

**STATEMENT OF
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BEFORE THE
HOUSE SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES
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Chair Gallego, Chair Grijalva, Ranking Member Cook, and Members, thank you for inviting me to testify. I am the Vice Chair of the United States Commission on Civil Rights, and I come before you today to speak about the Commission’s work on evaluating the civil rights of Native Americans and implementation of the federal trust relationship, including our report released in December 2018, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*.¹

Our report responded to a bipartisan Congressional request for the Commission to update our previous similar investigation from 2003. The Commission’s recent investigation, as approved by the Commission majority, reflects that federal efforts during these past 15 years have resulted in only minor improvements, at best, for Native Americans as a group.² In some areas, such as housing, conditions have actually worsened in that time span.³

Native American people continue to face everyday challenges due to disproportionately high rates of violence and crime victimization; poor physical and mental health conditions; high rates of suicide; aggregate low educational achievement and attainment; unemployment; and other

¹ U.S. Commission on Civil Rights, *Broken Promises: Continuing Federal Funding Shortfall for Native Americans*, <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf> [hereinafter “Report”].

² Report at 3.

³ Report at 211.

challenges.⁴ More than 25% of Native Americans live in poverty; that is the highest poverty rate of any other racial group in the United States.⁵

Native American or Alaska Native tribal sovereign entities have a government-to-government relationship with the U.S., which guarantees certain federal benefits, services, and civil rights protections.⁶ The government-to-government relationship between the federal government and Native American tribes has been given form and substance by numerous treaties, laws, Supreme Court decisions, and Executive Orders.⁷ Treaties between the United States and various tribal nations initially established the federal government's commitment to provide for Native Americans.⁸ As part of entering into treaties, the federal government acquired Native American lands and agreed to provide Native Americans with certain services such as the preservation of law and order, education, housing, and health care.⁹

The Commission received a compelling and succinct distillation of this relationship and the need for congressional action during the 2016 briefing, from Stacy Bohlen, the Executive Director of the National Indian Board of Health, who testified: “[W]e exchanged 400 million plus acres of land, and our way of life, and our very lives, for peace, and for the provisions that are provided for in the treaties, and a basic human dignity of having basic services for American Indian and Alaska Native people.”¹⁰

⁴ Report at 16-17.

⁵ Report at 156-57.

⁶ Report at 12.

⁷ *Id.*

⁸ *Id.*

⁹ Report at 12-13.

¹⁰ Report at 13.

In addition to the agreements found in treaties, Congress's trust obligation to provide services now takes form in the multitude of statutes detailing federal services provisions to Native Americans and tribes. Congress has also enacted statutes that define the United States' trust responsibilities with regard to management of property and other trust assets. The primary delegation of Congressional authority to the Executive Branch can be found in the Snyder Act of 1921.¹¹ In this Act, Congress delegated broad authority to the Executive Branch for carrying out the federal trust relationship for the welfare of American Indians by authorizing the expenditure of such funds as Congress may appropriate for the benefit, care, and assistance to Native Americans throughout the United States.¹² Congress has also enacted numerous statutes promising services and funding aimed to promote Indian self-determination and self-government as well as important corresponding civil rights.¹³ Congress has never fully funded these promises.

Today, Native Americans, in the aggregate, experience dramatically lower quality of life across every dimension the Commission evaluated, compared with non-Native Americans. As touched on below and as elaborated in our report, the basic needs of safety, shelter, and healthcare have not (and are not) being met.

¹¹ *Id.*

¹² *Id.*

¹³ Report at 14. Some such laws on Indian self-determination and the corresponding civil rights are the Indian Reorganization Act of 1934, 25 U.S.C. § 5101 et seq. (1934); Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 et seq.; Indian Education Act of 1972, Pub. L. No. 92-318 (codified as amended in scattered subsections of §§ 7, 12, 16, and 20 of the U.S. Code); Indian Self-Determination and Education Assistance Act of 1975, Pub. L. No. 93-638 (1975) (codified at 25 U.S.C. § 5301 et seq.); and the American Indian Religious Freedom Act of 1978, Pub. L. No. 95-341 (1978) (codified at 42 U.S.C. § 1996).

