



Natural Resources Committee
Subcommittee for Indigenous Peoples of the United States
“Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women (MMIW):
Exploring Solutions to End the Cycle of Violence”
March 14, 2019

Written Responses to Questions
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The Honorable Chairman Raúl M. Grijalva, Ranking Member Rob Bishop, Chairman Ruben Gallego, Ranking Member Paul Cook, and Members of the Committee, the National Indigenous Women’s Resource Center submits the following responses

Thank you for the opportunity to respond to the written questions you and other Members have provided.

QUESTIONS ASKED BY REPRESENTATIVE DEB HAALAND:

Question: “In your testimony, you stated that there are resources needed for victim services which would provide meaningful interventions for survivors of gender-based violence. What types of programs would be most effective to address this? Is the funding needed in Indian Country, urban areas, or both?”

Answer: First, it is critical to have tribal programs in place that provide meaningful interventions to Indian victims *before* domestic and sexual violence, including sex trafficking, escalates to abductions, homicide or murder. Funding for such services is needed in Indian Country and urban areas. Less than one-half of all Indian Tribes receive funding to serve victims of crimes enumerated under the Violence Against Women Act (VAWA). The vast majority of Indian Tribes lack any services for victims and many of these Tribes are geographically isolated in rural or remote areas. Generally more funding is available for victim services programs in urban areas than for Indian Tribes. Many Tribes continue to serve their people wherever they are located, including urban areas, with what limited resources they have.

In past reauthorizations of VAWA and the Family Violence Prevention and Services Act (FVPSA), Congress created programs for Indian Tribes. These programs and resources have made a difference in the lives of Indian victims and should continue to be reauthorized.

However, the funding for tribal services remains insufficient. According to the National Institute of Justice, 38% of Indian victims were unable to receive necessary services, including medical care and legal services.¹ Resources like the StrongHearts Native Helpline, a culturally appropriate, confidential service for Native Americans affected by domestic violence and dating violence, have found that there is a severe tribal resources disparity that is a barrier for tribal governments limiting how and what advocacy and justice services they are able to develop and provide their citizens and non-Indian residents.

This resource disparity is, in large part, due to the fact that Tribes did not have direct access to the Crime Victims Fund (CVF) through the Victims of Crime Act (VOCA) until last year. Though the FY18 Omnibus Spending Bill includes a 3% set aside for tribal governments, a permanent fix is needed. There must be a government-to-government funding stream legislatively established for tribal governments accessing the CVF. Critical resources like the StrongHearts Native Helpline, Tribal Domestic Violence and Sexual Assault Coalitions, tribally-run or Native based shelter and sexual assault services, services designed to address sex trafficking, tribal housing, legal services, comprehensive medical and forensic services, mental health services, services for Native children and youth affected by domestic and sexual violence, other culturally appropriate programs and services, and technical assistance supporting tribal response development are absolutely vital to any meaningful response to violence in tribal communities. The current funding available in Indian Country is inadequate to address these needs - from the provision of basic, emergency services and responses to more comprehensive, long term services - and is a breach of the federal trust responsibility to assist Indian Tribes in safeguarding the lives of Indian women.² Without adequate federal assistance through resources for Indian Tribes, Indian women will continue to go missing and be murdered at the highest rates in the country.

The crisis of MMIW in urban areas deserves attention. The Urban Indian Health Institute (“UIHI”), based in Seattle, Washington, recently conducted research across 71 urban areas and cities with a significant Native population.³ The Institute’s findings are remarkable and alarming and provide a partial view of the barriers facing Indian women vulnerable to murder and abduction. The majority of urban area law enforcement agencies fail to keep data or records to indicate if and when a Native woman is murdered or missing within their jurisdiction.⁴ The UIHI Report called for reforms around the experiences of urban Indians, including funding to ensure proper data collection.

