to address domestic violence issues within Tribal Justice systems, along with 260 positions in P.L. 280 jurisdictions, and 20 new positions in Healing to Wellness Courts. The remaining positions were for the operation of Tribal courts, including clerk positions, probation positions, case manager positions, among others.

Healing to Wellness courts have provided positive results in healing and strengthening Tribal communities. For example, Penobscot Nation has not incarcerated a defendant this year, but in fact has graduated individuals from the Healing to Wellness court and provided participants with options for higher education and resulted in commitments to work to create a safer and better community. The same can be said for other Tribes, such as Saginaw Chippewa Healing to Wellness court.

Through these Healing to Wellness Tribal Courts many Tribes are reforming or creating judicial systems which incorporate traditional and cultural aspects to create a more effective measure to address the trauma induced circumstances within their communities. In addition to dealing with narcotics issues, Healing to Wellness courts also address child dependency and family matters brought by the Tribal Social Service Directorate and play an essential role in family reunification by providing support and services needed for parents to complete within the reunification plan. Tribes have seen an improvement in the reunification process when relatives and community members provide encouragement and support to those families needing assistance. Reunification is more successful through the Healing to Wellness court process, as is addressing addiction issues, which often go hand in hand with child dependency cases.

In addition, the Tiwahe funding has also provided positions not only for Tribes participating in the demonstration project but provided essential positions for Tribes seeking to have representation in state court on Indian Child welfare matters. BIA has funded 10 attorney Tribal justice positions focused on transferring children from state court to Tribal court under the Indian Child Welfare Act which solidifies the intent of the Act to bring Native Children home.

In addition to providing Tribal justice positions, the BIA supports peer-to-peer trainings and provides Tribes the ability to share best practices with others. In an effort to support Tribal self-determination, Tribes are better suited to provide best practices and discuss challenges with their peers. To that end, over 1,000 Tribal justice personnel were trained in 2023. For instance, Choctaw Nation is holding a

VAWA special tribal criminal jurisdiction training next week and though the event is funded by the BIA, it is hosted and conducted by the Tribe.

Tribal Courts solidify sovereignty and work to address underlying aspects causes of individuals who become missing and murdered in their community. The focus of all these courts is to address issues “upstream” instead of dealing with ultimately tragic issues which debilitate our communities.

Challenges to Public Safety in Indian Country: Jurisdiction, Illegal Drugs, and Resources

Protecting public safety in Indian country is a difficult task, given the complex challenges facing both Tribes and federal agencies responsible for meeting our obligations to Tribes and their citizens. We’ve highlighted three of the biggest challenges we are facing: jurisdiction, illegal drugs, and resources.

Jurisdiction

The jurisdictional framework between Indian Tribes, the federal government, and states is complex, especially regarding criminal jurisdiction. Congress and the courts have tied criminal jurisdiction to several variables to determine who exercises jurisdiction. These variables include type of crime, Tribal affiliation of the defendant, Tribal membership status of the victim, and land status of the crime scene. These variables impose significant transaction costs on officers, policymakers, attorneys, judges, and advocates working to address public safety challenges in Indian country. In most other jurisdictions, resolving these issues before beginning the work of policing and adjudicating is a simple task. In Indian country, it is a necessary complexity.

However, Congress, has legislated to clarify and affirm criminal jurisdiction in Indian Country. These enactments include:

- the 1968 amendments to P.L. 280, which required states to obtain the consent of the Indian Tribe prior to exercising criminal jurisdiction in Indian Country and permitted states to withdraw from the jurisdictional arrangement;
- the 1991 amendments to the Indian Civil Rights Act, which affirmed Indian Tribes’ inherent criminal jurisdiction over non-member Indians;
- the 2010 Tribal Law and Order Act, which enhanced the criminal sentencing authority of Tribal courts;
- the 2013 reauthorization of the Violence Against Women Act, which recognized and affirmed Indian Tribes’ inherent jurisdiction to prosecute non-Indians for certain crimes committed in Indian Country;
- the 2019 enactment of Savanna’s Act, which improved the federal response to missing or murdered Indigenous persons by increasing coordination among Tribal, Federal, State, and local law enforcement agencies.
- the 2019 enactment of the Not Invisible Act, which created a Commission to make recommendations to the Department of the Interior and Department of Justice to improve intergovernmental coordination and establish best practices for state-Tribal-federal law enforcement to combat the epidemic of missing persons, murder, and trafficking of Native Americans and Alaska Natives; and
- the 2022 reauthorization of the Violence Against Women Act, which expanded and reaffirmed Indian Tribes’ inherent jurisdiction to prosecute non-Indians for additional crimes committed in Indian Country.

These enactments demonstrate that Indian Tribes themselves can best meet the public welfare and safety needs of communities within their jurisdiction.

Illegal Drugs in Tribal Communities

Drug related activity in Tribal communities is a major contributor to violent crime and imposes health and economic hardship. As a response, OJS has a specialized national drug enforcement division, the Division of Drug Enforcement (DDE), to investigate the distribution of illegal narcotics in Indian Country. OJS also conducts investigations on narcotics, gangs, human trafficking, and border violations in Indian Country. The DDE provides investigations that focus on disrupting drug distribution networks and analytical support to track drug cases that directly impact Indian Country. The DDE provides drug related training and technical assistance to law enforcement programs that operate in Indian Country.

Current Drug Seizure Totals

Each year, our DDE plans and executes multiple undercover narcotic and highway interdiction operations throughout Indian Country. The operations will typically range from 4 to 14 days, during which the assigned special agents and police officers focus efforts solely on a specific reservation. The number and success of these operations is the strongest driver of our annual illegal drug seizures. During FY 2023, twenty-two such operations were completed, leading to seizure totals of:

- Methamphetamine: 1,846 lbs.
- Fentanyl Powder: 98 lbs.
- Fentanyl Pills: 1,097,671
- Marijuana: 11,411 lbs.
- Heroin: 23 lbs.
- Cocaine: 1,418 lbs.

Current Drug Threats and Impact on Tribal Communities

Nationwide activities of our drug enforcement team are identifying methamphetamine and fentanyl as the prevalent emerging drug threats to the safety of Tribal communities. Tribes reported 1,590 fatal overdoses in FY 2023 and 899 non-fatal overdoses. While the data conveys the seriousness of these threats, we are unable to measure the resulting impact to victims, affected families, and the already strained Tribal justice and social service systems in these communities.

Resources

Many resources are needed to help fully staff Tribal public safety agencies. This includes housing, updated equipment, and the improvement of Tribal public safety data collection.

Housing for Tribal public safety staff is important for recruitment and retention. Many Tribal communities are in remote areas and law enforcement recruits often must relocate to those communities for their jobs. It's no secret that housing needs within Tribal communities are very high. Housing conditions vary from community to community, but homes are often overcrowded, lack running water and heat, and need replacement. Combined with traveling long distances from home to work contributes to fatigue on Tribal law enforcement staff and the faster deterioration of public safety equipment.

The Task Force report stated that Department law enforcement officers identified having updated equipment and technology resources as one of the top priorities needed to support their safety. Because many Tribal communities and homes are located in remote areas with unpaved roads, public safety vehicles accumulate greater wear and tear and need to be routinely replaced. Tribal law enforcement officers often respond to high-risk calls alone and face greater rates of death in the line of duty. Ensuring all Tribal officers have access to reliable top-tier equipment can contribute to their safety in the field. Law enforcement heavily rely on field communications, like land mobile radios, to respond to calls and maintain officer safety. Expanded radio coverage would minimize "no coverage" areas and should include video and data capabilities to increase officer safety and reduce the stress of uncertainty of whether assistance will be available.

Another component to ensuring Tribal law enforcement officer safety is access to law enforcement data systems. State and federal law enforcement agencies utilize their own data systems to track important information like warrants, missing individuals, unsolved crimes, evidence, and the level of danger a criminal poses. These systems often do not communicate with each other and contribute to data gaps in Tribal communities. Tribal law enforcement agencies also do not always have access to these systems and if they do, individuals must be trained to use federal systems and many agencies often do not have the staff to utilize that training. Consolidating those existing law enforcement systems would improve the capture of public safety data and allowing Tribal law enforcement agencies to have access to that consolidated system can also ensure Tribal officer safety in the field.

Conclusion

The Department continues to prioritize and reinforce Tribal sovereignty and self-determination by providing support and resources to improving public safety in Indian Country.

Chair Hageman, Ranking Member Leger Fernández, and members of the Subcommittee, thank you for the opportunity to provide the Department's views. We look forward to working with Congress to affirm and support Tribal sovereignty and public safety within Tribal communities. I am happy to answer any questions that you may have.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. BRYAN NEWLAND, ASSISTANT SECRETARY-INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. Newland did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

Question 1. Can you please provide further details, including any positive or unforeseen outcomes, of the Bureau's recent strides towards pay parity among law enforcement, specifically in the Bureau's upgrade to the uniformed police officer positions in FY 2023?

Question 2. Can you provide further details on what the Bureau has done to address the lengthy background checks process, and any further steps the Bureau intends to take?

Questions Submitted by Representative Hageman

Question 1. Assistant Secretary Newland, during the hearing we discussed issues the Bureau of Indian Affairs is facing with recruitment and retention of law enforcement officers. In your answer detailing Bureau efforts to address these problems, you discussed your willingness to work with the Subcommittee to develop other tools, such as location pay and special incentives and bonuses, to recruit, hire, and retain candidates to positions in remote locations.

1a) What are some other tools Congress could consider providing the Bureau?

Question 2. We noted in the hearing that BIA has received additional money and resources in recent years from Congress to address these issues.

2a) What can Congress do to ensure these growing resources are having the greatest impact possible? By this I mean, what else, besides providing more resources, can Congress do to help BIA?

Question 3. Congressman Jerry Carl cited the concerns raised by the Coalition Of Large Tribes (C.O.L.T.) about the pending Food and Drug Administration (FDA) ban of menthol cigarettes in America.¹ Specifically, C.O.L.T. is concerned that this ban will create illicit markets for foreign cartels and criminal interests from China, the Middle East, and Mexico. C.O.L.T. notes that trafficking channels already exist on reservations because these cartels know how to use the jurisdictional gaps and underfunded law enforcement to their advantage. Therefore, C.O.L.T. believes this proposed ban will have significant public safety concerns, such as placing further strains on tribal law enforcement and exposing Native American consumers of these products to unregulated cigarettes.

3a) Assistant Secretary Newland, during the hearing you responded that you were not aware of the FDA proposed rule. Have you had the chance to familiarize yourself with the proposal? And have you since consulted with the FDA?

3b) Do you share these concerns about the unintended consequences this proposed rule could have on tribal public safety should it go into effect?

3c) Numerous tribes and tribal reservations in our nation, especially in the West and Southwest, are already burdened by the increasing flow of fentanyl and other illicit products over the southern border. Could this FDA proposed rule further strain resources tribes have had to dedicate to this national issue?

(i) Could this proposed rule damage BIA efforts to assist tribal law enforcement deal with the influx of illicit products and criminal organizations using reservations for their own advantage?

¹Tobacco Product Standard for Menthol in Cigarettes, 87 FR 26454 (Proposed May 4, 2022)

Question 4. It is our understanding that the final rule has been sent to the White House Office of Management and Budget for review.

4a) Will you commit to consulting with the FDA and White House to raise these tribal concerns before a final rule is published?

Ms. HAGEMAN. Thank you very much.

The Chair now recognizes the Honorable Dustin Klatush for 5 minutes. Welcome back.

**STATEMENT OF THE HON. DUSTIN KLATUSH, CHAIRMAN,
CONFEDERATED TRIBES OF CHEHALIS RESERVATION,
OAKVILLE, WASHINGTON**

Mr. KLATUSH. Good afternoon, Chair Hageman, Ranking Member Leger Fernández, and members of the Committee. My name is Dustin Klatush. I am the Chairman of the Confederated Tribes of the Chehalis Reservations. My testimony will focus on challenges that the Chehalis Tribe has experienced providing effective law enforcement services to our community and provide some recommendations for the Committee to consider.

The Chehalis Reservation is located halfway between Seattle and Portland off Interstate 5 in Southwest Washington State. The Tribe's 5500-acre reservation land base is checkerboarded and portions of the reservation are in three different counties.

Recruitment challenges in Washington State. Many Indian tribes, including Chehalis, have recruited and trained law enforcement officers only to see them leave for more competitive pay and benefits in neighboring jurisdictions. As explained in my written statement, the state of Washington has the lowest number of law enforcement officers per 1,000 residents of any state in the United states. This has resulted in aggressive recruiting efforts by our neighboring state and local jurisdictions for tribal officers. My Tribe pays salaries on par with our neighbors, but it is not able to provide the same retirement benefits that our neighboring jurisdictions can provide.

The Tribe fully supports the Parity for Tribal Law Enforcement Act, a bipartisan bill introduced by Congressman Dan Newhouse, that would allow tribal law enforcement officers to begin accruing the same retirement, injury, and death benefits that Federal law enforcement officers currently enjoy. If enacted, H.R. 4524 will provide Indian tribes nationwide with a critical tool to address law enforcement, recruitment, and retention challenges.

The Tribe encourages the Committee to move this bill quickly. Fentanyl has put an increased burden on tribal law enforcement in Washington State. As I mentioned in my written statement, fentanyl has become one of the Chehalis Tribe's biggest law enforcement challenges.

In 2021, the Washington State Supreme Court ruled that the state's primary criminal drug possession law was unconstitutional. The Washington State Legislature responded by enacting a new law that made possession of hard drugs like fentanyl a misdemeanor. The new law also required that offenders be diverted to treatment in lieu of arrest for, at the least, the first two arrests.

This effectively meant that state law enforcement would not make arrests for fentanyl possession.

