

**FROM LANGUAGES TO HOMELANDS: ADVANCING
TRIBAL SELF-GOVERNANCE AND CULTURAL
SOVEREIGNTY FOR FUTURE GENERATIONS**

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS

UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

SECOND SESSION

DECEMBER 9, 2020

Printed for the use of the Committee on Indian Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

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WEDNESDAY, DECEMBER 9, 2020

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 2:43 p.m. in room 628, Dirksen Senate Office Building, Hon. John Hoeven, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN HOEVEN,
U.S. SENATOR FROM NORTH DAKOTA**

The CHAIRMAN. Good afternoon. I call this oversight hearing to order.

As we close out the 116th Congress, we will hear from leaders of the tribes and tribal organizations on what Congress can do to further strengthen the foundational principles of tribal sovereignty and self-governance during today's hearing, entitled From Languages to Homelands: Advancing Tribal Self-Governance and Cultural Sovereignty for Future Generations.

Before we get to opening statements and the witnesses' testimony, I would like to take a moment to recognize Vice Chairman Udall, who is retiring at the end of this Congress. This being our last Indian Affairs Committee hearing of the year, I want to thank him for his dedication and steadfast leadership to this Committee. This Committee has a long history of working in a bipartisan manner, and this spirit of bipartisanship continues today.

For example, in the 115th and 116th Congresses, we have passed 80 bills out of our Committee. Over half of those have received co-sponsorship by both Democrats and Republicans. Since 2017, Senator Udall and I have served as Vice Chairman and Chairman of this Committee. Senator Udall is a large reason why this bipartisan tradition has continued. I think we have about a dozen bills we are trying to hotline right now, too, so the work continues.

I greatly appreciate and am proud to have worked with Vice Chairman Udall on legislation that improves the quality of life in Indian Country. This includes S. 211, the SURVIVE Act, which secures resources for Indian victims of violent crimes, as well as the recently signed into law Progress for Indian Tribes Act, which strengthens and reforms self-governance and self-determination

programs. These are in addition to the many bills that Senator Udall has helped shepherd to the President over the years, including the Esther Martinez Language for Reauthorization Act, and the Native American Business and Computers Act as examples.

I want to thank Vice Chairman Udall for his friendship and his service to our Country, the great State of New Mexico, and to Indian Country. I want to wish you, Vice Chairman Udall, and Jill, very best wishes going forward in what I know will be very productive and very good future endeavors.

I also want to take a moment to thank our respective staffs on the Committee for a job well done. From my staff, John, Jacqueline, James, Chase, Brandon, Holmes, Caitlin, Christy, and Elizabeth, and most of all, of course, to Mike, our staff director, who is exceptional. I acknowledge all of you for the professional work you do, and I thank you.

I also thank, in addition, Jim and Avis and Zach and Dawson and also Jack. And also, I want to say a thank you to Mel, who has been the Committee hearing reporter this past Congress. Thank you, sir.

And with that, I will turn to Vice Chairman Udall.

**STATEMENT OF HON. TOM UDALL,
U.S. SENATOR FROM NEW MEXICO**

Senator UDALL. Mr. Chairman, thank you so much, and thank you for the very kind words and the kind words Senator Murkowski and others have said here today.

For the past 43 years, the Senate has relied on this Committee to lead its work advancing Federal Indian policy and living up to our constitutionally enshrined trust and treaty responsibilities. I am honored to have been a member of this Committee for the past 12 years, over one-quarter of its history, and have led this Committee, alongside you, Mr. Chairman, for the last four years.

During my tenure with the Committee, we have joined together with tribal leaders to advance Indian Country's priorities. Sixty of the Committee's bills have been enacted in that time, and we have seen countless other committee-led policies included in broader Senate packages.

Mr. Chairman, I take no small amount of pride in noting that the Committee's productivity under our leadership has been remarkable. Together we have convened over 50 hearings and enacted 21 Indian Affairs bills. The spirit of bipartisanship is alive and well in the Indian Affairs Committee. I expect that tradition to continue long after we depart these halls.

Indeed, it has been a historic decade. I am proud that we have helped expand self-determination programs to new departments, permanently reauthorize the Indian Health Care Improvement Act, improve access to Federal Native language programs, restore tribal jurisdiction over domestic violence offenses, secure inclusion of Indian Country priorities in the Farm Bill, that was a big first, support small businesses and entrepreneurs in Native communities, and ensure tribes were not left behind when Congress negotiated COVID-19 relief.

I have fought alongside tribal leaders to defend tribal sovereignty, sacred sites, and the Indian Child Welfare Act. Our work

in Indian Affairs is proof positive that bipartisanship can still find its footing here in Washington, that progress and principles need not to be sacrificed for political gamesmanship or political expediency.

I have often said that I came to Washington to take the tough votes, to tackle the difficult issues. When it comes to Indian affairs, there have been many times when it would have been easier, more expedient, more popular, to give in and say sovereignty sometimes, self-governance when it is convenient, or consultation if there is time. But public service isn't about doing what is easy. I came here to fight for New Mexico, to fight for Indian Country, and to legislate from a place of principle.

Today's hearing is an opportunity to reflect on these lessons, to examine our shared legacy and discuss what still remains to be done. Through my own time in the Senate, and my own time in the Senate is drawing to a close, my commitment to the core principles that have guided my work on Indian Affairs throughout my public service careers remain unwavering.

Soon we will hear from Governor Vallo, President Francis, and Mr. Echohawk. I hope everyone will consider their testimony with great care and attention. As tribal leaders and advocates in their field, I am heartened to have them as witnesses today.

Also hopefully we will ask ourselves how we can act on their advice better, respect tribal sovereignty, promote tribal self-determination and ensure government to government consultation is meaningful. These principles must be the bedrock for Federal actions, because if we truly want to advance sound policies for future generations, we must all commit to a principled approach to developing Indian affairs law and policy.

Thank you, Mr. Chairman, for working with me to convene this important hearing. I can think of no better topic to close out our work for the 116th Congress.

With your indulgence, I would like to just add one more thing before I wrap up my statement. Success in Congress is built on collaboration, members working together with other members, committees working with other committees. And of course, committees working with their staff. The remarkable success we have enjoyed in Indian Affairs in the last four years is the result of the work of each Senator on this dais. I am truly humbled to have called you all colleagues and friends.

It is also due in no small part to our excellent staff, without whom we would surely be lost. So I will close by saying thank you to my own Indian Affairs Committee staff, as you have done with yours, Mr. Chairman, Jennifer Romero, Anthony Seville, Kim Moxley, Joss Mayhan, Connie Socideharo, Anu Tupper. Your tireless work on behalf of the Committee and Indian Country has been of the highest caliber.

Thank you. I yield, Mr. Chairman, to you.

The CHAIRMAN. Thank you, Vice Chairman Udall. With that, I would turn to other members who would like to make an opening statement. Senator Murkowski?

**STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA**

Senator MURKOWSKI. Thank you, Mr. Chairman, and Vice Chairman Udall. I appreciate the fact that we have scheduled, as you point out, Senator Udall, this very important hearing as it relates to advancing tribal self-governance, cultural sovereignty, future generations. It is pretty forward-leaning, and I think, as you say, it is a very fitting way to end a very productive Committee schedule here within Indian Affairs.

I am not going to be able to stay for the balance of the hearing and hear from these very important witnesses. I am working on trying to put together a COVID emergency relief package, and part of my focus within that is to ensure that our indigenous peoples, that the tribes are represented, that we have tribal set-asides, whether it is making sure than when States and locals receive money that our tribes also receive that Federal support, whether it is tribal set-aside for broadband or for the nutrition programs, making sure that we are always thinking about our first peoples and putting them first.

But before I leave, I want to take just a couple of minutes and recognize Vice Chairman Udall, my friend, not only my friend here on the Indian Affairs Committee, but my partner for many years now on Interior Appropriations, where we have oversight of IHS, of the IA and so many of these very, very important accounts. I have had an opportunity to be here on the Committee now for my full tenure, 18 years on the Indian Affairs Committee.

I agree with you, Senator Udall, I think that this is a place where we can come together, work through some different issues, because we all come from different places. And the needs of the Native people in New Mexico may be different than in Alaska or in the Dakotas. But we know the needs are there, and they are very real. We have worked together to solve that.

So to call this place, this Committee, a refuge of bipartisanship I think is a tribute to the Committee, to the staffs, and to the effort to try to do right for all the right reasons.

I think about the things that we have partnered on just in this 116th Congress. We have had some pretty critical pieces of legislation come together. Some have become law, some we are going to need to keep working on. But when I think about what we did to build on the tribal jurisdiction provision within the 2013 VAWA Act, the Native Youth and Officer Protection Act, addressing violence against Native women, children and tribal law enforcement.

We have also your BADGES legislation addressing public safety needs in Indian Country. What we have done to, what we as a full committee have done, to address the unconscionable crisis as it relates to murdered and missing indigenous women and girls, what we have done to get the attention of the agencies to improve data collection, understanding what it is that we know and understanding what it is that we don't know. What we are doing to improve public safety resources and clarifying tribal jurisdiction.

You mentioned the sovereignty issue. I was very pleased to be able to work with you and our team as we filed that bipartisan, bicameral amicus to make the case for the constitutionality of the Indian Child Welfare Act, and Congress' authority, the trust respon-

sibility to legislative for the benefit of Indian tribes. I think it was probably one of the most significant pieces of Indian legislation that Congress has enacted. And to really maintain the integrity of Native culture and family. So working together with you on that was very, very important.

On the culture side, the work that we have been able to do when it comes to languages has been so, so, so very important and appreciated. You mentioned the Esther Martinez Native Languages Act. But we have also introduced the Durbin Feeling Native Languages Act just recently. So we had Esther Martinez signed into law last year, and know that I am going to continue our joint effort as we work to support Native languages.

I will mention the work that we have done on Interior Appropriations, and the partnering that we have done. We have some pretty strong staff, Rebecca and Emmy and the rest of the teams there that have really worked to ensure that the support for Indian Health Services and health care for Native peoples is good, is solid, is robust. We know we have to do more.

But what we were able to do with advanced appropriations for IHS, that is significant, significant stuff. That is legacy stuff. And again, I think in the midst of this pandemic, the impact that we have seen in Indian Country with disproportionate health and economic impacts, everything that we can be doing to work in a bipartisan basis for the betterment of Native peoples and the fiscal and health needs are things that, whether it is New Mexico, whether it is Alaska, whether it is North Dakota, we are doing this together.

I want to thank you for your leadership and your care and your heart, particularly for American Indians, Alaska Natives, Native Hawaiians. I have seen you engage in so many other different issues and areas. But you can tell that your heart is with the people. So I thank you for that.

We will miss you. I will miss having you and Jill here. But know that your contributions are appreciated and will be long-lasting.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Murkowski.

We will turn to Senator Smith virtually.

[Pause.]

The CHAIRMAN. All right, then we will proceed until she returns.

Now we will hear from our witnesses, starting with the Honorable Brian Vallo, Governor, Pueblo of Acoma; the Honorable Kirk Francis, President, United South and Eastern Tribes Sovereignty Protection Fund, Nashville; and Mr. John Echohawk, Executive Director, Native American Rights Fund, Boulder, Colorado. All of them will be testifying virtually.

We will begin with Governor Vallo.

STATEMENT OF HON. BRIAN D. VALLO, GOVERNOR, PUEBLO OF ACOMA

Mr. VALLO. [Greeting in Native tongue.] Good afternoon, members of the Committee, Chairman, Vice Chair Udall. Thank you for this opportunity.

I am Brian Vallo. I am the Governor of the Pueblo of Acoma of New Mexico. I thank the Committee for this opportunity to testify

on Advancing Tribal Self-Governance and Cultural Sovereignty for Future Generations.

In discussing tribal cultural issues and the government-to-government relationship, there is one dominant question. That question is, will tribal values and beliefs regarding our ancestors, our sensitive tribal cultural heritage items, and our sacred landscapes, be honored and respected by the United States government or not?

This Committee has elevated tribal belief and values, which is why Indian Country so often turns to you for justice and support. Over the last few decades, as a result of your work, and that of others, and despite many challenges, much progress has been made to protect tribal sovereignty and culture.

When you look for common threads in this work, one that stands out is Vice Chairman Udall, Indian Country's constant friend and ally. As this is Vice Chairman Udall's last Senate hearing, I would like to note that he has always answered the question I posed a moment ago by stating firmly that tribal beliefs should be honored and prioritized and that the United States should live up to its trust responsibilities.

Vice Chairman Udall, going back to your time as the New Mexico Attorney General, followed by your service in the House, where you were a cosponsor of the original Esther Martinez Native Language Act, and finally in the Senate, you have been one of Indian Country's greatest supporters on a wide range of issues. The Udall name is legendary in Indian Affairs, standing for justice and humanity, and you have honorably continued that service and commitment to Native people. Your good work will be felt for many generations to come.

In the cultural space, much good work has been done, and much remains, including items the Committee is working on right now. In the area of sensitive Tribal cultural heritage items, this Committee has done a lot of work on the Safeguard Tribal Objects of Patrimony Act, including adopting in July a comprehensive amendment developed in coordination with all the stakeholders and Federal agency experts. This act will address a gap in Federal law that makes it difficult to recover items from overseas and encourages unscrupulous individuals to sell sensitive cultural heritage items into foreign markets. You know that it took the Pueblo Acoma five years to recover the sacred ceremonial shield.

There are still a few precious days left in this Congress to get this bill passed and to make a powerful statement about support for tribal culture. I urge this Committee to do all in its power to move the STOP Act forward.

The Pueblo of Acoma has also fought hard to protect its sacred sites, such as the sacred landscape of the Greater Chaco Region. Despite the irreplaceable and deeply important nature of this area, it has faced largely unrestricted oil and gas development that is inching closer and closer to its center. The Chaco Cultural Heritage Area Protection Act, introduced by Vice Chairman Udall, would withdraw from future mineral development Federal land in an approximately 10-mile area surrounding the Chaco Culture National Historical Park, while still preserving the rights of tribes and allottees to develop on their own land, even in the withdrawal area.

Again, Vice Chairman Udall has been instrumental in securing funding for a tribally led cultural resource study to identify which areas are most sensitive and to limit mineral leases pending completion of that study. We urge the Committee's support for this legislation.

The Pueblo of Acoma has devoted significant resources into the revitalization of our language. I have testified before this Committee on our experience in using ANA grants to seed a linguistic and cultural movement in the Pueblo of Acoma.

Language is foundational to our cultural sovereignty and survival. We urge this Committee to support a diverse body of Federal measures focused on Native language and cultural transmission. Some of these measures include increased investment in Indian Head Start, which has become central to our efforts to educate and engage our young in Acoma culture; reauthorization of the Esther Martinez Act, a law which has been successful in advancing Native language revitalization efforts; continuing funding for ANA grants; and finally, passage of the Durbin Feeling Native American Languages Act.

In closing, let me return to the question I posed at the beginning of my testimony: will tribal values and tribal beliefs regarding our ancestors, our sensitive tribal cultural heritage items, and our sacred landscapes, be honored and respected by the United States government, or not? I urge this Committee to please continue your vital work to ensure that the answer is always "Yes."

Thank you.

[The prepared statement of Mr. Vallo follows:]

PREPARED STATEMENT OF HON. BRIAN D. VALLO, GOVERNOR, PUEBLO OF ACOMA

The Pueblo appreciates the opportunity to present information on this important topic to the Committee and your staff. For millennia, the Acoma people have worked to fulfill our inherent responsibility to maintain, live by, and protect our culture. This work is both internal, ensuring that we are keeping our language and culture alive, and external, protecting our traditions, cultural resources, and land from encroachment and desecration. The Pueblo is grateful for the opportunity to share our experiences with you. We hope that you will use this information to galvanize your efforts to uphold your trust responsibilities to Indian Country.

We would also like to take this opportunity to thank Vice Chairman Udall for his years of advocacy on behalf of the Pueblos of New Mexico and other tribes throughout the United States. Through not only his position as a Senator but also as a leader on this Committee, he has fought hard for Indian Country. We understand that this is his last Committee hearing, and we extend to him our sincere gratitude for his service.

I. Cultural Preservation

a. Tribal Cultural Heritage Items

The Pueblo has provided testimony to this Committee many times, explaining the problem of trafficking in tribal cultural heritage items, both domestically and abroad. The current federal laws often used to protect these items, the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. §§ 3001–3013, 18 U.S.C. § 1170, and the Archaeological Resources Protection Act (ARPA), 16 U.S.C. §§ 470aa–470m, have important limitations that leave many tribal cultural heritage items unprotected. Further, once a tribal cultural heritage item is exported—even if NAGPRA or ARPA prohibits it from being trafficked domestically—it is very difficult to stop trafficking and to bring it home. The Pueblo sees its sacred items set for sale domestically and abroad, and we are painfully aware of how current federal law falls short.

With regard to stopping domestic trafficking, the Pueblo has worked alongside the New Mexico congressional delegation to secure funding each year to support the Department of the Interior's (DOI) prosecution of crimes under NAGPRA and other re-

lated laws. But more must be done. Amending NAGPRA and ARPA to do away with loopholes would make prosecution and deterrence much more feasible.

With regard to international trafficking, the Safeguard Tribal Objects of Patrimony (STOP) Act of 2019, S. 2165 and H.R. 3846, is one bill that works to close current gaps in federal law. In 2016, Congress through the PROTECT Patrimony Resolution, H.Con. Res. 122, acknowledged these issues. In 2018, the Government Accountability Office released a report, GAO-18-537, that also acknowledged this problem. The Resolution supported the development of legislation and the report noted the need for explicit restrictions on the export of such items. The STOP Act addresses these issues.

Among other things, the STOP Act puts into place the elements necessary—an explicit export prohibition and an accompanying export certification system—to utilize already-existing international mechanisms to stop illegal trafficking of tribal cultural heritage items that NAGPRA or ARPA prohibit from being trafficked domestically. The STOP Act is a narrow bill designed to close one particular gap in federal law. It has broad support within Indian Country and bipartisan support within Congress, and it was generated with significant input from federal agencies with the necessary expertise in this area. In fact, many of the Members of this Committee are cosponsors of the bill.

The Committee held a hearing on the STOP Act on June 24, 2020, and on July 29, 2020, ordered the STOP Act to be reported favorably. During the markup before the Committee, the Committee adopted an amendment that incorporated expert feedback from tribal representatives, agency officials, art dealers, and others to ensure the STOP Act accomplishes its goals.

The House Natural Resources Subcommittee on Indigenous Peoples of the United States held a hearing on the STOP Act on September 19, 2019, and the House Natural Resources Committee is ready to accept and move the Senate-passed version of the bill.

We celebrate the strides the STOP Act has made. We ask the Committee to usher the STOP Act across the finish line.

b. Sacred Sites

The Pueblo has been heavily involved in fighting to protect sacred landscapes. This includes ensuring that development decisions are only made when sufficient cultural resource analysis has taken place pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and the National Historic Preservation Act (NHPA), 54 U.S.C. §§ 300101 *et seq.* It also includes ensuring that sacred landscapes are properly considered when the federal government makes land management decisions pursuant to the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 *et seq.*

Tribes are inherently sovereign governmental entities to which the United States owes a trust responsibility. Despite this status, the United States has stripped tribes of legal title to most of their aboriginal territory, often relocating tribes entirely off their homelands. This means many tribes have important interests tied to land to which they do not have legal title—including, for example, interests related to cultural resources. Without legal mechanisms in place, tribes often lack a voice in important federal decisionmaking processes affecting land to which we have sacred ties. NEPA and the NHPA, when implemented correctly, provide tribes a seat at the table, and FLMPA requires the federal government to consider these issues when making public land use decisions.

The Pueblo has utilized these and other tools to fight to protect its sacred sites. One such example is the sacred landscape of the Greater Chaco Region. For over 2,000 years, Pueblo people lived in Chaco Canyon, eventually moving outward into the land the Pueblos currently occupy. Their time in Chaco Canyon, movement outward across the landscape, and continued interaction with Chaco Canyon after departure have both resulted in a dense concentration of cultural resources—including vast pueblo structures, shrines, other sacred sites, and natural formations with culturally relevant modifications and meanings—and a sacred interconnected landscape.

Yet, this sacred landscape has been riddled with oil and gas development, including on federal lands. A portion of the Greater Chaco Region is recognized as a National Historical Park and UNESCO World Heritage Site—called the Chaco Culture National Historical Park. Chacoan Outliers Protection Act of 1995, Pub. L. No. 104-11 (May 18, 1995) (designating certain outlying sites as “Chaco Culture Archaeological Protection Sites”); Pub. L. No. 96-550, Tit. V (Dec. 19, 1980) (creating Park) (now codified at 16 U.S.C. § 410ii-410ii-7). But much of the Greater Chaco Region is not protected, and further, many of the cultural resources in these unprotected areas have not been surveyed and documented.

The Pueblo has joined together with others to protect the Greater Chaco Region through all mechanisms available. It has engaged through NEPA and the NHPA in DOI's efforts to amend the FLPMA resource management plan (RMPA) that guides development decisions in the area—although COVID-19 has now made meaningful tribal consultation on the RMPA impossible. The Pueblo has also worked closely with DOI and Congress to secure funding for a tribally-led cultural resource study of the Greater Chaco Region, appropriated in the FY 2020 appropriation legislation, which the Pueblo hopes will inform DOI's development decisions. However, DOI provided only half of the funding appropriated by Congress to the Chaco Heritage Tribal Association (CHTA), an organization representing Pueblos and the Hopi Tribe, and thus additional funding is needed to complete the study the Pueblos believe DOI requires. Therefore, we urge Congress to appropriate additional funding for the CHTA's study.

The Pueblo has also worked alongside a long list of stakeholders to permanently protect a critical area of the Greater Chaco Region. It has advocated for the Chaco Cultural Heritage Area Protection Act, S. 1079 and H.R. 2181, which would withdraw from future mineral development federal land within an approximately 10-mile withdrawal area surrounding the Chaco Culture National Historical Park, including its outliers. The bill would explicitly preserve the rights of tribes and allottees to develop on their land. In the interim, and while the tribally-led cultural resource study remains pending, the Pueblo and other stakeholders have worked alongside the New Mexico Congressional delegation to secure a moratorium via the FY 2020 appropriation legislation to prevent DOI from carrying out mineral leasing in the withdrawal area pending completion of the study. Pub. L. No. 116-94, Div. D, Title IV, Sec. 442 (2019); *see also* 165 Cong. Rec. 11281 (Dec. 17, 2019). We urge Congress to maintain this moratorium in future appropriation legislation.

c. Tribal Historic Preservation Officers (THPOs)

Sacred sites are a vital part of our heritage, marking the paths of our existence and shaping our worldviews as Pueblo People. In most, if not all situations, the only way to identify these sacred sites, which may exist miles from our present villages, is through Native eyes. We must be involved in Section 106 and NEPA decision-making processes from the outset. Otherwise, there is a heightened risk that outside evaluators will misidentify sacred sites and contribute to the loss of irreplaceable aspects of our cultural identity. We urge the Committee to work with tribal leaders on identifying ways to strengthen meaningful tribal involvement in these critical review processes.

