

Terry Rambler, Chairman, San Carlos Apache Tribe
House Natural Resources Committee
Subcommittee for Indigenous Peoples of the United States
“Examining Federal Facilities in Indian Country”
June 17, 2021

Chair Leger Fernandez, Ranking Member Young, and Members of the Subcommittee, I want to thank you for holding this hearing to examine unmet federal facility needs in Indian country.

My name is Terry Rambler, and I am honored to serve as Chairman of the San Carlos Apache Tribe, representing 17,000 enrolled members. Our ancestral homelands span throughout the southwest. The U.S. Calvary, through brutal military campaigns, forcibly removed Apache bands to the Reservation in the latter half of the 1800’s. The U.S. entered into the ratified Apache Treaty of Santa Fe in 1852 to end hostilities. The San Carlos Apache Reservation currently spans 1.8 million acres in rural southeast Arizona. We remain deeply connected to our traditions, our Reservation, and our ancestral lands that we have called home since time immemorial.

My testimony today focuses on the longstanding need to replace Bureau of Indian Affairs (BIA) Building 86, which housed the San Carlos Police Department and Tribal Courts, and which the BIA ordered condemned in 2009. My statement also focuses on the sporadic levels of federal funding for construction to replace public safety and justice facilities that the BIA has condemned, the lack of transparency in determining which facilities gain priority for replacement, and the longstanding need for Congress to significantly increase funding for construction to replace condemned public safety and justice facilities on Indian lands.

Public Safety and Justice on the San Carlos Apache Reservation

The San Carlos Apache Tribe (Tribe) entered a P.L. 93-638 contract for law enforcement services in the 1990s. The San Carlos Apache Police Department (SCAPD) is doing incredible work on a shoestring budget, all while working out of temporary trailers that are rapidly deteriorating.

Our committed law enforcement personnel risk their lives on a daily basis to provide law and order on our Reservation. In 2019, SCAPD received 53,974 calls to the dispatch center, resulting in 31,543 calls for service with 2,731 criminal arrests. Officers patrolled a total of 323,654 miles on the Reservation. SCAPD also supervises the Tribal Security department and patrolled 69,642 miles with assignments to all Tribal buildings, district water pump stations, ceremonial dances, community events and many other events to assist sworn personnel. Response times to calls for service average one hour due to our limited staffing and long distances that officers must travel, often alone, on our vast rural Reservation.

For decades, our Reservation has been plagued by violent crime and inundated by drug trafficking and resulting substance abuse. According to the BIA, the Tribe’s violent crime rate in 2009 was more than 6 times the national average. The need for added police officers at San Carlos ranked third on BIA’s list of tribes with a high violent crime rate.

The Reservation faced an alarming spike in violence early in 2011, including several homicides and a significant increase in violent crimes. To help address the situation, the BIA approved the Tribe’s request to participate in the High Priority Performance Goal program (a two-year initiative), which provided a significant infusion of resources for SCAPD, San Carlos Tribal Courts, and our child protective services as well as increased coordination with federal law enforcement officials to target violent crimes and drugs. The HPPG was an enormous success. Our

violent crime rate dropped more than the targeted 5 percent. However, the coordination with federal agencies and resources has waned since the two-year program ended in 2013. Since then, violent crime and substance abuse have again increased on our Reservation.

Longstanding Need to Replace BIA Building 86

In the 1970's, the BIA constructed Building 86 to house BIA law enforcement and related public safety and justice services. As noted above, the San Carlos Apache Tribe made the decision in the early 1990s to exercise self-determination and contract for law enforcement services. Our incoming San Carlos Apache Police Department and entire team of tribal justice personnel—tribal courts, prosecutors, public defenders, domestic violence advocates—shared this space with the BIA Criminal Investigators who remained in the facility.

The BIA owns Building 86 and was responsible for maintaining the building. However, the BIA failed to adequately maintain Building 86, and over time the facility significantly deteriorated and posed significant safety and health risks to visitors and the personnel housed there.

