



CENTRAL COUNCIL
Tlingit and Haida Indian Tribes of Alaska
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May 31, 2016

Senate Select Committee on Indian Affairs
838 Hart Senate Office Building
Washington, D.C. 20510
Washington, D.C. 20240
Sent by email to: testimony@indian.senate.gov

Dear Senate Select Committee on Indian Affairs:

The Central Council of Tlingit and Haida Indian Tribes of Alaska (“Central Council”) offers written comments to supplement the hearing held on May 18, 2016 on Senate Bills 2920 and 2785. We are appreciative that the Senate Select Committee on Indian Affairs is proactively looking at reauthorization of Tribal Law and Order Act (TLOA) and also to close jurisdictional gaps of 25 USC 1304, the Special Domestic Violence Court Jurisdiction over non-Indians section.

This letter will begin with a brief overview of our Tribe, followed by general comments about the unique legal issues to Alaska, and specific recommendations about the proposed bills. It is worth stating upfront that the Supreme Court case in the *Native Village of Venetie*, along with the Alaska Native Claims Settlement Act (ANCSA) have created a challenging situation for Alaska Native Villages and Tribes to address village safety issues, especially as it relates to accountability of criminal defendants and domestic violence perpetrators. We ask that the Senate consider a legislative fix to these jurisdictional issues.

WHO WE ARE

Central Council is a federally recognized Tribal government for Alaska’s Tlingit and Haida population, with more than 30,000 tribal citizens worldwide. Central Council is one of approximately 229 federally recognized tribes in the State of Alaska. Alaska tribes comprise nearly 40% of all federally recognized tribes in the United States.

On September 4, 2007, Central Council began operating a formal, regional tribal court, located in Juneau, Alaska, to provide child support services to 20 villages and communities that are spread over 43,000 square miles within the Alaska Panhandle. The region encompasses a 525-mile strip of coastline and interior waterways, bordered by Canada on the north, south, and east, with the Gulf of Alaska on the west. There is no road system linking Southeast Alaska communities; therefore, communities can only be reached by airplane, boat or ferry.

Prior to 2007, the tribal court had elected judges but no budget for staffing or operation of tribal court. This all changed when the Tribe applied for and received Title IV-D funding to open a tribal child support agency. This funding source allowed the tribe to hire one judge and one court clerk to hear paternity, child support order establishment and enforcement for cases involving children enrolled or

eligible for enrollment with the tribe. Since that time, despite continued limited grant funding, the tribe has expanded its services to include domestic violence, child custody, divorce, guardianship, adoption and is currently in the process of expanding services to include juvenile justice and child welfare cases.

Central Council's tribal court is located in Juneau, as part of a tribal government office building. Juneau has the highest concentration of tribal citizens in Alaska, but Central Council has citizens all across Southeast, and out of state. Central Council compacts with a few Southeast Tribes for social services, such as Indian Child Welfare Act (ICWA).

UNIQUE STATUS OF ALASKA TRIBES

Historically, Alaska tribes, for various reasons, have been treated differently than lower 48 tribes, often making fundamentals of tribal court jurisdiction difficult to understand or ascertain. In a rather remarkable turn of events, the federal government settled its land claims with the aboriginal people of Alaska not by compensating the tribal governments of the aboriginal people, but rather by establishing corporations whose shareholders would be the aboriginal people and bestowing on those corporations the goal of leveraging the land and money received in compensation to operate for-profit businesses. With the passage of the ANCSA in 1971, the only remaining reservation in the state is the Annette Island Reserve in Southeast Alaska. Rather than recognize sovereign tribal lands, ANCSA tasked the for-profit corporations to manage more than 40 million acres of fee land. ANCSA divided the state into 12 regional corporations and over 200 village corporations that would identify with their regional corporation. Many of these villages had corresponding tribal village governments, but with the passage of ANCSA, no meaningful land base. As a result, unlike most court systems that have defined territorial jurisdiction and personal jurisdiction, Alaska Tribal courts generally exercise jurisdiction through tribal citizenship, and not through a geographic space defined as "Indian Country" because of ANCSA and in part due to a United States Supreme Court case.