Where the reforms in Indian Country are rooted in the federal trust responsibility to assist Indian Tribes in safeguarding the lives on Indian women, the reforms in urban areas must come from city and state governments that have the authority to respond and responsibility for public safety

¹ Andre B. Rosay, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*. Washington, D.C.: U.S. Dept. of Justice, National Institute of Justice, 2016, NCJ 249736.

² 34 USC § 10452 Note

³ The full report and findings can be found here: <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>

⁴ *Missing and Murdered Indigenous Women & Girls*, <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf> (2018).

within their jurisdictions. Unlike Indian Country, city and state governments have the infrastructure and resources to develop their responses and services in partnership with tribal governments and organizations, including urban Indian centers. In addition, because it's not unusual for Indian peoples to travel between urban areas and tribal lands, cross jurisdictional agreements would maximize efforts to prevent abductions and homicides, including ensuring comity and full faith and credit of tribal court orders, including orders issued from CFR Courts.

Perhaps the Subcommittee would consider supporting pilot projects with existing state and local government funding (e.g., VAWA, Byrne, COPS, VOCA) that would support the development of urban justice responses and advocacy services to the issue of MMIW, including cross jurisdictional agreements with Indian Tribes and partnerships with urban Indian centers. Additional funding for Indian Tribes could focus on the expansion of existing domestic and sexual violence tribal justice responses and advocacy services to address prevention of abductions and homicides.

Question: You mentioned that to address this issue, there needs to be improved access to federal criminal databases. Can you explain the difference between the various available federal data systems and which one would be the best central point for data collection for MMIW?

Answer: It is critical that just like state and local governments, tribal governments have equal access to the National Criminal Information Center (NCIC) database maintained by the FBI. In fact, given the public safety challenges such as MMIW, this Congress has the opportunity to ensure tribal governments have the access they need to prevent any more Indian women going missing and being murdered. The NCIC database currently consists of twenty-one files of data. There are seven property files containing records of stolen articles, boats, guns, license plates, parts, securities, and vehicles. There are fourteen persons files, including: Supervised Release; National Sex Offender Registry; Foreign Fugitive; Immigration Violator; Missing Person; Protection Order; Unidentified Person; Protective Interest; Gang; Known or Appropriately Suspected Terrorist; Wanted Person; Identity Theft; Violent Person; and National Instant Criminal Background Check System (NICS) Denied Transaction. The system also contains images that can be associated with NCIC records to help agencies identify people and property items. The Interstate Identification Index, which contains automated criminal history record information, is accessible through the same network as NCIC.

One of the largest obstacles to addressing the crisis of murdered and missing Indian women have been the barriers Tribal Nations face in accessing national crime databases. For instance, without access to NCIC, Tribal Nations are unable to enter the name of one of their citizens if and when she goes missing. This means that other federal and state law enforcement agencies will not be aware that she is missing, and ultimately it means she is less likely to be located and her life, most likely, will not be saved.

VAWA 2005 and the Tribal Law & Order Act of 2010 both included provisions directing the Attorney General to permit Tribal Nations to enter information into and obtain information from federal criminal information databases. Tribal Nations have raised this issue for years. In response to these concerns, in 2015, DOJ announced the Tribal Access Program for National

Crime Information (TAP), which provides eligible Tribal Nations with access to the NCIC systems.

Under TAP, Tribes have successfully begun entering information directly into the federal databases, resulting in nearly 600 sex offender registrations and over 550 sex offender check-ins, nearly 300 instances of data entry that would prohibit someone from being able to purchase a firearm, over 1000 orders of protection entered or modified and over 4,200 finger-print based record checks for civil purposes that include employment, tribal housing placement and personnel/volunteers who have regular contact with or control over Indian children. These are the sorts of achievements that prevent the escalation from domestic violence to homicide, or serve to assist law enforcement in the apprehension of a suspect before he commits yet another crime that could result in the murder or kidnapping of a Native woman.

