

Committee on Natural Resources
Subcommittee for Indigenous Peoples of the United States
Remote Oversight Hearing – Cisco WebEx

Oversight Hearing on “Examining Federal Facilities in Indian Country”

Follow-up question responses by:

Hon. David Hill, Principal Chief Muscogee (Creek) Nation

Questions from Rep. Leger Fernandez

- 1. Your testimony includes the BIA’s Office of Justice Services (OJS) estimated recurring cost for the Muscogee (Creek) Nation’s maintenance of a full police force—\$34.4 million. Using the same formula, the Nation calculated its new estimate for this maintenance under the McGirt decision—\$40 million for tribal courts and \$20.6 million for detention costs.**
 - a. If you are able to, can you break these figures down for us? What do these recurring costs support?**

The Muscogee Nation must build capacity in three areas, each requires expansion of physical infrastructure and investment in human capital. The Nation's estimates for recurring needs are based on the Bureau of Justice Services (BJS) formula provided under the Tribal Law and Order Act (TLOA), which incorporates estimated cost for FTE's and support services primarily based on population size. Because the Nation's reservation includes the second most populated city in the state of Oklahoma, making our total Indian population greater than 110,000 citizens. The is nearly 25% of the entire American Indian/Alaska Native population in the entire state.

The three critical areas that require immediate expansion on community policing, prosecution and tribal courts, and detention. Based on the BJS formulas and our Indian population BJS would recommend more than 300 law enforcement officers and similar personnel capacity for prosecutors, judges, administrative staff. Providing policing and court services across the eleven county reservation requires a hub and spoke so that officers, judges and partner agencies can rapidly respond and answer calls in any community and efficiently adjudicate criminal and civil matters. Expansion of police services will include increased patrol, investigation and administrative support to protect our communities. Our Attorney General's Offices must be staffed properly to ensure timely and efficient procedures. Additionally, staffing in any area will require office space, equipment and software to modernize and support remote services. Similar to the law enforcement model, MCN would like to see courtrooms and staff to co-located near detention facilities. Finally, detaining and properly caring for inmates is of utmost importance.

MCN chose not to utilize the BJS TLOA reported formula for detention services because it woefully underestimates the need compared to other states with similar population bases. In fact, BJS reports that the Oklahoma has nearly twice the tribal population of New Mexico, but requires just 51 FTEs compared to New Mexico's 478 FTEs and just one tenth of the total estimated funding of New Mexico. Given the clear underestimation of need in the report, MCN utilized other available data to generate an estimate. MCN used a simple formula based on the average per capita costs in the state of Oklahoma for incarceration, approximately \$185 per person, and the most recent American Community Survey estimates for the total American Indian/Alaska Native in combination with other races population. This is likely also an underestimation of need, but certainly provides a better starting point while BJS realigns their formula for Oklahoma with an accurate reflection of the federal responsibilities in Oklahoma after the McGirt decision.

Questions from Rep. Grijalva

1. Can you provide additional context to the existing federal and tribal detention centers in Oklahoma and how the Muscogee (Creek) Nation utilizes them?

Presently, the Muscogee (Creek) Nation does not own or operate a tribal detention facility. In order to maintain public safety our programs work with local governments to house inmates when necessary. This interim solution has served our law enforcement and communities well during the initial transition, but we are weighing other operations, including construction and operation of a detention facility to meet our needs.

There are three federal correctional facilities in Oklahoma for adult inmates. While MCN does not have contacts directly with these facilities, our regional federal partners do utilize these when cases are transferred from tribal to federal court.

Muscogee Nation has access to the single tribally-operated juvenile detention facility located within the Sac and Fox Nation – more than one hour from Okmulgee, OK. Since the affirmation of the reservation status, these facilities have taken on an increased caseload with three of the four largest tribes in the local vicinity. Presently, the mechanisms exist to utilize state facilities, however given a current political climate the State of Oklahoma is less likely to enter into compacts to allow the access to these facilities.