In recent years, an increasing number of tribal governments have established THPOs equivalent to state programs under the NHPA to lead these activities. Federal funding, however, has not kept up with this expansion. It is thus difficult for tribal governments to meet their preservation compliance duties and responsibilities, which include working with non-tribal governments on site identification, conducting surveys, compiling data and samples, documenting best practices, and assisting in museums and research centers that preserve and share tribal material culture. The expansion of THPO positions across Pueblo and Indian Country is a positive development in advancing tribal self-governance and cultural sovereignty. Additional federal support for the THPO program is needed, however, to facilitate this invaluable work.

d. Wildlife and Wild Spaces

In the Pueblo worldview, we are stewards of the earth's natural resources—land, water, air, minerals, and wildlife. Acoma supports policy and legislation that provides for the protection and management of all these cultural and natural resources, as well as a requirement for federal-tribal collaboration when these resources are affected in any way. We support a policy that requires in-depth collaborative efforts to arrive at mutual outcomes where natural resources on or near tribal lands could be destroyed or diminished.

The effective management and conservation of our natural resources is not limited to the waters, soil, and trees that form the rich landscape of Pueblo Country. We must also account and appropriately care for the diversity of wildlife that is meaningful to our culture and essential to maintaining our ecosystems' equilibrium. Further, each species possesses its own inherent value and should be protected by the federal government. The Bureau of Indian Affairs Endangered Species Program provides tribes with the technical assistance and financial resources to protect endangered species on tribal lands through natural resources restoration and management, as well as economic development. This program, along with those housed within the Department of Fish and Wildlife Services, will only continue to gain in

importance as wildlife habitats are disrupted and the effects of climate change threaten species' welfare.

e. Climate Change

Climate change poses an existential threat to our Pueblo beliefs, culture, and identity. Acoma is designated as a National Trust Historic Site. As such, our Pueblo itself is recognized as a finite, irreplaceable resource. The surrounding land and its natural resources form the essence of who we are as Pueblo People across generations: our origin stories are rooted in its geographic features, our contemporary life finds sustenance in its flora and fauna, and our future generations will shape their identity and dreams in the light of its plateaus. This intimate relationship is replicated in tribal communities across the country. For all of us, climate change poses a disconcerting and tangible threat to the continued existence of our traditional practices and unique cultural identities.

Across Pueblo Country, we have experienced the harmful effects of major wildfires, droughts, and floods. Invasive species, drought conditions, disappearing tree lines, intense wildfires, and accelerated rates of erosion are also taking an increasing toll on our agricultural and natural resources. The ecosystems and well-being of our environment are being dramatically affected—and sometimes permanently altered—with each new occurrence. We need only look to our sister Pueblo, the Pueblo of Santa Clara, to see the fundamental changes wrought by natural disasters heightened by climate change on the Santa Clara Creek and Canyon ecosystems. It will take generations for Santa Clara's traditional homeland and spiritual sanctuary to recover from the devastation and, because of climate change, it is not clear how that future will unfold.

Our Earth Mother is our homeland; it is the place we have been entrusted with since time immemorial. We devote the resources we can to the healing of our land to protect our community, and, through cultural practice, we care for the vast landscapes beyond our Pueblo, the oceans, air, water, and the sacred core of the Earth, however, we do not have the resources to do it alone. The federal government must take steps to effectively manage the meta-factors that drive climate change—such as worldwide deforestation, fossil fuel consumption, and greenhouse gas emissions—before it is too late. Acting on climate change today is a moral and legal imperative, essential to all of us as Pueblo People and Americans during a period of what now appears to be almost inevitable rapid climate change.

Two critical but underutilized and underfunded federal programs can help tribes in this existential battle. The DOI Tribal Climate Resilience and Cooperative Landscape Conservation Programs equip tribes with tools to manage resource stressors, develop adaptive management plans, and engage in intergovernmental coordination. Access to these resources is limited, however, by federal funding. Prioritization of these programs would help us protect our homelands for future generations.

II. Language and Arts

a. Esther Martinez

The Pueblo worldview is contained in our languages. In addition to maintaining tribal life ways, we have established various programs and methods in order to revitalize and preserve what are considered some of the most ancient and distinct languages in America. Some Pueblo languages are so unique they are not spoken anywhere else in the world. The Esther Martinez Native American Languages Preservation Act is a singular piece of legislation benefitting indigenous people and communities. It has empowered tribes to make significant strides in revitalizing Native languages across the United States. Biennial evaluations by the Department of Health and Human Service, where Esther Martinez programs are housed, show that grantees increase the abilities of more than 4,000 youth and adults to speak a Native language on a yearly basis. These same grantees train 170–280 Native language teachers each year.

The Esther Martinez Act is also a potent tool for tribally-driven programs to address the impacts of historical trauma on their communities. Native language instruction and the implementation of culturally based education programs are proven to be critical factors in fostering community resilience and Native student confidence and success in later years. For example, students in language immersion programs demonstrate substantial improvement in their academic performance and testing. Data shows that Native students excel in S.T.E.M related subjects largely attributable to their language skill set. Native languages offer a unique thought process and a way to interpret the world and its interactions.

Our Native languages are the adhesive that holds our cultural, religious and traditional beliefs together and enables those beliefs to be passed on. As communities that have faced prolonged and insidious efforts to eradicate our Native identities,

the support offered by the Esther Martinez Act should be maintained and expanded going forward. Acoma urges this Committee to reauthorize the Esther Martinez Act to strengthen indigenous cultural expression and facilitate the transmission of Native languages to current and future generations.

b. Durbin Feeling Native American Languages Act of 2020

Acoma Pueblo supports S. 4886, the “Durbin Feeling Native American Languages Act of 2020,” that would amend the Native American Programs Act of 1974 to provide flexibility and reauthorization to ensure the survival and continuing vitality of Native American languages. The amendment would require the Administration for Native Americans (ANA) to conduct a survey of Native languages. Key data to be collected would include information on language vitality, current language revitalization/maintenance practices, and unmet needs for advancing these efforts, among other topics. Critically, the survey would have to be designed in close consultation with tribal leaders and linguists to ensure that data collection is completed in a culturally-sensitive manner and with guarantees of ongoing tribal input on covered topics. The survey would be conducted every five years and result in a comprehensive report to Congress on the status of Native languages in America.

To our knowledge, there is no federal entity engaging in regular and compendious data collection or reporting on Native languages. S. 4886 would fill this informational gap. Access to linguistic data—collected as it will be in a tribally-driven and culturally sensitive manner—would help tribes in shaping their language revitalization programs. It would also serve as a beneficial tool for ensuring that federally funded Native language initiatives are receiving the necessary funding and support to carry out their missions. We look forward to working with the Committee on advancing this valuable piece of legislation.

c. Administration for Native Americans

Since its establishment in 1974 pursuant to the Native American Programs Act, the ANA has served as a valuable resource in helping Native communities achieve their goals in self-sufficiency and cultural preservation. The ANA provides discretionary grant funding for community-based projects, as well as training and technical assistance. The beauty of ANA grants lies in the control that is given to tribal applicants in identifying an area of need within their community and developing a plan of action to address it with federal funding. The singular focus on community-based and community-driven projects that promote the exercise of self-determination and cultural flourishing makes the ANA unique within the federal system.

Acoma has over a decade of experience working with the ANA. Our first award was a planning grant in 1996 to establish a community-based language initiative known as the Acoma Language Retention Program. The Program’s focus was on re-strengthening the link between the Keres language and Acoma cultural practices through an ambitious plan for language revitalization aimed at younger generations in the community. The community identified the widening disconnect between the number of knowledgeable Keres speakers, particularly among Acoma youth, and the level of engagement with our traditional cultural practices as a critical issue. ANA provided financial support enabling us to establish its first language program tasked with finding solutions to this issue.

The ANA was available to us as a resource throughout the grant process. Critically, they limited their assistance to the technical aspects of the grant, such as data analysis and reporting final outcomes. It was left to Acoma to decide what was appropriate in carrying out the Program’s goals. ANA operates on the understanding that tribal grantees have a specific vision for their communities and know what will work best for them. It does not dictate how federal funds should be used. Instead ANA grants are founded on and seek to advance the expression of our sovereignty by focusing on project outcomes and facilitating the realization of grantees’ self-determination goals. While other federal funding sources include self-determination as one of many factors to be considered in a grant application and implementation process, the ANA is one of the rare federal partners that makes it the determinative factor in a grant award.

The first generation of children to participate in two-week summer language and culture immersion programs we subsequently developed with ANA grant funds are now adults and parents. Many have become key participants in the socio-cultural traditions of the Pueblo. Those of us from the community have observed how those children have grown up and been shaped by the availability of Keres cultural programming. Now, the children of that first generation of beneficiaries have the opportunity to participate in Keres language classes, both in the community and in some local schools, are following in the footsteps of their parents and relatives in being integrated into the cultural practices and linguistic tradition of our community. We

have been made stronger from the inside because of it. The benefits of that original ANA short-term planning grant continue to translate into long-term positive gains for our community.

We have also been able to share the strength and beauty of our community with others pursuant to an ANA Social and Economic Development Strategies (SEDS) grant for the planning and development of the Sky City Cultural Center and Haak'u Museum. Acoma Sky City is the heart of our community. We have lived at our mesa-top home for at least 1,000 years, making it the oldest continuously inhabited community in the United States. Acoma religious, cultural, and social life revolves around Sky City, both on a daily basis and during times of ceremony. ANA funding has been instrumental in preserving this cultural resource for present and future generations. We encourage Congress to maintain strong support for the ANA to help tribal nations achieve their long-term linguistic and cultural goals, critical to the fulfillment of our inherent responsibility.

d. Indian Head Start

Indian Head Start has been a vital part of Head Start since its inception in 1965, and it is currently the most important and successful federal program focused on the needs of Native youth and families in early childhood education. Currently, Indian Head Start and Early Head Start serves 22,379 children in more than 200 separate programs across 26 states. Our programs are unique in that they tend to be located in rural communities that are often affected by hardships such as poverty, high rates of crime, limited or non-existent transportation networks, and limited financial and qualified personnel resources. Indian Head Start strives to address these challenges through a focus on the whole individual—through education, health, language, and culture—as well as on the whole family and community, creating a vibrant and safe learning environment for our Native children.

Indian Head Start is founded on a three-generational approach provides an array of services tailored to meet the needs of children, parents, and (increasingly) grandparents. For example, programs may offer family nutrition or literacy workshops for parents and guardians. For Indian Head Start, this model is especially important given the critical role the program fills in addressing the unique needs of Native children, parents, and communities. Indian Head Start supports Native parents by providing access to job assistance trainings, healthcare services, and a reliable source of safe and nurturing early childhood education. Native children are empowered with self-esteem, high quality educational services, safe space, and nutritional meals to support their healthy development.

Further, through the integration of culturally and linguistically appropriate classroom practices, Indian Head Start enables Native communities to take the lead in preserving, revitalizing, and reclaiming their heritage. This is achieved most commonly through the integration of elders into the classroom. Elders are teachers and role models in their communities who impart tradition, knowledge, culture, and lessons—all of which have been proven to be key contributors to Native student resiliency and success in later life. Further, for many communities, elders represent the last stronghold of tribal languages and traditions that were very nearly lost during the boarding school and termination eras of federal Indian policy. Through Indian Head Start we have been able to make tremendous strides in sowing the seeds of language revitalization and educational success for present and future generations.

III. Co-Management of Public Lands

The stewardship of land, minerals, water and other natural resources is key to both the economic well-being of Pueblo People and to our cultural survival. Every day, Acoma and sister Pueblos strive to balance these interests.

The vast majority of federal lands are carved out of tribal ancestral homelands. The historical and spiritual connection of tribes to federal lands was never extinguished. Courts acknowledge that tribes retain rights to hunt, fish, and gather on federal lands. Federal laws acknowledge the continued right of tribes to access federal lands to pray, conduct ceremonies, and gather medicinal plants. Federal laws and executive orders also require federal land managers to consult with tribal governments prior to taking action that would affect the integrity of federal lands. For example, the Pueblo of Laguna worked with the Department of Agriculture and the Forest Service as a Cooperating Agency in the preparation of an Environmental Impact Statement for the Cibola National Forest Plan Revision. Such beneficial partnerships better ensure that tribal interests are taken into consideration in the development of the federal land resource and management plans.

In addition, there are existing federal laws that can facilitate the successful co-management of public lands to the advance of tribal sovereignty. For instance, the Tribal Forest Protection Act (TFPA), Pub. L. 108–278, provides authorities to tribal

governments to co-manage federal lands bordering or adjacent to tribal lands to better protect trust and federal environmental resources from fire, disease, and other threats. It also advances tribal and federal interests in the development of land resource and management plans. Empowering tribal governments as caretakers to protect tribal, trust, and federal resources through co-management arrangements is a smart, cost-saving policy. Yet, efforts to implement the TFPA's beneficial provisions have been impeded. We recommend that Congress direct the Interior to prioritize TFPA implementation within the U.S. Forest Service to facilitate more beneficial partnership under this existing law.

IV. Government-to-Government Tribal Consultation

All interactions between the federal government and tribes lay over the sacred government-to-government tribal consultation obligation. For without adherence to this obligation, the federal government cannot support our work to advance our tribal self-governance and cultural sovereignty for future generations.

The United States has a duty to consult with tribes when it undertakes any action that affects us, even when those actions are aimed at aiding our exercise of sovereignty. This duty grows from our status as sovereign governments, the government-to-government relationship the United States carries on with each tribe, and the trust obligations it owes.

In furtherance of its obligations, the Executive Branch has taken on a duty to consult with tribes on federal policies that have tribal implications. Exec. Order No. 13175, 65 Fed. Reg. 67249 (Nov. 9, 2000). Each agency was called on to create its own consultation policy. President Barack Obama, Memorandum for Heads of Executive Departments and Agencies, re Tribal Consultation (Nov. 5, 2009) (setting forth process for implementing Exec. Order No. 13175). DOI, for example, enacted a tribal consultation policy under this mandate. Dep't of Interior, *Department of Interior Policy on Consultation with Indian Tribes*; see also DEPT OF INTERIOR, Sec. Order No. 3317, DEPARTMENT OF THE INTERIOR POLICY ON CONSULTATION WITH INDIAN TRIBES (2011). Further, in many situations, such as under the NHPA, tribal consultation is also statutorily mandated.

We urge the Committee to continue to engage in open and honest dialogue with tribes as it pursues legislation and policies that affect us. And we ask that you help those Members and Committees of Congress less steeped in this sacred duty to understand their tribal consultation obligations.

We also strongly recommend continued support for tribal advisory committees at federal departments and agencies as a highly effective means of advancing the government-to-government relationship and providing substantive feedback on agency programs and policies affecting Pueblos and Indian Country. Tribal advisory committees are not a substitute for tribal consultation. They do, however, offer a vital source of ongoing discourse on the development and implementation of federal policies impacting tribal communities and people. They serve to strengthen the government-to-government relationship and, when done right, streamline the provision of federal programs and tribal services to the long-term benefit of our communities and families. It must continue as a driving force within the federal government going forward.

Dá'wá'eh; Thank you.

The CHAIRMAN. Thank you, Governor Vallo.

Now we will turn to the Honorable Kirk Francis, President, United South and Eastern Tribes Sovereignty Protection Fund, Nashville, Tennessee.

STATEMENT OF HON. KIRK FRANCIS, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND

Mr. FRANCIS. Good afternoon, everyone. I wish I could be there with you in person. It is an honor to be here with you all, Chairman Hoeven, Vice Chairman Udall, members of the Committee. Thank you for this opportunity to provide testimony on necessary advancements in the delivery of the trust obligation, the promotion of tribal self-governance, and the recognition of our inherent sovereignty.

We appreciate the forward looking nature of this hearing as we continue to see change to our relationship with the United States, change that will lead to a more appropriate, diplomatic relationship for the 21st century.

My name is Kirk Francis, I proudly serve as the Chief of the Penobscot Indian Nation in the State of Maine, and president of the USET Sovereignty Protection Fund.

Before I begin, I would like to also acknowledge the Vice Chairman's distinguished career. Mr. Vice Chairman, you have been a consummate friend and partner to tribal nations, committed to justice and progress for our people. On behalf of USET, our family and quite frankly, all of Indian Country, we thank you and honor you for your service.

As one of the most challenging years this Nation has seen in generations draws to a close, Indian Country finds itself at a turning point in our relationship with the United States. 2020 brought extreme challenges, sorrow and upheaval to tribal nations and all across America. As COVID-19 tore through our communities, our Country engaged in a reckoning with its past and looked forward to a more honorable future. We have consistently called upon the United States to fulfill its sacred promises to tribal nations and to act with honor and honesty in its dealings with us. But the pandemic has exposed how Federal neglect and inaction have created the circumstances facing tribal nations. The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the U.S. keeping its promises.

Though multiple advancements have been made due to a lot of hard work by our friends on this call on Federal Indian policy over the years, the 2013 VAWA amendments, the Progress Act and other expansions of self-governance as well as economic advancements. However, the deep and chronic failures facing Indian Country cannot be addressed without bold, systemic changes. For example, the full extent of our inherent sovereignty continues to go unacknowledged, and in some cases is actively opposed by other units of government, so as to undermine the provision of essential services to our people, including such vital services as public safety, as well as the exercise of our cultures.

A gap in criminal jurisdiction stems from this failure to recognize our inherent sovereignty, and tribal nations are barred from prosecuting offenders. When the Federal Government fails in its obligations, criminals are free to offend with impunity.

Tribal nations must have full criminal jurisdiction over our lands as well as the people on them through a fix to the Supreme Court decision in *Oliphant*. Related, we again remind this body that some tribal nations are living under restrictive settlement acts that further limit our ability to exercise criminal jurisdiction. We assert that Congress did not intend these land claim settlements to forever prevent a handful of tribal nations from taking advantage of beneficial laws and for all of Indian Country. We continue to request the opportunity to explore solutions to this problem with the Committee.

It is also incumbent upon all branches of the U.S. Government to ensure the protection of sacred sites. This includes seeking the consent of tribal nations for Federal actions impacting their lands

and people. Broadly, the U.S. must work to reform the tribal consultation process. Meaningful consultation requires that dialogue with tribal partners occur with a goal of reaching consent.

As it is for any sovereign, economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. It is critical that the lack of government parity be addressed, so that we may conduct economic development activities for the benefit of our citizens. This includes the advancement of reforms that would address inequities in the tax code and eliminate things such as dual taxation.

We also continue to call for parity for all tribal nations in the restoration of tribal homelands. Despite the success of the tribal nations exercising authority under the ISDEAA, many opportunities still remain to improve and expand upon its principles. An extension of tribal self-governance to all Federal programs would be the next evolutionary step in the Federal Government's recognition of our sovereign status.

Above all, the COVID-19 crisis has highlighted the urgent need to provide full and guaranteed Federal funding to tribal nations. In addition, much like the U.S. investment in rebuilding European nations following World War II via the Marshall Plan, the government should commit to a system in the rebuilding of tribal nations, as our current circumstances are directly attributable and tied to U.S. policies.

With a new year on the horizon, and as we look toward recovery from COVID-19, USET calls upon Congress, the Administration and the whole Federal Government to join us in working toward a legacy of change for tribal nations.

It is again my honor to be here with other tribal leaders and distinguished guests and members of Congress. I am happy to answer any questions.

[The prepared statement of Mr. Francis follows:]

PREPARED STATEMENT OF HON. KIRK FRANCIS, PRESIDENT, UNITED SOUTH AND EASTERN TRIBES SOVEREIGNTY PROTECTION FUND

Chairman Hoeven, Vice Chairman Udall, and members of the Senate Committee on Indian Affairs, thank you for this opportunity to provide forward-looking testimony on necessary advancements in the delivery of the federal trust obligation, the promotion of Tribal self-governance, and the recognition of our inherent sovereignty. We appreciate the prospective nature of this hearing, as we continue to seek foundational and systemic change to our relationship with the United States; change that lead to a more appropriate, respectful, honorable, and modern diplomatic relationship for the 21st century. I am Kirk Francis, Chief of the Penobscot Indian Nation and President of the United South and Eastern Tribes Sovereignty Protection Fund.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹

¹USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe-Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy

USET SPF is dedicated to promoting, protecting, and advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

Before I begin, I would like to acknowledge that this is the final Senate Indian Affairs hearing of Vice Chairman Udall's distinguished career. Mr. Vice Chairman—you have been a consummate friend and partner to Tribal Nations, committed to justice and progress for our people. Your dedication to upholding and advancing the trust obligation and Tribal sovereignty is evident in your many accomplishments alongside and on behalf of Indian Country over more than two decades of federal service. While we are sad to see you leave Capitol Hill, USET SPF extends our gratitude, support, and well wishes to you as you continue on your journey. On behalf of our USET SPF family of Tribal Nation, and all of Indian Country, we thank you and honor you for your service.

Introduction

As one of the most challenging years this nation has seen in generations draws to a close, Indian Country finds itself at an inflection point in our centuries-long relationship with the United States. 2020 brought extreme challenges, sorrow, and upheaval to Tribal Nations and the whole of America. As COVID-19 tore through our communities, our country engaged in a reckoning with its past and looked toward a more honorable future. USET SPF has consistently called upon the United States to deliver and fulfill its sacred promises to Tribal Nations and to act with honor and honesty in its dealings with Indian Country. But the global pandemic has exposed for the world to see the extent to which generations of federal neglect and inaction have created the unjust and untenable circumstances facing Tribal Nations. The time is long overdue for a comprehensive overhaul of the trust relationship and obligations, one that results in the United States finally keeping the promises made to us as sovereign nations in accordance with our special and unique relationship.

