

Written Testimony of Mark Macarro
President of the National Congress of American Indians For the U.S. House Committee on
Appropriations
Subcommittee on Interior, Environment, and Related Agencies February 27, 2025

On behalf of the National Congress of American Indians (NCAI), thank you for this opportunity to provide testimony on FY 2026 funding for the Department of the Interior (DOI), the Indian Health Service (IHS), and the Environmental Protection Agency (EPA). Founded in 1944, NCAI is the oldest and largest national organization composed of American Indian and Alaska Native tribal nations.

The funding requests in this testimony are rooted in the promises made by the U.S. Government in treaties and agreements with tribal nations. The 2018 *Broken Promises Report* from the U.S. Commission on Civil Rights (USCCR) found that “[f]ederal 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

The United States fulfills its trust and treaty obligations through both the direct delivery of Tribal programs and services and provision of federal funding to Tribal Nations. Over time, the United States has created a web of different mechanisms it uses to deploy federal funding to serve Tribal Nations and Tribal communities. Essential services provided by Federal employees include healthcare services through the Indian Health Service, law enforcement and public safety through the Bureau of Indian Affairs, and educational services through the Bureau of Indian Education—not to mention countless other essential and legally mandated services provided by employees serving in Tribal offices and throughout the federal government.

However, there is much more to be done by the federal government to truly fulfill the promises made to tribal nations. Congress and the Administration must build on these initial steps. Accordingly, NCAI urges Congress to fully fund the U.S. Government’s treaty and trust obligations. It also urges Congress and the Administration to continue to improve how funding is delivered to the BIA, IHS and other federal programs that serve Tribal Nations by providing advance appropriations until such time that all trust and treaty obligations are accounted for, and provided as, mandatory spending.

I. Respect Tribal Sovereignty and Uphold Trust and Treaty Obligations Amid Executive Actions

As the Subcommittee is aware, the Trump Administration’s early actions have generated confusion, fear, and real consequences throughout Indian Country. This includes freezing and potentially reallocating vital federal funding, firing essential federal employees, and proposing changes to important Tribal programs, such as education. We have also been wrongly caught up in Administration efforts related to illegal immigration and diversity, equity, and inclusion and environmental justice programs.

From our perspective, these actions represent a misunderstanding of our unique political status under the law and the United States’ legal requirement to deliver on its trust and treaty obligations. Each of the mandates issued by the Administration has acknowledged that it is not meant to affect ongoing legal requirements, and Indian Country programs are legally required by trust and treaty obligations and associated implementing statutes. If the Administration were to

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

engage in government-to-government Tribal consultation with us prior to executing on its priorities, we could help the Administration avoid harm to Indian Country.

NCAI appreciates that the Departments of Health and Human Services and Interior and the Office of Personnel Management have taken some steps to clarify that implementation of the Administration's Executive Orders and priorities should not impact the United States' delivery on trust and treaty obligations to Tribal Nations and citizens and communities.

We call upon this Subcommittee and all appropriators to ensure that these directives are faithfully implemented within these Departments and similar policies are executed across the federal government. More broadly, we call upon you to do your part in upholding trust and treaty obligations, including by appropriating the funding that Indian Country is owed, and by assisting the Administration in understanding and meeting its legal obligations to us.

II. Bureau of Indian Affairs

The BIA is one of the fundamental 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 Nations 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.

NCAI recommends \$27.120 billion for Indian Affairs programs in FY 2026, consistent with the official FY 2026 recommendation of the Tribal/Interior Budget Council (TIBC).² Within TIBC's FY 2026 recommendations are robust increases for all base-funded programs, and additional funding to address public safety and justice in tribal communities; the economic and social wellbeing of our citizens and all those who visit or do business in our communities; the backlog of school, community, and government infrastructure construction and maintenance; taking land into trust; and addressing cultural protections within tribal and federal lands.

The following subsections highlight a few of TIBC's FY 2026 recommendations.

A. Public Safety and 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 has 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."³

The underfunding of Tribal law enforcement and justice systems is well-documented. In 2024, three years after the 2021 reporting year, BIA submitted a report to Congress estimating that to provide a minimum base level of service to all federally recognized Tribal Nations: \$1.724 billion is needed for Tribal Law Enforcement Programs, \$1.5 billion is needed for Tribal Courts, and \$284.1 million is needed to adequately fund existing Detention Centers.⁴ FY 2024 funding levels

² TIBC Tribal Representatives' *FY 2026 Budget Submission to the Department of the Interior*, April 9 2024, accessed at: <https://cdn.sanity.io/files/raa5sn1v/production/9c4e1e12d80bfbcd11d349b24dd86ecf1a89ee23.pdf>

³ Tribal Law and Order Act, 34 U.S.C. § 10381(j).

⁴ 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, 2021*, March 7, 2024, accessed at:

fall far short of BIA's estimates. The 2018 report⁵, identifies that Public Safety & Justice in Indian Country is funded at a mere 14% of need, according to the 2021 estimates, this unmet need has fallen further to 12%. The \$3.06 billion dollar shortfall equated to approximately 26,000 additional personnel required to adequately serve Indian country.

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 on par with other well-functioning criminal justice systems, basic police protection, and services for victims that are fundamental priorities of any government — tribal nations are no different.

As stated above, NCAI supports TIBC's FY 2026 recommendations, which include \$3.01 billion for Public Safety and Justice funding, with approximately \$1.472 billion for BIA Law Enforcement and \$1.156 billion for Tribal Courts.