Fentanyl usage has surpassed heroin and methamphetamine usage on the Chehalis Reservation and in Southwest Washington. Most arrests that the Tribe's officers make involve fentanyl. While the Tribe's neighboring jurisdictions are effectively unable to arrest the drug possession crimes due to lax state laws, our U.S. Attorney's Office wants to see airtight cases with large amounts of drugs before it will take up cases.

All of this has meant that the Chehalis and other tribal law enforcement agencies must fend for ourselves. Congress should consider using the special domestic violence jurisdiction in the Violence Against Women Act as a model and provide authority for Indian tribes to arrest and prosecute non-Indians for possession and distribution of fentanyl and other hard drugs. This type of authority is the only real enforcement mechanism for tribes to get fentanyl-related perpetrators off the streets.

We are aware that law enforcement is only a part of the solution to the fentanyl problem. Next month, the Tribe will host a grand opening of its Hope and Healing Clinic, a facility that will provide inpatient and outpatient treatment for substance abuse, including opioids. The Tribe also has a 38-foot mobile clinic that will be used to provide treatment at remote locations. The Tribe intends for the Hope and Healing Clinic to fill a critical void in our area by providing treatment options not only for the Tribe but our non-Indian neighbors as well.

Moving forward, the Tribe urges the Committee to ensure that Indian tribes are included in larger Federal initiatives and legislation that provide resources to government to arrest and prosecute fentanyl-related offenses and to provide treatment options.

Thank you for allowing me to provide testimony today. I look forward to answering any questions the Committee may have.

[The prepared statement of Mr. Klatush follows:]

PREPARED STATEMENT OF THE HONORABLE DUSTIN KLATUSH, CHAIRMAN,
CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION

Thank you, Chair Hageman, Ranking Member Leger Fernandez, and members of the Committee for holding this oversight hearing. My name is Dustin Klatush, and I am the Chairman of the Confederated Tribes of the Chehalis Reservation (the "Tribe"). My testimony will focus on challenges that the Chehalis Tribe has experienced providing effective law enforcement services to our community, and provide some recommendations for the Committee to consider.

The Chehalis Reservation was created by Executive Order in 1864 and is located between the confluence of the Chehalis River and the Black River. Geographically, the Tribe is located approximately halfway between Seattle and Portland off Interstate 5. Large assemblages of the Tribe's 5,500-acre reservation land base are checkerboarded and are situated throughout southwestern Washington state in three different counties. Approximately forty percent of Chehalis tribal members are under the age of 18.

I. RECRUITING AND RETAINING TRIBAL OFFICERS HAS NEVER BEEN MORE DIFFICULT

According to data published annually by the Washington Association of Sheriffs and Police Chiefs,¹ the state of Washington has the lowest number of law enforcement officers per 1,000 residents of any state in the United States. Washington's average of 1.12 officers per 1,000 residents is below every other state and the District of Columbia. The national per capita average is 2.31 per 1,000 residents, so Washington state has less than half as many officers proportionately than the national average. The number of officers in Washington state has been decreasing despite aggressive recruitment efforts by local jurisdictions, such as increased pay and hiring bonuses.

The Tribe's Police Department (PD) carries out law enforcement and detention services under a contract with the Bureau of Indian Affairs (BIA) under the Indian Self-Determination and Education Assistance Act of 1975. The Tribe's PD has thirteen commissioned officers who are certified under state law to enforce state and local criminal laws, in addition to Chehalis tribal criminal laws. The PD currently has two vacant positions. Next year, the Tribe intends to add two new officer positions and hopes that it will be able to find suitable candidates to fill them.

Many Indian tribes have experienced recruiting and training law enforcement officers only to see them leave for more competitive pay and benefits in neighboring jurisdictions. The Chehalis Tribe is no exception, and this problem has been aggravated by the shortage of officers statewide and the aggressive recruiting efforts of our neighboring jurisdictions.

There are other factors that the Tribe believes have contributed to the shortage of police officers, including a negative political climate in recent years toward law enforcement generally. We are seeing fewer young people who are interested in pursuing careers in law enforcement. Historically, the Tribe could rely on officers from neighboring jurisdictions who retired with pension benefits from their respective state and local departments to seek employment with the Tribe as tribal officers. Today, however, we are now seeing these individuals leaving the law enforcement profession altogether.

The decrease in the number of law enforcement officers in Washington state over the past five years has unfortunately corresponded with an increase in the number of assaults against police officers. In 2018, there were 1,676 reported assaults on law enforcement officers in the state. In 2022, there were 2,375 reported assaults against police officers, which represented a 20 percent increase over 2021. These statistics highlight the obvious: law enforcement is a critical, yet dangerous, profession in any community.

While the Tribe pays salaries commensurate with our neighbors, it is not able to provide the same retirement benefits that our neighboring jurisdictions can provide. State governments and municipalities can fund pension and more generous retirement benefits by collecting various types of real estate, income, and sales and excise taxes on individuals and businesses. Indian tribes, on the other hand, have a very limited ability to collect taxes—particularly from non-Indian businesses—because of the so-called “dual taxation” problem where federal courts have generally allowed state and local governments to impose and collect taxes on non-Indians in Indian country, even where a tribal tax applies. For tribes to impose tribal taxes under these circumstances means that non-Indian businesses will simply not do business on tribal lands because of the dual system of taxation.

The Tribe fully supports the Parity for Tribal Law Enforcement Act (H.R. 4524), a bipartisan bill introduced by Congressman Dan Newhouse that would allow tribal law enforcement officers to begin accruing the same retirement, injury, and death benefits that federal law enforcement officers currently enjoy. The Tribe has worked closely with the Department of the Interior on this bill and is confident that the bill will have a minimal impact on the federal budget. If enacted, H.R. 4524 will provide Indian tribes nationwide with a critical tool in addressing their law enforcement recruitment and retention challenges. The Tribe encourages the Committee to move this bill quickly.

¹See *Crime in Washington 2022 Annual Report*, Washington Association of Sheriffs and Police Chiefs, available at <https://www.waspc.org/assets/CJIS/Crime%20in%20Washington%202022-compressed.pdf>. The statistics cited in this prepared statement were taken from this report.

II. FENTANYL AND ENFORCEMENT GAPS IN STATE LAW HAVE PUT AN INCREASED BURDEN ON TRIBAL LAW ENFORCEMENT IN WASHINGTON STATE

In 2021, the Washington Supreme Court struck down Washington state’s primary drug possession law as unconstitutional in a case called *State v. Blake*.² The state law that was invalidated by that decision had made possession of controlled substances a felony.

The Washington State Legislature responded to the *Blake* decision by enacting a law that made drug possession, including hard drugs like fentanyl, a *misdemeanor* with a requirement that offenders be diverted to treatment in lieu of arrest for at least the first two arrests. The Legislature’s response meant that, for practical purposes, law enforcement could not arrest individuals for possessing or using fentanyl or other hard drugs because the law enforcement agencies had no effective way of tracking whether a perpetrator had been offered services the requisite two times before an arrest was allowed.

This year, the Washington State Legislature amended the law again to remove the mandatory diversion requirements, but possession and public use of fentanyl or other hard drugs are still only misdemeanors. Further, the new law “encourages” law enforcement officers to divert offenders for treatment in lieu of jailing them. The new law went into effect this past summer and widespread confusion still exists among law enforcement in the state about what to do with drug possession offenders.

The state of Washington’s evolving approach to drug possession has caused a ripple effect for tribal police departments, including the Tribe. Most arrests that the Tribe’s officers make involve fentanyl possession. Fentanyl usage has surpassed heroin and methamphetamine usage on the Chehalis Reservation and in southwest Washington.

While the Tribe’s neighboring jurisdictions are unable to arrest for drug possession crimes due to lax state laws, the U.S. Attorney’s Office has other challenges. Federal law enforcement priorities vary with administrations and the current federal prosecution priorities for our U.S. Attorney’s Office are human trafficking, sex crimes, and financial crimes. For drug cases in Indian country, federal prosecutors in our area want to see airtight cases with large amounts of drugs. Those cases represent just a small fraction of the fentanyl cases in our area, which renders the federal law enforcement response essentially a non-factor for the Tribe’s purposes. Given the realities of state and federal law enforcement in our area, Chehalis and other tribes are often in the difficult position of having to fend for ourselves.

Indian tribes generally lack jurisdiction to prosecute non-Indians for violations of tribal law, including offenses related to drug possession and distribution. In 2013, Congress authorized Indian tribes to prosecute non-Indians for certain domestic violence offenses in Indian country and expanded that authority for related offenses when it reauthorized the Violence Against Women Act in 2022. Congress should consider providing similar authority for Indian tribes to arrest and prosecute non-Indians for possession and distribution of fentanyl and other hard drugs. Given the legal and political landscape in the state of Washington, this type of authority might be the only effective enforcement mechanism to get fentanyl-related perpetrators off the streets for tribes in our area.

The Tribe is mindful that law enforcement is only part of the solution to the fentanyl problem. On December 14, 2023, the Tribe will host the grand opening of its Hope and Healing Clinic, a facility that will provide inpatient and outpatient treatment for substance abuse, including opioids. The Clinic will provide medication-assisted treatment and behavioral health therapy and will be the only facility of its kind in the surrounding area. For state and local governments, siting these types of facilities has proven difficult because of opposition from residents, neighbors, and citizen groups. Tribes, on the other hand, can expedite construction on tribal lands using tribal zoning laws and regulations, which is what the Tribe did.

The Tribe also has a 38-foot mobile clinic that will be used to provide treatment at remote locations, as well as to transport patients to and from the Hope and Healing Clinic. The Tribe intends for the Hope and Healing Clinic to fill a critical void in our area by providing treatment options not only for the Tribe, but our non-Indian neighbors as well. Moving forward, the Tribe urges the Committee to ensure that Indian tribes are included in larger federal initiatives and legislation that provide resources to governments to arrest and prosecute fentanyl-related offenders and to provide treatment options.

²*State v. Blake*, 197 Wash.2d 170, 481 P.3d 521 (2021).

I thank the Committee for allowing me to provide testimony today and look forward to answering any questions.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. DUSTIN KLATUSH, CHAIRMAN,
CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION

The Honorable Dustin Klatush did not submit responses to the Committee by the appropriate deadline for inclusion in the printed record.

Questions Submitted by Representative Westerman

Question 1. In your written testimony you mentioned the challenge to recruit and retain qualified law enforcement officers even with the Tribe's ability to provide equivalent salaries as neighboring jurisdictions.

1a) Can you provide the Committee with statistics and/or anecdotes that illustrate this issue?

1b) Are there law enforcement personnel that have informed you they would continue to work for the Tribe, but for the difference in benefits between the law enforcement agencies?

Question 2. You highlighted in your testimony that Washington State has the lowest number of police officers per capita of any state in the United States.

2a) How has the overall shortage impacted the Tribe's ability to recruit and retain tribal officers?

2b) Do you believe that an overall opposition or antagonism towards law enforcement and police in general has contributed to this shortage?

Question 3. In your testimony you mentioned the common situation of your Public Safety Department training new officers only to leave for other law enforcement agencies.

3a) What has the financial cost been for the Tribe of this revolving door of training officers only to have them leave?

Question 4. Please describe the factors that led the Tribe to open a treatment facility to provide addiction and behavioral health services. How will the opening of the treatment facility contribute to a long-term strategy to address drug use in tribal communities?

Question 5. Can you provide further information on the complex jurisdiction issues the Tribe faces when working with local and state officials and agencies in the realm of narcotic related offenses?

Question 6. How has your tribe supplemented resources and funding that BIA provides for public justice services in your communities? And are there other funds or resources you have leveraged in your communities?

Question 7. What actions at a tribal, state, local, or federal level do you think can increase cooperation between law enforcement agencies? And what is your tribe doing to increase that capacity for your own tribal officers?

Ms. HAGEMAN. Thank you for your testimony.

The Chair now recognizes the Honorable Lloyd Goggles for 5 minutes.

**STATEMENT OF THE HON. LLOYD GOGGLES, CHAIRMAN,
ARAPAHO BUSINESS COUNCIL, NORTH ARAPAHO TRIBE,
ETHETE, WYOMING**

Mr. GOGGLES. Chairman Hageman, Ranking Member Leger Fernández, members of the Subcommittee, thank you for inviting me to speak on this important issue of public safety. To inform you, I do have a speech impediment, so please bear with me.

My name is Lloyd Goggles. I am an enrolled member of the Northern Arapaho Tribe. I was elected Chairman of the Business Council in 2022. I have approximately 15 years of experience in law enforcement. I am a former United States Marine, a Wyoming National Guardsman, tribal police officer, municipal police officer, and tribal judge.

Accordingly, I have been exposed to law enforcement and public safety issues both inside and outside of the Tribe. Tribal law enforcement grapples with numerous obstacles but I believe a bright future is emerging. Today, I will talk about these challenges and opportunities for improvement in critical areas, including recruitment and retention of key personnel, jurisdiction, and other community issues.

The Northern Arapaho and Eastern Shoshone Tribes are separate, sovereign, federally recognized tribes that occupy the same reservation. With no independent tribal police force, the tribes rely heavily on the efforts of the Bureau of Indian Affairs, BIA. BIA officers are helpful in patrolling and ensuring the public's safety, but they have their limits.

To truly improve the public safety, the Tribe needs a strong tribal law enforcement agency to work with BIA and other law enforcement agencies. We do have three tribal fishing and game wardens, but they are tasked with the patrolling of the 240 lakes, 1,100 miles of stream, and a total 2.2 million acres of tribal land. Realistically, a minimum of 12 officers are needed. Creating a tribal law enforcement agency and providing minimal staffing levels for officers at the Fish and Game Department requires innovative Federal funding solutions.

