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Subcommittee on Interior, Environment, and Related Agencies
American Indian and Alaska Native Public Witness Hearing
Written Testimony of Kevin J. Allis
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On behalf of the National Congress of American Indians (NCAI), thank you for holding this American Indian and Alaska Native Public Witness hearing. Founded in 1944, NCAI is the oldest and largest national organization composed of American Indian and Alaska Native tribal nations. NCAI’s testimony will discuss funding for the Bureau of Indian Affairs (BIA) and Indian Health Service (IHS).

This testimony is rooted in the treaties and agreements that tribal nations made with the U.S. Government. A recent assessment from the U.S. Commission on Civil Rights (USCCR) found that “federal funding for Native American programs across the government remains grossly inadequate to meet the most basic needs the federal government is obligated to provide.”¹ Tribal leaders and citizens have known this for decades, and we urge Congress to fully fund the U.S. Government’s treaty and trust obligations.

Tribal nations seek only those things promised to them and their citizens by the solemn treaties and agreements reached between tribal nations and the United States. When tribal nations ceded millions of acres of land to the United States, the federal government promised to safeguard their right to govern themselves, and to provide them adequate resources to deliver essential services effectively.

Federal funding remains critical to ensure essential government services are delivered to tribal citizens. The BIA and IHS provide services for tribal nations, including hospitals, schools, law enforcement, child welfare programs, and social services, among many others. For many tribal nations, most tribal governmental services are funded by federal sources as part of the treaty and trust obligations. This is particularly important because federal law and policy have resulted in tribal nations lacking tax bases to raise revenue that state and local governments enjoy.

Tribal nations face significant challenges due to uncertainty in the federal budget process. Although government shutdowns are prominent examples of the negative effects of breakdowns in the federal budget process, tribal nations also must regularly contend with uncertainty when planning and delivering services to their citizens because of short-term continuing resolutions. As such, healthcare provided by IHS and services provided by the BIA are regularly impacted because both receive funding through Interior-Environment appropriations. NCAI urges Congress to provide advance appropriations for IHS and BIA to protect tribal programs from further uncertainty.

Bureau of Indian Affairs

Along with IHS, the BIA is one of the primary agencies responsible for providing services throughout Indian Country, either directly or through compacts or contracts with tribal nations. The operation of these programs and services is essential for the health, safety, and social and economic well-being of tribal and surrounding communities. Unfortunately, chronic underfunding of tribal programs perpetuates systemic issues in Indian Country that could be reduced or eliminated by funding tribal programs in amounts that meet the federal government's treaty and trust obligations to tribal nations.

Public Safety & Justice

Among the fundamental components of the federal government's treaty and trust responsibilities to tribal nations is the obligation to protect public safety on tribal lands. Congress and the U.S. Supreme Court have long acknowledged this obligation, which Congress reaffirmed in the Tribal Law and Order Act (TLOA) expressly "acknowledging the federal nexus and distinct federal responsibility to address and prevent crime in Indian Country."²

The inadequate funding for tribal criminal justice and public safety has resulted in staggering rates of violent crime and victimization on many Indian reservations. A Department of Justice (DOJ) study has found that more than four in five American Indian and Alaska Native (AI/AN) adults have experienced some form of violence in their lifetime.³ Among AI/AN women, 55.5 percent have experienced physical violence by intimate partners in their lifetime, and 56.1 percent have experienced sexual violence.⁴ The Administration has recently acknowledged the urgent need to address the high number of missing and murdered persons from tribal communities by launching the Lady Justice Initiative. While NCAI appreciates the effort to increase inter-agency and cross jurisdictional collaboration, tribal police departments and justice systems must play an integral part. To do so, they must be adequately funded. NCAI requests an increase to BIA Law Enforcement of \$200 million over FY 2020 levels. NCAI also requests an increase in base funding for tribal courts, for a total of \$83 million, which would include courts in P.L. 83-280 jurisdictions.

The underfunding of tribal law enforcement and justice systems is well-documented. Most recently, the BIA submitted a report to Congress in 2017 estimating that to provide a minimum base level of service to all federally recognized tribal nations: \$1 billion is needed for tribal law enforcement, \$1 billion is needed for tribal courts, and \$222.8 million is needed to adequately fund existing detention centers.⁵ Based on recent appropriation levels, the BIA is generally funding tribal law enforcement at about 20 percent of estimated need, tribal detention at about 40 percent of estimated need, and tribal courts at a dismal five percent of estimated need.

Due to the inadequacy of BIA base funding, tribal nations often seek short-term, competitive grants to try to make up a portion of the shortfall. This is especially true with regard to funding for the non-incarceration aspects of justice systems, such as tribal courts, which, as mentioned above, are even more severely underfunded than policing and detention. The bulk of these grants are administered by DOJ. Tribal funding at DOJ has steadily declined in recent years, falling from approximately \$165 million in FY 2010 to \$115 million in FY 2017. Since FY 2018, the funding appeared to increase dramatically to \$246 million. This increase reflects the fact that Congress included tribal nations in the annual disbursements from the Crime Victims Fund for the first time. While this funding for crime victim services is sorely needed, it cannot be used for law

enforcement, prosecution, or other criminal justice purposes, and it does not make up for cuts in those areas.