B. BIA Road Maintenance

Infrastructure remains a critical need in Indian Country. BIA received \$39.19 million for the BIA Road Maintenance Program in FY 2024. BIA has indicated that it has a deferred maintenance backlog of approximately \$400 million. Additionally, the annual funding levels for this program have been relatively flat, especially when compared to the increasing level of deferred maintenance needs. This program is critical to the safety of all those driving on the approximately 29,100 miles of roads and 1,100 bridges in Indian Country that are overseen by BIA. NCAI supports TIBC's FY 2026 recommendation of \$400 million for the BIA Road Maintenance Program to address deferred maintenance needs in Indian Country.

C. Contract Support Costs and Tribal Leases

NCAI strongly supports reclassifying the Contract Support Costs and Payments for 105 (I) Tribal Leases as mandatory spending for both IHS and Indian Affairs.⁷ Given current 105 (I) trends in IHS and Indian Affairs (IA), Tribal Nations are concerned that CSC and 105(I) costs could have a detrimental impact on overall increases for IHS and IA, including funds for patient care, and trust services. The IHS Workgroup and Tribal Interior Budget Council (TIBC) continues to urge that all the IHS and Indian Affairs budgets be provided as mandatory spending, but that CSC and Payments for Tribal Leases are immediately prepared to be moved to mandatory. NCAI and National Tribal advisory groups urge this immediate action to ensure that spending for IHS and Indian Affairs under discretionary caps can prioritize addressing Indian Country inequities made worse by inadequate budgets and uncertain

III. Bureau of Indian Education

A. Preservation of the Bureau of Indian Education

https://www.bia.gov/sites/default/files/media_document/2021_tloa_report_final_508_compliant.pdf

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, 2018*, July, 2020, accessed at:

https://www.bia.gov/sites/default/files/dup/assets/bia/ojs/ojs/pdf/2018_TLOA_Report_Final.pdf

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

⁷ NCAI Resolution#LV-24-027, Mandatory Classification of 105(I) Lease Payments to Tribal Nations under the Federal Budget,

<https://ncai.assetbank-server.com/assetbankncai/action/viewAsset?id=5621&index=5&total=8&view=viewSearchItem>

“The United States has a trust and treaty responsibility to provide eligible Indian students with a quality education. The BIE serves as a capacity builder and service provider to support Tribes in delivering culturally appropriate education with high academic standards to allow students across Indian Country to achieve success.”⁸

NCAI strongly supports that, any Tribal program or funding delivered to Tribal Nations is provided in furtherance of the United States’ trust and treaty obligations. The federal employees necessary for the functioning of those Tribal programs and the disbursement of those Tribal funds are also part of the trust and treaty obligations. The United States further has a duty to consult government-to-government with Tribal Nations on federal actions that may have Tribal implications, including implications on delivery of trust and treaty obligations.

Indian Education is one of the oldest educational obligations in the United States to Tribal Nations. NCAI respectfully requests Tribal consultation in decisions regarding the planning and implementation of any school choice funding program for BIE-eligible students. Furthermore, we Congress to ensure that any such program does not deplete the already underfunded accounts supporting Tribal schools.

Congress has already established a school choice system for Tribal communities through Tribally Controlled Schools within the BIE, as a product of meaningful tribal Self-Determination policy. However, chronic underfunding has prevented its full achievement.

Therefore, any additional development of school choice programs for Indian children that does not both secure separate funding from that designed for Tribally Controlled Schools while also ensuring adequate and complete funding for BIE, fails congress’ original intent. Further, any Indian education program which is not funded and designed with Tribal Nations at the table could have wide sweeping detrimental impacts on the current Indian Education system. NCAI

B. Indian School Equalization Program (ISEP)

Indian Student Equalization Program (ISEP) Formula Funds provide the primary funding for the core operational functions of Bureau of Indian Education (BIE)-funded elementary and secondary schools, including academic, educational, residential, and guidance and counseling services; teacher and staff salaries; instructional materials, extracurricular activities, and related programming.

Combined with the underfunding of student transportation, facilities operations, facilities maintenance, and tribal grant support costs, BIE-funded schools must often reallocate critical teaching and learning ISEP funding to cover expenditures in these line items to provide safe and adequate learning facilities. This continued underfunding negatively impacts BIE-funded schools’ ability to provide appropriate, high-quality education to its students. NCAI is supportive of the TIBC recommendation of \$950 million for Indian Affairs programs in FY 2026, consistent with the official FY 2026 recommendation of the Tribal/Interior Budget Council (TIBC).

Thank you again for the opportunity to submit testimony. NCAI is grateful for all of the work Congress has done to uphold the Trust and Treaty Responsibility to Tribal Nations, and we look forward to working further to protect and maintain the progress that has been made in recent years for the benefit of all of Indian Country. If you have any questions or need additional information,

⁸ OVERSIGHT HEARING ON EXAMINING THE PRESIDENT’S FY 2025 BUDGET REQUEST FOR THE BUREAU OF INDIAN AFFAIRS, INDIAN HEALTH SERVICE, AND OFFICE OF INSULAR AFFAIRS. (n.d.). <https://www.govinfo.gov/content/pkg/CHRG-118hrg55647/html/CHRG-118hrg55647.htm>

please contact Matthew Vogel, Policy Lead, NCAI (mvogel@ncai.org).

Respectfully,

A handwritten signature in black ink, appearing to read "Mark Macarro". The signature is fluid and cursive, with a long horizontal stroke at the beginning.

Mark Macarro
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