Regarding jurisdiction, some of the areas on the reservation have a checkerboard jurisdiction which creates logistical inefficiencies and confusion. Sometimes officers are simply unsure of who to call. Consequently, the law goes unenforced. The better utilization of special law enforcement commission cards and cross-deputization can be a solution here. Confusion and lack of enforcement often results in non-members on the reservation who believe they do not need to follow tribal laws.

This results in higher numbers of violations, everything from simple speeding to far more sinister crimes. For example, we have caught Federal agents poaching and people sneaking over to fish without a permit. The fines for such violations outside of tribal land would be severe but there is a view that you can get away with this behavior on tribal land.

But this is a direct challenge to our sovereignty. We must have a system that respects both the rights of the people and the legitimacy of tribal law. Good public safety requires law enforcement to engage actively with the communities. Their increased presence during non-emergency times will build trust and create strong relationships. As of now, we see BIA officers only when their presence is required or requested.

Lastly, I would be remiss if I did not mention economic conditions which can aggravate social pressures, including crime, and any solution to public safety requires addressing the harsh economic conditions on the reservation. Public safety on Native American land is a shared responsibility that transcends borders,

cultures and backgrounds, logistical issues, and cultural differences. They present challenges for us.

But the future holds promise. Progress requires community engagement, cultural awareness, and collaboration. At an early age, the elders in my community inspired me to serve. Since then, I have always been a public servant. I am inspired to see that light in the next generation in my son's eyes and the eyes of other young people like him.

Thank you and I look forward to your questions.

[The prepared statement of Mr. Goggles follows:]

PREPARED STATEMENT OF LLOYD GOGGLES, CHAIRMAN OF THE NORTHERN ARAPAHO BUSINESS COUNCIL

I. Introduction

Chairwoman Hageman, Ranking Member Leger Fernandez, members of the Subcommittee, thank you for inviting me to speak on behalf of the Northern Arapaho Tribe about this very important issue.

My name is Lloyd Goggles. I am an enrolled member of the Northern Arapaho Tribe from the Wind River Reservation. I was elected Chairman of the Business Council in 2022.

I have approximately 15 years of experience in law enforcement. I am a former United States Marine, a Wyoming National Guardsman, Tribal police officer, municipal police officer, and a Tribal judge. Accordingly, I have been exposed to law enforcement and public safety issues both inside and outside of the Tribe.

The Wind River Reservation is shared between the Northern Arapaho and Eastern Shoshone people. We have approximately 10,600 enrolled Northern Arapaho members, most who live on the reservation. Additionally, there are also about 3,500 enrolled Shoshone people. In addition to the members that occupy the land, we also have non-members who live on the Wind River Reservation.

As Chairman of the Business Council, I view public safety as paramount to the wellness of our people.

There is no doubt that Tribal law enforcement grapples with numerous obstacles, from limited resources to jurisdictional issues, that directly impact public safety. We have issues with funding, with drugs, with disgruntled residents, and with non-members who do not respect Tribal laws and the Tribe's jurisdiction. Many of these issues are exacerbated by a lack of cultural knowledge by non-members.

And yet, even with these hurdles, I believe a bright future is emerging and that there are several opportunities for improvement. Moving forward, we should prioritize law enforcement's community engagement, cultural awareness, and increased collaboration between agencies at the federal, state, municipal, and tribal levels.

And that is what I will talk about today—both the challenges and the opportunities for improvement in critical areas relating to public safety, including (1) recruitment and retention, (2) jurisdiction, and (3) other community issues.

II. Recruitment and Retention

a. Law Enforcement

Neither the Northern Arapaho Tribe nor the Wind River Reservation have an independent Tribal police force. Instead, we rely heavily on the coordinated efforts of the Bureau of Indian Affairs (BIA) Wind River Agency and their police force. The BIA has approximately 32 officers dedicated to the region and function as our primary law enforcement agency.

BIA officers are helpful in patrolling and ensuring the public's safety, but they have their limits. To truly encourage improvements to public safety, the Tribe needs a strong Tribal law enforcement agency to work with BIA and other law enforcement departments.

We do have the Tribal Fish and Game Department, which is a Tribal government entity. However, the Fish and Game force is severely understaffed. There are only three officers in the department. These individuals are responsible for patrolling and monitoring roughly 2.2 million acres of reservation land. To patrol adequately, the Fish and Game force needs at least 12 officers.

This recruitment effort requires increased funding, so that we can hire and train officers. However, funding has been a major hurdle for the Tribe in the past.

Formerly, we had the Tribal Highway Safety patrol and a Drug Liaison position, but both have been eliminated due to a lack of funding. Those positions were important and helped fill the gaps left by BIA. The loss of these positions means we are unable cover integral components of regular law enforcement.

b. Tribal Judges and Prosecutors

The judicial and legal systems also play a vital role in public safety by ensuring the fair and equitable administration of justice. Every day, our Tribal judges make critical decisions on cases involving criminal offenses that impact the lives of our residents. So, it is necessary that we have enough trained judges to carry out these duties. Likewise, quality prosecutors are needed to ensure public safety—they play an important role in ensuring fair outcomes, and tribal prosecutors are also uniquely situated in understanding both the law of the Tribe as well as the Tribe's tradition and customs.

Right now, we have four tribal judges: a chief judge and three associate judges. We have one tribal prosecutor. In a recent BIA report, all of the judges were deemed to be unqualified. Likewise, our prosecutor is talented and does the best she can, but needs more structural support to succeed.

Much of the problem here stems from simple economics. Tribal judges make far less than they would in other markets. They receive no retirement or health benefits. Their advanced degrees are highly sought after, and the Tribe is unable to meet their economic needs. The Tribe needs to be able to compete economically to attract, train, and retain that talent.

III. Jurisdictional Challenges

Generally, we have a good working relationship with all law enforcement entities, whether it be federal, state, county, or municipal government bodies. But there are areas where we can increase collaboration and simplify jurisdictional processes in a way that provides for more efficient use of resources.

Some of the areas on the reservation have “checkerboard” jurisdiction, which present challenges by way of logistical inefficiencies and confusion.

Sometimes officers are simply unsure who to call. This can frustrate officers, who often do not have the time or capacity to figure out jurisdictional confusions. Consequently, sometimes the law goes unenforced. To prevent this, BIA officers should continue to work closely with tribal law enforcement, tribal leaders, and other relevant agencies to coordinate efforts. Some options to improve this issue include better utilization of Special Law Enforcement Commission cards and cross deputization.

The confusion and lack of enforcement results in some non-members on the reservation having a lack of respect for the rule of law. These non-members believe they do not need to follow the laws set by our Tribal government bodies. This results in higher numbers of violations—everything from simple speeding to far more sinister crimes within our community.

This is a direct challenge to our sovereignty as a Tribe that we cannot tolerate. We must have a system that respects both the rights of the people, whether members or non-members, as well as the legitimacy of law at all levels of government, including the Tribe.

IV. Community Solutions

In addition to improvements with recruitment and jurisdiction, there are also opportunities for progress in community policing and providing more economic opportunities to residents.

Public safety requires law enforcement to interact with and understand the people being served. BIA officers should engage actively with tribal communities to build trust and create strong relationships. Their increased presence in the community during non-emergency times will improve circumstances for everyone during times of need. As of now, we see BIA officers only when their presence is requested. This was not always the case. I remember a time when the presence of BIA officers was more visible and regular; we should return to that model.

I also suggest that all BIA personnel receive more training on the specific cultural, historical, and social aspects of the tribes they serve. Understanding these aspects will help officers work more effectively and engender greater trust and understanding by both sides.

Lastly, I must also mention economic conditions on the reservation, something I work on every day to help address. Poor economic conditions can aggravate social pressures; this includes crime. Sadly, some tribal members suffer under poor economic conditions, exacerbated by a lack of opportunity. Distressed people sometimes act in a distressed manner. The harder we work to address economic

conditions on the reservation and among tribal members generally, the fewer problems we will face, socially and criminally. To accomplish this, we must make sure that federal government institutions are fulfilling their responsibilities and economic opportunities exist to help uplift tribal members.

V. Conclusion

Public safety on Native American land is a shared responsibility that transcends borders, cultures, and backgrounds. We must work together to ensure a safer and more just community for everyone.

Throughout my life and career, I have viewed this problem from many angles. At an early age, the elders from my community inspired me to serve. Since then, I have always been a public servant and aspired to have a good rapport with the people I served. I remember a time when there was a more collaborative working relationships between various law enforcement agencies, when there was more enthusiasm about serving the communities, and when law enforcement was viewed in a more positive light.

Logistical issues and cultural differences do present challenges for us. But the future still holds promise, and we can make progress towards a safer and more prosperous future so long as we continue to focus on community engagement, cultural awareness, and collaboration between all parties.

Thank you. I look forward to answering your questions and working with you in the future.

QUESTIONS SUBMITTED FOR THE RECORD TO THE HON. LLOYD GOGGLES, CHAIRMAN,
ARAPAHO BUSINESS COUNCIL, NORTHERN ARAPAHO TRIBE

Questions Submitted by Representative Westerman

Question 1. At the hearing you were able to explain further about how fentanyl and other illicit narcotics have had a detrimental impact at Wind River Reservation.

1a) Please provide any further information that you think the Committee should know about this issue for the reservation.

Answer. The pervasive presence of fentanyl remains a significant concern within the reservation. The effects are detrimental. Tragically, lives have been lost and severe disruption within families has been experienced due to fentanyl and other substances. The escalating prevalence not only further restricts our already constrained resources for public safety and public health, but also demoralizes our people. Thus, it is imperative that we remain committed to limiting and ultimately eliminating the presence of illegal fentanyl on the reservation. The Drug Liaison position would help with this issue.

1b) If the tribe(s) were able to support a Drug Liaison position, how would that impact the ongoing illicit drug crisis on the Wind River Reservation?

Answer. Establishing a Drug Liaison position would aid tribal law enforcement in prioritizing the monitoring and enforcing of drug control laws within our community. Presently, the absence of dedicated personnel focused on drug control hinders our visibility into these critical issues.

For instance, consider the frequent occurrence of non-drug violations on the reservation, such as trespass. Addressing these incidents demands significant resources and leads to the diversion of focus and funding away from drug-related law enforcement efforts. This designated position would help change the current dynamic and facilitate the proactive implementation of a systematic approach for gathering intelligence and investigating both known and potential drug-related offenses.

Moreover, the appointment of a liaison officer would enhance the relationship with the Bureau of Indian Affairs (BIA) and other law enforcement agencies. The Drug Liaison could function as a central point of contact for drug-related infractions, providing valuable insights into the cultural and communal aspects intertwined with drug control issues. This proactive engagement empowers the tribe to assume a leading role in overseeing and upholding drug laws within the reservation, an assertion of greater sovereignty.

While reinstating the Drug Liaison position would be a step in the right direction, it must also be noted that there would still be more to do. Ultimately, drug enforcement is a communal effort. Tackling illicit drug issues requires strong and organized law enforcement, broadly. No one position will be the solution.

Question 2. Your testimony discussed community solutions that included a return to BIA officers being more regular and visible on the reservation and establishing further training for BIA personnel on the culture and history of the tribes they serve.

2a) What impact would an increased, and visible police force have on the Wind River Reservation and what would that practically look like in day-to-day actions on the reservation?

Answer. Based on the most recent data available to us, BIA currently has 22 officers stationed to the Wind River Reservation. We also understand the agency is looking to fill four more positions, a total of 26 officers. However, the existing approach concerning the territorial assignments of BIA officers have led to notable challenges.

First, the deployment of 22 officers falls short in effectively monitoring our expansive community. Tasked with surveilling a reservation spanning across 2.2 million acres, or 3,532 square miles, BIA officers struggle tremendously with triaging their forces to address the most urgent matters. More personnel are imperative to meet the needs of our community.

Second, even when fully staffed, the BIA often reassigns officers to other areas once capacity is met in our region. This is due to the agency-wide shortage. Consequently, officers frequently spend only limited time here before being transferred elsewhere. This practice significantly complicates the rapport between BIA officers and our community. The transient nature of officer tenure inhibits the establishment of substantial, enduring relationships and a deep understanding of the community's needs.

An increase in officers, enough officers to be present in the community more continuously, would change the current dynamic. This change means more and improved long-standing relationships with Tribal law enforcement, more and improved long-standing relationships with the Tribal governments, increased casual interactions with the Northern Arapaho people, officer presence in schools, shops, and on street corners. The change also means community members having day-to-day interactions with BIA, rather than only interacting with them when there is an emergency or a problem. This approach encourages harmony and creates familiarity.

2b) How can the tribe assist the Bureau of Indian Affairs in providing increased cultural training regimen for officers?

Answer. This is a land of mixed cultures, and it is imperative that we foster mutual understanding. The Northern Arapaho people, of course, possess deep expertise in our cultural heritage, and welcome all that want to learn and understand more. We stand ready to contribute by offering valuable cultural sensitivity training sessions.

Indeed, our tribe has supported Northern Arapaho participation in cultural training before. However, while we have previously offered to conduct training, some former BIA chiefs have declined our offer. This training ought to be mandatory, rather than optional. Officers and agencies having adequate familiarity with the communities they serve is too important to be discretionary.

To that end, I suggest a Tribal component of Wind River Cares. Previously, Wind River Cares was slated to conduct a cultural competency training for local police jurisdictions. Regrettably, this training did not come to fruition.

The Wind River Cares training, and others like it, could help federal, state, and local law enforcement in the following ways: (1) by creating shared understanding of the cultural nuances, traditions, and customs of the community; (2) participating in the training led by tribal members helps build trust and familiarity from the very beginning of service; (3) it potentially increases the effectiveness of communication because of the shared understanding and deliberate relationship building; and (4) it will help reduce any biases, stereotypes, and preconceived notions about the tribe.