Native Americans as a group suffer one of the nation's highest rates of crime victimization.¹⁴ For example, Department of Justice crime statistics show Native Americans are victims of violent crimes at a rate two times the national average.¹⁵ Native American women are 10 times more likely to be murdered & four times more likely to be sexually assaulted than the national average.¹⁶ It is painful that statistics reflect that 1 in 3 Native American women will be raped in their lifetimes.¹⁷ Native Americans are killed in police encounters at a higher rate than any other racial or ethnic group.¹⁸

In addition, the report documents life-threatening health and health access disparities. Native Americans as a group suffer from the highest rate of diagnosed diabetes in the nation.¹⁹ The rate of posttraumatic stress disorder among Native children is the same rate as veterans returning from Iraq and Afghanistan, and triple the rate of the general population.²⁰ Native Americans experience suicide rates that are 1.6 times greater than the national average.²¹ The rate of alcohol-related deaths for Native Americans is six times greater than the rate for all races.²² Chronically poor health conditions are compounded by poor levels of access to quality health care in Indian Country.²³

¹⁴ Report at 31.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ Report at 45.

¹⁸ Report at 31.

¹⁹ Report at 84.

²⁰ Report at 76.

²¹ Report at 79.

²² Report at 76.

²³ Report at 66.

In addition to the health and criminal justice harms the report documents, the report reflects heartbreaking educational opportunity gaps separating Native Americans' experiences in the nation's schools from their non-Native peers. Citing just two examples: Native American students are the least likely, among all students nationwide, to attend a high school that offers Advanced Placement courses. And the majority of Native students attend a high school that lacks a complete range of math and science courses.²⁴

Likewise, the Native American housing crisis has deteriorated from what was already a low point in 2003, when the Commission last reported on it.²⁵ The South Dakota State Advisory Committee to the Commission heard distressing testimony from the Police Chief of the Oglala Sioux Tribe reflecting that this calendar year, "I drove through a lot of our communities and [saw] our housing situations, our houses boarded up, our streets in disrepair within our housing areas, and the high rates of suicide, sense of hopelessness in many of our communities."²⁶

HUD information tracks these concerns more nationally. Between 2003 and 2015, the number of overcrowded households or households without adequate kitchens or plumbing grew 21%, from 91,032 households to 109,811 households. The number of households with severe housing costs grew 55%, from 42,401 families to 65,667 families.²⁷

Poor physical infrastructure hallmarks the daily lives of many Native Americans. For example, an estimated 14% of households in Indian Country have no access to electricity—10 times higher

²⁴ Report at 118.

²⁵ Report at 137.

²⁶ *Id.*

²⁷ Report at 137-38.

than the national average.²⁸ About 40 percent of Navajo Nation members do not have running water in their homes.²⁹ In 2011, the Department of the Interior Inspector General found 50% of surveyed BIA detention facilities are in poor physical condition with leaky roofs, defective heating and fire systems, and rust-stained bathroom facilities.³⁰ Our report identifies major facility deficiencies in many schools in Indian Country.³¹ The Government Accountability Office has reflected as recently as 2014 a recurring “lack of infrastructure such as running water and sewer systems” leading to higher housing development costs for many Native American communities.³² Indian land is predominantly rural, and spans more than 100 million acres, spread across 34 states in America, raising infrastructure challenges specific to the largely rural locations.³³ The Government Accountability Office has put Native American education and healthcare programs on their high risk list.³⁴

Instead of meeting these significant needs with systematically planned and sufficient funding, for the years the Commission examined, the President’s budget requests have been haphazard and generally – often wildly – insufficient. For example, in the most recent budget request analyzed in our report, for Fiscal Year 2019, the total amount of federal funding the Trump Administration requested for programs serving tribes and Native American communities across over twenty federal agencies and sub-agencies would constitute a \$2 billion decrease from the FY 2018 enacted federal funding level of \$22.0 billion.³⁵ More specifically, this is what that request and

²⁸ Report at 171.

²⁹ Report at 182.

³⁰ Report at 53.

³¹ Report at 122.

³² Report at 138.

³³ Report at 165.

³⁴ Report at 102-03.