As Native people, we are called to not only act on behalf of our people here today, but for those who came before us and those who will come after us—the future of our nations. We must always remember this mission as we work uphold, advance, and protect our sovereign rights and authorities for generations to come. At a time when our nations are facing great challenges, including existential threats, this charge becomes all the more critical.

While some notable advancements have been made in federal Indian policy over the last several years, the deep and chronic failures facing Indian Country will continue to plague us without bold, systemic changes. Centuries of neglect and dishonorable dealings, as well as a relationship predicated on the demise of our governments and our inability to self-govern, cannot be wiped away by working within the parameters of a system built to work against our interests. It is long past time that we create fundamental and lasting change to U.S.-Tribal Nation relations in order to truly improve the delivery of federal trust and treaty obligations. This includes the removal of existing barriers that interfere with our ability to implement our inherent sovereign authority to its fullest extent, without state and/or federal interference, which, in turn, will position Indian Country to realize its greatest potential.

Recognition of Inherent Tribal Sovereignty

Tribal Nations are political, sovereign entities whose status stems from the inherent sovereignty we have as self-governing peoples, which pre-dates the founding of the Republic. The Constitution, treaties, statutes, Executive Orders, and judicial decisions all recognize that the federal government has a fundamental trust relationship to Tribal Nations, including the obligation uphold the right to self-government. Our federal partners must fully recognize the inherent right of Tribal Nations to fully engage in self-governance, so we may exercise full decisionmaking in the management of our own affairs and governmental services, including jurisdiction over our lands and people.

However, the full extent of our inherent sovereignty continues to go unacknowledged and, in some cases, is actively restricted by other units of government, including the federal, as well as state and local governments. This serves to undermine the provision of essential services to our people, including such vital services as public safety, as well as the continuity and exercise of our cultures. This has created a crisis in Indian Country, as our people go missing and are murdered,

Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY), Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

and are denied the opportunity for safe, healthy, vibrant communities and traditions enjoyed by other Americans.

Criminal and Civil Jurisdiction over our Homelands

One important reason for higher rates of crime in Indian Country is the gap in jurisdiction stemming from the United States' failure to recognize our inherent criminal jurisdiction, allowing those who seek to do harm to hide in the darkness away from justice. When Tribal Nations are barred from prosecuting offenders and the federal government fails in the execution of its obligations, criminals are free to offend over and over again.

The United States has slowly chipped away at Tribal Nations' jurisdiction. At first, it found ways to put restrictions on the exercise of our inherent rights and authorities. And eventually, as its power grew, the United States shifted from acknowledging Tribal Nations' inherent rights and authorities to treating these rights and authorizes as grants from the United States. With this shift in mindset, recognition of our inherent sovereignty diminished, including our jurisdictional authorities.

For example, in the 1978 decision of *Oliphant v. Suquamish Indian Tribe*, the Supreme Court struck what may be the biggest and most harmful blow to Tribal Nations' criminal jurisdiction. In that case, it held Tribal Nations lacked criminal jurisdiction over non-Native people, even for crimes committed within Indian Country. Without this critical aspect of sovereignty, which is exercised by units of government across the United States, Tribal Nations are unable achieve justice for our communities. While the United States has stripped Tribal Nations of our own jurisdiction and the resources we need to protect our people, it has not invested in the infrastructure necessary to fulfill its obligation to assume this responsibility. As a result, Indian Country currently faces some of the highest rates of crime, with Tribal citizens 2.5 times more likely to become victims of violent crime and Native women, in particular, subject to higher rates of domestic violence and abuse. Many of the perpetrators of these crimes are non-Native people.

More recently, the federal government failed to recognize a Tribal Nation's sovereign right to protect its community from COVID-19. When it became clear that the state of South Dakota was not going to institute the public health measures necessary to control the spread of COVID-19 within its borders, the Cheyenne River Sioux Tribe (CRST) acted to protect its citizens by installing checkpoints on the highways leading to its homelands. These checkpoints have been immensely successful in identifying COVID and mitigating its spread in CRST's community. However, when the Tribal Nation refused to remove the checkpoints, the governor of South Dakota wrote to the White House and Department of Interior (DOI) to request intervention. Despite its legal obligation to uphold and defend Tribal sovereignty and self-governance, DOI threatened to withdraw CRST's law enforcement funding if it did not comply with the governor's request.

It is important to note that over the last decade, the federal government has made some effort to better recognize Tribal Nation jurisdiction over our own lands. USET SPF is appreciative of the efforts of this body in strengthening and improving public safety across Indian Country. Though many Tribal Nations remain unable to take advantage of its provisions, the 2013 reauthorization of VAWA was a major victory for Tribal jurisdiction, self-determination, and the fight against crime in Indian Country. This law provides crucial opportunities for Tribal Nations to reassume responsibilities for protecting their homelands by restoring criminal jurisdiction over non-Indian individuals in cases of domestic violence against Tribal citizens.

However, Tribal Nations, the Department of Justice, and others are reporting oversights in the drafting of the law that prevent the use of special domestic violence criminal jurisdiction (SDVCJ) and the law from functioning as intended. USET SPF remains strongly supportive of several bills aimed at addressing these gaps, including the Justice for Native Survivors of Sexual Violence Act and the Native Youth and Tribal Officer Protection Act. Though their provisions were incorporated into 2019 VAWA reauthorization proposals, they, along with VAWA, have not been approved by the 116th Congress.

As sovereign governments, Tribal Nations have a duty to protect our citizens, and provide for safe and productive communities. This cannot truly be accomplished without the full restoration of criminal jurisdiction to our governments through a fix to the Supreme Court decision in *Oliphant*. While we call upon this and the 117th Congress to take up and pass the aforementioned legislation, we strongly urge this Committee to consider how it might take action to fully recognize Tribal criminal jurisdiction over all persons and activities in our homelands for all Tribal Nations. Only then will we have the ability to truly protect our people.

Restrictive Settlement Acts

As we work to ensure that Tribal sovereignty is fully upheld, we again remind this body that some Tribal Nations, including some USET SPF member Tribal Nations, are living under restrictive settlement acts that further limit the ability to exercise criminal jurisdiction over their lands. These restrictive settlement acts flow from difficult circumstances in which states demanded unfair restrictions on Tribal Nations' rights in order for the Tribal Nations to have recognized rights to their lands or federal recognition. When Congress enacted these demands by the states into law, it incorrectly allowed for diminishment of certain sovereign authorities exercised by other Tribal Nations across the United States.

Some restrictive settlement acts purport to limit Tribal Nations' jurisdiction over their land or to give states jurisdiction over Tribal Nations' land, which is itself a problem. But, to make matters worse, there have been situations where a state has wrongly argued the existence of the restrictive settlement act prohibits application of later-enacted federal statutes that would restore to Tribal Nations aspects of our jurisdictional authority, including VAWA and the Tribal Law and Order Act (TLOA). In fact, some USET SPF member Tribal Nations report being threatened with lawsuits should they attempt to implement TLOA's enhanced sentencing provisions. Congress is often unaware of these arguments when enacting new legislation. USET SPF asserts that Congress did not intend these land claim settlements to forever prevent a handful of Tribal Nations from taking advantage of beneficial laws meant to improve the health, general welfare, and safety of Tribal citizens. We continue request the opportunity to explore short- and long-term solutions to this problem with this Committee.

Cultural Sovereignty

While the practice of spiritual and ceremonial traditions and beliefs varies significantly among USET SPF Tribal Nations, our spirituality is overwhelmingly place-based. From the Mississippi Band of Choctaw Indians' Nanih Waiyah mounds to the ceremonial stone landscapes of New England, each member Tribal Nation has specific places and locations that we consider sacred. These places are often the sites of our origin stories, our places of creation. As such, we believe that we have been in these places since time immemorial. Through these sites, we are inextricably linked to our spirituality, the practice of our religions, and to the foundations of our cultural beliefs and values. Our sacred sites are of greatest importance as they hold the bones and spirit of our ancestors and we must ensure their protection, as that is our sacred duty. As our federal partner in this unique government-to-government relationship, it is also incumbent upon all branches of the U.S. government to ensure the protection of these sites, including by upholding our own sovereign action.

This includes seeking the consent of Tribal Nations for federal actions that impact our sacred sites, lands, cultural resources, public health, or governance. Broadly, the U.S. must work to reform the Tribal consultation process, as conducted by agencies across the federal government. Tribal Nations continue to experience inconsistencies in consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. Letters are not consultation. Teleconferences are not consultation. Providing the opportunity for Tribal Nations to offer guidance and then failing to honor that guidance is not consultation. Meaningful consultation is a minimal standard for evaluating efforts to engage Tribal Nations in decisionmaking. Ultimately, free, prior, and informed Tribal consent, as described in the U.N. Declaration on the Rights of Indigenous Peoples, is required to fulfill federal treaty and trust responsibilities. The determination of what level of consultation is required should come from Tribal Nations. Meaningful consultation requires that dialogue with Tribal partners occur with a goal of reaching consent as a true reflection of a nation-to-nation diplomatic relations framework and understanding.

Economic Sovereignty

As it is for any other sovereign, economic sovereignty is essential to Indian Country's ability to be self-determining and self-sufficient. Rebuilding of our Tribal Nations involves the rebuilding of our Tribal economies as a core foundation of healthy and productive communities. We celebrate and acknowledge the recent passage of the Native American Business Incubators Act and the Indian Community Economic Enhancement Act, but there is more work to be done here, as well. Building strong, vibrant, and mature economies is more than just business development. It requires comprehensive planning to ensure that our economies have the necessary infrastructure, services, and opportunities for our citizens to thrive; thus resulting in stronger Tribal Nations and a stronger America. In order to achieve economic success, revenues and profits generated on Tribal lands must stay within Indian Country in

order to benefit from the economic multiplier effect, allowing for each dollar to turn over multiple times within a given Tribal economy. It is critical that inequities and the lack of parity in policy and federal funding be addressed for Tribal Nations in order to fully exercise our inherent self-governance to conduct economic development activities for the benefit of our Tribal citizens.

Further, the U.S. government has a responsibility to ensure that federal tax law treats Tribal Nations in a manner consistent with our governmental status, as reflected under the U.S. Constitution and numerous federal laws, treaties and federal court decisions. With this in mind, we remain focused on the advancement of tax reform that would address inequities in the tax code and eliminate state dual taxation. Revenue generated within Indian Country continues to be taken outside its borders or otherwise falls victim to a lack of parity. Similarly, Tribal governments continue to lack many of the same benefits and flexibility offered to other units of government under the tax code. Passage of comprehensive tax reform in 2017 without Tribal provisions was unacceptable, and our exclusion was inconsistent with expressed Congressional support to strengthen Tribal Nations. USET SPF continues to press Congress for changes to the U.S. tax code that would provide governmental parity and economic development to Tribal Nations.

Restoration of Tribal Homelands

Possession of a land base is a core aspect of sovereignty, cultural identity, and represents the foundation of a government's economy. That is no different for Tribal Nations. USET SPF Tribal Nations continue to work to reacquire our homelands, which are fundamental to our existence as sovereign governments and our ability to thrive as vibrant, healthy, self-sufficient communities. And as our partner in the trust relationship, it is incumbent upon the federal government to prioritize the restoration of our land bases. The federal government's objective in the trust responsibility and obligations to our Nations must be to support healthy and sustainable self-determining Tribal governments, which fundamentally includes the restoration of lands to all federally-recognized Tribal Nations, as well as the legal defense of these land acquisitions. With this in mind, USET SPF continues to call for the immediate passage of a fix to the Supreme Court decision in *Carcieri v. Salazar*.

Expansion and Evolution of Tribal Self-Governance

Despite the success of Tribal Nations in exercising authority under the Indian Self-Determination and Education Assistance Act (ISDEAA), as well as the recently enacted Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination (PROGRESS) for Indian Tribes Act, the goals of self-governance have not been fully realized. Many opportunities still remain to improve and expand upon its principles. An expansion of Tribal self-governance to all federal programs under ISDEAA would be the next evolutionary step in the federal government's recognition of Tribal sovereignty and reflective of its full commitment to Tribal Nation sovereignty and self-determination. In the case of COVID-19 response, it would provide for a streamlined and expeditious approach to the receipt and expenditures of funding from across the federal government, and ensure these resources can be utilized in ways that reflect the diversity of Tribal governments.

USET SPF, along with many Tribal Nations and organizations, has consistently urged that all federal programs and dollars be eligible for inclusion in self-governance contracts and compacts. We must move beyond piecemeal approaches directed at specific functions or programs and start ensuring Tribal Nations have real decisionmaking in the management of our own affairs and assets. It is imperative that Tribal Nations have the expanded authority to redesign additional federal programs to serve best our communities as well as have the authority to redistribute funds to administer services among different programs as necessary. To accomplish this requires a new framework and understanding that moves us further away from paternalism.

Examinations into expanding Tribal self-governance administratively have encountered barriers due to the limiting language under current law, as well as the misperceptions of federal officials. USET SPF stresses to the Committee that if true expansion of self-governance is only possible through legislative action, the Committee and Congress must prioritize legislative action on the comprehensive expansion of Tribal self-governance. This will modernize the federal fiduciary responsibility in a manner that is consistent with our sovereign status and capabilities. As an example, in 2013, the Self-Governance Tribal Federal Workgroup (SGTFW), established within the Department of Health and Human Services (HHS), completed a study exploring the feasibility of expanding Tribal self-governance into HHS programs beyond those of IHS and concluded that the expansion of self-governance to

non-IHS programs was feasible, but would require Congressional action. However, despite efforts on the part of Tribal representatives to the SGTFW to attempt to move forward in good faith with consensus positions on expansion legislation, these efforts were stymied by the lack of cooperation by federal representatives. USET SPF urges the Committee and Congress to use its authority to work to legislatively expand Tribal self-governance to all federal programs where Tribal Nations are eligible for funding, in fulfillment of the unique federal trust responsibility to Tribal Nations.

Further, Congress and the Administration should consider modifications to reporting requirements under ISDEAA and other methods of funding distribution. The administrative burden of current reporting requirements under ISDEAA including site visits, “means testing,” or other standards developed unilaterally by Congress or federal officials are barriers to efficient self-governance and do not reflect our government-to-government relationship. While obtaining data around Tribal programs is critical to measuring how well we as Tribal governments are serving our citizens and how well the federal government is delivering upon its obligations, Tribal Nations find themselves expected to report data in order to justify further investment in Indian Country. This runs counter to the trust obligation, which exists in perpetuity. The data collected by Tribal Nations must be understood as a tool to be utilized in sovereign decisionmaking, not to validate the federal government’s fulfillment of its own promises.

Because funding for Tribal Nations is provided in fulfillment of clear legal and historic obligations, those federal dollars should not be subject to an inappropriate, grant-based mentality that does not properly reflect our diplomatic relationship. USET SPF notes that federal funding directed to foreign aid and other federal programs are not subject to the same scrutiny. Grant funding fails to reflect the unique nature of the federal trust obligation and Tribal Nations’ sovereignty by treating Tribal Nations as non-profits rather than governments. We reiterate the need for the federal government to treat and respect Tribal Nations as sovereigns as it delivers upon the fiduciary trust obligation, as opposed to grantees.

Full Funding for Federal Fiduciary Obligations

The chronic underfunding of federal Indian programs continues to have disastrous impacts upon Tribal governments and Native peoples. Native peoples experience some of the greatest disparities among all populations in this country—including those in health, economic status, education, and housing. Indeed, in December 2018, the U.S. Commission on Civil Rights issued the “Broken Promises” Report, which found deep failures in the delivery of federal fiduciary trust and treaty obligations. The Commission concluded that the funding of the federal trust responsibility and obligations remains “grossly inadequate” and a “barely perceptible and decreasing percentage of agency budgets.”

Above all, the COVID-19 crisis is highlighting the urgent need to provide full and guaranteed federal funding to Tribal Nations in fulfillment of the trust obligation. While we unequivocally support budget stabilization mechanisms, such as Advance Appropriations, in the long-term, USET SPF is calling for a comprehensive reexamination of federal funding delivered to Indian Country across the federal government. Because of our history and unique relationship with the United States, the trust obligation of the federal government to Native peoples, as reflected in the federal budget, is fundamentally different from ordinary discretionary spending and should be considered mandatory in nature. Payments on debt to Indian Country should not be vulnerable to year to year “discretionary” decisions by appropriators. Recently, some in Congress have called for mandatory funding for specific agencies serving Indian Country. USET SPF strongly supports this proposal, which is more consistent with the federal trust obligation, and urges that this be realized via an entirely new budget component—one that contains all of the funding dedicated to Indian Country. Not only would this streamline access to these dollars, this mechanism would reflect true prioritization of and reverence for America’s trust obligation to and special relationship with Tribal Nations. While some will quickly dismiss this as unrealistic and untenable, when compared against the value of the land and natural resources the United States gained as part of the exchange, both voluntarily and involuntarily, it becomes evident that it is really only a matter of will and desire.

Marshall Plan for Indian Country—Rebuild and Restore Tribal Infrastructure

For generations, the federal government—despite abiding trust and treaty obligations—has substantially under-invested in Indian Country’s infrastructure. While the United States faces crumbling infrastructure nationally, there are many in Indian Country who lack even basic infrastructure, such as running water and pass-

able roads. Now, the nation and world are witnessing the deadly consequences of this neglect, as COVID-19 spreads through Tribal communities that are unable to implement such simple public health measures as frequent hand washing. The United States must commit to supporting the rebuilding of the sovereign Tribal Nations that exist within its domestic borders. Much like the U.S. investment in the rebuilding European nations following World War II via the Marshall Plan, the legislative and executive branches should commit to the same level of responsibility to assisting in the rebuilding of Tribal Nations, as our current circumstances are, in large part, directly attributable to the shameful acts and policies of the United States. In the same way the Marshall Plan acknowledged America's debt to European sovereigns and was utilized to strengthen our relationships and security abroad, the United States should make this strategic investment domestically. Strong Tribal Nations will result in a strengthened United States. At the same time, any infrastructure build-out, in Indian Country and beyond, must not occur at the expense of Tribal consultation, sovereignty, sacred sites, or public health.

Conclusion

With a new year on the horizon and as we look toward recovery from the global pandemic, USET SPF calls upon Congress, the Administration, and the whole of the federal government to join us in working toward a legacy of change for Tribal Nations, Native people, and the sacred trust relationship. This year has underscored the urgent need for radical transformation in the recognition of our governmental status and the delivery of federal obligations our people. We can no longer accept the status quo of incremental change that continues to feed a broken system. The federal government must enact policies that uphold our status as sovereign governments, our right to self-determination and self-governance, and honor the federal trust obligation in full. We look forward to partnering with this Committee in an effort to advance these policies in the remaining days of this Congress, as well as the next.

The CHAIRMAN. Thank you, President Francis.

Now we will turn to John Echohawk, Executive Director, Native American Rights Fund, Boulder, Colorado.

STATEMENT OF JOHN E. ECHOHAWK, EXECUTIVE DIRECTOR, NATIVE AMERICAN RIGHTS FUND

Mr. ECHOHAWK. Thank you, Mr. Chairman.

I am pleased to have the opportunity to testify today in the Committee's oversight hearing. I am a citizen of the Pawnee Nation of Oklahoma, and the co-founder of the Native American Rights Fund, a non-profit national Indian legal defense fund headquartered in Boulder, Colorado, which is celebrating its 50th anniversary this year.

We have been involved in most of the major Indian rights cases over the years. I have been the Executive Director continuously since 1977, and have testified before Congressional committees many times over those years, including the Senate Committee on Indian Affairs.

As we have already recognized, Senator Tom Udall, the Vice Chairman of the Committee, is retiring from the Senate, and I want to take this opportunity to recognize and honor him today. He has done great work for Native Americans over his many years of public service. I want to personally thank him for that.

I have known him for many years. I was the first Native American law graduate from the University of New Mexico School of Law in 1970, and Senator Udall is also a UNM Law graduate in 1977. I first met him when he was serving as Attorney General of the State of New Mexico, at a meeting with the conference of attorneys general. I have enjoyed working with him over the years on Native American issues and wish him well.

We really appreciate all of the work that Senator Udall has done with us over the last two sessions of Congress in trying to secure passage of the Native American Voting Rights Act, which he sponsored with many of you Committee members as cosponsors.

As you know, the Native American Voting Rights Act would establish the first of its kind Native American voting task force to provide equal access to voter registration and polling places, address the devastating effects of the 2013 *Shelby County v. Holder* Supreme Court decision by restoring tribal concurrence, affording equal treatment of tribal ids, requiring language assistance, furnishing Federal election observers, and requiring the Department of Interior to conduct annual voting consultation with Indian Tribes.

Few Senators have shown the devotion to voting rights, particularly the voting rights of Native Americans, that Senator Udall has demonstrated over the years. In 2015, the Native American Rights Fund created the Native American Voting Rights Coalition, a coalition of national and regional grass roots organizations, academics and attorneys, advocating for equal access of Native Americans to the political process. It was founded to facilitate collaboration between members on coordinated approaches to the many barriers that Native Americans face in registering to vote, casting their ballot and having an equal voice in elections.

Our first two actions were to conduct the largest ever survey of Native American voters, and conduct a series of nine field hearings across Indian Country to identify barriers faced by Native American voters. This resulted in thousands of pages of hearing transcripts, evidence of voter suppression. Senator Udall immediately identified this issue and began to draft the Native American Voting Rights Act to address the common barriers we identified. In so doing, he heard the voices of all those who spoke up at field hearings and brought them to the national stage. He heard them; he heard them and then did something about it.

Senate Bill S. 739 was introduced by Senator Udall in 2019. This year, the Senator continued to pursue this issue by holding meetings and roundtables on the importance of the tribal vote and barriers to voting in rural communities. Joining the John Lewis Voting Rights Advancement Act, and adding Native American specific provisions to that as well. Just a few months ago, he led an effort urging the Department of Justice to immediately address the mass closure of voting locations in Native communities.

He has shown unfailing leadership on voting rights of the most disenfranchised Americans. For that, the Native American Rights Fund will be forever grateful.

The Native American Rights Fund represents the Ute Mountain Ute Tribe, the Hopi Tribe, and Zuni Pueblo in litigation challenging the President's diminishment of the Bears Ears National Monument in southeastern Utah in 2017. These ancestral lands of these tribes were protected as they requested when President Obama established the Bears Ears National Monument in 2016, with the provision that recognized co-management of those lands by the tribes and the Federal Government.