As of September 2018, TAP has been deployed to 47 Tribal Nations. While we celebrate this change, the federal trust responsibility to assist Indian Tribes in safeguarding the lives of Indian women extends to all 573 federally recognized Indian Tribes, so we must work to grant access to 526 more tribal governments.

A dedicated funding stream should be created for expanding the TAP program and making it available to all interested Tribes who meet the requirements. TAP is the best central point for data collection for MMIW. All Tribal Nations should have the ability to access federal databases not only for the purpose of obtaining criminal history information for criminal or civil law purposes, but also for entering protection orders and other relevant information, including NICS disqualifying events, into the databases.

I want to close NIWRC's response to your question, Representative Haaland, with the words of one mother Florence Choyou and her story (attached) of her daughter's murder:

The man who violently took Monica's life received three years and will be released soon. Before coming to our reservation, he was banished from two other nearby reservations for violence. If we had only known of his violence, she might still be alive. The tribal registry might have saved her life.⁵

QUESTIONS PRESENTED BY CHAIRMAN GRIJALVA:

Question: What programs or initiative is your organization or other organizations currently developing to address the MMIW issue? How is your organization collaborating with local tribal groups or coalitions?

Answer: The NIWRC's on-going efforts to address MMIW include leading events and activities locally, regionally, nationally and internationally. Partnerships with the following organizations and many others identified below have been key to the groundswell of attention and activity: the Alaska Native Women's Resource Center, National Congress of American Indians, Indian Law Resource Center, National Resource Center on Domestic Violence, and tribal domestic violence

⁵ Jacqueline R. Agtuca, *Safety for Native Women: VAWA and American Indian Tribes*, NIWRC, 2014.

and sexual assault coalitions including the Native Women’s Society of the Great Plains and Healing Native Hearts Coalition.

The list below is not exhaustive, but provides some of what NIWRC has done because of the need:

- ★ conducted Conversations With the Field (CWTF),
- ★ organized hill briefings,
- ★ hosted a reception on Capitol Hill,
- ★ hosted several educational screenings of Wind River with accompanying panel discussions,
- ★ provided testimony at international advocacy forums,
- ★ educated tribal leaders at National Congress of American Indians conferences, including assisting with the passage of 2016 NCAI Resolution, presentations during NCAI Violence Against Women Task Force meetings and during annual VAW government-to-government consultations,
- ★ participated in awareness activities/marches/California Indian film festival/vigils,
- ★ created a toolkit, postcards, issued press releases, and interviews with media worldwide,
- ★ conducted webinars and a social media campaign in support of the National Day of Awareness for Missing and Murdered Native Women and Girls, including Native Hawaiian women,
- ★ assisted with development of video PSAs and a documentary about missing and murdered Alaska Native women, and
- ★ written Restoration Magazine articles since 2008, and I submitted one such article along with NIWRC’s written testimony on March 14, 2019. The NIWRC’s Restoration Magazine is an incredible resource on many issues related to ending domestic violence and sexual assault against Native women, including MMIW. NIWRC has reported on the crisis of MMIW since 2008.

The CWTF concept was first developed in 2003 as a tool for organizing a national conversation of the grassroots movement, including building a national platform of current and emerging issues of concern and recommendations to increase the safety of Native women. The CWTF engagements involved meetings with grassroots advocates, community members, tribal leaders, tribal coalitions and allies. In 2017, the NIWRC held a series of CWTF: Understanding the Issue of Missing & Murdered Native Women and Organizing a Response at NIWRC’s Specialty Institute, the 2017 NCAI Mid-Year Convention, and at an Alaska Native Village Engagement in Kotzebue, AK. The CWTF discussions provided an overview about the issue of Missing and Murdered Native women, including ways to organize a response given that disappearances are often connected to not only domestic and sexual violence, but other forms of violence.