In 2009, the BIA abruptly notified the Tribe that it would condemn Building 86 for failure to meet safety and health requirements and building codes and standards. At the same time, the BIA immediately renovated another BIA-owned facility in downtown San Carlos to house the BIA Criminal Investigators. SCAPD and our tribal court personnel continued to work in the condemned building for six years – often without electricity and AC in the up to 120-degree summer heat.

These actions taken by the Bureau were and are an affront to tribal government self-determination. By making space for BIA public safety personnel, but leaving 638-contracted tribal public safety and justice personnel to work in a structure deemed by the agency as unsafe and unsecure—it tells all tribal governments that if you exercise self-determination you are on your own, and serves as a complete disincentive for all tribes to exercise self-determination.

The Tribe has sought a permanent replacement of Building 86 prior to the condemnation order in 2009, and we continue our work to achieve a permanent replacement to this day.

In 2015, after lengthy negotiations, the BIA and the Tribe came to an agreement to leave Building 86 and take occupancy of temporary portable modulars to house the SCAPD and our Tribal Courts with the promise that this would be a temporary solution, and the understanding that BIA would continue to work with the Tribe to permanently replace Building 86. A letter dated February 17, 2011 from then-Assistant Secretary for Indian Affairs Larry Echo Hawk to the Tribe expressly stated that “for purposes of determining the priority of future permanent construction of replacement of justice facilities, the use of temporary portable buildings will not be considered adequate facilities by Indian Affairs but rather the severely deteriorated conditions of Building 86, causing you to relocate into temporary buildings will be the basis of priority determination by Indian Affairs.”

While the modulars provided a slight improvement at the time, they are not safe or secure to serve the public safety functions of law enforcement investigations and court proceedings. Nearly six years after moving to the modulars, the structure has rapidly deteriorated: the Chief of Police works in an office with a crack in his wall where he can see the outside; the generator routinely malfunctions causing power to go out while conducting business; the generator does not provide AC throughout the entire unit; water and sewer service is intermittent; the portables lack space for evidence storage; the floors do not securely support storage safes that include cash, drugs, and

other evidence; the bathroom routinely leaks into the hallways, staining the carpet and smelling of urine; and the roof routinely leaks; among other deficiencies.

Rep. Tom O'Halleran visited the modulars in August of 2018. During the visit, his staff needed to use the restroom, but the water was out. We had portable toilets behind the modulars, but the 120-degree heat that day made them unbearable. The smell of sewage was palpable as he crossed the stained carpets near the broken restrooms. Later during his visit, in the midst of his discussion with our Chief Judge, the power went out, and we had to complete our meeting using phone flashlights.

As noted above, SCAPD officers face violence and risk their lives on a daily basis. These conditions are taking a toll on their work operations, and have made it nearly impossible to retain good officers or recruit new ones.

Disjointed and Sporadic Levels of Tribal Public Safety and Justice Construction

Federal funding for the construction of new and replacement public safety and justice facilities (tribal police departments, detention centers, courts, and related justice facilities) has been without direction for decades. Primary federal funding has transferred between the Interior and Justice Departments since 2000. Funding levels have been widely sporadic. There has been sparse communication between federal partners, and the funding systems that have been in place have lacked any transparency.

In 1997, the Clinton Administration's Report of the Executive Committee for Indian Country Law Enforcement Improvements acknowledged that "[t]here is a public safety crisis in Indian Country." The Executive Committee concluded that a substantial infusion of resources into Indian Country law enforcement was essential to addressing the crisis, and that the delivery of law enforcement services must be consolidated and improved.

The President's FY 1999 Budget included grant programs administered by DOJ and delivered directly to Indian tribes for programs to improve tribal justice systems. Prior to FY'99, the only DOJ funding available to Indian tribes came in the form of pass through funding provided to state governments. The new DOJ-tribal law enforcement initiative included the Community Oriented Policing Services-Tribal Resources Grant Program, the Tribal Courts Assistance Project, the Tribal Public Safety and Justice Construction Program, and the Tribal Youth Program. *Department of Justice/Department of Interior Tribal Justice Initiatives: Hearing Before the Senate Comm. on Indian Affairs*, 105th Cong., at 58-62 (June 3, 1998) (statement of United States Attorney General Janet Reno). Today, these programs are delivered to tribal governments through the DOJ Consolidated Tribal Assistance Solicitation (CTAS).