The tribes have sacred sites, former villages, burial grounds and other cultural resources on these ancestral lands now owned by the

Federal Government that they would like to help protect with their traditional knowledge. We appreciate the support that Senator Udall and other members of this Committee have given for the tribal co-management concept.

Finally, I want to conclude by thanking Senator Udall and other members of this Committee for their recognition and support of legislation that addresses the issue of missing and murdered indigenous women. This is one of the most serious issues in Indian Country. This Committee and this Congress is to be congratulated for passing the Not Invisible Act and Savanna's Act to ensure we finally address these important issues.

That concludes my testimony. I will be pleased to answer any questions that Committee members might have. Thank you.

[The prepared statement of Mr. Echohawk follows:]

PREPARED STATEMENT OF JOHN E. ECHOHAWK, EXECUTIVE DIRECTOR, NATIVE AMERICAN RIGHTS FUND

I am pleased to testify in the Committee's oversight hearing today titled "From Language to Homelands: Advancing Tribal Self-Governance and Cultural Sovereignty for Future Generations." I am a co-founder of the Native American Rights Fund, the non-profit national Indian legal defense fund headquartered in Boulder, Colorado, which is celebrating its 50th anniversary this year. We have been involved in most of the major Indian rights cases over the years. I have been the Executive Director continuously since 1977 and have testified before Congressional committees many times over the years, including the Senate Indian Committee on Indian Affairs.

Senator Tom Udall of New Mexico, Vice-Chairman of this Committee, is retiring from the Senate and I want to recognize and honor him today. He has done great work for Native Americans over his many years of public service and I want to thank him for that. I have known him for many years. I was the first Native American graduate from the University of New Mexico School of Law in 1970 and Senator Udall is also a UNM Law School graduate. I first met him when he was serving as Attorney General of the State of New Mexico, at a meeting with the Conference of Western Attorneys General. I have enjoyed working with him over the years on Native American issues and wish him well.

We really appreciate all of the work he has done with us over the last two sessions of Congress in trying to secure passage of the Native American Voting Rights Act which he sponsored with many of you Committee members as co-sponsors. As you know, the Native American Voting Rights Act would establish the first of its kind Native American Voting Rights Task Force, provide equal access to voter registration and polling sites, address the devastating effects of the 2013 *Shelby County v. Holder* Supreme Court decision by restoring tribal preclearance, affording equal treatment of tribal IDs, requiring language assistance, furnishing federal election observers, and requiring the Department of Justice to conduct an annual voting consultation with Indian tribes.

Few Senators have shown the devotion to voting rights, particularly the voting rights of Native Americans, that Senator Udall has demonstrated over the years. In 2015, NARF created the Native American Voting Rights Coalition, or NAVRC, a coalition of national and regional grassroots organizations, academics, and attorneys advocating for the equal access of Native Americans to the political process. It was founded to facilitate collaboration between its members on coordinated approaches to the many barriers that Native Americans face in registering to vote, casting their ballot, and having an equal voice in elections. Our first two actions were to conduct the largest ever survey of Native American voters and conduct a series of nine field hearings across Indian Country to identify barriers faced by Native American voters. This resulted in thousands of pages of hearing transcripts—evidence of voter suppression.

Senator Udall immediately identified this issue and began to draft the Native American Voting Rights Act to address the common barriers we identified. In so doing, he heard the voices of all those who spoke up at the field hearing and brought them to a national stage. He heard them, and then did something about it. Senate Bill S. 739 was introduced by Senator Udall in 2019. This year, the Senator continued to pursue this issue by holding meetings and roundtables on the im-

portance of the tribal vote and barriers to voting in rural communities; joining the John Lewis Voting Rights Advancement Act and adding Native-specific provisions to that as well; and just a few months ago he led an effort urging the Department of Justice to immediately address the mass closure of polling locations in Native communities. He has shown unfailing leadership for the voting rights of the most disenfranchised Americans and for that, the Native American Rights Fund will be forever grateful.

The Native American Rights Fund represents the Ute Mountain Ute Tribe, the Hopi Tribe, and Zuni Pueblo in litigation challenging the President's diminishment of the Bears Ears National Monument in southeastern Utah in 2017. These ancestral lands of these tribes were protected as they requested when President Obama established the Bears Ears National Monument in 2016 with a provision that recognized co-management of those lands by the tribes and the federal government. The tribes have sacred sites, former villages, burial grounds, and other cultural resources on these ancestral lands now owned by the federal government that they want to help protect with their traditional knowledge. We appreciate the support that Senator Udall and other members of this Committee have given to the tribal co-management concept.

I want to conclude by thanking Senator Udall and other members of this Committee for their recognition and support of legislation that addressed the issue of missing and murdered Indigenous women. This is one of the most serious issues in Indian country. This Committee and the Congress is to be congratulated for passing the Not Invisible Act and Savanna's Act this year which finally address these important issues.

The CHAIRMAN. Thank you, Director Echohawk.

With that, I would turn to Senator Cantwell for the purposes of an opening statement.

**STATEMENT OF HON. MARIA CANTWELL,
U.S. SENATOR FROM WASHINGTON**

Senator CANTWELL. Thank you, Mr. Chairman, and thank you for holding this very important hearing on self-governance and sovereignty and the need to discuss in the next Congress how we continue to make progress on this. I hope that the issue of a Carcieri fix will also be discussed by some of our colleagues.

I am a big supporter of self-governance and the progress our tribes have made on self-governance. We hear a lot from Ron Allen, who has been one of our key witnesses many times talking about how the Jamestown S'Klallam have continued to make progress.

But having the ability to take land into trust for economic purposes, one of my first colleagues, Senator Inouye, as chair of this Committee, did phenomenal work on what now became the development of an alliance between the Port of Seattle and the Port of Tacoma, all enabled because the Puyallup Tribe was able to take land into trust, change the waterway and actually become the more dominant player in the Puget Sound area, all because we gave them the ability to take land into trust and negotiate with the city and the county in various ports. So I hope we will get to that issue.

But if I could, on our departing colleague, the Vice Chairman of the Committee, I want to thank him for his work with you, Mr. Chairman, and the incredible focus that you both have brought to this Committee over the last few years. I want to thank Senator Udall, obviously, for his role in Savanna's Act, as the chairman, Mr. Echohawk, just brought up. The fact that for the State of Washington, we had the most, I think as a percentage, missing and murdered indigenous women, this was a very important priority for the Seattle Indian Health Corps. They did a report that basically gave national attention to the problem.

I want to thank you for your work and your work with the Chairman on that important legislation.

I also want to thank you for your work that you helped us on in passing the Spokane Settlement Resolution, which was a long-time inequity that existed for the Spokane Tribe in not being adequately compensated for a hydroelectric system and the taking of their lands. It was a pretty incredible moment working with my colleague, Representative McMorris Rodgers, when we went to the Spokane Tribe.

There were actually a few people still alive that remembered the day that their land was taken and flooded, and the fact that they had to move. They were finally seeing a just compensation from the U.S. Government. It was a pretty big moment, and I thank you, and I thank you both for that.

I also thank you for working on this issue of broadband and broadband deployment in Indian Country. I don't know what we can do working altogether in the future. But this has to be a big priority for us. So I thank you, Senator Udall, for your leadership in coming to me and getting me, from the commerce perspective, to be more engaged in working with you here on the Committee.

And thank you for the Progress Act. Again, drawing it back to today's hearing, I know that not everybody in Indian Country thinks the same way about self-governance. But I do think that the more we empower tribes on these issues of capacity to do contract and ability to take matters to govern themselves, I think we are seeing phenomenal results.

We are seeing phenomenal economic growth in Indian Country, and I think that is what we want to see. We want to see the economic stability of those individuals making their own self-determination and us giving them the power and tools to do so.

So thank you for the Progress Act, and thank you, Mr. Chairman, for the Progress Act.

I guess that is a way of saying I hate to break up this team. But Senator Udall has made the decision. So I don't know what else we can do but to wish him well and thank him for his service. And thank you again, I think that was Mr. Echohawk speaking, thank you for mentioning Bears Ears. The preservation of sacred lands across our Nation is also a pretty important objective for the future. I thank everybody for paying attention to how important these specific lands are to the heritage and culture of the United States of America.

I wish you the best. I wish you the best, the Senator from New Mexico, our Vice Chairman, thank you for understanding Indian Country and working so hard with our colleague, the Chair, Senator Hoeven.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cantwell. And thank you for all the bills you worked on in a bipartisan way, and helped pass a lot of bills. So thank you. We really appreciate it. You really did a lot.

Senator CANTWELL. Thank you.

The CHAIRMAN. With that, let's turn to our witnesses. I am going to start with questions for Governor Vallo.

In 2019, along with Vice Chairman Udall, and others introduced, including Senator Cantwell, the Progress for Indian Tribes Act. Earlier this year, that bill was signed into law. The Progress for Indian Tribes Act streamlined agency procedures, clarified the compacting process, and most importantly, provided for more tribes to exercise self-governance and administer Federal programs.

But my question, Governor Vallo, would be, while this bill was long overdue, and I echo Senator Cantwell's comments on it, can you explain how the Progress Act is a good example of increased self-determination for tribes, and any other thoughts you have on that issue about how we can do more?

Mr. VALLO. Thank you, Mr. Chairman, for the question. We do appreciate the passage of the legislation.

As you know, tribes are always looking to advance and take advantage of the opportunity, when it is available, to be self-determined, in all areas. I believe we have worked together to inform and educate not only our Federal partners but others beyond the Federal system of these goals, these objectives of ours [indiscernible].

I think that the opportunities that are presented here are significant. In fact, we now have an open door, so to speak, and I think it gives us the opportunity to really mobilize a much more streamlined process toward self-determination and self-governance. The Pueblo of Acoma has maintained plans for many, many years, various tribal councils have looked at these opportunities. We are realizing the fruits of our labor.

What I do believe, however, is that we need to begin the process of engagement with the appropriate Federal agencies to ensure that they are aware of what these short and more importantly, the longer-range plans are for our respective tribal communities. I believe there is an opportunity for intertribal discussion to occur on this subject, because we are always learning from one another, and we have plenty of tribes in this Country who have set a high bar in the way self-governance can be achieved.

So we are always looking to those models. Any resources that can be filtered down to our tribe to continue this important work I think would also make a significant difference in not only the mobilizing, but also executing these processes and taking full advantage of opportunities presented in the Progress Act.

The CHAIRMAN. Thank you.

I would like to turn to Chief Francis. You referenced economic development in your comments, which I think is so important. Of course, that is something we worked on in S. 212, the Indian Community Economic Enhancement Act, or the ICEE Act. It does things like waive the requirement for Native community development financial institutions and without that match, that is clearly going to free up money for tribes. It takes other steps to really help with economic development in Indian Country, which I think is so important.

So my question would be, do you believe bills like ICEE as well as the Vice Chairman's Native American Business Incubators bill represent good starts in helping to build tribal communities? And what other examples or what other tools do you think would be helpful?

Mr. FRANCIS. Thank you for the question, Senator. I think this is also a very important subject. In terms of tools, one, obviously, we are very supportive of the Act and appreciative of its passage. Any time we are looking to provide more tools in Indian Country for economic success, given the extreme challenges that we are faced with from the Department of Treasury reports in terms of disparities with access to financing, et cetera, to help build businesses within Indian Country.

I would say a few things that, as we move forward, I think it is going to be critically important that tribal governments are given every tool possible in terms of access to financing and capital coming from geographical locations that are often challenged, challenges with broadband, a whole host of other things that we know exist within Indian Country.

I will give two specific examples. The creation of opportunity zones, for example, those opportunity zones where the western governors did decide where those zones would be. Every tribal nation in Maine was left out of those geographical locations to be able to participate in that program.

But more importantly, I think, when we look at things like the market tax credits and tribal set-asides in that area, if we look at the overall allocation of new market tax credits where often projects and development within Indian Country to promote jobs and all those things don't typically fall into that \$200 million to \$400 million range for a project, there are lots of \$6 million, \$10 million, \$15 million, projects that just don't garner the attention in the open new market tax credit pool.

So tribes are often left out. We have some experience with that at Penobscot, without new elder facilities, et cetera. So I think we have to take a long, hard look at programs with the new market tax credit, make sure there are set-asides that help disadvantaged communities where tribes can have access to those. So access to capital, access to the programs that are already out there, good programs that maybe unintentionally are just leaving Indian Country behind.

The CHAIRMAN. Thank you, Chief.

We will turn to Vice Chairman Udall.

Senator UDALL. Thank you, Mr. Chairman.

My grandfather, in a voting rights case, Levi Udall, wrote "To deny the right to vote is to do violence to the principles of freedom and equality." I wholeheartedly agree.

Mr. Echohawk, the Native American Rights Fund has done excellent work highlighting the challenges that Native voters face at the polls. Most recently, NARF's report, *Obstacles at Every Turn, Barriers to Political Participation Faced by Native American Voters*, details testimony from over 120 witnesses about the difficulties they face when exercising their right to vote in Indian Country. That is why I introduced the Native American Voting Rights Act, to correct the decades-long suppression of the Native vote.

It is more important than ever that we pass legislation to ensure that the voices of Native communities in New Mexico and across Indian Country are counted, not discounted.

I also joined Senator Klobuchar in writing a letter to the Department of Justice outlining our serious concerns regarding the mass

closures of polling locations in tribal communities due to the COVID-19 pandemic. We called for the DOJ to work with tribal governments to find solutions to ensure the Native vote is counted. Yet despite these challenges, data is showing a large increase in Native vote turnout for the 2020 election.

John, what concerns has NARF or the Native American Voting Rights Coalition heard from tribal communities about the 2020 election process?

Mr. ECHOHAWK. Thank you for the question, Senator Udall. Again, thank you for all your support of the Native American Voting Rights Act.

Indian Country has come to understand that their right to vote is under attack. They have come to realize that that must be for some reason. Somebody doesn't want them to turn out. So that has really lit a fire under them. The enthusiasm in Native communities to turn out, why don't these people want us to vote, it is for that reason we are going to show up and vote. It may take extraordinary measures to do that, but our turnout in the 2020 election was phenomenal. It made a difference in some of these States.

That is just the way our people are. We are resilient. We are determined. When we are attacked, we are going to resist and we are going to fight back.

Senator UDALL. John Echohawk, what can Congress do to ensure that every Native vote is counted and not discounted?

Mr. ECHOHAWK. We need the protections of the Native American Voting Rights Act, because our right to vote is always going to be under attack. There are people out there who do not want us to vote. They are going to continue their efforts of voter suppression. The Native American Voting Rights Act will provide more protections for our right to vote going into the future, so we won't have to face these issues again.

Senator UDALL. Thank you.

Mr. Chairman, I would ask to enter NARF's report into the record.

The CHAIRMAN. Without objection.

Senator UDALL. Governor Vallo, I would want to ask you about the indigenous-led conservation, coordination and co-management with Federal public land managers. Millions of acres of Federal public land are tribal homelands, home to important cultural lands, caves, sacred sites and habitat for important plants and wildlife.

I believe that it is time we rethink the way the Federal Government works with tribes. It is not only important for Federal land managers to work with tribes on land management planning and decisions, but it is also a fundamental aspect to upholding the Federal Government's trust and treaty responsibilities.

We have a number of laws and processes that you mentioned in your testimony, like NHPA, the National Historic Preservation Act, and the Federal Land Policy and Management Act, that require consultation. But often, the Federal Government makes decisions beforehand and then attempts to consult on those decisions with the tribes instead of working on land use planning together and in the early part of the process.

Governor, my question to you is, how can the Federal Government make consultation more meaningful, especially when dealing

with sensitive areas like Chaco or Bears Ears, for example? Should we build on existing processes, move to a co-management model, or something else? What do you recommend?

Mr. VALLO. Thank you, Senator Udall, for that important question. Some of us have, Mr. Echohawk and the Chief, and me, spent a lot of time talking about this question. But it is an important one as we realize that the last four years have been quite a challenge in terms of the ways in which consultation, for example, between tribes and Federal agencies, especially in the areas of cultural resources and landscapes are concerned.

Acoma is and has been very vocal on this issue. What we would like to see, Senator and members of the Committee, is that there be an examination conducted of the existing processes under Federal law. Clearly, within some of our agencies, where local resources and landscapes are concerned, the consultation process is very one-sided. Oftentimes we don't have the opportunity to participate in the very early stages of this process.

What I am referring to here is the development of what that consultation process would look like [indiscernible]. It should involve considerations of timing, and also making very clear what the anticipated outcomes will be as it is [indiscernible] these consultations.

We throw around the term "meaningful" so much these days, a meaningful consultation. Well, we are not there, we are definitely not there yet in terms of meaningful consultation. But it has to be meaningful commitment between the Federal Government and a tribe or tribes.

That leads to the meaningful consultation that also then involves a process of active engagement [indiscernible] and ensuring that the outcomes of consultation do in fact yield positive outcomes, favorable outcomes for tribes as we continue this work on protection and preservation of our cultural resources. It is also then as stewards for the co-management piece of that on our minds.

I think that is something that is I wholeheartedly support, an examination of the existing processes, and whether or not those processes for co-management can be enhanced to where tribes and perhaps tribal preservation officers, maybe tribal natural resource departments and management officials are engaged more intimately in that process of the co-management of the natural resources and land.

We definitely [indiscernible] cultural resources and cultural landscapes are concerned [indiscernible] extending that to consider [indiscernible] and landscapes is something that we would definitely like to see.

The CHAIRMAN. Senator Cantwell?

Senator CANTWELL. Again, thank you, Mr. Chairman, for this hearing. Our witness brought up the fact that we needed a new market tax credit set-aside. We have also been working on the low-income housing tax credit program with an additional focus and set-aside for Indian Country for housing. I wonder if the witnesses could talk about the incredible opportunity there is on both of these, what that would mean as far as the broader impacts to the economy if we would use our tax credits more specifically this way in Indian Country, and what else we need to do to change that for-

mula, so that either with a set-aside or in the case of the low-income housing tax credit increase that we have been trying to push on a Cantwell-Young bill, we have been trying to specifically call out Indian Country. I can see a lot of housing, very-needed housing being built in Indian Country with the low-income housing tax credit.

So I don't know if any of the witnesses can speak to that.

Mr. FRANCIS. I can, really quickly. Thank you, Senator, for the question. In terms of low-income tax credit programs, at Penobscot we have accessed those programs in the past, and they have been hugely beneficial in terms of not only getting much needed housing shortages addressed for some of our most vulnerable populations, our elder group, et cetera. We just built a new facility last year in partnership with Maine State housing, utilizing a lot of these programs.

And so just in terms of the overall theme of the hearing today in terms of recognizing sovereignty and all those things, it doesn't come without its hiccups in terms of, when we talk about a new market tax credit set-aside, for example. I think some of the biggest challenges we have is when investors come to the table, they want waivers of sovereign immunity. The tribe has to assess those opportunities and make sovereign decisions around those as we do with 638 contracts and a whole list of other things.

But I think that financial institutions are not really educated a lot about tribal structures, tribal governments, tribal judicial systems, how we are rectifying grievances within outside financing opportunities, et cetera within tribal territories. So I think a new market tax credit, for example, the question of set-aside would be important, because it can be defined in a way that creates that understanding up front, and also a direct understanding of where these dollars are supposed to go and how they are supposed to benefit these disadvantaged communities.

Senator CANTWELL. How would you describe the lack of access to capital otherwise?

Mr. FRANCIS. Again, it is the same challenge, I think, out there. Tribes are often faced with challenges about things like simply providing collateral for loans and access to resources to satisfy financial institutions, just by the nature of tribal makeup. Obviously, banks can't repossess lands on tribal land, as an example, and other things. So I think a lot of those things create a lot of the misunderstanding in terms of how to get this done.

One of the really good programs is the 184 program which really had set up a structure to allow for the people for the first time in our community over the last 10 years start to have a robust home ownership market within tribal territory, because of that program and the ability of tribes and others to be involved to make sure those loans are guaranteed.

So I think when we talk about set-asides and new market tax credit, or low-income housing or whatever it is, specifically for Indian tribes, that is not just about wanting some special program out there. It is a program within those set-asides that can really address the uniqueness of the challenges and obstacles there that tribes are facing.

Senator CANTWELL. I think our legislation was an 30 percent, an additional 30 percent from where we are. My point was, when you think about the crisis that exists in Indian Country housing, it is pretty massive. The other changes that you have for funding mechanisms I see are more limited.

Anyway, I think this is an area we need to think more about the value of this. I think it is pretty high. I think it is a good return, particularly for the economic development that comes with housing. I would certainly say with the new market tax credit we have seen tremendous benefits to the economic development that comes with it.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cantwell. We will turn to Senator Cortez Masto.

**STATEMENT OF HON. CATHERINE CORTEZ MASTO,
U.S. SENATOR FROM NEVADA**

Senator CORTEZ MASTO. Thank you, Mr. Chairman, and thank you all for this important discussion.

Before we get started, I apologize, I was on the Floor of the Senate, so I wasn't able to be here for your opening statements. So I too want to take a minute to recognize and thank Vice Chairman Udall for his years of leadership on this Committee, and for his commitment and service to our tribal communities. It has been an honor to serve with you on this Committee the past four years.

I want to thank you for your advice, your wisdom, your mentorship, and the example that you have set for us through your many years in Congress, in the Senate and on this Committee. I also want to thank your staff for their dedication in supporting this Committee's work. The tireless leadership in working across the aisle, not just with Chairman Hoeven, but so many members of the Committee, and our tribal leaders. You have encouraged all of us truly to work together in a bipartisan way. I thank you for that.

I am particularly thankful for your leadership and your help in passing the Not Invisible Act and Savanna's Act that we have heard about today, so important for our tribal communities. But your achievements in the Senate stand as a testament to the spirit of the west.

And as a western State, I so appreciate your voice, and your commitment to our communities in the west, from conserving and protecting our public lands to the Great American Outdoors Act, a champion for the rights of Indian Country, from empowering our tribal communities to introducing what we have just been talking about, the Native American Voting Rights Act, holding our Federal agencies accountable and ensuring vital Coronavirus relief funds and safe care delivery reach those who need it most during this horrific pandemic.

So whether it is through finding creative solutions, to try and address the homework gap, to partnering with me on introducing the E-Rate support for school bus wi-fi, or fighting for quality housing, as we were talking about, through reauthorization of the Native American Housing Assistance and Self-Determination Act, your work here has led to tangible benefits for Native communities in my home State of Nevada and all across the Country.