Additionally, in 2017, in cooperation with Senator Murkowski, the NIWRC sponsored a MMIW hill briefing in partnership with the Indian Law Resource Center (ILRC) and the Alaska Native Women’s Resource Center (AKNWRRC), which focused on “Moving Ahead to Increase the Safety of American Indian and Alaska Native Women, Efforts to Address Missing and Murdered Native Women and Girls.” In addition to remarks offered by our panelists, Senators Murkowski, Tester and Daines, the NIWRC shared statistics from the NIJ report, Violence Against American

Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey and showed the NIJ video, Violence Against American Indian and Alaska Native Women and Men. The NIWRC provided an overview of missing and murdered Native women along with the Senate resolution, calling for May 5th as a National Day of Awareness for Missing and Murdered Native Women and Girls.

In February 2018, in cooperation with Representative Torres, the NIWRC and several partners successfully hosted a reception and an event: “Understanding the Crisis of Missing and Murdered Native Women” at the Capitol Visitor Center in Washington, D.C. The event coincided with NCAI’s Executive Council Winter Session and was partnered with NCAI, the National Indian Gaming Association, the ILRC, the StrongHearts Native Helpline, the AKNWRC, the Tunica-Biloxi Economic Development Corporation, the Tunica-Biloxi Tribe, the Cheyenne River Sioux Tribe, and the Shakopee Mdewakanton Sioux Community. We also hosted a briefing to discuss MMIW issues and followed the event with a screening of Wind River. The event was well attended by Hill staffers, tribal leaders, and advocates from across the country who are actively engaged in addressing the issue of violence against Native women.

The NIWRC organized additional screenings of Wind River with community discussions at the Haskell Indian University in Lawrence, KS in September 2017, University of South Dakota, Vermillion in February 2018, Pala Band of Mission Indians (CA) in April 2018 during the Sexual Assault Awareness Walk for Honor Walk for Justice organized by the Avellaka Program La Jolla Band of Luiseno Indians, and NIWRC’s Women Are Sacred 2018 Conference.

The NIWRC provided statements with NCAI, ILRC and AKNWRC to the United Nations, including at the UNCSW March 2016 parallel event titled “Indigenous Women’s Movements to End Violence Against American Indian, Alaska Native, and Aboriginal Women.”

In August of 2018, the NIWRC supported the Native Women’s Society of the Great Plains that organized a candlelight vigil at the annual VAW government-to-government consultation in Sioux Falls, SD.

In September of 2018, the NIWRC hosted a candlelight vigil at the National Museum of the American Indian at which the following spoke: Representative Gwen Moore, myself, Caroline LaPorte (NIWRC Senior Native Affairs Advisor), Juana Majel Dixon (NCAI Task Force on Violence Against Native Women Co-Chair), Carmen O’Leary (NIWRC Board Vice-Chairwoman and Executive Director of the Native Women’s Society of the Great Plains) and Leanne Guy (NIWRC Board Secretary and Executive Director of the Southwest Indigenous Women’s Coalition). Most impactful however, was when Florence Choyou shared the story of her daughter Monica who was murdered by her boyfriend in Keams Canyon on the Hopi Reservation.

NIWRC has supported organizing efforts nationally and specifically the annual walks held in Lame Deer, Montana, during the National Day of Awareness. The NIWRC national office is located in Lame Deer, and it was also the home of Hanna Harris. NIWRC works closely with Malinda Harris, Hanna’s mother, and staff have engaged at various levels of community support from making banners to the helping with the community meal following the walks.

Based on the many difficult lessons from the disappearances and murders of women, the NIWRC developed a basic toolkit that summarizes key points for Tribes and communities to consider. The toolkit encourages communities to prepare protocols based on an understanding that domestic and sexual violence occurs on a spectrum of abusive behavior and can include abduction and murder. We encourage Tribes to take immediate action, noting the quicker the response, the faster the victim may be located and help may be provided.

The Tribal Community Response Toolkit for Action includes a basic overview of lessons responding to cases of MMIW. It encourages communities to:

- Develop a response before a disappearance occurs;
- Contact law enforcement immediately as soon as a disappearance occurs;
- Document and track events—dates and times are essential;
- Issue an alert immediately—a press release, radio announcement, social media post;
- Organize community actions—a vigil, search, justice walk, or march to provide a positive anchor for family and community to support the woman who is missing.