³⁵ Report at 27-28.

current funding look like in particular issue areas facing the Native American communities: the Trump Administration’s budget proposal sought to end programs with proven track records of success in improving subsistence conditions in Native American communities, and to reduce funding for programs critical to Native Americans’ wellbeing. President Trump’s Fiscal Year 2019 budget also proposed eliminating funding for an initiative – the Tiwahe initiative—that has succeeded in reducing violent crime by 56% over three years in four Native American communities.³⁶ In addition, that same budget requests more than \$144 million reduction in funds for BIE schools, which educate 7% of Native American students.³⁷

The lack of federal funding streams burden Native American communities in life-and-death ways in which other communities are not burdened. Whereas state and local criminal justice systems typically do not depend on short term funding streams for operations, tribal criminal justice systems are heavily dependent on mostly competitive, short term federal funding streams.³⁸ In addition, Congress chronically underfunds Native American healthcare, even when recent overall increases in federal spending for Native American healthcare are taken into account.³⁹ In 2017, IHS health care expenditures per person were \$3,332, compared to \$9,207 for federal health care spending nationwide.⁴⁰ Unlike other federally funded health programs, such as Veterans Health Administration, IHS generally does not receive advance appropriations (funding before the start of the fiscal year): from Fiscal Year 1998 to Fiscal Year 2016, there was only one year (Fiscal

³⁶ Report at 32-33, 208.

³⁷ Report at 110, 98.

³⁸ Report at 51.

³⁹ Report at 68-69, Table 2.1.

⁴⁰ Report at 66-67.

Year 2006) when the IHS budget was enacted before the start of the year.⁴¹ Notwithstanding the housing concerns documented in the report, the largest source of federal funding for housing development and assistance in Indian Country – the Indian Housing Block Grant (IHBG) program⁴² – has been flat funded since its inception in Fiscal Year 1998.⁴³ The Department of Housing and Urban Development estimated in Fiscal Year 2017 that the IHBG program would need a 36.9% increase (totaling \$236 million) just to compensate for inflation.⁴⁴ In addition, the Native American population is growing at twice the rate of the national average,⁴⁵ increasing the need for housing development at a time when constant dollar amounts show a steady decline in federal investment.⁴⁶

Federal funding insufficiencies further undermine the purposes of important policy choices. For example, while Congress has passed multiple laws supporting tribal courts, funding for tribal courts is often inadequate to allow them to carry out their judicial duties.⁴⁷ Notwithstanding the crisis that Native Americans experience the highest rate of diagnosed diabetes in the nation, a successful program Congress established in 1997 – the Special Diabetes Program for Indians (SDPI) grant program – that provides grant funding to support diabetes education, treatment, and prevention programs in 35 states, and that has had success in decreasing the Native American death rate from diabetes, has been level-funded from 2002 through 2018, without increases for inflation. Adjusted for inflation, that means funding for the SDPI has actually decreased by 23%

⁴¹ Report at 70.

⁴² Report at 139.

⁴³ Report at 140.

⁴⁴ Report at 141.

⁴⁵ Report at 145 (stating that the Native American population grew 59% from 1999 to 2014).

⁴⁶ Report at 141.

⁴⁷ Report at 51.

over the same period; factoring in Native American population increases would benchmark the funding even lower.⁴⁸

The failure of the federal government adequately to fund the promises made in treaties and statutes have resulted in disparate outcomes: Native Americans continue to rank near the bottom of all Americans in health, education, and employment outcomes.

Here are key findings from our report:

- Data in general about Native American, Native Hawaiian, and Other Pacific Islander racial groups are often incomplete, inaccurate, old, or simply not tracked by the federal government. Even with these limitations, the best available data suggest sometimes extreme social and economic disparities between these communities and national average.
- Federal programs designed to support the social and economic wellbeing of Native Americans remain chronically underfunded and sometimes inefficiently structured, which leaves many basic needs in the Native American community unmet and contributes to the inequities observed in Native American communities.

⁴⁸ Report at 84-85.

- The federal government has also failed to keep accurate, consistent, and comprehensive records of federal spending on Native American programs, making monitoring of federal spending to meet its trust responsibility difficult.

Here are key recommendations from our report:

- The United States should live up to its treaty obligations, just as the United States expects other nations to satisfy theirs.
- Congress should pass a spending package to fully address unmet needs, targeting the most critical needs for immediate investment. This spending package should specifically address funding necessary for buildout of unmet essential utilities and core infrastructure needs such as electricity, water, telecommunications, and roads in Indian Country.
- The federal government should provide steady, equitable, non-discretionary funding directly to tribal nations to support the public safety, health care, education, housing, and economic development of Native tribes and people.
- To better understand whether the federal government is meeting its trust and statutory obligations, the Office of Management and Budget should develop more detailed standards for tracking and reporting spending on Native American programs across the federal government, including classification of spending by base funding, grants, and state pass-throughs, and how many Native tribes and people are served.

The Commission majority calls on Congress to do better, now, because our fellow Americans are legally and morally entitled to fulfillment of the federal trust relationship.