So Senator Udall, I have no doubt that your legacy of service here will continue to make a powerful impact on many of our tribal communities for years to come. I am going to miss you, my friend. But I look forward to the opportunity to work with you in the future and do things with you as well. So thank you for your commitment.

As we move on to the subject at hand, which is self-governance, tribal consultation that is so necessary for Federal agencies, we have talked about a number of issues that clearly need attention for our tribal communities. One of them, though, I do want to address as well. President Francis, I am going to direct this question to you, because in your testimony, you shared the importance of the 2013 reforms to the Violence Against Women Act that allowed tribes to prosecute certain domestic violence related crimes.

I wonder if you could share with us on how beneficial this has been to the tribes, that it has been able to help them implement special jurisdiction, and what it has meant for the safety of the Native women in those communities.

Mr. FRANCIS. Sure. Thank you for that important question as well. The Violence Against Women Act is, in my mind, one of the most historic acts that Congress has passed addressing a horrific condition within Indian Country. Certainly, my tribe is no less impacted by it than everyone else's. Those same statistics ring true with us as they do with everyone else.

As I also talked about in my testimony, we live under a land claims settlement act here that allows for challenges to our jurisdiction by the State of Maine in almost every aspect of our life. We were lucky that this past year we were able to implement some provisions of VAWA. We had a really robust domestic violence and sexual assault program and department with great people. What we found was that we had, at a certain time we would have hundreds of people we were servicing, but yet those services and those victims weren't lining up with things moving through the judicial process.

So what we were learning, prior to the implementation of VAWA, was that victims, quite frankly, would either not trust the system outside of the tribal system, or they were delayed so long in kind of the rank and file process of a bigger State court or Federal court that they would often be a year or two years from that trauma and simply not want to relive it again. Therefore, people are just not being held accountable.

So this act was extremely important, as with tribal law and order, a whole host of other acts that this Committee has supported. The mind set of local control is really the only way to address these issues in a positive and impactful way. So for the women of our tribe and for the women all across Indian Country, this has been an extremely impactful, and I will speak for our region, extremely impactful at that was passed, and created a situation of trust and also of this kind of assumption by tribal governments that they had no control over this issue when it was existing right under our nose. So it has provided for a lot of success in that area, and a lot of victims are better off for it today and we have been able to, more importantly, prevent more of that from happening.

Senator CORTEZ MASTO. That is great to hear.

My time is up, so I will submit these questions for the record. I am also curious as to what other improvements we can make in this area for tribal governance when it comes to addressing domestic violence issues in our tribal communities.

Thank you for this conversation.

The CHAIRMAN. Thank you, Senator Cortez Masto.

Now we will turn to Senator Smith.

**STATEMENT OF HON. TINA SMITH,
U.S. SENATOR FROM MINNESOTA**

Senator SMITH. Thank you, Chair Hoeven. I too was on the Floor of the Senate just a little while ago at the beginning of this Committee to listen to our colleague Doug Jones' farewell speech. So I am sorry I missed the beginning of this hearing.

Senator Udall, I just want to add my huge thanks to you. You know that I grew up in New Mexico, I was born in New Mexico. In fact, you've had a chance to meet my father, who still lives in Santa Fe. In fact, my father graduated from the University of New Mexico probably about 20 years before you did. I didn't realize that you had that connection as well.

When I was growing up, I came from a politically active family. The Udall name was truly political royalty in New Mexico and all of the west. So when I discovered that I was going to have the opportunity to serve with you in the United States Senate, and especially to serve with you on the Indian Affairs Committee, it has meant so much to me. It has great resonance in my life and in my passion for environmental issues and tribal justice issues now, as I have the blessing of representing the great State of Minnesota.

So I am just so grateful for all of your work and time. I know that we will continue to be friends for many years to come. I will look forward to seeing you and Jill at the Shack in Santa Fe when I am there visiting my father again and when we can be out and be with our loved ones again. Thank you so much for your service. I am so grateful.

I want to also thank our testifiers here today, Governor Vallo, Chief Francis, and John Echohawk from the Native American Rights Fund. I would like to tell you what I am interested in hearing your perspective on. It relates to the importance of teaching accurate Native history and culture in our schools, especially in K through 12 education.

When I was growing up in Santa Fe, I remember vividly in elementary school learning about the history of New Mexico, and the long history of Native people in New Mexico, and also the Hispanic culture in New Mexico, long before white people came to that State. So my knowledge of that from when I was just a little child has, I believe, always shaped my understanding of the deep, rich history of this Country, especially as it relates to Native people.

So I am very interested in knowing what your perspective is on how better we can do this in our schools. I think this ties directly to the importance of consultation, and tribal consultation, as we figure out how well to do this. I am working on a bill that has really been inspired by some of the work of the Shakopee and Wahpeton Sioux community in Minnesota to develop curriculum to

teach about Native American history and culture. This bill would support educators as they are teaching accurate history and culture in classrooms across the Country and figuring out how to also make that specific.

Could I just turn to you and ask you a little bit about what you think we should be doing in this area and why you think this matter? I am interested in hearing from all of you.

Mr. VALLO. Thank you for the question, Senator. It is an important question and one that we have a very proactive interest in addressing here in the State of New Mexico.

We have had some challenges in terms of having the opportunity to really consult on a meaningful level with the State department of education on the assessment of this component of history, New Mexico history, and how these accurate histories become introduced into the instruction at all levels, really, not only for the general population of our students but also for all Native American students, and expanding the instruction for them as well beyond history, but also integrating and seeing a true integration of cultural instruction within our public school systems and also our local schools, in the schools that we have the opportunity to manage on our own.

We have provided the State with plenty of guidance, I believe. I am not only speaking for Acoma; I am speaking for the tribes here in New Mexico. We have worked together as a body to bring those issues before our State department of education. We have made some progress, I believe, in some areas, especially where the introduction of language is now available for Native students within some of our school systems. But there is so much more to do.

[Indiscernible] issues that we are [indiscernible] in New Mexico is bring some closure to impact aid and how those Federal impact aid dollars generated by Native students filters down to the school districts, those districts who have a population that is generating these dollars. Unfortunately, we have not had a great relationship with the State in addressing and really bringing some closure and understanding to this issue. But here is a resource, a resource that is available to really enhance the cultural instruction and education, not only for our Native students, but for the general population.

So I feel like we are still in that discussion mode and really taking a broad look at things. I hope that with continued support of the Native American Languages Act, and the Esther Martinez Act, what we are finding is that there is a little trickle-down from these programs that are being administered in schools now that is impacting cultural education for our students.

Senator SMITH. Mr. Chair, I have another question, but I will follow up with our other guests today, because I am very interested in getting their input on this piece of legislation and working on it. Thank you very much.

The CHAIRMAN. Thank you, Senator Smith.

With that, we will turn to Senator Tester.

**STATEMENT OF HON. JON TESTER,
U.S. SENATOR FROM MONTANA**

Senator TESTER. Thank you, Mr. Chairman. I want to thank the folks who testified today. I too was on the Floor listening to Senator Jones' farewell speech. It was good, and I want to spend a little bit of my time talking about another Senator that is going to be leaving this body, unfortunately, and that is Senator Udall. Senator Udall is somebody that, quite frankly, has not only been a great Senator, but has been an incredible friend to many of the Native Americans across this Country.

Having been on leadership of this Committee, I can tell you from my perspective, Senator Udall has never missed a beat when it comes to making sure that things like sovereignty and trust responsibilities and self-determination, that we do our best to live up to those things when it comes to Native Americans. There are a lot of folk who serve with the United States Senate that don't understand trust responsibility and that trust relationship. You can't say that about Senator Udall. Senator Udall fully understands it and fights for it every day that he is here.

I know that it drives him crazy when I refer to him as the Jimmy Stewart of the U.S. Senate. But the truth is, if you listen to him talk, and use your imagination a little bit, he is a dead ringer for Jimmy Stewart. In fact, I think that if you were able to work on your imitation a little better, we might be able to get a recreation of It's A Wonderful Life from you, Senator Udall.

[Laughter.]

Senator TESTER. I just want to say, in this path that we live called life, and our path crosses with wonderful people and we get a chance to work with them, whether it is inside the Senate or outside the Senate, it doesn't matter. Those folks tend to go a different path than we are on.

Well, for the last eight years, Senator Udall and I have had the chance to serve together in the United States Senate. I know you come from a great lineage of public servants, Tom. Your dad, Stuart Udall, was one of the finest, there is no doubt about that. He is, as Senator Smith said, truly legendary across the western United States.

But the truth is, you filled his shoes very, very well. You are somebody that is going to be missed not only in the Indian Affairs Committee, I serve with you on Appropriations, and I know you are Ranking Member and Chair, which also deals with many issues that deal with Native Americans. You have been a marvelous friend and person that I can joke with and have some fun with on all the committees that we serve together, Appropriations and Indian Affairs for sure.

I just want to say we wish you and Jill the very, very best as you carve out another path in life. I will just be blunt: I hope the Administration picks you for Interior. I think you are a great human being for that. I think you understand the issues. Quite frankly, I think you are somebody that would serve the Administration very, very well as being a clear thinker with common sense.

So I just wanted to throw that out there. We are going to miss you, Tom, my friend. But hopefully you will not be a stranger to the United States Senate.

I have one quick question. I have more than one, but one quick question that has come up, and it is for Kirk. It is about access to capital in Indian Country. You talked about collateral not being there, you talked about the 184 programs. Are there any solutions we need to do, particularly, I want to talk about for business startups, when it comes to access to capital in Indian Country? Do you have any ideas that we can work on and get a bill together and maybe name it the Tom Udall Bill for Economic Development in Indian Country?

Mr. FRANCIS. Yes, certainly, thank you for that question, Senator. It is good to see you.

I think there are a lot of specific things we could do. I think I would like to take some time to work with my colleagues at USET, to work with the Committee on exactly what that would look like. But I think even though we have these programs out there, like the BIA loan guarantee program, for example, there is a lot of different information out there that we can draw from to try to create a program that really puts financial institutions' not only minds at ease, but incentivizes them to invest in Indian Country.

I think those are the important things, as we need to figure out a way to get financial institutions to look at Indian Country and to look at the territories within Indian Country as a solution around a whole host of things rather than an encumbrance or a burden.

So I think a strong bill developed with those kinds of guarantees and incentives for tribes and incentives for businesses would be the way to go. We would be more than happy to work with you on that in short order.

Senator TESTER. Well, I just want to say this, and I will put the rest of my questions in for the record. I also serve on the Banking Committee. There are a lot of folks, at least in my State, that serve in the financial industries that want to get out there to Indian Country. But as you said, they want to make sure they know the rules before they get there.

So I look forward to working with you, and I know there are others on this Committee that would, too, on trying to find some solutions to access to capital. Because I think it is a big inhibitor in Indian Country.

Thank you all for being here. Once again, thanks for being with us here, Senator Udall. I yield.

The CHAIRMAN. Thank you, Senator Tester. I would turn to Vice Chairman Udall for some additional questions.

Senator UDALL. Thank you, Mr. Chairman. I would like to follow up with a final question for all the panel. It focuses around President Francis, that your testimony discussed a Marshall Plan for Indian Country in order to rebuild and restore tribal infrastructure.

I have long fought to increase vital infrastructure funding in Indian Country and in Native communities. Too often they lack basic infrastructure, such as clean drinking water, roads, health care facilities, electricity grids, and broadband. Even before my time with this Committee, I had urged support for a Marshall Plan for Indian Country.

While I am proud of the work I have done with my colleagues on this Committee and on the Appropriations Committee to in-

crease infrastructure investments in Indian Country, I recognize there is much more that needs to be done.

This question is for the entire panel, but let me start with Chief Francis. What priorities should be addressed in an Indian Country Marshall Plan?

Mr. FRANCIS. Thank you, Senator, and again, I appreciate the very important question.

USET SPF has been talking about trust modernization and the concept of a Marshall Plan, et cetera, for a few years now. This is really focused on nation rebuilding. So it is hard to give one answer in terms of what the most important thing is because the past actions and policies that are responsible for the current situation within the governments and communities, a Marshall Plan for Indian Country would seek to rectify all of that.

This would include funding for governmental and judicial infrastructure, historic preservation, economic infrastructure, health care infrastructure, all those things would have to be assessed. Essentially everything that is needed to begin this nation rebuilding stage decades from being in the self-governance era.

So we understand that this is not going to happen overnight. We all know that. But there needs to be a plan developed that has meaningful progress over the next decade or so that really focuses on what are the systematic damages within Indian Country, and being able to quantify all that stuff and really put it into a comprehensive plan that focuses on what does the number look like.

That is the other thing. I think the other important part of this question too in terms of, how do you get to a number and all of that. We looked at, for example, this situation over at OMB. We have to do a much better job of tracking exactly how well the trust obligation to Indian tribes is being met and what is the starting line, the actual detailed accurate starting line.

So we would recommend things initially in development of this plan like an Indian Office of OMB that can really drill down in better detail exactly what is getting to Indian Country. We know that OMB touts that \$21 billion is appropriated for Indian Country annually.

None of us believes that \$21 billion is getting out to Indian Country. We think this is what is available, and it looks eligible to be in Indian Country. But even if we took that \$21 billion number, for example, that is one-tenth of 1 percent of the annual value that the United States receives on Federal lands and the natural resources on them.

So there is a lot that would go into developing this plan. I have appreciated your willingness to have this conversation. There are pieces that need to be put in place to start addressing this and to develop a comprehensive plan over the coming years that really gets at reparations within Indian Country to allow for continued success and rebuilding of tribal nations.

Senator UDALL. John Echohawk, any thoughts on Indian Country Marshall Plan?

Mr. ECHOHAWK. Yes, Senator Udall. As you know, the United Nations passed the Declaration of Rights of Indigenous Peoples in 2007, after nearly 40 years of work by indigenous people from around the world, it was [indiscernible] over in Geneva. It is a won-

derful document that recognizes everything that Native nations want and need, and are their inherent rights. But we still need the implementation of that declaration across the board.

If that was implemented, that would be a Marshall Plan. The Obama Administration got the United States to support the declaration in 2010, and it has not been fully implemented. Recognition of that, the National Congress of American Indians passed a resolution at their convention here last month recommending to the new Biden-Harris Administration that they establish a commission to study the full implementation of the Declaration of the Rights of Indigenous Peoples by the United States government. If that commission was formed, it started working on everything this Country needs to do to implement that declaration, that would constitute in my view a Marshall Plan that would bring back Indian Country to the position that it deserves to be in, based on its inherent rights.

Senator UDALL. Thank you.

Governor Vallo, any thoughts on a Marshall Plan for Indian Country, an Acoma perspective there?

Mr. VALLO. Thank you, Senator. I would just say that this pandemic and the experience that we are all having is certainly bringing to light again for us the need for development of [indiscernible] but the communities, certainly here in Acoma. I would fully support this initiative and I thank you for raising this. If there is more data now that is available [indiscernible] we should be again looking at this comprehensive initiative, and perhaps a commission as described by Mr. Echohawk for evaluation of the Declaration. In addition to the Declaration, there might be a similar process for addressing this effort and the creation of a Marshall Plan that is all inclusive and very comprehensive.

Senator UDALL. Thank you, Mr. Chairman, and thank you to all of our witnesses today. I think this was an excellent hearing. I really want to say thanks again for the very kind words of all the members on the Committee. It has been a real honor to work with them, and work with tribes to make sure we have brought justice to some of the important issues, as you know, that we face and the tribes face in Indian Country.

Thank you very much.

The CHAIRMAN. I would like to thank our witnesses for today. The hearing record will be open for two weeks, and if there are additional questions submitted for the record, we would ask that you try to respond within that two-week timeline.

So thanks to our witnesses. To Vice Chairman Udall, I thought all of the well wishes and the compliments that you received from our Committee members today were extremely appropriate.

I think I particularly liked Senator Tester's Jimmy Stewart, Mr. Smith Goes to Washington. I hadn't necessarily thought of that, but once he said it, I think he is right. I mean that in a really complimentary way.

I think we really have worked to be bipartisan here. We have moved a lot of bills. We are still trying to outline some more.

I want to add, again, my appreciation to the appreciation that the other Committee members provided today for the way you have

approached the work of this Committee and for your commitment to Indian Country. Thank you so much.

And with that, we are adjourned.

[Whereupon, at 4:20 p.m., the hearing was adjourned.]

A P P E N D I X

PREPARED STATEMENT OF HON. BRIAN SCHATZ, U.S. SENATOR FROM HAWAII

Mr. Chairman,

Although I am unable to stay, I don't want to leave without expressing my deep appreciation to Vice-Chairman Udall. Today's hearing in the Senate Committee on Indian Affairs is our last hearing of the year, and it will mark the last hearing that we will have with Senator Udall as our Vice-Chair.

I'd like to take a few moments to thank Senator Udall for all he has done for tribes and native communities across the nation, and especially for his work on behalf of Native Hawaiians. Thank you Tom- for your leadership and your friendship.

This Committee has always held a distinct position in the Senate. The legal and policy issues we grapple with as we try to honor our promises and lift up American Indian, Alaska Native and Native Hawaiian communities are unique and yet universal. There is great diversity among the indigenous groups of our nation and oftentimes significant differences among tribes and native communities located in the same state. Almost every issue requires us to try to understand a myriad of historical, cultural, legal, and economic issues as well as to take into account distinct factual considerations. Balancing competing interests is never easy, but Senator Udall, you have exemplified what it means to be a leader. I have appreciated the thoughtful and inclusive way that you approach policymaking, and the deep sense of fairness that informs your words and actions.

You have helped to maintain and build upon the strong tradition of bipartisanship associated with the Senate Committee on Indian Affairs. Thank you for serving so well this committee, our members, our constituents, and all native communities in Indian country, Alaska and Hawaii. At this time I ask that letters of appreciation to Senator Udall written by Native Hawaiian organizations be included in the hearing record. I would also ask for testimony provided by the Office of Hawaiian Affairs on today's hearing, as well as documents prepared by the Office of Hawaiian Affairs and other Native Hawaiian organizations for Senator Udall and SCIA during the 116th Congress, be inserted at the end of my statement.

Finally, today I want to join my other colleagues in congratulating you on a well-deserved retirement after twelve remarkable years of service in the Senate. You have built an exemplary record of accomplishment through your work on this committee, the impacts of which have been felt all over Indian country, Alaska and Hawaii, and will continue to be felt for generations to come.

My best to you always, Tom. I know we haven't seen the last of you yet, and I can't wait to see what you do next.

PREPARED STATEMENT OF THE STATE OF HAWAII, OFFICE OF HAWAIIAN AFFAIRS
(OHA)

Dear Chairman Hoeven, Vice Chairman Udall, and Members of the Senate Committee on Indian Affairs:

Mahalo nui loa (Thank you very much) for your leadership in the 116th Congress. The Office of Hawaiian Affairs (OHA) appreciates the opportunity to provide testimony for the record of the December 9, 2020, Oversight Hearing on "From Languages to Homelands: Advancing Tribal Self-Governance and Cultural Sovereignty for Future Generations." This hearing topic provides a valuable forum to discuss the importance of self-determination to all Native American people, including American Indians, Alaska Natives, and Native Hawaiians.

Self-determination—the right of Indigenous people to chart our own course—supports the cultural sovereignty of the Native Hawaiian people and advances the mission of OHA to better the conditions of the Native Hawaiian community. The federal government owes a trust responsibility to all Native American people that it carries out through the self-determination framework. We thank the U.S. Senate Committee on Indian Affairs for its work to ensure the rights of all Native people, in-

cluding Native Hawaiians, are protected. We urge the Committee to continue to include the Native Hawaiian community in its work to meet this obligation in its consultation policies and legislative proposals, including but not limited to the areas of culture and languages; climate change; health care and the federal response to the Novel Coronavirus Disease (COVID-19) pandemic; and preventing and stopping violence against women and children and child sexual exploitation.

Background on OHA and Its Standing to Represent Native Hawaiians

Established by our state's Constitution,¹ OHA is a semi-autonomous agency of the State of Hawai'i mandated to better the conditions of Native Hawaiians. Guided by a board of nine publicly elected trustees, all of whom are Native Hawaiian, OHA fulfills its mandate through advocacy, research, community engagement, land management, and the funding of community programs.

Hawai'i state law recognizes OHA as the principal public agency in the state responsible for the performance, development, and coordination of programs and activities relating to Native Hawaiians.² Furthermore, state law directs OHA to advocate on behalf of Native Hawaiians;³ to advise and inform federal officials about Native Hawaiian programs; and to coordinate federal activities relating to Native Hawaiians.⁴

Trust Responsibility Owed to All Native Americans

Native Hawaiians are owed the same trust responsibility as any other Native American group. To meet this obligation, the federal government has created policies to promote education, health, housing, and a variety of other federal programs that support self-determination. Similar to many American Indians and Alaska Natives, Native Hawaiians have never relinquished our right to self-determination despite the United States' involvement in the illegal overthrow of Queen Lili'uokalani in 1893; the subsequent dismantling of our government; and the repeated attempts to erase our culture. In fact, Congress has consistently acknowledged or recognized Native Hawaiians as the Indigenous people of Hawai'i by establishing a special political and trust relationship through over 150 laws. Some notable legislation include the Hawaiian Homes Commission Act, 1920 (42 Stat. 108) (1921), the Native Hawaiian Education Act (20 U.S.C. § 7511) (1988), the Native Hawaiian Health Care Improvement Act (42 U.S.C. § 11701) (1988), and the Hawaiian Homelands Homeownership Act codified in the Native American Housing Assistance and Self Determination Act, Title VIII (25 U.S.C. § 4221) (2000).

As Congress holds the plenary power to exercise its duties to regulate Indian Affairs, it is Congress who decides how and to whom that special relationship is owed. Through enacted laws to implement the trust responsibility to Native Hawaiians, Congress has explicitly acknowledged that the grounds for these programs are rooted in the status of Native Hawaiians as an Indigenous, once-sovereign people. Moreover, whenever possible, Congress extends to Native Hawaiians the rights and privileges accorded to American Indians and Alaska Natives. Some examples where Native Hawaiians are included alongside American Indians and Alaska Natives are the Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001), the Native American Programs Act of 1974 (42 U.S.C. § 2991), the Older Americans Act of 1965 (42 U.S.C. § 3001), and the Native American Tourism and Improving Visitor Experience (NATIVE) Act (25 U.S.C. § 4351). Since Congress has clearly established a special relationship to Native Hawaiians, this Committee holds the jurisdiction to ensure that the federal government implements the trust responsibility fully and equally to all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians.