In 2017 and 2018, the NIWRC collectively organized with the national grassroots movement for the safety of Native women to support the National Day of Awareness for Missing and Murdered Native Women and Girls, and the NIWRC is currently working on the effort for 2019. Past efforts included support from over 250 tribal, state, and national organizations. May 5, 2017, marked the first national day of awareness with tribal awareness and justice walks taking place across the United States. In 2018, the efforts of NIWRC included a social media campaign, which reached millions online globally.

The NIWRC has presented four webinars:

Sept. 2014 - “Missing and Murdered Native Women”

Nov. 2016 - “Missing and Murdered Native Women - Public Awareness Efforts”

May 2017 - “Honoring Missing and Murdered Indigenous Women”

Dec. 2017 - “Effective Use of the National Missing and Unidentified Persons System (NamUs) for Case Resolution”

Through our partnership with the Alaska Native Women’s Resource Center and Healing Native Hearts Tribal Coalition, we have supported the development of public service announcements and a video documentary on Missing and Murdered Indian women, which have not yet been publicly distributed. During the March 14 hearing Tami Truett Jerue (Executive Director, AKNWRC) shared one of the PSAs with the Subcommittee.

The NIWRC, with continued grassroots advocacy efforts and in close collaboration with our partners, will continue to raise awareness and advocate for social and systemic change to remove the barriers in laws and policies that prevent Tribal Nations from developing local, tribal responses to domestic and sexual violence, including MMIW. As in the past, since 2008, NIWRC will continue to document efforts in our Restoration Magazine.

Question: Your testimony also refers to Alaska having “unique” jurisdictional challenges when compared to other tribes. Can you explain why Alaska has different jurisdictional issues and how

the NIWRC is working with Alaska Native tribes to deal with this? Please provide the historical context and different relationship Alaska Natives have with the federal government.

Answer: In 2013, the NIWRC worked closely with Alaska Native village-based advocates to create the Alaska Native Women’s Resource Center dedicated to working with Alaska Native Tribes and allies to address domestic and gender-based violence. The AKNWRC formed as its own nonprofit in 2015. NIWRC continues to work closely with the AKNWRC.

Chapter 2 titled *Reforming Justice for Alaska Native: The Time is Now* of the Indian Law and Order Commission’s (ILOC) report, *A Roadmap for Making Native America Safer* (November 2013) explains Alaska’s jurisdictional issues, including some of the historical context, and provides recommendations for removing barriers in federal laws and policies that NIWRC supports. Alaska Native Tribes have the same government-to-government relationship with the federal government as Tribes in the rest of the country.

The extraordinarily high rates of murder, rape, sexual assault, and domestic violence committed against Alaska Native women have been recounted by senators, documented by the United States Department of Justice, and federal commissions, including the ILOC. As Senator Lisa Murkowski recently noted, “violence against Native American and Alaska Native women is a dire issue, with murder being the third-leading cause of death of indigenous women.”⁶

A Roadmap for Making Native America Safer made the following recommendations:

2.1: *Congress should overturn the U.S. Supreme Court’s decision in Alaska v. Native Village of Venetie Tribal Government, by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.*

2.2: *Congress and the President should amend the definitions of Indian country to clarify (or affirm) that Native allotments and Native-owned town sites in Alaska are Indian country.*

2.3: *Congress should amend the Alaska Native Claims Settlement Act to allow a transfer of lands from Regional Corporations to Tribal governments; to allow transferred lands to be put into trust and included within the definition of Indian country in the Federal criminal code; to allow Alaska Native Tribes to put tribally owned*

⁶ Statement by Senator Lisa Murkowski (Nov. 14, 2018), <https://www.murkowski.senate.gov/press/release/murkowski-highlights-findings-of-new-report-on-missing-and-murdered-indigenous-women-and-girls>

fee simple land similarly into trust; and to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities.