In 2018, the USCCR found that there continues to be “systematic underfunding of tribal law enforcement and criminal justice systems, as well as structural barriers in the funding and operation of criminal justice systems in Indian Country” that undermine public safety.⁶ Tribal justice systems must have resources so they can protect women, children and families, address substance abuse, rehabilitate first-time offenders, and put serious criminals behind bars. Well-functioning criminal justice systems, basic police protection, and services for victims are fundamental priorities of any government — tribal nations are no different. The increases NCAI is requesting will be an important incremental step toward providing the resources necessary for tribal nations to ensure public safety on their lands.

BIA Road Maintenance

Funding for infrastructure remains a critical need in Indian Country. BIA received \$36.063 million for the BIA Road Maintenance Program in FY 2020 but has a deferred maintenance backlog in excess of \$300 million. This program is critical to the safety of all those driving on the approximately 29,400 miles of roads and 900 bridges in Indian Country that are overseen by BIA. NCAI is requesting \$75 million for the BIA Road Maintenance Program to begin to address the deferred maintenance needs in Indian Country.

Indian Health Service

In permanently authorizing the Indian Health Care Improvement Act (IHCA), Congress reaffirmed the duty of the federal government to provide all the necessary resources to ensure the highest possible health status for AI/ANs, declaring that “it is the policy of this Nation, in fulfillment of its special trust responsibilities and legal obligations to Indians.”⁷ Unfortunately, IHS has never received sufficient funding to fully honor its obligations. Instead the Indian healthcare delivery system faces significant funding disparities. In FY 2017, IHS per capita expenditures for patient health services were just \$4,079, compared to \$9,726 per person for health care spending nationally.⁸

Habitual underfunding of the Indian healthcare system has resulted in a health crisis across Indian Country. Infant mortality, suicides, and preventable deaths plague tribal communities. Treatment of chronic diseases like diabetes, auto-immune deficiencies, cancer, and heart disease quickly erode limited resources leaving, few dollars for preventative care. Further, failing infrastructure creates unsafe and unsanitary conditions and severely compromises the quality of healthcare. Aging facilities and the lack of resources to modernize equipment and health information technology has created a dire need for large investments in basic infrastructure.

For the IHS budget to grow sufficiently to meet the documented needs of tribal nations over a twelve-year period, the National Tribal Budget Formulation Workgroup recommends in its FY 2021 budget that “[t]he IHS need-based funding aggregate cost estimate for FY 2021 is now \$37.6 billion, based on the FY 2018 estimate of [2.9 million] AI/ANs eligible to be served by IHS, Tribal and Urban health programs.”⁹ New healthcare insurance opportunities and expanded Medicaid in some states may increase healthcare resources available to AI/ANs. However, these new opportunities cannot substitute for fulfillment of the federal government’s trust and treaty

obligations to tribal nations. Accordingly, NCAI recommends the amount requested by the National Tribal Budget Formulation Workgroup for FY 2021, a total of \$9.145 billion in FY 2021.

Section 105(l) Lease Agreements

Section 105(l) of the Indian Self-Determination and Education Assistance Act (ISDEAA) provides that the Secretary of the Interior and the Secretary of Health and Human Services shall enter into leases with an Indian tribe or tribal organization for the administration and delivery of services under ISDEAA. The *Maniilaq Ass'n v. Burwell* decisions upheld this federal responsibility,¹⁰ and tribal nations are now entering into leases at both the Department of the Interior (DOI) and Department of Health and Human Services (HHS) to compensate for the use of allowable facilities.

In order to secure the Section 105(l) program in the long-term, funding for these leases should be classified as mandatory spending. Funding for Section 105(l) leases must be funded in the amount of such sums as may be necessary for both DOI and HHS. No solution to the Section 105(l) funding issue should detrimentally affect funding or operation of any other tribal program.

Conclusion

We look forward to working with this subcommittee on a nonpartisan basis to ensure the federal government honors its treaty and trust obligations to tribal nations through the federal budget process. Thank you for this opportunity to testify on the importance of increased funding for tribal programs.

¹ U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, 4, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

² Tribal Law and Order Act, 34 U.S.C. § 10381(j).

³ U.S. Department of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, 2, (2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf>.

⁴ *Id.*

⁵ U.S. Department of the Interior, *Report to Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country*, 5, (2018), https://www.bia.gov/sites/bia.gov/files/assets/bia/ojs/ojs/pdf/Report_Final-Cleared.pdf.

⁶ U.S. Commission on Civil Rights, *Broken Promises: Continued Federal Funding Shortfall for Native Americans*, 32, (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf>.

⁷ Indian Health Care Improvement Act, 25 U.S.C. § 1602.

⁸ National Tribal Budget Formulation Workgroup, *Recommendations on the Indian Health Service Fiscal Year 2021 Budget*, 9, (2019), https://www.nihb.org/docs/04242019/307871_NIHB%20IHS%20Budget%20Book_WEB.PDF.

⁹ *Id.* at 15.

¹⁰ 72 F. Supp. 3d 227 (D.D.C. 2014); 70 F. Supp. 3d 243 (D.D.C. 2016).