Question 3. How has your tribe supplemented resources and funding that BIA provides for public justice services in your communities? And are there other funds or resources you've leveraged in your communities?

Answer. BIA plays a pivotal role in delivering direct services through officer support within our tribal community. Accordingly, any tribal supplement related to public safety or public justice provided by the Northern Arapaho is typically in the form of private security arrangements facilitated by the tribe itself. For instance, the tribe regularly engages private security services to ensure enhanced safety and orderliness during significant public gatherings such as Tribal Council assemblies.

Moreover, the tribe regularly employs private security personnel to oversee and safeguard large-scale public cultural events, such as the revered Sun Dance ceremony. The utilization of private security personnel during these occasions serves

multiple purposes, including crowd management, ensuring the sanctity and security of cultural practices, and upholding the overall safety and well-being of attendees.

Question 4. What actions at a tribal, state, local, or federal level do you think can increase cooperation between law enforcement agencies? And what is your tribe doing to increase that capacity for the BIA officers for your reservation?

Answer. There are several actions that can be taken to increase cooperation between law enforcement agencies. For instance, many of the above-mentioned suggestions, including more BIA officers deployed to the Wind River Reservation, a more robust tribal police force presence, and better cultural understanding between officers and tribes, would all encourage increased cooperation between agencies. Additionally, there are two other measures that would be of benefit and encourage cooperation: (1) seamless cross deputization for tribal law enforcement officers and (2) well defined exterior boundaries of the reservation.

As the subcommittee is aware, cross deputization for tribal law enforcement necessitates cooperation between agencies and empowers tribal law enforcement departments. It can provide for better communication and collaboration by hosting joint trainings, sharing resources, and coordinating responses to criminal activities or emergencies. The state legislature has previously put forward bills to address cross-deputization, and the Northern Arapaho Tribe supports these bills. However, we have a shared reservation and need the support of our tribal counterparts.

Additionally, defining exterior boundaries of the reservation also helps with coordination and collaboration. Well defined demarcation of the reservation's boundaries helps law enforcement departments understand their respective jurisdictions. This reduces confusion, in turn encouraging better communication and cooperation.

Ms. HAGEMAN. Thank you.

The Chair now recognizes Mr. Jonodev Chaudhuri for 5 minutes.

**STATEMENT OF JONODEV CHAUDHURI, AMBASSADOR,
MUSCOGEE CREEK NATION, OKMULGEE, OKLAHOMA**

Mr. CHAUDHURI. Hello. [Speaking Native language], Madam Chairman, Ranking Member, and members of the Subcommittee. [Speaking Native language] for the opportunity to testify.

My name is Jonodev Osceola Chaudhuri, and I am proud to serve as Ambassador of the Muscogee Creek Nation, the fourth largest tribe in the United States. As one of the first Tribal Nations to implement the jurisdiction restored through the bipartisan 2013 Violence Against Women Act Reauthorization, the issue of public safety is critical to my Nation. We thank this Subcommittee for its leadership in the most recent reauthorization of VAWA in 2022.

Thanks to VAWA 2022, we can prosecute anyone who assaults tribal law enforcement or abuses a child. No sovereign has a more significant interest in protecting Muscogee children than our Muscogee Nation, and the restoration of this inherent authority through VAWA has already enabled our law enforcement, our Attorney General, and our entire Nation to better protect our children.

In 2020, the Supreme Court affirmed the continued existence of our reservation borders. From 2020 to 2022, the Muscogee Nation has more than doubled our Lighthorse Police budget. We hired 20 new police officers, 10 investigators, 2 sexual offender registration officers, and 6 dispatchers. We also have been working hard to collaborate with our Federal and state partners to ensure the safety and protection of all who live within our borders, Indian and non-Indian alike.

The Nation presently has 64 cross-deputization agreements in place, including with the city of Tulsa. From July 2020 to April 2022, the Nation referred approximately 4,162 criminal matters to non-Indian governments. And, likewise, we have received 4,136 referrals from non-Indian governments. By all accounts, the court's decision in *McGirt* has resulted in increased safety for those who live, work, or visit the Muscogee Reservation.

But as the Subcommittee has recognized, our tribal law officers, who put their lives on the line to secure this safety, are not afforded the same compensation, benefits, and/or protections that their Federal colleagues receive. This has made it all the more challenging to recruit and retain officers to work for our Lighthorse law enforcement.

The legislation being proposed today, if passed into law, would take critical steps necessary to ensure better parity between the Federal officers and tribal officers. For instance, as others have pointed out, even when tribes use Federal 638 dollars to fund their own tribal law enforcement, tribal law officers are not eligible for the same retirement benefits as their Federal counterparts.

Maintaining strong, reliable law enforcement agencies on tribal lands is critical to ensuring public safety throughout Indian Country. This is especially true as we attempt to address the crisis of murdered and missing Indigenous women and girls. All too often when our women and girls are murdered or go missing, no one investigates.

The reason our women and children are more likely to be murdered, assaulted, and victimized than any other population in the United States is because the inherent right of our own governments to protect our own citizens living within our borders has been artificially limited and restrained by the Supreme Court's 1978 decision, *Oliphant v. Suquamish Tribes*.

Recently, my Nation along with many other Nations and national tribal organizations, such as the National Indigenous Women's Resource Center and others, put forward a legislative proposal to address the public safety crisis in Indian Country. This proposal was passed through a resolution by the National Congress of the American Indians in November 2022. I have attached NCAI Resolution 22-43 to my written testimony submitted herein.

Briefly, the proposal focuses on fully restoring the jurisdiction of Tribal Nations to protect anyone and everyone within our borders. I should emphasize that restoration is voluntary, and it is up to any given Tribal Nation the extent to which they want to adopt it.

We hear time and time again that one of the most demoralizing aspects of serving as a tribal law enforcement officer is witnessing horrific, violent crimes committed against your family and community and knowing that you cannot arrest, investigate, or prosecute the person harming those who are you are supposed to protect because the right to do that has been taken away.

Our law officers have the ability, experience, dedication, and integrity necessary to keep our communities safe. Today, in 2023, there is no reason to treat them as inferior or less adequate when compared to state or Federal law enforcement officers. Today's proposed legislation takes an important step in the right direction. But

truly we will not have public safety in Indian Country until our right to protect ourselves is fully restored.

We find ourselves at a historic crossroad. On one hand, the Supreme Court has recently affirmed Congress' exclusive authority over Indian affairs, including issues related to public safety. At the same time, there are members of the court who have recently signaled they would be happy to subjugate tribal sovereignty and our Nation's placement in the United States Constitution to new judicially-crafted doctrines. We need Congress to remain active and engaged in administering its authority over Indian affairs.

Thank you again for the opportunity to speak with you today.
[Speaking Native language.]

[The prepared statement of Mr. Chaudhuri follows:]

PREPARED STATEMENT OF JONODEV CHAUDHURI, AMBASSADOR FOR THE MUSCOGEE
(CREEK) NATION

Mr. Chairman and members of the subcommittee, thank you for the opportunity to testify. My name is Jonodev Osceola Chaudhuri, and I am proud to serve as Ambassador of the Muscogee (Creek) Nation, the fourth largest tribe in the United States.

The issue of public safety is critical to my Nation. At Muscogee Nation, we are aware that Native women and children are more likely to be victimized by violent crimes than any other population in the United States, and we are committed to addressing this crisis of violence.

As one of the first tribal nations to implement the jurisdiction restored through the bi-partisan 2013 Violence Against Women Act re-authorization, we have dedicated countless resources to prosecuting crimes committed against our women and children within our reservation borders. We thank this subcommittee for its leadership in the more recent re-authorization of VAWA in 2022, when Congress restored tribal criminal jurisdiction over several categories of non-Indian crimes, including child abuse and assault on tribal law enforcement. Thanks to the leadership of this subcommittee, and the bi-partisan efforts in both the House and the Senate, our Nation can now prosecute anyone, Indian or non-Indian, who assaults law enforcement personnel when they respond to a call for help. Thanks to VAWA 2022, we can also prosecute anyone who abuses a child.

No sovereign has a more significant interest in protecting Muscogee children than our Muscogee Nation, and the restoration of this inherent authority through VAWA has already enabled our law enforcement, our Attorney General, and our entire Nation to better protect our children. Our children are sacred. They are our future. And it is our inherent right to protect them.

In 2020, the Supreme Court affirmed the continued existence of our reservation borders. This ruling not only affirmed our inherent sovereign authority over our reservation lands, it also confirmed that Oklahoma had been illegally exercising jurisdiction it never had. One result of the Court's decision in *McGirt* was that our Nation had to increase the amount of resources we dedicate to public safety. And we have.

From 2020 to 2022, the Muscogee Nation more than doubled our Lighthorse police budget. We hired twenty new police officers, ten investigators, two Sexual Offender Registration officers, and six dispatchers.

We also have been working hard to collaborate with our federal and state partners to ensure the safety and protection of all who live within our borders, Indian and non-Indian alike. The Nation presently has 64 cross-deputization agreements in place, including with the City of Tulsa. From July 2020 to April 2022, the Nation referred approximately 4,162 criminal matters to non-Indian governments, and has received 4,136 referrals from non-Indian governments.

By all accounts, the Court's decision in *McGirt* has resulted in increased safety for those who live, work, or visit the Muscogee Reservation. But, as this Subcommittee has recognized, our tribal law officers—who put their lives on the line to secure this safety—are not afforded the same compensation, benefits, and/or protections that their federal colleagues receive. This has made it all the more challenging to recruit and retain officers to work for our Lighthorse law enforcement.

The legislation being proposed today, if passed into law, would take critical steps necessary to ensure better parity between the federal officers and tribal officers who

have taken on the important duty of protecting the lives of all who live and work within the borders of tribal communities and throughout Indian country lands. For instance, as others have pointed out, even when tribes use federal 638 dollars to fund their own tribal law enforcement, tribal law officers are not eligible for the same retirement benefits as their federal counterparts.

Maintaining strong, reliable, law enforcement agencies on tribal lands is critical to ensuring public safety throughout Indian country. This is especially true as we attempt to address the crisis of Murdered and Missing Indigenous Women and Girls. All too often, when our women and girls are murdered or go missing, no one investigates.

This failure to investigate, however, is the consequence of a federal failure that extends far beyond failure to recruit, train, or retain tribal law officers. The reason our women and children are more likely to be murdered, assaulted, and victimized than any other population in the United States is because the inherent right of our own governments to protect our citizens living within our borders has been artificially limited and restrained by the Supreme Court's 1978 decision in *Oliphant v. Suquamish Indian Tribe*.

Recently, my Nation, along with many other nations and national tribal organizations such as the National Indigenous Women's Resource Center and others have put forward a legislative proposal to address the public safety crisis in Indian country. This proposal was passed through a resolution by the National Congress of the American Indians in November 2022. I have attached Resolution SAC-022-043 to my written testimony submitted herein. Briefly, the proposal focuses on fully restoring the jurisdiction of tribal nations to protect anyone and everyone within our borders.

One of the most demoralizing aspects of serving as a tribal law officer is witnessing horrific, violent crimes committed against your family and community and knowing that you cannot arrest, investigate, or prosecute the person harming those you are supposed to protect because the right to do that has been taken away. Our law officers have the ability, experience, dedication and integrity necessary to keep our communities safe. Today, in 2023, there is no reason to treat them as inferior or less adequate when compared to state or federal law officers. Today's proposed legislation takes an important step in the right direction. But truly, we will not have public safety in Indian country until our right to protect ourselves is fully restored.

Truly, we find ourselves at a historic crossroads. On one hand, the Supreme Court has recently affirmed Congress's exclusive authority over Indian affairs, including issues related to public safety. At the same time, there are members of the Court who have recently signaled they would be happy to subjugate tribal sovereignty and our Nations' role in shaping and placement in the United States Constitution to newfound, unfounded judicially crafted doctrines. We need Congress to remain active and engaged in administering its authority over Indian affairs.

Thank you again for the opportunity to be with you today.

Ms. HAGEMAN. Thank you.

And the Chair now recognizes Mr. Chris Sutter for 5 minutes.

STATEMENT OF CHRIS SUTTER, POLICE CHIEF, TULALIP TRIBES, TULALIP, WASHINGTON

Mr. SUTTER. Good afternoon, Chairwoman Hageman, Ranking Member Fernández, and members of the Committee. My name is Chris Sutter, Chief of Police for the Tulalip Tribes. On behalf of Tulalip Chairwoman Teri Gobin, we thank you for this opportunity to testify on public safety in Indian Country.

The Tulalip Indian Reservation is 22,000 acres located just 35 miles north of Seattle. Three miles of the Interstate 5 corridor was built within the Reservation's eastern border. This, in addition to 10,000 non-Indian residents who live on the reservation, due to the history of allotments, has created the perfect storm for serious felony crimes on our tribal lands.

The Tulalip police department is a full-service police agency providing 24/7 service to our tribal community, the non-Indian

community, and the thousands of visitors who enter the Tulalip Reservation each day. Our officers enforce tribal laws, state laws, and refer some of our most serious cases to the U.S. Attorney for Federal prosecution. We have 59 officer positions that we struggle to fulfill and maintain. Our police officers hold Washington State peace officer certifications, giving them the authority to arrest and cite non-Indians under state law directly into state courts for prosecution.

The Tulalip Tribes has been a leader in many areas relating to public safety and law enforcement in Indian County. And while we continue to have many successes, the disparities as a sovereign is putting more strain than ever on our ability to protect and serve.

We struggle with officer retention. In recent years, we have lost approximately 50 percent of our officer workforce due to recruitment by local law enforcement agencies. We invest almost a year with our new hires between pre-academy training, Federal law enforcement training, field training, and finally, a 2-week Washington State equivalency academy to become state certified. With this extensive training and certification, our officers become highly sought after and recruited by outside agencies with attractive salary and retirement benefits.