2.4: *Congress should repeal Section 910 of Title IX of the Violence Against Women Reauthorization Act of 2013 (VAWA Amendments), and thereby permit Alaska Native communities and their courts to address domestic violence and sexual assault, committed by Tribal members and non-Natives, the same as now will be done in the lower 48.*

2.5: *Congress should affirm the inherent criminal jurisdiction of Alaska Native Tribal governments over their members within the external boundaries of their villages.*

The current VAWA, however, does not ensure safety for Alaska Native women. As reauthorized in 2013, VAWA contained a specific provision (Section 910) exempting 228 federally recognized Tribes in Alaska from Section 904's jurisdictional provision. In December 2014, Section 910's exemption for Tribes in Alaska was repealed. This, however, has not ensured that Alaska Tribes can protect their women from non-Indians who commit violent crimes and seek to harm them. The amendment repealing Section 910 did nothing to address the fact that Section 904 limits Tribes' jurisdiction to crimes committed in "Indian country," a legal term that the United States Supreme Court has interpreted to exclude the landbases of almost all of Alaska Native Tribes (*Alaska v. Village of Venetie Tribal Government*, 522 U.S. 520 (1998)). As a result, Section 904 continues to preclude 228 of the 229 federally recognized Tribes in Alaska from exercising the jurisdiction that has now been restored to other Indian Tribes. This jurisdictional loophole leaves Alaska Native women unprotected, and in many instances, makes calling the police a pointless—if not dangerous--exercise.

The Tribal Law and Order Act Commission recommended a legislative fix for *Venetie*. The fix would amend the definitions of "Indian country" to include Alaska Native allotments and native-owned town sites; supporting land into trust applications by Alaska Native Tribes; channeling more resources directly to Alaska Native tribal governments for governmental services; and supporting Alaska Native Tribes and villages with the exercise of criminal jurisdiction within their communities. The reform needed also requires an amendment to the Alaska Native Claims Settlement Act's definition of "Indian country" to include Alaska Native allotments and Native-owned town sites. The Indian Law and Order Commission's Report stated that Congress should legislate a fix for *Venetie* by amending ANCSA to provide that former reservation lands acquired in fee by Alaska Native villages and other lands transferred in fee to Native villages pursuant to ANCSA are Indian country.

In partnership with the AKNWRC, the NIWRC recommends the adoption of a pilot project—similar to the one created in VAWA 2013—wherein three to five Tribes in Alaska will be

permitted to exercise SDVCJ (as well as any additional tribal criminal jurisdiction restored in the 2019 reauthorization of VAWA). As this Committee moves forward with VAWA reauthorization, we encourage you to work closely with the Alaska delegation and the Alaska Native Women’s Resource Center to include provisions that will address the needs of Alaska Native victims.

Question: Ms. Nagle. NIWRC has done a lot of events both on the local and federal leve[l] to educate the public on this issue, and I want to thank you and your organization for that. With that in mind, why do you think it has been, and continues to be, so difficult in getting attention focused on the MMIW issue, especially in the law enforcement and justice arenas? In your opinion, what is the greatest roadblock in this area?

Answer: In addition to a lack of clear data from urban, state, and local law enforcement agencies across the United States, one of the largest barriers to addressing the crisis of murdered and missing indigenous women is that when a Native woman goes missing—on tribal lands—there is more often than not a jurisdictional barrier to launching the investigation and search and rescue effort that will ensure her safety.

When a Native woman disappears and goes missing, so much of the “response” is based on more questions— which law enforcement agency has jurisdiction to take an initial report, who can respond, who can search, who can investigate...and ultimately, who can/will prosecute? The first 24 hours of any missing person case is a crucial time for law enforcement to organize and conduct an immediate search, but too often, questions of jurisdiction impede a timely law enforcement response.