As we close the 116th Congress, we thank you for your work to uphold the trust obligations owed to all Native Americans, and we look forward to the 117 th Congress as an opportunity to renew the federal government's commitment to honoring this trust responsibility.

Consultation Policies as Part of the Foundation of Self-Determination Policies

One of the most critical safeguards of Native American self-determination today is the mandatory federal consultation policy. Under Executive Order 13175 of November 6, 2000, and subsequent memoranda from the George W. Bush and Barack Obama Administrations, the U.S. Government recognizes the right to sovereignty and self-determination of this country's Native people. While this is a step in the

¹Haw. Const., art. XII, §5 (1978).

²Haw. Rev. Stat. § 10-3(3).

³Haw. Rev. Stat. § 10-3(4).

⁴Haw. Rev. Stat. § 10-6(a)(4).

right direction, the omission of Native Hawaiians from the federal consultation requirements has unduly stifled the Native Hawaiian community's voice in federal projects for the past two decades.

Ensuring Native Hawaiians are informed of proposed actions and have an open line of communication with all federal agencies undertaking actions that would impact our people, culture, and sacred sites will help to correct this country's historical wrongs against our people. Consulting with organizations that serve the Native Hawaiian community, including OHA, the Department of Hawaiian Home Lands, Papa Ola Lokahi, and the Native Hawaiian Health Care Systems, among others, would allow Native Hawaiians to access this basic tenet of self-determination—having a meaningful say in our own governance.

With that in mind, we urge this Committee to pass legislation in the 117th Congress to codify the federal consultation mandate of Executive Order 13175 and to extend these rights to all Native Americans, including Native Hawaiians.

Culture-Based Education and Indigenous Language Programs Lead to Better Outcomes

The self-determination framework supports the reclamation and revitalization of Native identity through culture-based education and language programs. Evidence supports that programs providing Native Hawaiian students an opportunity to learn in their own culture and language lead to better academic outcomes. The successes of the Native Hawaiian education movement are understood throughout the community.

In 2011, Ms. Namaka Rawlins of Aha Piinana Leo, a renowned 'Olelo Hawai'i (Hawaiian language) immersion preschool and the oldest Native American language immersion non-profit in the United States, testified before the Committee about the successes of the preschool and the language immersion movement generally. At the time, Ka Haka 'Ula o Ke'elikolani at the University of Hawai'i at Hilo offered the only Ph.D. in the world that focused solely on Native language and culture revitalization. This Hawaiian language college provides various levels of education, including a laboratory school for Kindergarten through 12th Grade. At the time, the Hawaiian immersion laboratory school had a 100 percent high school graduation rate and an 80 percent college entrance rate. These rates remained steady for more than ten years, supporting that culture-based education and Indigenous language programs are reliably and overwhelmingly successful.

Culture-based education in the classroom leads to positive results on students' socio-emotional development. At the same hearing, Dr. Shawn Kana'iaupuni testified on behalf of Kamehameha Schools that culture-based education instructs students on values, norms, knowledge, beliefs, practices, and language; this approach to education is successful in addressing educational disparities facing Indigenous students.

In the years that followed the 1893 illegal overthrow of the Hawaiian Kingdom, the Territory of Hawai'i's government—whose legislative structure and executive were dictated by the U.S. federal government—banned the speaking of Native Hawaiian language in schools and legislative proceedings at the expense of Native Hawaiian language, culture, and traditional practices. Although 'Olelo Hawai'i was at risk of extinction as a result of these oppressive assimilationist policies, the Native Hawaiian community has worked to reclaim its identity, culture, and language. In the past five years, enrollment in Hawai'i's public immersion schools increased by 40 percent and in public charter schools by 21 percent.⁵ Despite this increase, immersion teaching positions remain unfilled.⁶ Thus, we urge the Committee to support the diverse ecosystem of culture-based education, including Native Hawaiian language immersion programs, Hawaiian-focused charter schools, and among other things, distance learning opportunities for those Native Hawaiians who have been forced out of their homelands due to the economic burdens of living in Hawai'i. Additionally, we request the Committee consider new opportunities to foster the education and training of future teachers of 'Olelo Hawai'i.

Maintaining Cultural Perspectives in Climate Change Responses

Climate change presents a threat to self-determination by impeding on the safety of the Native Hawaiian community, limiting resources, and restricting the community's ability to maintain traditional practices. The consequences of climate change disproportionately affect Native Americans across the United States and exacer-

⁵Sue von Lee, Building A Hawaiian Language Curriculum Classroom By Classroom, Honolulu Civil Beat (Feb. 24, 2020), <https://www.civilbeat.org/2020/02/building-a-hawaiian-language-curriculum-classroom-by-classroom/>.

⁶*Id.*

bates existing challenges to health and welfare within Indigenous communities. In fact, Hawai'i is already preparing for sea level rise, shore erosion, and increased natural disasters as the result of climate change.⁷

Sea level rise has already had devastating impacts on our ecosystems. We are experiencing saltwater intrusion into our lo'i kalo (Hawaiian taro fields) and changes to the delicate balance of fresh water and sea water in our loko i'a (Hawaiian fishponds) and other coastal areas favorable for delicate resources like limu 'ele'ele and hululuwaena (edible seaweeds).⁸ As a result, some Native Hawaiian families have abandoned their lo'i kalo since taro cannot grow in salt water. At the same time, coastal resources—like edible seaweeds—are struggling to survive the changing environment and other opportunistic species.

Sacred burial areas are also threatened by rising sea levels and related coastal erosion.⁹ There are well over 10,000 or more known or suspected burials situated along the coastlines of Hawai'i. As the coastlines erode, the iwi kupuna (ancestral bones) are exposed or washed away. The uncovering of ancient burial sites has even led to some individuals removing these remains from their burial sites for personal collections.

Beyond these impacts to the culture and traditions of the Native Hawaiian community, Hawai'i is one of only two states in the nation to experience a local Dengue Fever outbreak in the past five years.¹⁰ Vector-borne diseases, particularly those transmitted by mosquitoes, are thriving as average temperatures in Hawai'i increase.¹¹ Not only do these diseases affect the people of Hawai'i, they also place the population of already endangered, endemic birds at further risk of extinction.¹² These birds hold special cultural significance for the Native Hawaiian community, and their extinction would prevent Native Hawaiians from continuing certain traditional practices.¹³ Beyond disease, Hawai'i is already preparing for sea level rise, shore erosion, and increased natural disasters as the result of climate change.¹⁴

Since these consequences directly impact the Native Hawaiian people, we must ensure that Native Hawaiian voices are included in discussions around climate change mitigation and adaptation. The Native Hawaiian community has the right to self-determination when deciding how it responds to the effects of climate change. The Native Hawaiian community is uniquely equipped to address climate change because of the community's historic stewardship over the islands and its resources. Traditional Native Hawaiian society relied on the ahupua'a system—which divided swathes of land beginning in the mountains and moving down to the shoreline—and loko i'a for sustainable resource management. Today, Native Hawaiian organizations and OHA are revitalizing these practices.

The federal government must work with the Native Hawaiian community to ensure Native conservation and agricultural practices are utilized to mitigate the effects of climate change. With this in mind, OHA requests a specially-designated seat on any federal climate change advisory committees or management groups. OHA already holds a similar position as a co-manager for Papahānaumokuākea Marine National Monument, a partnership which has successfully infused the unique Native Hawaiian perspective into federal resource management and policy. Beyond this role, OHA requests additional federal programs to support food security; disaster preparedness, mitigation, and recovery; and future Native Hawaiian science, tech-

⁷See, e.g., HAWAII CLIMATE CHANGE MITIGATION AND ADAPTATION COMMISSION, HAWAII SEA LEVEL RISE VULNERABILITY AND ADAPTATION REPORT (2017), <https://climateadaptation.hawaii.gov/wp-content/uploads/2018/01/SLR-Report—January-2018.pdf>.

⁸See generally Statement of Assistant Professor Malia Akutagawa before the U.S. Senate Committee on Indian Affairs (July 19, 2012), <https://www.indian.senate.gov/sites/default/files/upload/files/Malia-Akutagawa-testimony071912.pdf>.

⁹Haunani H. Kane et al., Vulnerability Assessment of Hawai'i's Cultural Assets Attributable to Erosion Using Shoreline Trend Analysis Techniques, J. OF COASTAL RESEARCH (May 2012).

¹⁰Dengue in the US States and Territories, CDC (Oct. 7, 2020), <https://www.cdc.gov/dengue/areaswithrisk/in-the-us.html>.

¹¹Hawai'i's Changing Climate Briefing Sheet, 2010, UNIV. OF HAW. SEA GRANT (2010), https://www.soest.hawaii.edu/coasts/publications/ClimateBrief_low.pdf.

¹²Claire Caulfield, Is Climate Change Affecting the Spread of Disease?, HONOLULU CIVIL BEAT (Mar. 23, 2020), <https://www.civilbeat.org/2020/03/is-climate-change-affecting-the-spread-of-disease/>; Brittany Lyte, Deadly Mosquitoes are Killing off Hawai'i's Rare Forest Bird, HONOLULU CIVIL BEAT (Dec. 10, 2019), <https://www.civilbeat.org/2019/12/deadly-mosquitoes-are-killing-off-hawaiis-rare-forest-birds/>.

¹³Ashlyn Ku'uleialoha Weaver, 'Īwi in Hawaiian Culture, Maui Forest Bird Recovery Project, <https://mauiforestbirds.org/cultural-significance/> (last accessed Dec. 17, 2020).

¹⁴See, e.g., HAWAII CLIMATE CHANGE MITIGATION AND ADAPTATION COMMISSION, HAWAII SEA LEVEL RISE VULNERABILITY AND ADAPTATION REPORT (2017), <https://climateadaptation.hawaii.gov/wp-content/uploads/2018/01/SLR-Report—January-2018.pdf>.

nology, education, and math (STEM) professionals. The self-determination framework for Native Hawaiians would allow us to make food readily available and prevent permanent harm when disasters strike. Equally important, Native Hawaiians can achieve greater self-determination by developing more STEM professionals from within the community to fuse together both traditional and scientific knowledge.

The Impact of the Pandemic Upon the Health and Welfare of Native Communities

Like our Native relatives on the continental United States, Native Hawaiians face disproportionate threats to our physical and mental health, including poverty,¹⁵ suicide and depression,¹⁶ infant mortality,¹⁷ alcohol abuse,¹⁸ homelessness,¹⁹ and prejudices against Natives. Native Hawaiian infants are twice as likely to die (infant mortality rate of 7.9 per 1,000 live births) than their White peers (infant mortality rate of 3.5 per 1,000 live births) in the State of Hawai'i.²⁰ Native Hawaiians are more likely to suffer from coronary heart disease, diabetes, and asthma than non-Native Hawaiians in the State.²¹ Nearly 16,000 Native Hawaiians suffer from diabetes and more than 36,000 suffer from asthma.²² These diseases are the result of many factors such as social determinants like housing. Indeed, many Native Hawaiians face homelessness-making up nearly half of the homeless population on the island of O'ahu,²³ whose population accounts for approximately two thirds of the State's total population.

Mental health is also a serious concern for the Native Hawaiian community. More than twenty percent of Native Hawaiian adults reported that they frequently feel their mental health is "not good."²⁴ Although Native Hawaiians make up only 27 percent of all youth in the State between the ages of ten and 14, they constitute 50 percent of the completed suicides.²⁵ These factors contribute to the fact that Native Hawaiians, despite being the Indigenous peoples of the Hawaiian Islands have the shortest life expectancy of any major population in the State.²⁶

Recently, the COVID-19 pandemic has exacerbated and will further widen the health disparities Native Hawaiians face. Unemployment in Hawai'i has skyrocketed and recovery efforts continue to lag, with the U.S. Bureau of Labor Statistics reporting that as of October 2020 Hawai'i had the highest unemployment rate at 14.3 percent.²⁷ We do not expect unemployment to lower significantly in the foreseeable future because one of our biggest industries—tourism—is almost completely shut down and many small businesses have permanently closed as a result. Our economy will likely not begin to see growth again until after the final stages of the COVID-19 pandemic recovery. The State of Hawai'i expects a \$1.4 billion budget shortfall in the general fund for each of the next four years. As a result, Hawai'i Governor David Y. Ige has implemented cost-reduction measures including the fur-

¹⁵ Anita Hofschneider, Poverty Persists Among Hawaiians Despite Low Unemployment, HONOLULU CIVIL BEAT (Sept. 19, 2018), <https://www.civilbeat.org/2018/09/poverty-persists-among-hawaiians-despite-low-unemployment/>.

¹⁶ NATIVE HAWAIIAN MENTAL HEALTH AND SUICIDE, OFFICE OF HAWAIIAN AFFAIRS (Feb. 2018), <http://www.ohadatabook.com/HTH—Suicide.pdf>.

¹⁷ Ashley H. Hirai *et al.*, Excess Infant Mortality Among Native Hawaiians: Identifying Determinants for Preventive Action, AM. J. OF PUB. HEALTH (Nov. 2013), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3828695/pdf/AJPH.2013.301294.pdf>.

¹⁸ NATIVE HAWAIIAN HEALTH STATUS, OFFICE OF HAWAIIAN AFFAIRS 22 (July 2019), <http://www.ohadatabook.com/NHHS.html>.

¹⁹ ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, NATIVE HAWAIIANS OVER-REPRESENTED IN COVID-19 AT-RISK POPULATIONS, OFFICE OF HAWAIIAN AFFAIRS 2 (2020).

²⁰ Hirai, *supra* note 17.

²¹ ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, NATIVE HAWAIIANS OVER-REPRESENTED IN COVID-19 AT-RISK POPULATIONS, OFFICE OF HAWAIIAN AFFAIRS 1 (2020).

²² *Id.* at 1 092.

²³ *Id.* at 2.

²⁴ NATIVE HAWAIIAN MENTAL HEALTH AND SUICIDE, OFFICE OF HAWAIIAN AFFAIRS (Feb. 2018), <http://www.ohadatabook.com/HTH—Suicide.pdf>.

²⁵ David M.K.I. Liu & Christian K. Alameda, Social Determinants of Health for Native Hawaiian Children and Adolescents, HAW. MED. J. (Nov. 2011), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3254224/pdf/hmj70ll_suppl2_0009.pdf.

²⁶ ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, NATIVE HAWAIIANS OVER-REPRESENTED IN COVID-19 AT-RISK POPULATIONS, OFFICE OF HAWAIIAN AFFAIRS 2 (2020).

²⁷ U.S. BUREAU OF LABOR STATISTICS, State Employment and Unemployment Summary—October 2020, <https://www.bls.gov/news.release/Jaus.nrO.htm>.

lough of State employees for two days a month beginning in January 2020.²⁸ Native Hawaiians will continue to be disproportionately affected by the economic standing of the State and its major industries because nearly one in four Native Hawaiians are employed in the service industry closely tied to tourism in Hawai'i.²⁹

In conversations with Native Hawaiian-serving organizations, OHA learned of ongoing struggles to meet even basic community needs as a direct result of the pandemic and the subsequent economic crisis. Native Hawaiian educators and service providers have faced steep challenges in continuing to offer effective cultural programming to nurture our keiki (children) due to the lack of kupuna (elder) and keiki care options for staff. Even worse, some Native Hawaiian communities have reported that food security has become a major problem with the closing of schools and thus unavailability of school lunches. While we hear heartwarming stories about communities coming together to ensure that no one is left to starve, without additional federal support, this pandemic threatens the continued health, safety, and well-being of the Native Hawaiian community.

We urge this Committee to ensure that Native Hawaiian programs and service providers are included in all future federal COVID-19 relief efforts.

Preventing and Stopping Violence Against Our Mothers, Sisters, and Children

Another essential aspect of self-determination and self-governance is the safety and welfare of individuals. While the Native Hawaiian community does not possess a distinct area of law enforcement jurisdiction, the issue of violence against our mothers, sisters, and children nevertheless affects our people. Recent reports in Hawai'i have shown that Native Hawaiians are disproportionately affected by sex trafficking. One study in particular found that in a survey of sex trafficking survivors, 64 percent identified as being Native Hawaiian.³⁰ Further, in numerous meetings with service providers and advocacy organizations, OHA was informed that child pornography and sex trafficking targeting Native Hawaiian children under the age of 12 is a particularly troubling crisis in the State of Hawai'i. Similarly, OHA, along with its partners the Lili'uokalani Trust, the Kamehameha Schools' Strategy & Transformation Group, and the Domestic Violence Action Center, recently issued a report raising awareness of the vulnerabilities and potential impacts of the COVID-19 pandemic on Native Hawaiians experiencing or at-risk of intimate partner violence.³¹ Notably, we reported that in 2013, 13.4 percent of Native Hawaiian adults report experiencing physical or sexual abuse by an intimate partner, compared to 10.2 percent non-Hawaiian adults and 10.6 percent of the total State of Hawai'i adult population.³² Moreover, this form of violence is too often underreported and more is needed to empower survivors to come forward.

We commend this Committee on its work to protect Native women through the passage of the Not Invisible Act and Savanna's Act into law earlier this year. These two bills address the issue of Missing and Murdered Indigenous Women (MMIW) by creating an advisory committee on violent crime to make recommendations and provide best practices and by creating new guidelines for responding to MMIW cases and incentivizing their implementation. As you continue this important work next Congress, we urge you to include Native Hawaiians in your efforts to end violence against all Native women and children. Our wahine (women) and keiki are seeking justice and access to resources to restore their safety.

Finally, as the 116th Congress draws to a close, we wish to express our appreciation and gratitude—our mahalo—for you both as Chair and Vice Chairman of the Committee. It has been an honor to work with two leaders dedicated to honoring the United States' trust obligations. Vice Chairman Udall, as you near your retirement, OHA especially thanks you for your steadfast support of the Native Hawaiian community, and we would like to thank you for your leadership and work in ensuring the passage of the Esther Martinez Native American Languages Programs Re-

²⁸ Governor's Office—News Release—Gov. Ige Announces Furloughs for State Employees Starting January 1, OFFICE OF THE GOVERNOR (Dec. 9, 2020), <https://governor.hawaii.gov/newsroom/governors-office-news-release-gov-ige-announces-furloughs-for-state-employees-starting-january-1/>.

²⁹ ISSUE BRIEF: COVID-19 AND NATIVE HAWAIIAN COMMUNITIES, NATIVE HAWAIIAN OVER-REPRESENTED IN COVID-19 AT-RISK POPULATIONS, OFFICE OF HAWAIIAN AFFAIRS 3 (2020).

³⁰ See, e.g. SEX TRAFFICKING IN HAWAII, PART III SEX TRAFFICKING EXPERIENCES ACROSS HAWAII (2020), <https://humanservices.hawaii.gov/wp-content/uploads/2020/02/ST-in-Hawaii%E2%80%98Executive-Summary-January-2020-FINAL092.pdf>.

³¹ NATIVE HAWAIIANS AT-RISK OF INTIMATE PARTNER VIOLENCE DURING COVID-19 (2020), <https://sites.google.com/ksbe.edu/nh-covid19/intimate-partner-violence?authuser=0>.

³² *Id.*

authorization Act this Congress. OHA wishes you the best of luck in your future endeavors. We look forward to continuing our work with the Committee.

KE KULA'O SAMUEL KAMAKAU PUBLIC CHARTER SCHOOL
KEAOMĀLAMALA
UNIVERSITY OF HAWAII
KALO
'AHA PUNANA LEO
KA HAKA 'ULA O KE'ELIKOLANI
KAHUAWAIOA
December 9, 2020

Hon. Tom Udall
Vice Chairman,
U.S. Senate Committee on Indian Affairs,
Hart Senate Office Building,
Washington DC.

Dear Vice Chairman Udall:

We send you our warmest of aloha from our homeland to you at the close of an illustrious tenure in service to your home communities in New Mexico and other Native communities across this country. We have watched your work to preserve the sovereign right of indigenous peoples to access and safeguard indigenous lands. The Sandia Pueblo Act ensured that the Sandia Mountain Wilderness and Cibola National Forest would be held in trust for the Pueblo. Along with a long record of support to protect the environment from hazardous waste dumping and other harmful actions, we are grateful for the strength of your voice in ensuring that our mother earth can thrive for generations to come.

We have also heard you champion on numerous occasions the rights of our peoples to communicate, value, believe, and be Native. Under your leadership, the Esther Martinez Native American Languages Preservation Act was successfully reauthorized and indigenous language programs flourished. Your continued commitment to uphold laws like the Esther Martinez Act and to appropriate funds to ensure that these public policies are financially supported has allowed so many indigenous communities to revitalize and renormalize the heart of their identities- Native language. In addition, your work to support Native American small businesses also ensure that indigenous peoples across the country can become entrepreneurs and innovators in their own homelands. Many young Natives can utilize Native ideas, practices, and others not only to earn a living but also to contribute to their home communities.

Your leadership has supported the continued revival and growth of Native language and culture across all Native American communities, including American Indians, Alaska Natives, and Native Hawaiians. 'Olelo Hawai'i (the Native Hawaiian language) and Native Hawaiian education are included among those successes. In pre- and post-contact society, Native Hawaiian cultural practitioners passed down traditional practices orally through 'Olelo Hawai'i. Native Hawaiian society and the Kingdom of Hawai'i valued education for its people. In addition to the oral cultural education passed down through generations, 'Olelo Hawai'i became a written language and was the medium in schools established by the Kingdom of Hawai'i. In the 1800s, over 250 Hawaiian language medium schools were in operation. Almost all Native Hawaiians were literate, and the Kingdom boasted one of the highest literacy rates in the world.

The overthrow of the Hawaiian Kingdom and United States' participation in the overthrow changed the trajectory of 'Olelo Hawai'i and Native Hawaiian education. During the territorial period, American-run schools banned the speaking of 'Olelo Hawai'i on campuses. The federal government also enforced a policy of assimilation upon the Native Hawaiian people similar to those forced upon American Indian and Alaska Native communities during that same era. Studies report these policies led to a sense of inadequacy and self-disparagement among Native Hawaiians. By the 1960s, 'Olelo Hawai'i was near extinction. Only 2,000 speakers remained in the 1980s. However, around that time, the Hawaiian Renaissance began to take hold and Native Hawaiian leaders worked tirelessly to revive Native Hawaiian traditional practices and 'Olelo Hawai'i.