H.R. 4524, the Parity for Tribal Law Enforcement Act, currently pending in Congress, authorizes tribal law enforcement officers to opt into the Federal officer pension and retirement benefits plan, extending tribal officers those same benefits that Federal officers receive. We need this legislation to recruit and retain tribal officers.

We also continue to face jurisdictional challenges. Tribal court search warrants are often denied or ignored because Federal law does not recognize tribal courts as a court of competent jurisdiction for purposes of requiring disclosure under the Electronic Stored Communications Act from service providers, such as Facebook. A Federal fix is needed to help us apprehend violent offenders.

We also face extreme external pressures from drug trafficking organizations. The opioid fentanyl epidemic has not spared Indian Country. Tulalip has had over 60 tribal member deaths attributed to fentanyl overdoses since 2017. Our leadership has recently declared an opioid state of emergency.

In search for solutions, Tulalip recently hosted a national tribal fentanyl summit that was attended by over 1,200 representatives of federally recognized tribes, Federal and state agencies, and Members of Congress to discuss and share strategies to help counter the disproportionate impacts of fentanyl in our tribal communities.

To help combat this, a Federal fix is needed to expand tribal special jurisdiction over non-Indians who deliver and distribute controlled substances such as fentanyl on our reservations. The U.S. Attorney's Office only accepts a small fraction of our drug trafficking cases due to their own limited resources. As chief of police, I feel we have been left to battle against a wave of illegal narcotics without adequate support from our Federal partners.

To help address these issues, we asked Congress to support tribal law enforcement parity efforts such as H.R. 4524, further

extending criminal jurisdiction over non-Indians and extending full recognition of tribal search warrants.

And in closing, I would like to say criminals who prey upon the vulnerable know no boundaries. They freely enter tribal lands, commit serious crimes, and flee the reservation often escaping justice because of the inequalities in Federal law.

Again, thank you for this opportunity to allow us to testify today, and I will welcome any questions from the Committee.

[The prepared statement of Mr. Sutter follows:]

PREPARED STATEMENT OF CHRIS SUTTER, CHIEF OF POLICE, TULALIP TRIBES
POLICE DEPARTMENT

Opportunities and Challenges for Improving Public Safety in Tribal Communities

Good afternoon, Chair Hageman, Ranking Member Fernandez, and members of the Committee. My name is Chris Sutter, Chief of Police for the Tulalip Tribes Police Department. On behalf of Tulalip Chairwoman Teri Gobin, we thank you for this opportunity to testify today on public safety in Indian country.

The Tulalip Tribes is the successor in interest to the Snohomish, Snoqualmie, and Skykomish people and allied bands signatory to the Treaty of Point Elliott of 1855. In the treaty, our ancestors reserved our inherent rights to sovereignty and self-determination as well as our inherent rights to fish at usual and accustomed grounds and stations and to hunt and gather upon all open and unclaimed land. The United States holds a trust responsibility to protect the Tribe's rights and interests as reserved in the treaty. The Tulalip membership continues to exercise these rights today. We are a fishing people. Fishing sustains us culturally and economically as it has since time immemorial.

The Tulalip community is located on a 22,000-acre Reservation bordering the Interstate 5 corridor, just 35 miles north of Seattle. The Tulalip Tribes membership consist of 5246 members. 40 percent of the Tulalip Indian reservation is in non-Indian fee status due to the history of allotments and over 10,000 non-Indian residents live on the reservation. The geographic location of the Tulalip Indian reservation, the non-Indian resident count, and the tribal economic development created by Tulalip drawing thousands of daily visitors has created the perfect storm for serious felony crimes on the reservation.

The Tulalip Tribal Police Department is a full-service police agency providing 24/7 service to our tribal and non-Indian tribal community, in addition to the thousands of visitors that enter the Tulalip reservation each day. Our officers enforce Tribal Laws, State Laws, and refer some of our most serious cases to the US Attorney's Office for Federal Prosecution. We have 59 commissioned law officers with Washington State Peace Officer certifications—giving our officers the authority to arrest and cite non-Indians under state law directly into state courts for prosecution. We have our own Drug Task Force, a Community Response Team, a Sex Offender Registration Unit, a Victims of Crime Services Coordinator, and a Dedicated Missing and Murdered Indigenous Women Task Force, in addition to a Fish and Wildlife division.

The Tulalip Tribes has been a leader in many areas relating to public safety and law enforcement in Indian County, and we continue to have many successes. But the ongoing disparities we face as a sovereign causes extreme strain on our ability to protect the people in our community.

Despite the robust nature of the Tulalip Police Department operations, we struggle with officer retention. In recent years, we have lost 50 percent of our officer workforce due to recruitment by state and local law enforcement agencies, putting extreme strain on our agency.

The Tulalip Police Department competes for the same qualified candidates other law enforcement agencies in our state. We invest a significant amount of training, time, and energy into new hires. This includes pre-academy training, Federal Law Enforcement Training at the BIA Indian Police Academy, post-academy training with our department, a four-month field training program, and finally, a two-week Washington State equivalency academy to become state certified. It takes officers nearly a full year to complete the training and certifications required for a new hire to operate as a solo police officer. However, with this extensive training and certification, our officers become highly sought after and recruited by outside agencies with attractive salaries and retirement benefits.

Tulalip is not the only tribal community with this challenge. I serve on the IACP Indian Country Section Committee, and at a recent meeting with Tribal Chiefs of Police from across the Country, the Committee identified recruitment, hiring, and retention of officers as one our biggest challenges, directly impacting tribes' ability to address law enforcement needs.

H.R. 8387, the Parity for Tribal Law Enforcement Act, currently pending in Congress authorizes tribal law enforcement officers to opt into the federal officer pension and retirement benefits plan, extending tribal officers those same benefits that federal officers receive. We need this legislation passed to increase our ability to retain trained and skilled police officers, which will help us provide public safety for both tribal and non-Indian persons in our community.

We also continue to face jurisdictional challenges. Tribal court search warrants are often denied or ignored because federal law does not recognize tribal courts as a "court of competent jurisdiction" for purposes of requiring disclosure under the Electronic Stored Communications Act. This is especially harmful where tribal court search warrants are not recognized by off-reservation service providers such as Facebook, preventing tribal law enforcement from obtaining digital electronic evidence. A federal fix that recognizes tribal courts as courts of competent jurisdiction under the Act is needed. Without this, violent offenders escape apprehension and victims do not receive justice.

The Opioid Fentanyl Epidemic is also placing extreme external pressure on our police department and the tribal community. Tulalip has had over 60 tribal member deaths attributed to Fentanyl overdoses since 2018. Tulalip Tribal Leadership has declared an opioid state of emergency. In a search for solutions, the Tulalip Tribes recently hosted a national tribal fentanyl summit. This summit was attended by over 1,200 representatives of tribes, federal and state agencies, and members of Congress, where we discussed and shared strategies for helping Indian Country counter the disproportionate impact caused by the Fentanyl epidemic.

The fentanyl epidemic highlights the need for H.R. 8387. The recognition of tribal court warrants under the Electronic Communications Act for drug trafficking offenses would aid law enforcement in countering drug dealers who take advantage of the jurisdictional deficiencies on Indian reservations such as Tulalip.

This epidemic also highlights the need to expand special criminal jurisdiction to Indian tribes over non-Indians who manufacture or deliver controlled substances such as Fentanyl within reservation boundaries. The US Attorney's Office only accepts a small fraction of our drug trafficking cases. The FBI has told us they have limited staffing resources for assistance on felony drug trafficking activity on the Tulalip Reservation. As the Chief of Police, I feel that our Tribal Police Department has been left to battle against a wave of illegal narcotics and the Fentanyl crisis without adequate support from our federal partners. We need more support, legal tools, and funding to investigate, prosecute and incarcerate the perpetrators of these deadly criminal narcotics organizations.

We need Congress to support tribal law enforcement reform and parity for our police officers and tribal courts, further extend criminal jurisdiction over non-Indians, and increase funding. Criminals who prey upon the vulnerable know no boundaries. They freely enter tribal lands, commit serious crimes, and flee the reservation escaping justice because of the inequalities in federal law.

QUESTIONS SUBMITTED FOR THE RECORD TO CHRIS SUTTER, CHIEF OF POLICE,
TULALIP POLICE DEPARTMENT

Questions Submitted by Representative Westerman

Question 1. Your testimony mentioned that tribal search warrants are routinely denied or ignored under the Electronic Communications Act.

1a) Can you provide instances in which your office needed to issue subpoenas to Facebook and other social media companies, and how the companies have responded?

Answer. The Tulalip Tribal Police Department in the course of investigating a Missing Murdered Indigenous Woman case submitted Tribal Court Search Warrants for electronic data from Facebook that would be crucial information in solving the case, in this situation the data provider denied the tribal court warrant. Because Tribal Court search warrants are being denied or ignored due to Tribal Courts not being considered courts of competent jurisdiction, our ability to investigate crimes

is impeded due to lost time and a less effective investigation and evidence due to not having timely submission of the requested data.

1b) What are the usual cases where the tribal authorities need to issue subpoenas?

Answer. Tribal police investigators utilize Tribal Court Search Warrants for electronic data in many types of felony criminal investigations including drug trafficking, missing person cases, controlled substance homicide cases, homicide cases, sexual assault cases, child abuse cases, and any case that may have electronic evidence from either the suspect or the victim. The need is heightened for drug trafficking, as social media platforms are how distributors connect with users. December 15, 2022, the Congressional Research Service (CRS) quoted the Drug Enforcement Administration (DEA) Administrator Ann Milgram who stated that “Snapchat and other social media platforms “the superhighway of drugs.” Tribal law enforcement needs access to this information to effectively deal with the opioid pandemic on our reservations.

1c) When these companies do not respond, how do you obtain that information?

Answer. When a Tribal Court Search Warrant is denied or ignored, the only other option is to apply for a warrant from a County Court. The County Court Warrant with the same facts presented as the Tribal Court Warrant has been a workaround for tribal investigators to obtain the needed electronic information. Although utilizing a state court-issued search warrant may be an alternative, this is not optimum as the Tribal Court is the court of jurisdiction in most cases, and this takes additional time putting a criminal investigation at risk. Also, while our tribal jurisdiction has a decent working relationship with our county currently to accomplish this effort, this working relationship is not guaranteed. Moreover, a good working relationship between Indian tribes and the local jurisdictions is not the norm in other parts of Washington state and across the nation.

Question 2. Your testimony mentioned that you've heard from other Tribal Chiefs of Police in the country that recruitment and retention of officers is one of the biggest challenges and that officers you train are sought after by other agencies. Have you heard from your officers that if they were able to have the same salary and benefits as these other agencies, they would continue to work for your tribal law enforcement?

Answer. As a member of the International Association of Chiefs of Police, IACP, I sit on the Indian Country Section Committee, in our October 2023 meeting, the Indian Country Section Committee comprised of Tribal Chiefs of Police from across the Country affirmed that recruitment, hiring, and retention was one of the most significant problems facing Indian Country Law Enforcement. I also communicate with several Tribal Police Chiefs from Washington state who also share that they are not able to retain trained certified officers who are recruited away from tribal policing by outside agencies. At the Tulalip Tribal Police Department, we have lost approximately 50% of our commissioned law enforcement staffing due to officers being recruited away and offered higher salaries, benefits, and pension programs. Tribal law enforcement officers have directly stated that they love working for the tribal community because of the community support and relationships that are developed, among other things, but they cannot afford to remain in their tribal positions due to a lack of competitive salaries, lower and more costly benefits such as health insurance, and the fact that Tribal law enforcement officers cannot participate in either the state or federal retirement system. These officers were hired, trained, and certified at the Tribe's expense and then we lose them to outside agencies who offer increased salaries, benefits, and a retirement program. This constant hiring, training, and certification process to end up losing talented officers is significantly weakening and hindering tribal law enforcement's ability to not only retain officers but to provide the level of service needed to protect tribal communities.

Question 3. How has the Tulalip Tribal Police Department been able to have any immediate impact on the opioid fentanyl epidemic on the Tulalip reservation and the local surrounding community?

Answer. As stated in our testimony, the Opioid Fentanyl Epidemic is placing extreme external pressure on Tulalip leadership, the police department, and the tribal community. At the time of our testimony, Tulalip had over 63 tribal member deaths attributed to Fentanyl overdoses since 2017. Unfortunately, we had another death caused by Fentanyl 10 days ago so the updated number is 64 tribal member deaths. Our Tribal Community's fentanyl overdose mortality rate is approximately 10 times greater than the general population. Tulalip Tribal Leadership has

declared an opioid state of emergency due to community deaths and mass importation of fentanyl from outside drug trafficking organizations.

Additionally, the Tulalip Tribal Police Department has had some successes resulting in positive impacts on the opioid fentanyl epidemic on the Tulalip Reservation. Our proactive narcotics interdiction efforts include self-funding a Tribal Drug Task Force comprised of five full-time detectives to conduct narcotics investigations on the Tulalip Reservation. The Tulalip Drug Task Force is responsible for dozens of narcotics-related search warrants and seizures of large amounts of Fentanyl from the Reservation. Our self-funded narcotics K-9 detection team to focus and assist both Patrol and the Drug Task Force has helped with these arrests. The problem is, we cannot prosecute these individuals because they are largely non-Indian, and neither the U.S. Attorney nor the County is prosecuting these cases. Tulalip needs the ability to prosecute non-Indians for drug trafficking, and we are advocating for a legislative fix to do this, along with jurisdiction to prosecute the same individuals for gun possession “in furtherance” of the crime of drug trafficking. Until we can prosecute these individuals, our ability to effectively battle this epidemic is stunted.