However, in light of the influx of DOJ funding for new and replacement tribal justice facilities, funding at the Interior Department for this line item was reduced in future appropriations bills.

While Congress approved an average of \$34 million for the DOJ tribal public safety and justice program for fiscal years 2000 to 2002, funding was cut to an average of \$5 million from FY2003-08, and \$10 million in future fiscal years. These funding levels fell far short of needs, as tribal justice facilities deteriorated and were condemned at rates much faster than replacement construction awards were made.

In FY14, DOJ unilaterally stopped new and replacement construction of tribal justice facilities, all while the BIA continued to condemn these facilities. *See DOJ-OIG Audit of the Tribal Justice Systems Infrastructure Program*, at 3, fn. 8 (January 2017). The backlog in unmet need has significantly grown since.

In addition to working with several administrations to secure the replacement of Building 86, the San Carlos Apache Tribe has led the effort to address this unmet need by seeking to restore funding for the construction of new and replacement tribal justice facilities at the Interior Department. I have traveled to Washington, D.C. multiple times annually since being elected Chairman to testify before Congress and meet with congressional appropriators on this issue.

Thanks, in part, to our work, Congress restored funding for the BIA new and replacement public safety and justice construction program in the FY18 Omnibus funding bill. Congress included \$18 million for new and replacement construction of tribal justice facilities in FY18 and FY19. Funding for this line item increased to \$25.5 million in FY20 and FY21.

However, the Interior Department has repeatedly refused to allocate any of these funds to tribal police facilities—despite congressional appropriation directives to make non-detention tribal justice facilities eligible. **In addition, the agency has yet to respond to the most recent congressional directive to specifically brief the appropriations committees on its plan to permanently replace Building 86.** An excerpt from the Joint Explanatory Statement to the Omnibus Appropriations Act, 2021, provides the following:

Public Safety and Justice Construction.—The bill provides \$42,811,000 for public safety and justice construction and includes the following: \$25,500,000 for facilities replacement and new construction.... * * *

The Bureau is expected to distribute funds provided in this Act to expeditiously complete construction of adult detention center projects that were previously awarded. Remaining amounts should be considered available for *all* public safety and justice facilities, consistent with previous direction. Direction is reiterated for the Bureau to: (1) produce and maintain a plan to improve public safety and justice facilities in poor condition; and (2) provide a draft plan within 120 days of enactment of this Act with next steps including Tribal consultation.

The Committees are aware there are many condemned facilities across the country including the Hopi, White Mountain Apache, and *San Carlos Apache public safety and justice facilities*. The Bureau is directed to report back within 90 days of enactment of this Act with a comprehensive list of condemned facilities that need to be replaced. Additionally, the Bureau is directed to provide a briefing to the House and Senate Committees on Appropriations on its long-term plans for the replacement of the “Building 86” public safety facility operated by the San Carlos Apache Tribe within 90 days of enactment of this Act.

Consolidated Appropriations Act, 2021, P.L. 116-260, Joint Explanatory Statement for Division G, at 42-43 (Dec. 27, 2020)(emphasis added).

Conclusion

The lack of functioning justice facilities contributes to the staggering violent crime rates on Indian lands. The men and women of the SCAPD and court system, like justice officials throughout Indian Country, put their lives on the line daily to make our communities safer. No justice system can function without a safe and secure facility to house these dedicated officers. The time is long overdue to permanently replace Building 86.

The San Carlos Apache Tribe again thanks the Subcommittee for holding this hearing and highlighting the longstanding unmet facility needs for tribal justice systems. I respectfully urge

Members of the Committee to work with your colleagues and the Administration to further increase annual funding for replacement construction of non-corrections tribal justice facilities, with a specific focus on facilities condemned more than a decade ago, and providing priority to reservations with high violent crime rates. Finally, we also urge you to work with the relevant congressional committees to include at least \$225 million, equal to the amount provided in the 2009 American Recovery and Reinvestment Act, for new and replacement construction of tribal justice facilities in any comprehensive infrastructure package that advances.