As a result of the United States Supreme Court's unfavorable decision in *Alaska v. Native Village of Venetie Tribal Government*, 522 U.S. 520 (1998), most of the Tribe's traditional territory is not considered "Indian Country." Without the ability to tax, without Indian gaming, and without consistent and predictable tribal court appropriations, Alaska Tribes lack the revenue typically available to other tribal governments to fund and sustain essential governmental programs. All Alaska Tribes are in a similar position, and must find innovative ways to raise governmental revenue and to leverage other resources to sustain their Tribal Courts and public safety programs. As a result of this resource dilemma, available grants for developing and sustaining programs are incredibly important for Alaska Tribes.

As mentioned, Alaskan tribal governments are not positioned to take advantage of the traditional tools local governments use to generate revenue. Except for Metlakatla, Alaskan tribal governments have no taxable land base and subsistence economies – also known as non-cash economies – are unable to generate strong steady revenues in the form of a sales tax, property tax, or other taxes.

Making matters worse, in 2003, Alaska's own Senator Ted Stevens singled out Alaska Tribes for exceptionally harsh financial restrictions through legislative riders to the FY 04 Consolidated Spending Bill (Sec. 112 of HR 2673). The riders eliminated funds to tribal courts and tribal law enforcement programs in Alaska Native Villages, and specifically excluded certain Southeast Alaska communities from receiving any Department of Justice funding. Although Congress recently eliminated these restrictions, they set back Alaska Tribes even further while they were in place. Without adequate resources, tribal court jurisdiction and law enforcement floundered.

All told, these funding restrictions have severely hindered the approximately 78 tribal justice systems in Alaska from developing. The vast majority of Alaska tribal courts are not able to operate on

a full-time basis or hire full-time employees. Central Council's tribal court staff are funded by a delicate balance BIA compact funds and temporary grants.

Against the backdrop of this funding desert, Alaskan tribal citizens are suffering. The absence of an effective justice system has disproportionately harmed Alaska Native women who are continually targeted for all forms of violence. Alaska Natives comprise only 15.2% of the state's population, but make up 47% of victims of domestic violence and 61% of victims of sexual assault are Alaska Native. And among other Indian Tribes, Alaska Native women suffer the highest rates of domestic and sexual violence in the country.

Although, in a PL 280 state, Alaska tribal communities should have access to state justice services, those services are centered in a handful of Alaskan urban areas, making them often more theoretical than real. Many communities have no law enforcement, no 911, no state official they could conceive of raising a complaint to, given the separation of geography, language, and culture. Also, because Alaska is a mandatory PL 280 state and because of other factors identified below, jurisdictional issues in Alaska create extremely dangerous conditions for our small, remote communities. The TLOA of 2010 created the Indian Law and Order Commission and authorized the Commission to conduct an extensive study of jurisdictional issues in Alaska. The Commission devoted an entire chapter to Alaska and found that:

“The strongly centralized law enforcement and justice systems of the State of Alaska . . . do not serve local and Native communities adequately, if at all. The Commission believes that devolving authority to Alaska Native communities is essential for addressing local crime. Their governments are best positioned to effectively arrest, prosecute, and punish, and they should have the authority to do so—or to work out voluntary agreements with each other, and with local governments and the State on mutually beneficial terms.”¹

While there have been recent gains that benefited Alaska, we still have laws and policies that make support for strong Alaska Native Judicial systems erratic, if not impossible. For example, the U.S. Department of Justice's support for repeal of the Special Rule for the State of Alaska included in section 910 of VAWA 2013 was applauded in Alaska, but the issue of Indian Country, described further below, remains. The Obama administration has supported our tribal governments in ways not seen for years. In a July 28, 2014, letter from Associate Attorney General Tony West to the Alaska state Attorney General, West reminded him of the State's obligation to give full faith and credit to tribal court orders of protection. Prior to this time, enforcement and recognition of Alaska tribal court orders was essentially non-existent. Basically, Alaska law required orders of protection issued by tribal courts to be registered with the state before enforcement would be available. As a result of Associate Attorney General West's assistance, the State of Alaska has recently evaluated its role in supporting Alaska Native protection orders. While still encouraging registration of tribal and foreign protection orders, in 2015, the State recognized that it must enforce unregistered Alaska tribal orders.