The Tulalip Tribal Police Department also has a Community Response Team to address Chronic Nuisance Properties often directly associated with narcotics use and sales. We also have a Victims of Crime Program to assist individuals and families impacted by crime and narcotics overdoses. We participate in the Tulalip Tribal Wellness Court, we assist our Probation Department when requested. We also participate with other Tribal Departments and service providers to identify and implement strategies to combat the Fentanyl epidemic.

Question 4. Are there specific initiatives that have begun because of the tribal fentanyl summit, recently hosted by the Tulalip Tribes, and what impact do you expect them to have on the opioid crisis?

Answer. In addition to the efforts described directly above, Tulalip leadership hosts regular Opioid Task force meetings with upper management and those with technical expertise to develop an ongoing strategic plan. The Tulalip Tribes was integral in the planning of the Governor’s Opioid Summit held in May, 2023. We also hosted the National Summit in August 2023 which around 1200 tribal leaders, industry experts, legislators and legislators attended. Tulalip also is piloting a Prevention Model Pilot program along with five other tribes by working with the Governor’s office, Health Care Authority, Planet Youth, Northwest Portland Area Indian Health Board. Lastly, Tulalip has created multi-disciplinary response team to provide increased services and treatment options for our community specific to the Opioid Fentanyl Epidemic.

With the issuance of the Public State of Emergency, the Chief of Police, Prosecutors office, and the Health Administrator meet weekly to identify key areas that need to be solved. They make recommendations to the Board of Directors to improve efficiency for our community. Tulalip also uses the Opioid task force to meet on a regular basis to continue to work on long term planning. We are also developing strategic plans to improve response time, public safety & policies.

The Tribal Fentanyl Summit focused on prevention, intervention, and treatment, along with a law enforcement track. Tulalip Tribal service providers attended their respective tracks and have begun planning and implementing strategies derived from the summit. The Summit resulted in a National Report to the tribes to identify and implement best practices. The Tulalip Tribes is implementing a prevention model discussed at the Summit, other initiatives include multi-agency coordinated response, traditional medicine, Department of Justice coordinated response, cross-jurisdictional deputization, increased law enforcement support, and resources, expanding culturally appropriate drug courts, increased support and funding for housing first initiatives. The Summit also identified the need for Congress to support Tribal Law Enforcement Parity Reforms and further extend criminal jurisdiction over drug-tracking offenses and drug-related crimes. As the Tribes work through and implement the numerous recommendations and best practices discussed at the Summit it is expected that these efforts will result in lives saved.

Question 5. How has the Tulalip Tribes supplemented resources and funding that BIA provides for public justice services in your communities? And are there other funds or resources you’ve leveraged in your communities?

Answer. The Tulalip Tribes police department is over 90% self-funded through Tulalip tribal hard dollars from its economic enterprises. Historically the BIA funding has only contributed approximately 5% of the overall Police Department’s operating budget. In addition to the BIA self-governance funding, the Tulalip Tribes has leveraged some Federal grants to help support law enforcement and justice

programs. These Federal grants have provided needed staffing for community policing programs, victims of crime programs, Tribal Court programs, and essential equipment and supplies.

Question 6. What actions at a tribal, state, local, or federal level do you think can increase cooperation between law enforcement agencies? And what is the Tulalip Tribal Police Department doing to increase that capacity for your own tribal officers?

Answer. Inter-agency cooperation at all levels between tribal, local, state, and federal law enforcement is critical for our ability to successfully accomplish our shared law enforcement mission. It is more important than ever due to the complicated jurisdictional issues that Tribal law enforcement be treated as equal partners in law enforcement. The Tulalip Tribal Police Department has expanded our internal capacity for our officers through obtaining training and State Peace Officer Certifications. This provides the authority for our police officers to arrest non-Indians and charge them directly in state courts for state offenses. We have also expanded our capacity by inviting partnerships with other local, state, and federal law enforcement agencies. We are working to find a federal agency that would like to partner with us on a Tribal Drug Task Force providing the advantages of federal task force credentials to our Tribal police drug task force detectives. Another way we have increased our capacity for our Tribal Officers is through enhanced training opportunities and professional development often provided through federal grant funding. We also use technology as a force multiplier to help our officers work smarter rather than harder, thereby increasing our efficiency and effectiveness.

Importantly, one way we can increase cooperation and place tribal law enforcement in a position of equality is by adopting Federal legislation giving Parity for Tribal Law Enforcement, expanding Tribal Court Special Criminal Jurisdiction over drug-related offenses and illegal gun possession in furtherance of drug trafficking, including Tribal Courts as "Courts of Competent Jurisdiction" under the Stored Electronic Communications Act, and providing additional technical and funding support for tribal law enforcement.

Please let me know if I can be of any further assistance to the Subcommittee, thank you again for the opportunity to appear and testify on these important public safety issues in Tribal Communities.

Ms. HAGEMAN. Thank you and thank you to all of you for your very thoughtful, organized, and informative testimony. I really appreciate the different perspectives that each of you bring while you all also have very similar problems and challenges that you are facing.

I will now recognize Members for 5 minutes for questioning, and I am going to begin with myself.

Mr. Newland, I would like to start with you. Would you please discuss the issues you have seen related to the BIA recruiting quality law enforcement candidates, and specifically where does the agency still need to improve its efforts in recruitment and retention?

Mr. NEWLAND. Thank you, Madam Chair, for that question. This has been a long-standing struggle for the BIA to not only hire but to retain officers. A lot of the locations where we hire direct service officers, as I mentioned in my opening statement, they are remote locations, and officers often have to work alone with outdated equipment for less pay than their Federal counterparts.

So, it is no wonder many chose to leave BIA in the past and go to other agencies. We have been working to make sure our officers are at least on par with their colleagues in other agencies at the department, and that effort has begun to lower our attrition rate. So, that is one thing. But we are also working to speed up the time to hire because it takes too long.

Ms. HAGEMAN. It takes too long.

Mr. NEWLAND. And there are other tools that I would be happy to work with the Committee on, when it comes to location pay and special incentives and bonuses to get people to sign up to work in some of these remote locations.

Ms. HAGEMAN. Perhaps we can follow up with some questions as to what those other tools might be, if you could perhaps provide that information in writing.

Mr. NEWLAND. Sure.

Ms. HAGEMAN. But over the past few years, Congress has increased funding going to Indian Country across the board. How has BIA and OSJ law enforcement been affected by these general increases and what has gone specifically to public justice and tribal court programs?

Mr. NEWLAND. Thank you, Madam Chair. Funding has increased for law enforcement in tribal courts, specifically, as you noted, and am happy to continue to work with Congress on that. That money does help pay for new equipment and additional officers, not only for the BIA, but as I mentioned, we contract and compact with tribes, and so that funding flows through us directly to tribal governments for that.

These increases, when they get spread across hundreds of tribes across the country, often keep up with rates of inflation, and as we have seen states and local governments competing for law enforcement officers, that is a good thing because it raises the pay for officers but it makes it hard for any one jurisdiction. So, as this funding has increased, it has allowed tribal governments to buy new equipment and hire new officers, but as we have seen in the TLOA Report, we are still behind what the total need is.

Ms. HAGEMAN. And, again, I think that we will have some follow-up questions for you after the hearing today.

Mr. Goggles, I would like to come to you next and I would like to thank you for traveling here from Wyoming. It is wonderful to see you and thank you for engaging on this incredibly important topic.

In your testimony, you mentioned that cross-deputization among law enforcement agencies is a possible solution. What are the current barriers to cross-deputization and has cross-deputization occurred at all between any of the law enforcement agencies active on the reservation today?

Mr. GOGGLES. Thank you, Madam Chair, Members. To answer the first question, the Wyoming State Legislature in the past has put forward bills in response to that. The Northern Arapaho Tribe has always been in support of those bills, but it is our tribal counterparts, the Eastern Shoshone, who aren't up to speed with it, for whatever reason.

Ms. HAGEMAN. OK. So, do we have any cross-deputization that is going on at all right now?

Mr. GOGGLES. There was an initiative in the past under Chief Doug NoSeep at the time for Wind River PD. He implemented it to the surrounding agencies, Fremont County Sheriff's Office, and I believe some municipalities. But at the time, the hold-up was them going through the background and more so the judicial process. That was where a lot of them drew back, so the cards were never issued, but the names were on board. But I have also heard

mention in the past of some having the cards but not having the full authorization.

Ms. HAGEMAN. It just seems like this is a terribly bureaucratized process and I think that that is something that has to be fixed with BIA as well as perhaps with Congress, but we have to find a way to streamline this.

With that, I am out of time. But, again, I think we will follow-up with some written questions for you.

And I would like to now call on the Ranking Member for 5 minutes of questioning.

Ms. LEGER FERNÁNDEZ. Thank you, Madam Chair. And I would point out that in New Mexico we have some very strong cross-deputization laws in place, and it is working. We are constantly running into little things we need to fix, but I worked on those laws a couple of decades ago. I have been around for a long time.

Chairman Klatush, I want to really thank you for describing the Hope and Healing Clinic as well as your call for an increase of jurable jurisdiction over fentanyl and other drug possessions. This was also an issue in a recent Senate hearing.

And when we talk about fentanyl, we know that fentanyl is being smuggled into our country, actually, there is a recent Cato Institute report that points out that it is being smuggled by citizens at our ports of entry. I would like to enter that into the record. Fentanyl is Smuggled for U.S. Citizens by U.S. Citizens, not Asylum Seekers. Madam Chair, without objection?

Ms. HAGEMAN. Without objection.

[The information follows:]

Fentanyl Is Smuggled for U.S. Citizens by U.S. Citizens, Not Asylum Seekers

CATO at Liberty Blog, September 14, 2022 by David J. Bier

<https://www.cato.org/blog/fentanyl-smuggled-us-citizens-us-citizens-not-asylum-seekers>

Fentanyl overdoses tragically caused tens of thousands of preventable deaths last year. Many politicians who want to end U.S. asylum law claim that immigrants crossing the border illegally are responsible. An NPR-Ipsos poll last week found that 39 percent of Americans and 60 percent of Republicans believe, “Most of the fentanyl entering the U.S. is smuggled in by unauthorized migrants crossing the border illegally.” A more accurate summary is that fentanyl is overwhelmingly smuggled by U.S. citizens almost entirely for U.S. citizen consumers.

Here are facts:

- Fentanyl smuggling is ultimately funded by U.S. consumers who pay for illicit opioids: nearly 99 percent of whom are U.S. citizens.
- In 2021, U.S. citizens were 86.3 percent of convicted fentanyl drug traffickers—ten times greater than convictions of illegal immigrants for the same offense.
- Over 90 percent of fentanyl seizures occur at legal crossing points or interior vehicle checkpoints, not on illegal migration routes, so U.S. citizens (who are subject to less scrutiny) when crossing legally are the best smugglers.
- The location of smuggling makes sense because hard drugs at ports of entry are about 97 percent less likely to be stopped than are people crossing illegally between them.
- Just 0.02 percent of the people arrested by Border Patrol for crossing illegally possessed any fentanyl whatsoever.

- The government exacerbated the problem by banning most legal cross border traffic in 2020 and 2021, accelerating a switch to fentanyl (the easiest-to-conceal drug).
- During the travel restrictions, fentanyl seizures at ports quadrupled from fiscal year 2019 to 2021. Fentanyl went from a third of combined heroin and fentanyl seizures to over 90 percent.
- Annual deaths from fentanyl nearly doubled from 2019 to 2021 after the government banned most travel (and asylum).

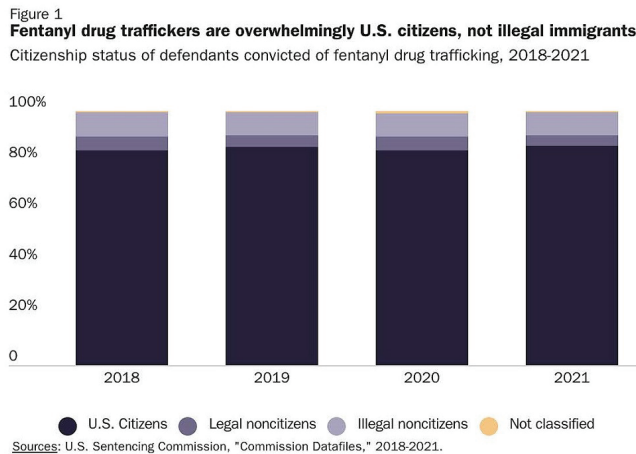
It is monstrous that tens of thousands of people are dying unnecessarily every year from fentanyl. But banning asylum and limiting travel backfired. Reducing deaths requires figuring out the cause, not jumping to blame a group that is not responsible. Instead of attacking immigrants, policymakers should focus on effective solutions that help people at risk of a fentanyl overdose.

U.S. Citizen Consumers Fund Fentanyl Smuggling

U.S. consumer payments for illicit opioids ultimately fund fentanyl smuggling. Consumers pay retail dealers who pay wholesalers, and the cash is then transferred back in bulk cash form to Mexico. These funds are then used to pay smugglers to bring drugs back into the United States again. The best evidence indicates that about 99 percent of U.S. consumers of fentanyl (or products containing fentanyl) are U.S. citizens.[i] Noncitizens appear to be about 80 percent less likely to be fentanyl consumers than their share of the population would predict. Fentanyl smuggling is almost entirely conducted on behalf of U.S. citizen consumers. Of course, consumers would prefer much safer and legal opioids over illicit fentanyl, but the government has unfortunately forced them into the black market with few safe options.