In 1983, Native Hawaiian leaders and community members created Punana Leo, a Native Hawaiian immersion preschool. The first group of students educated entirely in 'Olelo Hawai'i graduated from high school in 1999. Their success was the direct result of continued advocacy from the families involved with the immersion school movement. Hawaiian-medium education has grown exponentially since those

early days, and it is now possible to receive an education in 'Olelo Hawai'i from preschool through doctoral program. Students can receive an education in 'Olelo Hawai'i in immersion programs, Hawaiian-focused public charter schools, and distance learning, among other options. These programs not only revitalized Native Hawaiian traditional practices and 'Olelo Hawai'i, but they also continue to offer students a sense of connectedness and place through this education system. Your leadership has made the continued success of these invaluable programs possible.

We applaud your unwavering pledge to improve the health and wellbeing of Native communities. From water rights to nutrition improvement, you have steadfastly advocated for improvements to health care, housing, and agriculture for the Pueblos and the wider indigenous populations in the United States. Your ability to work with others in the spirit of bipartisanship has benefited all Natives; Congress and others are now much more aware of the long history of inequality and injustice committed against Native peoples in this country.

At the eve of your departure from Congress, we send our deepest gratitude, thanks, and humble applause for your work to advance Native language, health and wellbeing, and identity.

DECEMBER 21, 2020

Hon. Tom Udall
Vice Chairman,
U.S. Senate Committee on Indian Affairs,
Hart Senate Office Building,
Washington DC.

Dear Vice Chairman Udall:

We are a group of Native Hawaiian organizations that provide health, educational, cultural, community development, and other services to the Native Hawaiian community. On behalf of our organizations and the community we serve, we write to you to share information about the importance of 'Olelo Hawai'i (Native Hawaiian language) in the Native Hawaiian community and to express our deep gratitude for your decades of support for the Native Hawaiian community and our culture during your leadership in the United States House of Representatives and Senate.

A traditional Native Hawaiian proverb states: "I ka 'olelo no ke ola; I ka 'olelo no ka make." In our language rests life; *In our language rests death*. This adage holds true for many Native communities. In a May 26, 2011, oversight hearing on Native languages held by the U.S. Senate Committee on Indian Affairs, Ms. Namaka Rawlins from 'Aha Punana Leo testified that Native languages are crucial to ceremonial life, spirituality, kinship practices, and overall indigenous identity. This is especially true for the Native Hawaiian people. 'Olelo Hawai'i has always been a critical facet of our culture and traditions. Prior to the overthrow of the Kingdom of Hawai'i, 'Olelo Hawai'i flourished in both spoken and written forms. The citizens of the Kingdom of Hawai'i valued education, and the Kingdom enjoyed among the highest literacy rates in the world. Following the overthrow, a law banned Native Hawaiian language from schools. As a result of this action, coupled with other policies implemented over the years, fluent speakers of 'Olelo Hawai'i dwindled to just 2,000 by the 1980s. Like many other Native American languages, 'Olelo Hawai'i faced the risk of extinction as the result of assimilation policies from the U.S. Government. Fortunately, 'Olelo Hawai'i did not join the over 125 Native American languages that became extinct. Instead, through the dedicated efforts of Native language advocates, the community created Native Hawaiian language immersion preschools. Further initiatives expanded immersion programs into public schools during that time.

Today, students can choose to complete their studies in a range of disciplines from preschool through Ph.D. completely taught in 'Olelo Hawai'i. This is possible because of the tireless efforts of many people, including the United States Congress. In 1974, Congress passed the Native American Programs Act to create the Administration for Native Americans, which administers the grants authorized by the Esther Martinez Native American Languages Preservation Act. For decades, these grants have provided critical support for language revitalization across diverse Native communities.

You have been instrumental in ensuring this critical support continues through your leadership in legislative action around language bills such as the Esther Martinez Native American Languages Programs Reauthorization Act, as well as your work in the areas of education, health care, cultural sovereignty, and self-determination. We have enjoyed partnering with you and your staff to ensure that all

indigenous youth, including young Native Hawaiians, are educated in their language and culture; that all Native Americans receive culturally competent health care; and that Native communities and Native-owned businesses have the resources they need to thrive. We recognize the importance and value of your strong voice on these issues. Your legislative accomplishments among many other achievements, have been critical to the preservation and perpetuation of the Native Hawaiian language and culture for future generations.

Native American language learners and advocates, as well as all Native American communities and especially the Native Hawaiian community, owe many of the advances we see in Native American languages to your leadership. During your tenure, you served to ensure the federal government honored its trust and treaty obligations to all Native Americans, including American Indians, Alaska Natives, and Native Hawaiians. We are thankful for your inclusion of Native Hawaiians alongside American Indians and Alaska Natives in your tireless advocacy on behalf of Indian Country.

As you continue to the next chapter of your life, we hope that you will continue to keep the Native Hawaiian community in mind. Since we hope to see you again, we wish you a fond a hui hou (until we meet again) instead of saying goodbye. Mahalo again for your friendship.

‘O mākou nō me ka ha’aha’a,

ALU LIKE
 Association of Hawaiian Civic Clubs
 Bishop Museum
 Boys & Girls Club of Hawaii
 Ho’ola Lahui Hawai’i
 Hui Malama Ola Na ’Oiwai
 Hui No Ke Ola Pono
 INPEACE
 Kamehameha Schools
 Ke Ola Mamo
 Kua’aina Ulu ’Auamo
 Malama ’Aina Foundation
 Na Pu’uwai
 Office of Hawaiian Affairs
 Papa Ola Lokahi
 Partners in Development Foundation
 The Queen’s Health Systems

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO
 TO HON. KIRK FRANCIS

Question 1. Why is passing the Violence Against Women (VAWA) Act and other reforms and improvements to the 2013 special domestic violence criminal jurisdiction, such as the Justice for Native Survivors of Sexual Violence Act and the Native Youth and Tribal Officer Protection Act, so important to Native communities?

Answer. As you are likely aware, Indian Country currently faces some of the highest rates of crime, with Tribal citizens 2.5 times more likely to become victims of violent crime and Native women, in particular, subject to higher rates of domestic violence and abuse. Many of the perpetrators of these crimes are non-Native people. A primary reason for increased crime in Indian Country is the gap in jurisdiction stemming from the United States’ failure to recognize our inherent criminal jurisdiction, allowing those who seek to do harm to hide in the darkness away from justice. When Tribal Nations are barred from prosecuting offenders and the federal government fails in the execution of its obligations, criminals are free to offend over and over again.

The public safety crisis continues in Indian Country, a crisis that is directly attributable, at least in part, to U.S. policies of colonialism, termination, and assimilation, as well as the chronic failure to deliver upon the trust responsibility and obligations. The Senate must set partisanship aside and act to provide parity to Tribal Nations in the exercise of our inherent sovereign rights and authorities. While we ultimately seek the restoration of full criminal jurisdiction over our lands, the expansion of special domestic violence criminal jurisdiction and increased resources represent important advancements toward that goal.

Question 2. Can you elaborate on how the federal government can work with native communities and leaders to be a better partner in the tribal consultation process and ensure that federal agencies are being as inclusive as possible in ensuring

that tribal communities have a seat at the table and continue to be included throughout the process?

Answer. Broadly, the U.S. must work to reform the Tribal consultation process, as conducted by agencies across the federal government. Tribal Nations continue to experience inconsistencies in consultation policies, the violation of consultation policies, and mere notification of federal action as opposed to a solicitation of input. Letters are not consultation. Teleconferences are not consultation. Providing the opportunity for Tribal Nations to offer guidance and then failing to honor that guidance is not consultation. Meaningful consultation, at the earliest stages of the federal decisionmaking process, is a minimal standard for evaluating efforts to engage Tribal Nations. To this end, USET SPF supports consultation requirements for all federal departments and agencies, including independent agencies and the Executive Office of President, with the opportunity for legal remedy, should these policies be violated. It is also our position that all federal employees receive education on the history of U.S.-Tribal Nation relations and the federal trust obligation.

Ultimately, free, prior, and informed Tribal consent, as described in the U.N. Declaration on the Rights of Indigenous Peoples, is required to fulfill federal treaty and trust responsibilities. The determination of what level of consultation is required should come from Tribal Nations. Meaningful consultation requires that dialogue with Tribal partners occur with a goal of reaching consent.

Question 3. Do you have any recommendations on how to better improve tribal consultation for the near future, given the context of the limitations imposed by COVID-19?

Answer. USET SPF would suggest utilizing zoom or similar virtual meetings to conduct face-to-face Tribal consultation at both national and regional levels. This should be reinforced with adequate written comment periods for those unable to attend or without adequate access to broadband. Virtual consultation also affords the federal government the opportunity to address previous logistical issues (travel, costs, time restrictions, etc.) preventing true consultation, which is one-on-one Nation-to-Nation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
HON. BRIAN D. VALLO

Question 1. As you noted in your testimony, Native languages contain entire worldviews—they are the glue that hold communities together. That’s why we must do all that we can to live up to the federal policies set out in the *Native American Languages Act of 1990*. To that end, Senator Murkowski and I introduced the *Durbin Feeling Native American Languages Act of 2020* in October. This bill recognizes the contributions of Cherokee linguist and Vietnam veteran Durbin Feeling, who recently passed on and aims to hold the federal government accountable and improve targeting of federal resources for Native American languages. Your testimony expresses support for this new bill. Do you agree that this bill would be an important complement to the *Esther Martinez Act* and other previously enacted laws aimed at supporting Native languages?

Answer. Yes; the *Durbin Feeling* bill would be a valuable asset in helping tribal nations manage and promote the transmission of Native languages across generations. There is currently no routine collection of information on the status of Native language learning and usage. This gap makes it difficult for tribal leaders and federal agencies to target funds and resources where they are most needed. It also enables our already endangered languages to slip further into vulnerability or even extinction without any meaningful opportunity for intervention. The *Durbin Feeling* bill fills this gap. Even more importantly, however, is the fact that it would do so in a culturally sensitive manner that is driven by tribal leaders. With this new information, we will be able to make better informed decisions about how to best structure language nests and language restoration programs funded under the *Esther Martinez Act*. It will also help the Administration for Native Americans develop new grant opportunities to address specific needs identified using *Durbin Feeling* data, as well as ensure that existing programs are optimally operating. Data drives and complements each of these opportunities, and the *Durbin Feeling* bill would make that data possible.

Question 1a. Do you believe that conducting regular, periodic surveys of Native language communities to ascertain if their needs are being met by federal programs?

Answer. Yes; I believe that regular surveys of Native language communities are needed to ascertain whether federal programs are effectively addressing needs in this area. Data is the rock upon which informed decisions are made across all

fields—whether it be in science, healthcare, business planning, or education. Language instruction and transmission is no different. We must have information on its vitality in order to ensure that it can thrive. What would be key to Native language surveys—and what is appropriately address in the *Durbin Feeling* bill—is that they be driven by the Native language communities themselves. This is essential to respecting the cultural sensitivity of our linguistic heritage. One which, as you and I both noted, contains entire worldviews, spiritual teachings, and understandings of social networks. It would not be appropriate for a federal official to lead surveys involving such intimate and protected information. It is appropriate, however, for federal officials to use information gathered with direct and leading tribal input to ensure that federal programs are effectively meeting tribal needs in this area. Doing so would be akin to a type of cultural repatriation as our linguistic heritage is one that has been actively, and often violently, suppressed by the federal government and its private partners in the past. Supporting the full blossoming of federal programs and resources available to support Native language communities through regular, periodic surveys driven by the communities themselves would be right and just.

Question 1b. Do you believe that a regular, periodic survey of Native language communities like that proposed in the *Durbin Feeling* bill help ensure federal programs are meeting the needs of a more diverse set of Native language communities, including communities with lower numbers of remaining speakers?

Answer. Yes; I believe that the regular surveys contemplated under the *Durbin Feeling* bill would benefit Native language communities of all sizes and linguistic capacities, including those with lower numbers of remaining speakers. Today, some tribal nations have a robust population of fluent speakers while others have only a handful of conversant members and still others have no speakers left at all. These differences are not to be laid at the feet of the tribal nations themselves. The effects of colonialism, diaspora, generational shifts, loss of homelands, and socio-economic factors have all contributed—and continue to contribute—to the myriad statuses of Native languages in different tribal communities today. What all of our communities need, regardless of current size and capacities, is information. Information will help us at all stages of Native language transmission (i.e., in deepening community fluency, building out existing programs, and strategizing on how to revive severely endangered and unspoken languages). The broad reach of the *Durbin Feeling* bill's survey mandate will benefit all of our communities.

Question 1c. Why do you think it is an important feature of any survey of Native languages to ensure Tribes and Native language communities will be in the driver's seat when it comes to collecting information about Native languages?

Answer. Building off of my responses to the sub-questions above, which are also all directly relevant to this issue, it is important for tribal nations and leaders to lead the survey process where our Native languages are involved because of the central importance of our linguistic heritage to our past and present identities as indigenous peoples. Only we know what information is appropriate to collect and how, have the trust of tribal members who are holders of linguistic knowledge, know how to present the data to our federal partners for broader purposes in program evaluation and support, and, perhaps most importantly, are sovereigns who should and must be in the driver's seat regarding any effort involving our internal affairs. We would welcome the opportunity to partner with our federal allies in carrying out the *Durbin Feeling* bill's survey mandate, but it must be from a place of deference to tribal nations.

Question 2. I worked with other members of this Committee to introduce the *Indian Programs Advance Appropriations Act* and the *Indian Health Service Advance Appropriations Act* to try to bring greater budgetary certainty to Indian Country. But, I recognize that advance appropriations is just one step Congress could take to address this problem. Would reforming the federal budget process through more meaningful Tribal consultation and input help achieve more budget certainty for Tribes?

Answer. Yes; any opportunity for tribal leaders to provide input at the front end of federal decisionmaking processes is one that will contribute to more budget certainty for tribal nations in both the short- and long-term. While tribal leaders do have formal mechanisms for contributing to the budget formulation process, such as through the Tribal Interior Budget Council and Congress's Public Witness days, these are few and far between. Programs serving tribal communities exist across the federal spectrum and as such there should be direct, meaningful tribal consultation happening across the federal spectrum as well. Unfortunately, as this Committee well knows, that is simply not the case, currently.

Question 2a. How could we work to amplify Tribal voices in the budget and appropriations processes?

Answer. Amplifying the voices of tribal leaders in the budget and appropriations process first requires giving tribal leaders a platform on which to speak. We know our communities, we are involved in regional tribal cooperation, and we support national priorities that implicate our shared sovereignty and interests. We are, thus, an invaluable resource to the Administration, Congress, and federal agencies where decisions related to federal funding levels and allocations are at issue. Yet, we largely remain untapped for information despite our direct, vocal desire to assist. How can these missed connections be realigned? One way, I believe, is to set up tribal budget council within each federal department that would provide specific recommendations on the appropriate funding levels, priorities, and new program needs for those programs under the jurisdiction of the department and its sub-agencies serving tribal communities. This could be modeled on the Tribal Interior Budget Council, which meets on a quarterly basis. Tribal leaders would then have the chance to actively contribute to the formulation of the annual budget—we would be help to shape, not merely react, to its content. Such widespread proactive involvement in the federal budget and appropriations processes at the agency level is currently missing and one that would be invaluable to fill.

Further, at the other end of the appropriations process, I think that appropriations language allowing for maximum flexibility in the use of federal dollars for programs, grants, pilot projects, etc. serving tribal communities would also amplify tribal voices by empowering local and regional decisionmaking. The use of single distribution methodologies is often ineffectual because a one-size-fits-all approach is simply unworkable in Indian Country. As noted above, the size and internal capacities of tribal communities varies widely from coast to coast. Our general needs are commonly shared, but the best allocation of each federal dollar to meet those needs will be distinct in each community. Appropriating federal dollars serving tribal communities with a clause allowing for the maximum flexibility to use those dollars to address a targeted area or initiative would respect tribal sovereignty and give tribal leaders a concrete platform on which to participate in allocating the funds resulting from the federal budget and appropriations processes.

Question 3. As collection and reliance on data grows in our society, especially through federal law and programs, it is more important than ever to ensure that Tribal sovereignty over Tribal data is respected. And that includes ensuring that Tribes are able to access certain federal databases. Whether it's accessing criminal databases to address the MMIW crisis, or public health databases to track COVID-19 activity, Tribes are encountering far too many barriers getting the information they need—as governments—to protect their communities. How has lack of access to federal databases impacted your Tribe and Indian Country as a whole?

Answer. As you note in the introduction to this question, lack of access to accurate and up-to-date data creates myriad harmful challenges for tribal nations. For the Pueblo of Acoma, lack of access to federal databases has created more work and uncertainty for our staff in responding to the COVID-19 pandemic. We face hurdles in staying current on the types and quantities of PPE and medical supplies available in our area, as well as in coordinating community response efforts due to the lack of direct access to certain contact tracing and exposure data. We often had to patch together information provided to us from the Indian Health Service, State health officials, other federal agencies, our Pueblo sisters, and national tribal organizations to get a sense of the lay of land, and even then it could be incomplete. Still in other situations it is not only the lack of access to but the very lack of existence of federal databases that negatively impact our community. One of which, of course, is the lack of federal data on our Native language communities. I think that it would be valuable for the Committee to consider a future hearing or solicitation of comments from tribal leaders on federal databases that should be created to fill unmet data needs related to tribal communities.

It is also important to note that where we have access to federal data, we must still contend with data that is frequently out of date or irregularly collected when it pertains to Indian Country. Insufficient and incomplete data create the same types of challenges as those caused by a lack of access to information. By this I mean we as tribal leaders (though it also impacts Congress and federal officials) cannot make truly informed decisions about matters that directly impact the health and welfare of our people. Full, accurate, and regularly updated comprehensive data is the standard to which all federal databases with information relevant to or on tribal communities should strive. We would welcome the opportunity to work with the Committee on ways to further the realization of this goal.

Question 4. Data issues interplay with cultural sovereignty as well. For example, I've been working with the Rules and Judiciary Committees to look at an issue with the Music Modernization Act that would require museums and universities to release recordings of culturally-sensitive Tribal stories and ceremonies into the public domain. Do you think the federal government is doing enough to ensure that Tribal sovereignty over culturally-sensitive data and information is respected? If not, what more should we be doing?

Answer. No; I think that there are significant safeguards that need to be put in place across the federal government to better protect our culturally-sensitive data and information. As a foundational matter, there are federal agencies responsible for database that contain culturally-sensitive information yet seemingly have little to no contact with tribal nations, such as the U.S. Copyright Office discussed in the immediately following paragraph. Such agencies cannot be expected to adequately protect our information without those relationships. Tribal cultural experts (on a national, regional, and local level, as appropriate) need to have direct contact with the offices managing these databases to advise on identification of culturally-sensitive information, its proper management, and the adoption of policies and/or protocols related to this issue. Relatedly, it is difficult, if not impossible, to know where these tribal cultural experts are needed without a full and accurate list of federal databases housing tribal information. I think that the compilation of such a list would be a critical starting point for assessing what actions may be needed to protect tribal sovereignty.

I am encouraged to hear of Senator Udall's outreach on the *Music Modernization Act* and hope that the Committee will continue to work with its colleagues on the Rules and Judiciary Committees in considering amendments to the Act in the 117th Congress. Title II of that Act, regarding recordings pre-dating 1972, has the potential to increase public access to tribal audio recordings that are culturally-sensitive, including those involving ceremonies, confidential oral histories and songs, and linguistic heritage. To my knowledge, neither the U.S. Copyright Office nor the Library of Congress (of which the Office is a part) has held a tribal consultation on the implementation or implications of this Act, nor on how they can best manage, protect, and preserve the materials in their collections with Native contributors. As a legislative agency, the Library of Congress and its subcomponents share in the federal responsibility to tribal nations in their work cataloging, preserving, and celebrating the country's aural, visual, and print history.

Further, it is critical to point out that tribal sovereignty interests in culturally-sensitive data are not confined to text on a page nor to electronic entries in a database. It also includes the objects, activities, and places to which that data refers. For example, culturally-sensitive information on the status of a Native language community necessarily includes the community itself. Our cultural sovereignty is a complete package that cannot be severed into smaller parcels for quantification for research and analysis purposes. The federal government must keep knowledge of this indivisibility at the fore in its efforts to protect and respect culturally-sensitive data and information. For example, as the federal government develops and/or reforms database housing tribal information, it should advance parallel efforts related to the underlying subject.

Finally, on the issue of cultural sovereignty, I applaud the actions that have been undertaken by Committee to strengthen protections for our cultural sovereignty. The PROTECT Patrimony Resolution and the recent extension of the moratorium on energy leasing in the Greater Chaco Region are but two key examples. The Pueblo of Acoma, along with our sovereign Pueblo sisters and other tribal nations, hopes to see the moratorium made permanent, along with the reintroduction and swift passage of the Safeguard Tribal Objects of Patrimony (STOP) Act this Congress.

Question 5. My grandfather Levi Udall once wrote in a judicial opinion, "To deny the right to vote...is to do violence to the principals of freedom and equality." I wholeheartedly agree. That is why I introduced the Native American Voting Rights Act to correct the decades-long suppression of the Native vote. It is more important than ever that we pass legislation to ensure that the voices of Native communities in New Mexico and across Indian Country are counted, not discounted. Did you hear of any concerns from Acoma Tribal Members about their ability to exercise their voting rights during the 2020 election process?

Answer. No. As a matter of fact, our close working relationship with the Cibola County Clerk and Native American Liaison afforded our tribal members with every opportunity to cast their vote. The Pueblo insisted on an aggressive outreach and education effort to keep our registered voters informed of all developments relative to registering to vote, applying for an absentee ballot, and both the primary and general elections. Even during this time of pandemic, the Pueblo had one of the

highest voter turn-out for both elections. We also increased our number of registered voters.

Question 5a. What can Congress do to ensure that every Native vote is counted and not discounted?

Answer. Having the vote is the cornerstone of democracy; exercising it, however, is far from guaranteed, particularly in Pueblo and Indian Country. One of the primary ways that Congress can ensure that every Native vote has the opportunity to be cast and counted is by enacting national standards recognizing tribal identification cards as valid forms of voter identification for American Indians and Alaska Natives, and by allowing for the use of post office box numbers as a valid form of physical address for individuals residing on an Indian reservation. Use of tribal identification cards and/or a lack of a traditional physical address have been (ab)used by States as a means to deny Native voters from registering to vote and from casting mail-in ballots. Federal legislation stipulating that these are acceptable forms of identification and proof of residence in tribal communities would lead to the enfranchisement of thousands of Native voters—voters who are being unjustly denied their right to vote today.