SENATE BILL 2920

We greatly appreciate the introduction of this bill. We ask that the Senate look to recent studies such as the newly released, National Institute of Justice, *Research Report on the Violence Against American Indian and Native Women and Men*, that document the dire safety circumstances that Alaska native villages are in as a result of their unique geographic situation, the 229 tribes state wide and the inability for the state to address the public safety state of emergency for Alaska Tribes.

¹A Roadmap for Making Native America Safer: Report to the President and Congress of the United States (November 2013), available at <http://www.aisc.ucla.edu/iloc/report/>.

SOLUTIONS TO SOLVE THE JURISDICTIONAL QUAGMIRE

The repeal of section 910 of VAWA 2013 was a victory as it was a necessary step towards removing a discriminatory provision in the law that excluded all but one Alaska tribe from ever being able to enhance their response to violence against Native women in ways afforded all other federally recognized tribes. Nevertheless, because of the *Venette* decision, additional reforms are needed before Alaska tribes will be able to increase safety for Alaska Native women and hold all offenders accountable. This is because section 904 of VAWA 2013 limits the exercise of the special domestic violence criminal jurisdiction restored to tribes to certain crimes committed in "Indian Country." Yet, at the same time, the State does not have the resources to provide the level of justice needed in our communities. A legislative fix is necessary to address this injustice. Such a fix could be inserted in the Tribal Law and Order Act, or the next reauthorization of VAWA, or as an amendment to ANCSA, which recognizes a tribe's territorial jurisdiction equivalent to the corresponding Village Corporation's land base and traditional territory, or to other federal laws such as the statute defining Indian Country,² or accomplished through other changes in federal policy allowing the Department of the Interior to accept land into trust for all federally recognized Alaska tribes.³

We fully support the recommendations of the Tribal Law and Order Act Commission and ask that they all be priorities for inclusion in the reauthorization of TLOA. Specifically, we ask that the Senate Select Committee on Indian Affairs:

- Craft a legislative fix for the U.S. Supreme Court's *Venette* decision.
- Amend the definitions of "Indian Country" to include Alaska native allotments and native-owned town sites.
- Support land into trust applications by Alaska Native Tribes.
- Channel more resources directly to Alaska Native Tribal governments for the provision of governmental services.
- Support Alaska Native Tribes and Villages with the exercise of criminal jurisdiction within their communities.

As described by the TLOA Commission:

"problems in Alaska are so severe and the number of Alaska Native communities affected, so large, that continuing to exempt the State from national policy change is wrong."

We ask that the Commission's specific recommendation to the federal government "to channel more resources directly to Alaska Native Tribal governments for the provision of governmental services in those communities" be supported in legislation and through appropriations. We further ask that S.

² 18 U.S.C. § 1151. Section 1151 provides in pertinent part that: "Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

³ A federal regulation was developed after the U.S. District Court for the District of the Columbia held that exclusion of Alaska tribes from the land-into-process was not lawful. *See Akiachak Native Community v. Salazar*, 935 F. Supp. 2d 195 (D.D.C. 2013). The State of Alaska has appealed the decision and its motion to stay was granted to prevent the Interior Department from considering specific applications or taking lands into trust in Alaska until resolution of the appeal. On December 18, 2014, the Interior Department published its final rule rescinding the "Alaska Exception," which became effective on January 22, 2015. 79 Fed. Reg. 76888. This regulatory change could help some Alaska tribes exercise local governance to address violence against Native women.

2920 include specific findings by the Law and Order Commission that demonstrates the vast uniqueness of our communities as well as the dire circumstances we find ourselves in. We ask for specific findings within the Bill unique to Alaska's public safety crisis.