U.S. Citizens Are Fentanyl Traffickers

Fentanyl is primarily trafficked by U.S. citizens. The U.S. Sentencing Commission publishes data on all federal convictions, which includes demographic information on individuals convicted of fentanyl trafficking. Figure 1 shows the citizenship status of fentanyl traffickers for 2018 to 2021. Every year, U.S. citizens receive the most convictions by far. In 2021, U.S. citizens accounted for 86.3 percent of fentanyl trafficking convictions compared to just 8.9 percent for illegal immigrants.



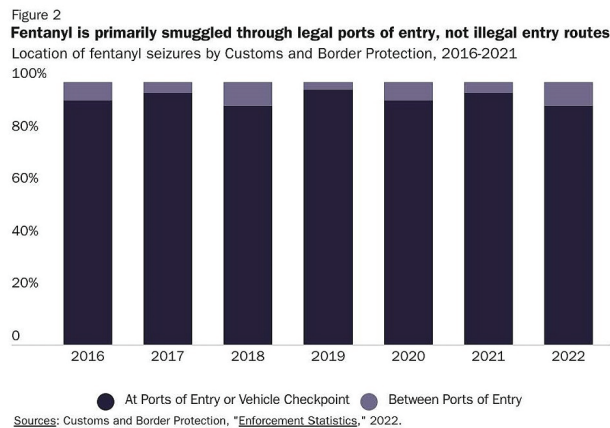
Note that since trafficking involves movement from Mexico to the United States, it is unclear how to measure the likelihood of conviction for a noncitizen without U.S. lawful immigration status or citizenship since the denominator would include most Mexicans in Mexico as well as anyone who crosses through Mexico. But regardless, the reality is that people with U.S. citizenship or residence traffic the vast majority of fentanyl, not illegal border crossers specifically or illegal immigrants generally. Indeed, this appears to be the case even for the most high-profile cases. Aaron Reichlin-Melnick of the American Immigration Council analyzed every Customs and

Border Protection press release mentioning fentanyl over a 6-month period and found just 3 percent involved illegal immigrants. This means that the agency itself believes the most important smugglers are U.S. citizens.

U.S. Citizens Bring Fentanyl Through Legal Crossing Points

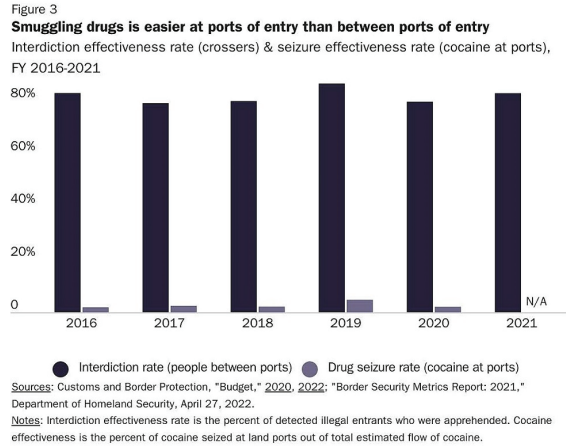
That U.S. citizens account for most fentanyl trafficking convictions is not surprising given the location of fentanyl border seizures. Over 90 percent of fentanyl border seizures occur at legal border crossings and interior vehicle checkpoints (and 91 percent of drug seizures at checkpoints are from U.S. citizens—only 4 percent by “potentially removable” immigrants).

In 2022, so far, Border Patrol agents who were not at vehicle checkpoints accounted for just 9 percent of the fentanyl seizures near the border (Figure 2). Since it is easier for U.S. citizens to cross legally than noncitizens, it makes sense for fentanyl producers to hire U.S. citizen smugglers.



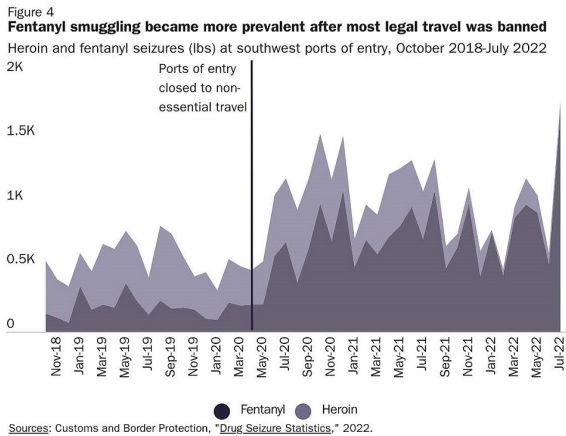
The DEA reports that criminal organizations “exploit major highway routes for transportation, and the most common method employed involves smuggling illicit drugs through U.S. [ports of entry] in passenger vehicles with concealed compartments or commingled with legitimate goods on tractor-trailers.” Several agencies including CBP, ICE, and DHS intelligence told Congress in May 2022 the same thing: hard drugs come through ports of entry.

Some people posit that less fentanyl is interdicted between ports of entry because it is more difficult to detect there. But the opposite is true: fentanyl is smuggled through official crossing points specifically because it is easier to conceal it on a legal traveler or in legal goods than it is to conceal a person crossing the border illegally. Customs and Border Protection estimates that it caught 2 percent of cocaine at southwest land ports of entry in 2020 (the only drug it analyzed), while it estimated that its interdiction effectiveness rate for illegal crossers was about 83 percent in 2021 (Figure 3).[ii] This means that drugs coming at a port of entry are about 97 percent less likely to be interdicted than a person coming between ports of entry, and this massive incentive to smuggle through ports would remain even if Border Patrol was far less effective at stopping people crossing illegally than it now estimates that it is.



Closing Ports Increased Fentanyl Smuggling

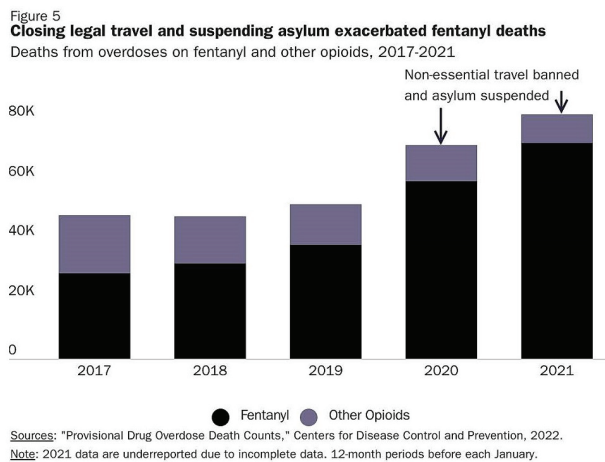
During the early days of the pandemic, the Trump administration drastically restricted legal travel to the United States, banning nonessential travel through land ports of entry from Mexico in particular in late-March 2020. Because there were fewer opportunities to traffic drugs at ports of entry, traffickers switched to trafficking more fentanyl. Because fentanyl is at least 50 times more potent per pound than heroin and other drugs, smugglers need fewer trips to supply the same market. The seizure data demonstrate the change in tactics. From October 2018 to February 2020, about a third of fentanyl and heroin seizures at southwest ports of entry were fentanyl with no clear upward trend. By the time the travel restrictions were ended (at least for vaccinated travelers) in January 2022, over 90 percent of heroin-fentanyl seizures were fentanyl. Unfortunately, the market shift has continued. The absolute amount of fentanyl being seized quadrupled (Figure 4).



The United Nations Office on Drugs and Crime reported that in mid-2020, as a result of travel restrictions, "Many countries have reported drug shortages at the retail level, with reports of heroin shortages in Europe, South-West Asia and North America in particular" and that "heroin users may switch to substances such as fentanyl." The DEA predicted in 2020 that "additional restrictions or limits on

travel across the U.S.-Mexico border due to pandemic concerns will likely impact heroin DTOs [drug trafficking organizations], particularly those using couriers or personal vehicles to smuggle heroin into the United States,” leading to “mixing fentanyl into distributed heroin.”

Unsurprisingly, the increased reliance on fentanyl has increased fentanyl deaths. Indeed, it appears that the border closures rapidly accelerated the transition from heroin to fentanyl, leading to tens of thousands of additional deaths per year (Figure 5). Note that 2021 data undercount the true number of deaths because not all locations have reported. Nonetheless, the annual number of fentanyl deaths have nearly doubled between 2019 and 2021. Banning asylum under Title 42 of the U.S. code probably had no effect on these trends, but it certainly did not help reduce fentanyl deaths, as some have claimed.



Asylum Seekers Don't Aid Fentanyl Smuggling

Fentanyl smuggling is not a reason to end asylum. The people arrested by Border Patrol are not smuggling fentanyl. Just 279 of 1.8 million arrests by Border Patrol of illegal border crossers resulted in a fentanyl seizure—too small of a percentage (0.02 percent) to appear on a graph—and many of these seizures occurred at vehicle checkpoints of legal travelers in the interior of the United States.

Nonetheless, some officials have asserted that asylum seekers distract Border Patrol from drug interdiction efforts. If asylum seekers were indirectly aiding drug smuggling, however, we would expect the effect to show up in the seizure trends by changing the locations, times, or amounts of the seizures in some way. But drug seizure trends simply do not deviate measurably with greater arrests of asylum seekers. This is true on several different metrics: across time, between sectors, along mile-distance from the border, or the share of seizures at ports of entry versus between them. If the administration legalized asylum at ports of entry, even this hypothetical problem would disappear.

Aggressive Drug Interdiction Exacerbates Fentanyl Smuggling

The fentanyl problem is a direct consequence of drug prohibition and interdiction. As my colleague Dr. Jeff Singer has written:

Fentanyl's appearance in the underground drug trade is an excellent example of the "iron law of prohibition:" when alcohol or drugs are prohibited they will tend to get produced in more concentrated forms, because they take up less space and weight in transporting and reap more money when subdivided for sale.

Fentanyl is at least 50 times more powerful per pound than heroin, which means you have to smuggle nearly 50 pounds of heroin to supply the market that a single pound of fentanyl could. This is a massive incentive to smuggle fentanyl, and the more efforts are made to restrict the drug trade, the more fentanyl will be the drug

that is smuggled. The DEA has even admitted, “The low cost, high potency, and ease of acquisition of fentanyl may encourage heroin users to switch to the drug should future heroin supplies be disrupted.” In other words, heroin interdiction makes the fentanyl problem worse.

Conclusion

Border enforcement will not stop fentanyl smuggling. Border Patrol’s experience with marijuana smuggling may provide even clearer evidence for this fact. Marijuana is the bulkiest and easiest-to-detect drug, which is why it was largely trafficked between ports of entry. Despite doubling the Border Patrol and building a border fence in the 2000s in part to combat the trade, the only thing that actually reduced marijuana smuggling was U.S. states legalizing marijuana. It is absurd to believe that interdiction will be more effective against a drug that is orders of magnitude more difficult to detect.

The DEA plainly stated in 2020 that fentanyl “will likely continue to contribute to high numbers of drug overdose deaths in the United States” even with the ban on asylum and travel restrictions. But ending asylum or banning travel has been worse than useless. These policies are both directly and indirectly counterproductive: first directly by incentivizing more fentanyl smuggling and then indirectly by distracting from the true causes of the crisis.

My colleagues have been warning for many years that doubling down on these failed prohibition policies will lead to even worse outcomes, and unfortunately, time has repeatedly proven them correct. The only appropriate response to the opioid epidemic is treatment of addiction. But for this to be possible, the government must adopt policies that facilitate treatment and reduce the harms from addiction—most importantly deaths. To develop these policies, policymakers need to ignore the calls to blame foreigners for our problems.

Notes

[i] This is based on overdose statistics, and last year, fentanyl caused 88 percent of opioid overdose deaths.

[ii] The cocaine seizure effectiveness rate includes an estimate of all cocaine that escaped detection, while the interdiction effectiveness rate for people only includes detected crossings. Including undetected crossings would lower the effectiveness rate for people, but because many arrests are the same person crossing after a prior arrest (27 percent in 2021), the interdiction effectiveness rate is a better estimate of the likelihood of being arrested during a first attempt, which would be all that is necessary to disrupt a drug smuggling attempt. Regardless, in 2020, DHS estimated an apprehension rate that included undetected crossings of 66.2 percent compared to 79.4 percent using only detected crossings. This would mean that drugs were only 96.8 percent rather than 97.4 percent less likely to be apprehended.

Ms. LEGER FERNÁNDEZ. But it is coming into the country. The question is what do we do about it? We need to stop it at the border. But what you all are raising is how do we keep our communities safe on our tribal communities. And this issue about tribal jurisdiction to protect your own I think is key, and I am glad that each of you has brought it up in a different way.

I am going to ask, because we never have enough time to get full discussion, but I am going to ask each of you, do you believe that your tribe, if granted the right to have full criminal jurisdiction over non-Indians, or a limited jurisdiction over maybe fentanyl and other opioids, would be able to improve the safety for your citizens and the visitors to your tribe and what resources would you need? Like can you do it, what do you need? And I will maybe just start, maybe we can go from left to right on that.

Mr. Newland, I am going to skip you, because I want to hear the tribal perspective.

Mr. KLATUSH. Yes, I believe if we had the full jurisdiction over non-tribals, I think that is going to be a lot better for our tribal police. Also training for the tribal police is going to be another good thing to put them in, but the fentanyl is just, there is another strain in Washington State now that is 100 times worse than the regular fentanyl, so one little puff of that little powder and the police officer is going to be down. So, training is a big thing, too, for that, so I believe so, yes.

Ms. LEGER FERNÁNDEZ. OK. So, you would need more training and then perhaps some more resources.

And, Honorable Goggles, what do you think about the issue and the possibility?

Mr. GOGGLES. Ms. Fernández, yes, I do believe if given that, the tribe would be able to facilitate the safety of the personnel. One thing that is a hinderance on the BIA side when it comes to the evidence is the evidence techs. There were two at one time when I was there last so, say there are only two or three on the shift, two may be in the evidence locker, one has to supervise what they brought off the street, the other is there to manage the evidence locker, so the other officer might be out there by his or herself.