Although the Supreme Court made it clear in *Oliphant* that Congress has the constitutional authority to restore the tribal criminal jurisdiction that the Supreme Court has removed,⁷ until tribal criminal jurisdiction over non-Indian perpetrated crimes of murder is restored, whether a Tribal Government has authority to investigate, arrest, and/or prosecute when a Native woman is missing on tribal lands depends upon the Indian/non-Indian status of the offender, the precise location of the crime (is it on land held in trust?), the nature of the crime, and within what state the Tribe is located.⁸

The consequence of this current jurisdictional quagmire is that, most times, when a Native woman goes missing on tribal lands and the local Tribal Government cannot demonstrate that the perpetrator was Indian—or that the crime took place on lands that qualify as “Indian country”

⁷ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) at 206-212 (“Congress has the constitutional authority to decide whether Indian tribes should be authorized to try and to punish non-Indians.”)

⁸ See The General Crimes Act, 18 U.S.C. § 1152 (providing that federal courts have jurisdiction over interracial crimes committed in Indian country); the Assimilative Crimes Act, 18 U.S.C. § 1; the Major Crimes Act, 18 U.S.C. § 1153 (providing federal criminal jurisdiction over ten enumerated major crimes committed in Indian country that is exclusive of the states); Public Law 83-280, 18 U.S.C. § 1162 (delegating federal jurisdiction to six states over most crimes throughout most of Indian country within their state borders); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) (holding that Tribes lack criminal jurisdiction over non-Indian defendants); Violence Against Women Reauthorization Act of 2013, S. 47, 113th Congress, Title IX (2013) (expanding tribal criminal jurisdiction to non-Indians for the crimes of domestic violence, dating violence and the violation of protection orders so long as the defendant has certain ties to the community and the tribe provides certain due process protections).

under 18 U.S.C. § 1151(a)—then the Tribal Government is without jurisdiction, although the Federal Government could have jurisdiction, the Federal Government most often declines to intervene or take on the case.⁹

The non-existent response of law enforcement leaves the responsibility of a search effort to the family members or tribal community. There is no question that the pillars beneath the crisis of missing and murdered are the restrictions on tribal authority to prosecute non-Natives for crimes committed on tribal lands and the severe resource disparity in Indian Country at large. The current legal framework fails to respond to the disappearance and murder of Native women and girls because that same framework was born during an era of termination of Indian Tribes and a prejudiced belief that Tribal Nations should be without jurisdiction to protect their citizens on tribal lands. We often speak of a “broken system” or of legal reform, but the truth is that the legal framework that applies in Indian Country was not designed to protect Native women and girls.

We know that the restoration of tribal criminal jurisdiction over non-Indians works. Five years ago, when Congress passed the Violence Against Women in 2013, the re-authorization of VAWA included a provision, known as Special Domestic Violence Criminal Jurisdiction (“SDVCJ”), that reaffirmed the inherent sovereign authority of Tribal Governments to exercise criminal jurisdiction over certain non-Indians who criminally violate qualifying protection orders or commit domestic or dating violence crimes against Indian victims on tribal lands.¹⁰

In the six years since VAWA was reauthorized in 2013, over two dozen Tribal Governments have begun exercising criminal jurisdiction over non-Indians and several dozen more are in varying stages of planning to implement the law.

From 2013 to 2018, the implementing Tribes reported making 143 arrests of 128 non-Indian abusers. These arrests ultimately led to 74 convictions, 5 acquittals, and as of 2018, there were 24 cases then pending. There has not been a single petition for *habeas corpus* review brought in federal court in an SDVCJ case. Although some argued, prior to VAWA 2013’s passage, that Tribal Courts would be incapable of fairly implementing SDVCJ, the absence of even a single habeas petition in the first five years reveals that those arguments were unfounded and likely based on prejudice alone. Moreover, for the Tribes that have implemented SDVCJ, their juries acquitted more often than they convicted non-Indian defendants. The bias that many previous asserted should prevent Tribal Nations from arresting and prosecuting non-Indians simply does not exist.