INDIAN COUNTRY IN ALASKA

Sprinkled throughout the TLOA Reauthorization, is the reference to "Indian Country." As mentioned with the Native Village of Venetie case, there is virtually no "Indian Country" in Alaska to be afforded the advantages intended within this bill. We need a legislative fix to this issue.

"Alaska's approach to providing criminal justice services is unfair. Alaska Natives, especially those living in rural areas of the State, have not had access to the level and quality of public safety services available to other State residents or that they should rightly expect as U.S. citizens. Given the higher rates of crime that prevail in Alaska Native communities, the inequities are even greater in relative terms. The State of Alaska's overarching lack of respect for Tribal authority further magnifies fairness concerns."

But yet without a meaningful and identifiable land base, jurisdictional boundaries will prevent a meaningful solution to solving the public safety crisis in our villages.

The TLOA commission's first recommendation is:

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

We need to begin a dialogue that gets at the heart of community safety issues and concerns. We ask that a commission or task force be created to develop a solution to the jurisdictional issues found in Alaska.

DATA SHARING WITH INDIAN TRIBES

We need a legislative fix that addresses the concerns of the Criminal Justice Information System (CJIS) about tribal access to federal databases for governmental purposes. Currently access is piecemeal, with federal statutes providing some access to tribes and then deferring to state law to define and provide access. Such checkerboard access places some of our most vulnerable citizens in jeopardy.

28 USC 534(d) authorizes release of criminal history information to tribal law enforcement agencies, but doesn't allow release of criminal information to other tribal agencies for important purposes, Emergency Placement of Children, or "Purpose Code X," employees that work with elders and vulnerable adults, etc.

CJIS interprets the appropriations rider language from 92-544 (and in the notes of 28 USC 534) as a permanent statute that prevents sharing this information with tribal governments. In their view, criminal history for licensing of foster parents can only be shared "if authorized by State statute and approved by the Attorney General, to officials of State and local governments for purposes of employment and licensing."

We need to amend federal law to authorize the sharing of this information with tribal governments for any legitimate purpose

One solution is to renumber 534(d) and add a new subsection: "If authorized by tribal law and approved by the Attorney General, the Attorney General shall also permit access to officials of tribal governments

for non-criminal justice, non-law enforcement employment, licensing purposes or any other legitimate government purpose identified in tribal legislation.”

We ask that Civil authority be included to so that once and for all the piecemeal inefficient barriers to full legitimate access is resolved.

SENATE BILL 2785

While we appreciate that the Senate recognizes the gaps in the Special Domestic Violence Court Jurisdiction (SDVCJ) of VAWA 2013, in that crimes against children and drug crimes attendant to the SDVCJ crimes remained unpunishable, until the issues of “Indian Country” in Alaska are addressed, we are largely left without inclusion in this important legislation that recognizes the inherent authority of a tribe to prosecute violent crimes against women. Again, we ask that a Commission or Task Force be created to provide a meaningful solution. This situation is especially dire with the economic strain the state of Alaska is currently in. As Senator Murkowski noted during the hearing, we need to look at “new jurisdictional definitions” or some other remedy to include Alaska villages. The state lacks resources to address the concerns of the village. The federal government needs to step in through the trust relationship to address these catastrophic issues that leave our communities unsafe. Again as Senator Murkowski noted, it’s time to explore different avenues to address the public safety issues and empower tribes to protect their communities.

SUMMARY

Alaska tribal governments are unique among indigenous American tribes in their lack of access to the same type of government revenues available to nearly every other sovereign entity in the country. We ask that the Senate Select Committee on Indian Affairs take this disadvantage into account to get Alaskan Tribes on an equal playing field, and to make a truly meaningful investment in tribal justice by including the jurisdictional challenges that have plagued meaningful justice to Alaska Native communities.

Sincerely,



Richard Peterson, President

cc: Senator Lisa Murkowski

Senator Dan Sullivan

Representative Don Young