So, what would happen is that, depending on the amount and then the quantity, they might have to break free to go assist, so they would have to make sure everything was in a safe spot, then leave, and then come back and do it again. So, that is why it has always been a hard spot to fill.

Ms. LEGER FERNÁNDEZ. You need more people there. And I am going to move us on. Mr. Ambassador?

Mr. GOGGLES. Thank you, ma'am.

Ms. LEGER FERNÁNDEZ. I know we want an *Oliphant* fix. If we can't get an *Oliphant* fix, where is the place that we go next, beyond VAWA, and is it here, and could you handle it? Great job on what you have been doing so far, by the way.

Mr. CHAUDHURI. Thank you, Ranking Member. And I think the answer is an *Oliphant* fix. Let me explain why. At Muscogee Creek Nation, not only would we be fully capable of exerting authority to protect people of all backgrounds within our borders, we would welcome that authority.

Brief history, our Nation was removed on the Trail of Tears. Prior to removal, we had full authority throughout our entire homelands, and we are talking huge areas of homelands, Georgia, Alabama, and Northern Florida. Same thing with Oklahoma and Indian Territory. We had authority over a whole slew of crimes. That was lost in 1978 with the *Oliphant* decision. That is the original sin here. We are handcuffed in being able to protect folks.

Ms. LEGER FERNÁNDEZ. I completely agree with you on that, but I don't want to not let our last—

Mr. CHAUDHURI. So, let—

Ms. LEGER FERNÁNDEZ. I have run out of time.

Mr. CHAUDHURI. If I could say one thing about the fentanyl. One of the reasons we have been so strong in having broad authority is being surgical about these crimes misses the fact that these crimes are often tied to collateral crimes such as breaking and entering, money laundering, assault, vandalism, auto theft. If you

can't attack the whole umbrella of crimes associated with something like fentanyl, your hands are tied.

So, thank you so much, Ranking Member.

Ms. LEGER FERNÁNDEZ. Madam Chair, can we give Mr. Sutter a chance to respond?

Ms. HAGEMAN. Yes, please, Mr. Sutter.

Ms. LEGER FERNÁNDEZ. And sorry to interrupt. I wanted to make sure all four of you could respond.

Mr. SUTTER. Ranking Member Fernández, we strongly support expanding the criminal special jurisdiction that tribes have currently to include crimes such as trafficking fentanyl onto our reservation because of the extreme disparate impact it is having on our tribal communities.

Ms. LEGER FERNÁNDEZ. Thank you so very much, and thank you for yielding to me, Madam Chair.

Ms. HAGEMAN. Thank you. The Chair now recognizes Mr. Carl from Alabama.

Mr. CARL. Thank you, Madam Chair.

Mr. Newland, I have a copy here of a press release put out by the Coalition of Large Tribes, COLT, in July of this year. COLT is an intertribal organization representing the interests of more than 50 tribes with a reservation of over 100,000 acres or more. According to this press release, they are concerned that the FDA's plan to ban legal sales of menthol cigarettes in the United States will create opportunities for foreign cartels to profit from the illegal cigarette sales.

They state that the tribes are painfully aware of the criminal's interest in China, the Mid East, and Mexico already, and various channels of trafficking the drugs through and on their reservation. And they are concerned that the same will be true for the new illicit supply chain of menthol cigarettes.

My question, sir, to you, have you consulted with the FDA about this rule and how it impacts on already overburdensome tribal law enforcement?

Mr. NEWLAND. Thank you, Congressman. I am not aware of that rule and I have not myself spoken with the FDA about it.

Mr. CARL. OK. According to this same article, the tribes were not consulted at all on this issue, and I think that is one thing I really want to point out here, that we have these mandates that get pushed down through, whether it is an Executive Order or whether it is just on a whim of what somebody wants onto these law enforcements. There is no money to back it up, there is no help to enforce them, but yet we expect them to do this.

How would you do that? How would you expect these people to start following up on something as simple as menthol cigarettes?

Mr. NEWLAND. Again, Congressman, I am not familiar with that rule. I am happy to follow-up and look into it. And I did want to emphasize that Federal agencies generally are subject to Executive Order 13175 on tribal consultation, but I can't speak to their process.

Mr. CARL. Normally before those Executive Orders are passed, is there communication with the tribes, do they actually ask?

Mr. NEWLAND. Oftentimes, in my experience, Executive Orders and other agency policies that affect tribes directly are the product

of many conversations and engagements between agencies and tribes. But I can't speak to the FDA's process, sir. I am sorry.

Mr. CARL. OK. Well, my point here is simply trying to put out we tie their hands on what they can or can't do, but yet we try to push more down the line of what they should do. And then when we ask them to do it, we don't provide any leadership, we don't get any input from them, and there is no monetary reason to do it also. So, my frustration is pretty simple. And I know this is a very simple thing, menthol cigarettes. That is exactly why I wanted to talk about it.

Madam Chair, that is all I have. Thank you.

Ms. HAGEMAN. Thank you, Mr. Carl. I actually think it is an important issue because what so many of our law enforcement personnel have been turned into is regulators and regulator enforcement, so I think it would be great if the BIA would reach out to the sister agency and provide the information about the challenges associated with enforcement of those kinds of things on our reservations and burdening already burdened law enforcement in our tribal communities.

I think it is very important to address those kinds of things, because it is one of the reasons why we don't have the resources that we need. So, I appreciate you raising that particular issue.

The Chair now recognizes Mr. LaMalfa from California for 5 minutes.

Mr. LAMALFA. Thank you, Madam Chair, and apologies to everybody in the room for my late arrival. There was another big deal going on. I am glad I could be here for this portion.

With the flow of illegal drugs or illegal handling of drugs in this country, and especially rural America, the rural part of California where I reside, of course, this affects Indian Country as well, so we see the giant problem with the drugs from China, of course, fentanyl ad nauseam, and the flow from our southern border. It is a direct attack on public safety, the actual usage or finding these things laced in other products, and then the negative effect on neighborhoods, et cetera.

Chairman Goggles, we have talked a lot of times on this Committee about public private lands are constantly being trespassed upon for illegal cannabis grows up in my neighborhood. Across Northern California they see, again, a surge of illicit fentanyl and other hard drugs. Our local law enforcement has to a lot of times do the job, whether it is counties, cities, or tribal law enforcement. And we are talking international drug cartels infesting these areas as well as the whole country.

So, Chairman, would you talk a little bit about how the impact, we kind of have a broad percentage of how it affects the country, but is this especially acute on your lands, on your reservation for your members maybe beyond the national average?

Mr. GOGGLES. Thank you, Congressman. I don't have the percentage with me currently, but there has been enrolled members' deaths at all ages from the surrounding communities. It is just one of those evils that doesn't have any care about who or what. Presently, we have been saved from any children's death or exposure to that drug in particular.

Mr. LAMALFA. So, these cartels, they are not only bringing this product in and infecting our communities with it, but we are seeing that illegal weapons are being brought in and those get into the marketplace. And then maybe most important is the human trafficking side of it. What experiences can you relate with those sides?

Mr. GOGGLES. With the cartels, sir?

Mr. LAMALFA. On human trafficking or handling of illegal weapons and such, have you seen a lot of that?

Mr. GOGGLES. With the cartels, it is usually a nonvisible component. They facilitate their acts through small fish people, counterparts, enrolled members. The human trafficking, it has been through the reservation in different aspects, not at a high volume, just small instances here and there. One example was a child that was recovered in the California area, I believe it was Los Angeles, or San Francisco, I believe. And there was a child that was recovered on our reservation in Wind River from the Crow Reservation in Montana.

Mr. LAMALFA. Are you finding the cooperation with law enforcement at your tribe level is well-coordinated with the Federal?

Mr. GOGGLES. I would say the best example of that would be in the Tribal Fish and Game and the U.S. Fish and Wildlife. They are, from what I see, the seamless, effortless tandem. The rest has always resided with the characters or officers that were in the department. It has just always depended on how they were with other people.

Mr. LAMALFA. Do you see as much of a help with the cartel side of it with Federal law enforcement?

Mr. GOGGLES. From our standpoint, I would not be able to identify any cartel involvement, only the counterparts.

Mr. LAMALFA. I appreciate it. I will yield back, Madam Chair.

Mr. GOGGLES. Thank you, sir.

Ms. HAGEMAN. Thank you. We do have a briefing that we need to get to, but I would like to ask a quick question to each of you that I think is very important because I would like your input. And that is, if there was one thing that you could change that you think would dramatically improve the law enforcement situation within your respective jurisdictions, what would that be? And, again, I will go to the tribal members. I am going to start with you, Mr. Klatush.

Mr. KLATUSH. Law enforcement pension.

Ms. HAGEMAN. Pensions, OK.

And Mr. Goggles?

Mr. GOGGLES. More cohesion and cooperativeness.

Ms. HAGEMAN. Sir?

Mr. CHAUDHURI. Well, there are a variety of things that need to be done and funding is always at the top of the list. At the very top, you have to have restoring tribal jurisdiction, and everything flows from that. If we were allowed to do that, we would be better positioned to work with state counterparts, county counterparts, and Federal counterparts. So, it has to start there, restoring inherent tribal jurisdiction.

Ms. HAGEMAN. OK. And Mr. Sutter?

Mr. SUTTER. All the issues we discussed today are very important. The tribal jurisdiction, the fentanyl epidemic. We still have a

MMIW issue, and for us to effectively provide the law enforcement, to protect and serve, and really protect the most vulnerable from harm, we have to have the officers in our tribal police agencies to affect these very detailed, lengthy investigations.

So, working on officer retention with the pension program would make a significant difference for us and Tulalip in our ability to retain officers, and I think that would help us address the other very, very significant issues causing harm and very disproportionately on our tribal community.

Ms. HAGEMAN. I very much appreciate that. And I don't know if the Ranking Member has any follow-up, but if not, I will go ahead and close out the hearing.

Ms. LEGER FERNÁNDEZ. Thank you very much for your insight that you provided us today. And, Assistant Secretary, it is not that we don't want to hear your views on all of this, but—

[Laughter.]

Ms. LEGER FERNÁNDEZ. So, once again, to the tribal members as well as Mr. Newland, thank you very much.

Ms. HAGEMAN. And I want to thank the witnesses for your valuable testimony and the Members for your questioning.

The members of the Committee may have some additional questions for the witnesses and we will ask you to respond to those in writing. Under Committee Rule 3, members of the Committee must submit questions to the Committee Clerk by 5 p.m. on Friday, November 17, 2023, and the hearing record will be held open for 10 business days for these responses.

If there is no further business, and without objection, the Committee stands adjourned.

[Whereupon, at 3:20 p.m., the Subcommittee was adjourned.]

[ADDITIONAL MATERIALS SUBMITTED FOR THE RECORD]

Submission for the Record by Rep. Carl**COLT Chairman Echoes Senate Alarm on Foreign Illicit Tobacco Threats Amid FDA Prohibitory Rulemakings on Menthol and Nicotine in Cigarettes**

July 24, 2023

Browning, MT—The Coalition of Large Tribes, an intertribal organization representing the interests of the more than 50 tribes with reservations of 100,000 acres or more, echoes the U.S. Senate concerns raised by Senators Cassidy, Rubio, Budd and Hagerty in their letter today Commissioner Califf of the Food and Drug Administration, sounding the alarm over the Biden administration’s plans to restrict tobacco products for Americans, potentially creating opportunities for foreign cartels to profit from illegal tobacco on the black market.

COLT is also concerned about FDA’s proposed rules because they will no doubt create illicit markets for menthol and nicotine-containing products, gaps that will be filled by foreign criminal interests and directly and negatively impact public safety on remote rural Indian reservations like those of COLT member tribes.

As with other forms of prohibition, unregulated supply chains will take over once legal pathways to adult consumers are closed off. Banning the legal sale of menthol and nicotine-containing cigarettes will cede control of the market to illicit producers. “Tribes are painfully aware from our experience with the fentanyl crisis that criminal interests in China, the Middle East and Mexico already use various channels to traffic drugs through and concentrate drugs on our reservations, where the jurisdictional maze and chronic underfunding of tribal law enforcement leaves a persistent gaps for public safety. The Rules will strain already overburdened tribal law enforcement,” said COLT Chairman Marvin Weatherwax, a member of the Blackfeet Tribal Business Committee, quoting COLT’s June 2, 2023 Resolution #03-2022 (WR-Las Vegas), Calling for Pause in FDA Rulemaking on Tobacco to Allow for Tribal Consultation and Protection of Tribal Ceremonial Uses and Public Safety.

“Many of COLT member tribes’ citizens are cigarette smokers, including myself and my wife. We are very concerned that illicit markets borne from the FDA’s forthcoming Rules—Native American smokers who obtained such products will have no idea what foreign illicit cigarettes might be laced with—just like certain foreign drugs today are routinely laced with fentanyl,” said OJ Semans, COLT Executive Director. “As a career tribal police officer, I can tell you that the risks of FDA’s prohibitions on menthol and nicotine are huge for Indian Country.”

OJ Semans, COLT Executive Director

In addition to intensive public safety concerns, COLT is also dismayed that the FDA has not consulted with tribes at all on the Rules, despite the strong policies of the Biden Administration and numerous Executive Orders. COLT is also concerned that tribal tobacco manufacturers could be severely impacted by both Rules, and that tribal ceremonial use of tobacco could be severely restricted, infringing on tribal cultural and religious practices.

Consequently, COLT has called upon FDA to pause its rulemakings, engage in appropriate, required tribal consultation, and fully assess the Rules’ impacts to tribal economies and tribal public safety. COLT urges Congress to continue to shine light on the risks of the FDA’s rulemakings.