2. In your opinion, are these existing facilities sufficient to support the Nation's current and (growing) public safety needs?

Unfortunately, the current needs outweigh the available federal resources. In the meantime, we are working locally to meet the demand at a cost directly to our government. Coordinating accommodations and transporting inmates creates unique challenges and additional costs.

a. How does the current detention center infrastructure impact other tribal nations in your region?

Within our reservation boundaries we encompass the second largest city in Oklahoma, with a large growing population of almost 1 million. Located in the city of Tulsa, OK are three tribes that neighbor and of the three, two of them are within the top four largest tribes in the country.

The lack of federal correctional facilities creates additional operational challenges, transportation barriers, and increased costs for all tribal nations who have new responsibilities as a result of the ruling. It also challenges our tight knit communities. Available federal facilities are far from tribal community centers and tribal government headquarters, this means that incarcerated citizens are further from families and cultural leaders. It also creates barriers to tribal government services. We invest heavily in wrap around and rehabilitative services which are most successful when they begin while citizens are incarcerated.

- 3. In your opinion, does the Muscogee (Creek) Nation's public safety infrastructure needs fall under the priorities expressed in the President's American Jobs Plan**
 - a. If Indian Country's federal facilities were left out of the American Jobs Plan, what message would that send to tribal leaders like yourself?**

The American Jobs Plan does address many of the priorities tribes and rural communities share. However, lack of specific funding for the infrastructure we described in our verbal and written testimony will require tribal nations to shoulder more of the federal burden. Muscogee Nation, like many others, exchanged land through treaties with the promise of support for core government services. Now that these duties have been affirmed, it is our collective responsibility to find the support necessary to provide these services. Muscogee Nation consistently invests in rural communities and relies on infrastructure improvements to retain citizens and economic development on reservations and in smaller population centers. Our hope is that the Jobs Plan will include these core needs related to new responsibilities because infrastructure projects in tribal communities have untold multiplier effects on our economies. Any additional construction will lead to short- and long-term employment in areas where job development is critical and support ongoing government services required through historical agreements and recent acknowledgement

- 4. Can you briefly run through the existing barriers that the Muscogee (Creek) Nation faces in seeking out new venues or facilities to support the existing public safety infrastructure?**

Currently, there is one existing law enforcement building and one court building for the entire reservation. With the addition of cases, we have attempted to extend our coverage by adding additional staff; however the building space has not increased. Constructing a single public safety complex to meet all the needs within a reservation of our size would be very costly and without federal investment, these costs would require offsets from our ongoing programming social needs.

Without the infusion of additional resources, the public safety budget has been strained due to high off site detention center costs and locations of officers throughout. MCN has explored and will be looking to increase law enforcement sub stations throughout the reservation to readily address the increase demand. The closer availability of MCN law enforcement to a call will decrease response times and create more efficient processes of cases. In addition to having more disbursed law enforcement; we would need to invest in areas that could properly preserve evidence and chain of command. Spreading the coverage of officers is one part of the equation. The remaining part is where to house or detain after apprehension or conviction.

Given the size of the reservation and the change in environment for other tribal nations, it is best for the federal government to collaborate and create a regional system that meets the demands of all the reservation. Without coordination between the involved agencies, the system may create gaps.

5. BIA's budget proposal includes approximately \$4 million in additional funding for the support of Tribal Courts. Given what you've shared today, is this increase enough to address your Nation's tribal courts' needs and all other tribal governments?

While increases in funding directly to tribes are always appreciated. The proposed BIA budget increase does not recognize the substantial growth we are experiencing in eastern Oklahoma, nor do the existing formula methodologies respect our expanded reservation responsibilities.

Due to historical treatment of the Nation, the BIA provides less than \$10,000 for tribal court services on annual basis. Prior to McGirt, MCN provided an annual budget just over \$3 million. Today, we are on track to quadruple our case load in 2021 which will require additional judges, clerks, bailiffs, and other administrative personnel. Without a specific increase for tribes effected by McGirt, we will bear the entire related costs.