A fundamental aspect of voting is connecting potential voters to actual polling sites. In remote and rural areas, which characterize the majority of Indian Country, this is a particularly pressing challenge. The distance to a local polling site is often directly correlated with an indigenous person's ability to vote. States sometimes limit (whether deliberately or not) the availability of polling sites within or near tribal communities. When the distance becomes too great, the likelihood of that individual casting a ballot drops precipitously. Further, where the conditions of roads are inadequate, tribal community members may face significant physical hurdles in reaching the ballot box, particularly if election day is accompanied by any form of inclement weather. Congress must ensure that adequate numbers of accessible polling sites are available, with sufficient election resources provided at each, and that the Bureau of Indian Affairs road maintenance accounts are adequately funded on an annual basis to facilitate Native voter access to the polls.

Additionally, Congress could advance the exercise of voting rights across the country by declaring the presidential and mid-term elections to be federal holidays. For many of our Pueblo members and Americans in general, taking time off from work to vote is not an option. Recognizing the presidential and mid-term elections as federal holidays will enable more people to access the polls without placing their jobs in potential jeopardy. This would benefit not only indigenous voters, but also voters of all backgrounds across the United States.

I urge the Committee to consult the comprehensive report on the status of Native voting rights in America today that was recently compiled by the Native American Rights Fund. The report, titled "Obstacles at Every Turn: Barriers to Political Participation Faced by Native American Voters" provides a wealth of information for the Committee in understanding the systemic and cultural factors that prevent the full exercise of the Native vote and can serve as a jumping off point for coming up with concrete ways to remove these barriers in future elections. The report is currently available at www.narf.org/obstacles-at-every-turn/.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO
TO HON. BRIAN D. VALLO

Question 1. For the Acoma Pueblo, what sort of future projects would most benefit from new, discretionary grant funding from the Administration for Native Americans, and how would these projects work towards the overall goal of preserving tribal heritage and sovereignty and promoting self-governance on tribal lands?

Answer. Thank you for this important question. Our Pueblo has had great success in regards to leveraging Administration for Native American (ANA) grant dollars and resources to advance our linguistic and cultural programming. These projects are detailed in my written testimony, as well as in my testimony for this Committee's oversight hearing on the "45th Anniversary of the Native American Programs Act and the Establishment of the Administration for Native Americans" (February 27, 2019). It is essential that the current offerings of the ANA continue with full funding and, as you sagely note, that new discretionary grant funding be made available.

At Acoma Pueblo, we are constantly striving to implement new and engaging ways to promote our Pueblo sovereignty and cultural and linguistic heritage. Among our current and potential projects are:

- Acoma Language Dictionary Project—Funded in-part by ANA, this monumental and timely initiative of the Pueblo is nearing completion with additional planning occurring even while tribal elders, linguists, and other key tribal resources are finalizing what will be the first phase of the Dictionary. The planning is focused on curriculum development for students in tribally-controlled schools and for introduction within the local Public School District. There is great anticipation for access to this resource by the tribal community. The tribal mandate to revitalize the Acoma language remains at the forefront of a comprehensive historic and cultural preservation initiative at the Pueblo. We are grateful for the long-standing relationship we have built with ANA, and look forward to maintaining our relationship as the funding and technical resources offered by ANA have directly impacted our success.

Currently, the ANA's grant offerings are divided into four general categories: (i) language preservation and maintenance; (ii) *Esther Martinez Act* immersion schools; (iii) Social and Economic Development Strategies; and (iv) environmental regulatory enhancement. These are a strong core of grants that support tribal community development and Native languages. I think that a natural complement would be a fifth category of new discretionary grant funding that is made flexibly available to support cultural practices and their preservation. This could include project types loosely akin to the language nests and immersion schools supported by the *Esther Martinez Act* that would instead focus on the transmission of cultural practices and arts, such as Acoma pottery instruction, music, and culinary traditions, for example. This type of funding would help us to preserve our Pueblo cultural heritage and encourage new generations of Acoma artists in all mediums and styles. Fostering the full expression of our Pueblo identity would necessarily advance our tribal sovereignty and enable us to more deeply exercise our self-governance as Acoma people.

Question 2. Can you elaborate on how the federal government can work with native communities and leaders to be a better partner in the tribal consultation process and ensure that federal agencies are being as inclusive as possible in ensuring that tribal communities have a seat at the table and continue to be included throughout the process?

Answer. One of the central ways that the consultation process can be improved is also a simple one: time. We need time as tribal communities and tribal leaders to review the issue(s) and materials being presented to us, to formulate our responses (which must take into account the time needed to navigate the internal decisionmaking structures of tribal nations), and to participate in the consultation process itself, which may be either oral or written or both. It is disrespectful and self-defeating when federal agencies conduct tribal consultation without providing adequate notice or copies of the materials on which they intend to consult. I understand that, at times, rapid consultation is required. This has been evident during the ongoing pandemic when quick decisions on the allocation of relief resources must be made. However, rapid consultation is the exception rather than the rule. Where extenuating or emergency circumstances do not apply, tribal leaders should be consulted for a minimum of thirty days and preferably sixty days on federal actions and policies implicating tribal interests.

The other time related recommendation that I believe would advance the effectiveness of the consultation process is to conduct this engagement with tribal leaders on the front end of federal decisionmaking rather than after the fact. True consultation is a multiple step process. It entails (i) presenting a clear policy or action proposal to tribal leaders; (ii) soliciting our feedback within adequate timeframes; (iii) careful federal review of all comments received; and (iv) adjusting the policy or action as appropriate based on those comments and reporting back on why all decisions were made. It is unacceptably common for federal agencies to skip steps (i) to (iii) and merely present a finalized policy or action to tribal leaders. This is not consultation. This does not fulfill federal obligations to tribal nations. This does not respect our responsibility as tribal leaders to speak for and protect the interests of our people. It is critically important that the federal government complete all steps of the tribal consultation process, in the correct order, so that tribal leaders are included throughout each decisionmaking process.

The federal government can also better ensure inclusivity in the tribal consultation by meeting tribal leaders where they are. By this I mean holding in-person consultations, when safe once again, as close to the local level as possible. The twelve regions of the Bureau of Indian Affairs and the Indian Health Service, for example, are expansive. The Eastern Region alone comprises almost all of the United States east of the Mississippi. While not all federal agencies have designated regions for managing their communications and service delivery with tribal communities, almost all still conduct consultations on a regional basis. Where possible, we strongly

encourage federal agencies to conduct multiple consultations at different geographic locations within a region to facilitate the maximum participation of tribal leaders.

Question 3. Do you have any recommendations on how to better improve tribal consultation for the near future, given the context of the limitations imposed by COVID-19?

Answer. I would recommend that federal agencies, to the greatest extent possible, coordinate with another on the types of platforms that they will use for engaging in tribal consultation. Since the start of the pandemic, different federal agencies have used different virtual platforms for engaging in consultation. As a result, tribal leaders must be ready to go with Zoom for one session, then switch to GoToMeeting for another, and then switch to WebEx for yet another. If the federal agencies that regularly consult with tribal nations—such as the Indian Health Service, Bureau of Indian Affairs, Bureau of Indian Education, and now the Centers for Disease Control and Prevention—could come to an agreement on the use of even two or three consistent virtual platform options would benefit tribal leaders and improve participation rates. It is also critical that no matter the virtual platform used, each consultation must continue to include a landline option for participation as many tribal leaders reside in areas where phones are the only available form of reliable connection.

The abrupt disbanding of in-person consultation processes caused by the COVID-19 pandemic has brought with it both positive developments and challenges for tribal leaders. On the one hand, we are now able to participate in a variety of tribal consultation and listening sessions without losing valuable time traveling between consultation sites that would have normally occurred. On the other hand, our ability to participate in consultations is impaired by IT challenges (or total absences), Zoom fatigue, overlapping consultation times, and insufficient notice of sessions, which as we described above prevents us from being fully prepared or from identifying tribal staff who may be able to participate in our stead. Our hope is that we will one day return to in-person consultations, which is the most preferred; however, until that day, federal agencies must coordinate with one another and with tribal leaders on the most effective use of telecommunications technology to fulfill this vital federal obligation.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
HON. KIRK FRANCIS

Question 1. Your testimony touches on the issue of federal budgetary uncertainty and the burden that it places on Tribes. I have to say—I share your concern 100 percent. That's why I worked with other members of this Committee to introduce the Indian Programs Advance Appropriations Act and the Indian Health Service Advance Appropriations Act. But, I recognize that advance appropriations is just one step Congress could take to address this problem. You've pointed to other solutions we could consider—things like mandatory funding and creating a new Tribal budget component. These are important ideas that Congress and the Administration should be engages on with Tribes. a. Would reforming the federal budget process through more meaningful Tribal consultation and input help achieve more budget certainty for Tribes?

Answer. It is USET SPF's strong belief that more meaningful consultation, in which Tribal input is gathered and acted upon, is critical and always beneficial to the U.S.-Tribal relationship. We continue to call for a movement toward a consent-based model, which better reflects our sovereign status. More meaningful Tribal consultation on the federal budget process offers the opportunity to expose its flaws, including those aspects of the process that do not adequately reflect our unique relationship with the United States. This should lay the groundwork for reforms federal budgeting that truly honor Tribal sovereignty and the trust obligation.

However, it is important to note that as long as federal Indian funding remains on the discretionary side of the budget, subject to the whims of Congress and the possibility of sequestration, budget uncertainty will remain. That is why in the short-term, we are supportive of advance appropriations for all federal Indian budget lines, and in the longer-term, we are advocating for mandatory funding.

Question 1a. How could we work to amplify Tribal voices in the budget and appropriations processes?

Answer. The Office of Management and Budget (OMB) should be subject to the same Tribal consultation requirements as other federal agencies and offices. Further, we recommend a dedicated Indian desk be established at the OMB to serve as an advocate for Tribal Nations and coordinate within the agency on the development of policies and budgets impacting Tribal Nation interests. Currently, exam-

iners assigned to specific federal agencies or programs and housed in different departments are the only OMB personnel dedicated to Indian Country. We believe that the creation of a higher-level, more comprehensive position would assist the agency in fulfilling its obligations to Tribal Nations and be more representative of the sacred duty to our people. The Indian Desk should be responsible for the production of a comprehensive, detailed crosscut of federal Indian funding each year to show at the most granular level possible in order to measure whether funding is actually flowing to Tribal Nations or whether we are merely eligible.

Finally, both IHS and DOI engage in a Tribal budget formulation process, which is then supposed to influence the Administration's request. Yet, Tribal recommendations are usually significantly scaled back in what is submitted for inclusion in the final President's Budget Request. While we recognize that the Administration may be unable to incorporate all of our recommendations into the official request, Congress should, at the very least, be informed and require an annual report that compares Tribal Offered (Full Funding) v. Presidential Request v. Congressionally Appropriated.

Question 2. Tribes that enter into "638" contracts and compacts need to know that the federal government will live up to its side of these self-determination and self-governance agreements. The courts have affirmed this time and time again. And this Committee has re-affirmed this policy as part of its work supporting expansion of Tribal self-determination. Unfortunately, because of current budget structures and processes, "638" Tribes rarely receive the certainty they need. a. In your experience, how has the lack of budgetary certainty for Tribal self-determination programs impacted Indian Country?

Answer. Delays in funding, due to Continuing Resolutions or shutdowns, severely hinder the federal government's execution of its trust obligations to Tribal Nations—having destabilizing and disruptive effects on the provision of basic government services in Indian Country. This includes vital programs and services such as housing, law enforcement, road maintenance, social services, and health care—to name a few. During the 2018–19 35-day government shutdown, USET SPF member Tribal Nations, a majority of which engage in ISDEAA contracting and compacting, reported coming dangerously close to reductions in programs, services, and staff. According to one member Tribal Nation:

"Though our compacts with the federal government state that our Self-Governance funding is to be delivered at the beginning of each FY on October 1st, this has not occurred in years. As a result, we are forced to use our own limited Tribal resources to financially support our programs and services—to attempt to fulfill the federal government's trust obligations while Congress and the Administration attempt to fund the government. Since we have no alternative income or economic development, these resources provide only a limited bridge during CRs and shutdowns.

This winter's shutdown had destructive and disruptive effects on our ability to provide essential governmental services to our people, as well as our ability to fulfill grant requirements. I had to begin to assess and prioritize our programs and services; to determine how to cut expenses, including reductions to our workforce during the off-season [in our area] where non-seasonal jobs are scarce. Further, despite being awarded new, annual and multiple year grants, for new or continuing programs or services, there was no one available to distribute the funds. Because of the shutdown, we either lost the ability to perform critical grant deliverables because of the uncertainty of lack of funds, or we missed the seasonal window to begin and complete those deliverables." b. How do you think these issues might play out as "638" is expanded to other departments -like Transportation and Agriculture?

While the impacts of CRs and shutdowns are not unique to ISDEAA contracting and compacting Tribal Nations, the aforementioned issues will continue to play out in Indian Country, including funds outside of IHS And BIA, without further action to provide certainty to the funding that we are owed in perpetuity.

Question 3. One of the most successful areas for this Committee over the past few years has been working with Indian Country to improve and expand the Indian Self-Determination and Education Assistance Act. I'm particularly proud of my work with Chairman Hoeven in this space. Together, we've gotten the PROGRESS for Indian Tribes Act enacted and expanded the ISDEAA to the Department of Agriculture in the 2018 Farm Bill reauthorization. a. What federal programs do you think Congress should prioritize expanding ISDEAA to next?

Answer. As I noted in my testimony, USET SPF supports the expansion of ISDEAA to include all federal agencies and programs for which Tribal Nations are

eligible. I should also note that HHS has previously conducted a feasibility study regarding the expansion of self-governance into other HHS agencies and programs, reporting to Congress in 2003 that it was feasible. A joint Tribal-federal workgroup followed this with a 2013 report providing further insight into how this might be achieved. Since HHS concluded this would need legislative action, Tribal workgroup participants developed a concept paper and draft legislation on this expansion. USET SPF remains supportive of these efforts and urges the Committee to reexamine these proposals in the next Congress.

We also note that in the absence of full ISDEAA authority across all federal departments, agencies, the remain direct services from the federal government on which all Tribal Nations rely. The federal government must commit to continued funding and attention to these functions, as well.

Question 3a. What would you say are the “lessons learned” from looking at roll-out of ISDEAA expansion to the Department of Transportation and the Department of Agriculture?

Answer. There is an urgent need to ensure federal officials, along with the general public, receive comprehensive education on U.S.-Tribal relations and history. This includes education on Tribal sovereignty and self-determination, and the federal government’s obligation to fully support both.

Question 4. As collection and reliance on data grows in our society, especially through federal law and programs, it is more important than ever to ensure that Tribal sovereignty over Tribal data is respected. And that includes ensuring that Tribes are able to access certain federal databases. Whether it’s accessing criminal databases to address the MMIW crisis, or public health databases to track COVID-19 activity, Tribes are encountering far too many barriers getting the information they need—as governments—to protect their communities. How has lack of access to federal databases impacted your Tribes and Indian Country as a whole?

Answer. Public health: Our lack of access to state-collected public health data on our people has hindered an already under-resourced public health system in Indian Country. In 2010, the permanent reauthorization of IHCIA designated Tribal Epidemiology Centers (TECs), of which USET operates one, as Public Health Authorities and further compelled the Secretary of HHS to share any and all health data with Tribal Nations. However, this directive has not been honored, for the most part, and Tribal Nations and TECs continue to experience frequent challenges in access data on both the federal and state level. USET’s Tribal Epidemiology Center, for example, is unable to accurately conduct disease surveillance or compile complete mortality data for the Tribal Nations in our region. In the case of COVID-19, this has further impeded ability to monitor the disease, as well as our response. We urge Congress to ensure the federal and state governments are required to share this data with Tribal Nations and TECs.

Public safety: Similarly, our lack of access to criminal and other public safety information hinders the ability of Tribal Nations to keep our communities safe. It is critical that we have parity in access to federal crime information. We support the BADGES for Native Communities Act as it seeks to provide parity for Tribal Nations in access to federal crime information, collection, and tracking. This is an important step toward building a stronger public safety foundation in Indian Country. The lack of data and coordination presents burdens to address and overcome the public safety and justice issues across our communities and our federal partner must do more.

Question 5. Data issues interplay with cultural sovereignty as well. For example, I’ve been working with the Rules and Judiciary Committees to look at an issue with the Music Modernization Act that would require museums and universities to release recordings of culturally-sensitive Tribal stories and ceremonies into the public domain. Do you think the federal government is doing enough to ensure that Tribal sovereignty over culturally-sensitive data and information is respected? If not, what more should we be doing?

Answer. No, the federal government must fully uphold our sovereignty over our own data or data collected from our people, including cultural and ceremonial data. Tribal Nations should have full ownership over this data and be the final arbiters over how, when, and whether it is shared with the public, researchers, or other units of government.

This also includes assisting us in protecting our communities from nefarious or harmful research practices. Tribal-designated Institutional Review Board Review must be a requirement before any research commences within any Tribal community, unless expressly waived by Tribal Nation leadership. This review process must include informed-consent procedures that outline publication permission, as well as community protection informed consent and procedures.

Additionally, all federally-funded researchers must undergo mandatory annual training on the critical importance of Tribal community protection in research practices and data sovereignty, as well the unique and sacred trust relationship between Tribal Nations and the U.S. This training must be developed in consultation with Tribal Nations.

We further remind the Committee that at its core, data should be understood to be an asset of each Tribal Nation that each respectively uses to make informed decisions that impact their citizens and community, not as the primary basis for the United States fulfilling its trust and treaty obligations.

Question 6. Native languages contain entire worldviews—they are the glue that hold communities together. To that end, Senator Murkowski and I introduced the Durbin Feeling Native American Languages Act of 2020 in October. This bill recognizes the contributions of Cherokee linguist and Vietnam veteran Durbin Feeling, who recently passed on, and aims to hold the federal government accountable and improve targeting of federal resources for Native American languages. a. Do you agree that this bill would be an important complement to the Esther Martinez Act and other previously enacted laws aimed at supporting Native languages?

Answer. Yes, a critical aspect of the federal trust obligation is to assist Tribal Nations in the preservation of our very foundations—our cultures and traditions. However, it is impossible to track how well the government is meeting its obligations without regular review. We believe this bill has the potential to assist with that.

Question 6a. Do you believe that conducting regular, periodic surveys of Native language communities to ascertain if their needs are being met by federal programs?

Answer. While, we believe the federal government should be conducting periodic assessments of all of its efforts to fulfill the trust obligation, it is important to note that Native languages and other cultural resources are especially sensitive areas for Tribal Nations. In the spirit of Tribal data sovereignty, we urge the bill's sponsors to ensure that Tribal Nations are in full control of any survey and information released about our languages.

Question 6b. Do you believe that a regular, periodic survey of Native language communities like that proposed in the Durbin Feeling bill help ensure federal programs are meeting the needs of a more diverse set of Native language communities, including communities with lower numbers of remaining speakers?

Answer. USET SPF's diverse membership includes Tribal Nations working to retain, restore, and reawaken our languages, after centuries of attempts at termination and assimilation. It is our hope that this type of a survey—again, with the appropriate protections—would ensure more funding reaches our membership and provides the necessary support to ensure current and future generations are able to speak the words of our ancestors.

Question 7. Senator Murkowski and I wrote the Durbin Feeling Native American Languages Act of 2020 to ensure that Tribes will be in the driver's seat when it comes to collecting information about Native languages. Do you agree that this is an important feature of any survey of Native languages?

Answer. As stated previously, USET SPF feels it is an important feature of any data collected from Tribal Nations and our people. We would like to further explore the strengthened protections we have previously outlined with the Committee during the 117th Congress.

Question 8. My grandfather Levi Udall once wrote in a judicial opinion, "To deny the right to vote. . . is to do violence to the principals of freedom and equality." I wholeheartedly agree. That is why I introduced the Native American Voting Rights Act to correct the decades-long suppression of the Native vote. It is more important than ever that we pass legislation to ensure that the voices of Native communities in New Mexico and across Indian Country are counted, not discounted. a. Has USET SPF heard any concerns from Tribes about the ability of their members to exercise their voting rights during the 2020 U.S. election process?

Answer. While we remain horrified and dismayed by voter suppression efforts during the 2020 election cycle, we have not been informed of any efforts specifically targeting citizens of our member Tribal Nations.

Question 8a. What more can Congress do to ensure that every Native vote is counted and not discounted?

Answer. USET SPF joins our relatives across Indian Country in supporting S. 739, the Native American Voting Rights Act, legislation that would ensure Native people have equal access to the electoral process.

***RESPONSES TO THE FOLLOWING QUESTIONS FAILED TO BE
SUBMITTED AT THE TIME THIS HEARING WENT TO PRINT***

WRITTEN QUESTIONS SUBMITTED BY HON. CATHERINE CORTEZ MASTO TO
JOHN ECHOHAWK

Question 1. Looking to the future of fighting voter suppression, in regards to Native American populations, can you provide recommendations on how federal legislators can best collaborate with tribal leadership on continuing the progress of the *Native American Voting Rights Act* and addressing the issue of Native American voter suppression in our own states?

Question 2. Can you elaborate on how the federal government can work with native communities and leaders to be a better partner in the tribal consultation process and ensure that federal agencies are being as inclusive as possible in ensuring that tribal communities have a seat at the table and continue to be included throughout the process?

Question 3. Do you have any recommendations on how to better improve tribal consultation for the near future, given the context of the limitations imposed by COVID-19?

WRITTEN QUESTIONS SUBMITTED BY HON. TOM UDALL TO
JOHN ECHOHAWK

Question 1. As collection and reliance on data grows in our society, especially through federal law and programs, it is more important than ever to ensure that Tribal sovereignty over Tribal data is respected. And that includes ensuring that Tribes are able to access certain federal databases. Whether it's accessing criminal databases to address the MMIW crisis, or public health databases to track COVID-19 activity, Tribes are encountering far too many barriers getting the information they need—as governments—to protect their communities. Has NARF observed any negative impacts on Tribes from lack of access to federal databases?

Question 2. Data issues interplay with cultural sovereignty as well. For example, I've been working with the Rules and Judiciary Committees to look at an issue with the Music Modernization Act that would require museums and universities to release recordings of culturally-sensitive Tribal stories and ceremonies into the public domain. Do you think the federal government is doing enough to ensure that Tribal sovereignty over culturally-sensitive data and information is respected? If not, what more should we be doing?