The National Congress of American Indians has issued a report summarizing their experiences that shows the true difference that the 2013 Reauthorization has been making on the ground for Native victims. I encourage you to review this report in its entirety as the information, data, and analysis contained in the report demonstrates that the restored tribal criminal jurisdiction in VAWA 2013 (SDVCJ) increased public safety for all of those—both Indian and non-Indian—

⁹ From 2005-2009, the Government Accountability Office (GAO) found that U.S. Attorneys declined to prosecute nearly 52% of violent crimes in Indian country. U.S. GAO, *U.S. Department of Justice Declinations of Indian Country Criminal Matters*, Report No. GAO-11-167R, 3 (2010).

¹⁰ 25 U.S.C. §1304.

living on tribal lands and in tribal communities. By all accounts, it has been an incredible success.

Until or unless the inherent authority of Tribal Nations of Tribal Nations to protect their citizens on tribal lands, our Native women and children will not be safe living in their own homes. The restoration of tribal criminal jurisdiction is a critical and requisite component to effectively addressing the murdered and missing indigenous women's crisis in the United States.

Question: What avenues of funding are needed to address violence associated with the murder of Native women? What type of funding is needed for tribes and local governments to address problems that arise when a Native woman goes missing?

Answer: It is necessary to state first that Tribes need additional dedicated resources to support the development of local, tribal responses to MMIW cases. If Tribes have the resources and authority to respond to these crimes before they escalate in seriousness and lethality, at least some, if not many, potential MMIW cases would have a meaningful intervention prior to fatal escalation.

Specifically, the NIWRC recommends establishing permanent funding for victim services in tribal communities. Set aside resources for local, tribal responses to MMIW, such as a permanent tribal Victims of Crime Act (VOCA) set aside for tribal victim assistance and compensation programs.

Funding of Indian Tribes to address MMIW is generally zero to inadequate, and this lack of funding generally contributes to the vulnerability of Indian women to abusers and predators. Dedicated funding to Indian Tribes under VAWA, FVPSA, and VOCA is based on the government-to-government political relationship of Indian Tribes to the United States. These three dedicated funding streams each have specific purposes areas under the respective statute, and all currently include domestic violence; FVPSA is dedicated to shelter for victims of domestic and family violence; and, VOCA broader tribal victim services. All three of these statutes provide services to victims of crimes frequently co-occurring with the disappearance and/or murder of Native women—domestic violence, dating violence, sexual assault, sex trafficking, and stalking, Victim services are essential to prevent the future disappearance or murder of a Native woman. Where the response of the criminal justice system is critical to assist a woman who has disappeared and/or prosecuting the murderer. The following amendments are focused on increasing victim services and justice response, and a better understanding of the crisis of MMIW.

The following recommendations require Congressional action to enhance the response of Indian Tribes to MMIW and crimes inter-connected to the crisis of MMIW:

- ★ Increase funding to Indian Tribes to provide necessary services to victims regardless of where they live and work to prevent disappearances and homicides;
- ★ Increase funding to Indian Tribes to develop MMIW protocols;
- ★ Authorize and appropriate under VOCA a pilot program for Indian Tribes to develop MMIW protocols and increased response;

- ★ Amend VAWA, FVPSA, and VOCA tribal grant programs to specifically support the development of MMIW protocols in the context of the respective program;
- ★ Amend the VAWA 2013 National Institute of Justice national program of tribal research to add the area of missing Native women (VAWA 2013 included an amendment adding the area of murder);
- ★ Amend the VAWA National Baseline Study to prepare a report to Congress on the crisis of MMIW and appropriate one million per year for five years to conduct research and prepare the report;
- ★ Inclusion under the Savanna's Act of a new pilot program to support Indian Tribes and tribal non-profits organizations to develop and implement MMIW protocols (as non-profit organizations urban tribal domestic violence or sexual assault programs or urban Indian health centers would be eligible).

