

Testimony of Thora Padilla, President, Mescalero Apache Tribe Before the House Interior Appropriations Subcommittee

Good afternoon Chairman Simpson, Ranking Member Pingree, and Members of the Subcommittee. My name is Thora Padilla, and I am honored to serve as the President of the Mescalero Apache Tribe (“Tribe”). Thank you for this opportunity to testify about critical funding needs for BIA law enforcement, and BIA Forestry and Wildland Fire Management funding.

Background: the Mescalero Apache Tribe. The Mescalero, Lipan and Chiricahua Apache, make up the Mescalero Apache Tribe. Long before the first European settlers came to this land, our ancestors roamed the Southwest, from Texas to Arizona and from as far south as Mexico to the Colorado peaks. We were protected by our four sacred mountains: White Mountain/Sierra Blanca, Guadalupe Mountains, Tres Hermanas/Three Sisters Mountains, and Oscura Peak. We traveled the rough Apacheria mountains and deserts but always returned to our sacred White Mountain.

As Europeans began to encroach on our lands, the Apaches entered into a treaty with the United States on July 1, 1852, which promised the Tribe a permanent homeland. The Mescalero Apache Reservation, located in the White and Sacramento Mountains of rural south-central New Mexico, was established through a succession of Executive Orders in the 1870's and 1880's. The Reservation spans approximately 720 square miles (460,405 acres). Our Reservation is home to 5,500 tribal citizens and approximately 200 non-Indian residents.

The original Reservation boundaries includes lands that are currently held in federal ownership, such as Lincoln National Forest (“LNF”) and nearby Bureau of Land Management (“BLM”) lands. These federal lands were carved out of our ancestral homelands. However, the Mescalero Apache people have maintained strong cultural ties to these lands. To this day, we continue to gather plants important to our traditions and conduct ceremonies on these federal lands.

OVERVIEW: BIA Public Safety and Justice Programs

The Mescalero Apache Tribe views the federal government’s most fundamental treaty and trust obligation to provide for public safety on Indian lands as non-negotiable. For that reason, we have not contracted with the Bureau of Indian Affairs – Office of Justice Services (“BIA” or BIA-OJS”) for policing services. Our community relies on the BIA’s Mescalero Agency (the “Agency”) to provide direct law enforcement services on our Reservation.

I regret to report that the Agency has failed to meet this obligation for much of the past decade. Because of delays in responding to calls for service, and failure to follow up on investigations, an increasing number of victims are reluctant to report crimes. As a result, violence is escalating on our Reservation, and many are losing faith in the justice system.

While I have a long list of management failures at the Mescalero Agency OJS, we acknowledge that many of our concerns stem from a lack of funding.

The United States created the criminal justice system that exists in Indian Country. The system is the result of a series of federal laws and court decisions that date back to the Major Crimes Act of 1885 and includes the misguided Supreme Court decisions in *Oliphant v. Suquamish Indian Tribe* (1978) decision and the recent decision in *Oklahoma v. Castro-Huerta* (2022). The system handcuffs Tribal law enforcement agencies, forces Tribes to rely on federal and in some cases state law enforcement to investigate and prosecute Reservation-based crimes and lacks any accountability on the part of those officials to provide public safety and justice on Indian lands. The United States created this system, and Congress must take action to fix it and fund it.

Year after year, this Subcommittee has heard about the staggering rates of violent crime and victimization in Indian Country, the crisis of missing and murdered Native women, physical and sexual violence, and so much more. These horrific statistics are the result of the broken system of justice described above and the failure to adequately fund BIA and tribal police forces.

Tribal leaders have repeatedly testified before this Subcommittee about the significant shortfalls in Tribal Public Safety and Justice (“PSJ”) funding. The BIA recently submitted its annual report to Congress on “Costs for Public Safety and Justice Programs in Indian Country, 2021” that the agency is required to share pursuant to the Tribal Law and Order Act of 2010. The February 2024 Report confirmed what everyone in Indian Country has known for many decades: there is a huge disparity between federal funding and the unmet public safety and justice needs of Indian Country. PSJ is funded at less than 13% of total need. It would take an additional 25,655 personnel to adequately serve Indian country, including 11,635 police officers. These funding shortfalls are the root of the public safety and justice crisis facing Indian Country.

REQUESTS: BIA Public Safety and Justice Funding and Report Language

We support the TBIC request to increase overall BIA Public Safety and Justice funding to \$2.9 billion in FY’25. This request aligns with the BIA’s TLOA Report and would help address the drastic shortfalls in funding for police, courts, and corrections.

We urge the Subcommittee to include report language directing the Biden Administration to revisit the BIA’s High Priority Performance Goal (HPPG) Initiative. From 2010-2012, BIA-OJS increased staffing levels on four Indian reservations, including Mescalero. The Initiative enhanced coordination between BIA, FBI and DEA agents and brought in federal law enforcement from land management agencies to serve Indian Country. Violent crime rates across the four reservations fell 35 percent over 2 years—by 68 percent at Mescalero alone. In each case, crime rates initially went up, as local citizens, responding to a more visible and active law enforcement presence, gained the confidence to report more crimes, and then crime rates declined nearly across the board. The findings of the HPPG Initiative are real, the results validated, and the lesson is clear: Parity in funding for tribal law enforcement services reduces violent crime rates.

To improve accountability from direct service BIA-OJS Agencies, we urge the Subcommittee to include report language that requires direct service OJS Agencies to share vital crime data and agency budget and staffing information with the governing body of the Tribe that the Agency serves. When the BIA performs direct law enforcement services to an Indian Reservation, BIA-OJS should share all basic public safety information and data relating to that Reservation to the governing Tribal Council. This information should include police and admin. staffing levels; vacancies and related details; BIA actions to detail police officers away from the Reservation, length of details and other rationale; total monthly calls for service and responses to calls for service; crime rates and types of crimes reported and investigated; and any other information relating to public safety activities on the Reservation. This data will help inform Tribal Government leaders in working with OJS to address public safety concerns.

Finally, we urge the Subcommittee to coordinate with the Commerce, Justice, Science Subcommittee to enhance coordination between DOJ and Interior to combat violence in Indian Country. We realize that the Interior Department’s budget is limited. Enhancing DOJ personnel and funding to combat violence in Indian Country is a viable alternative to help meet the federal government’s legal obligation. CJS should establish a 10% OJP tribal set-aside to enhance resources for COPS, tribal courts, detention facilities, juvenile delinquency prevention,

and provide substance abuse prevention. In addition, CJS should increase the number of FBI agents dedicated to addressing Indian Country violent crime. Despite the increase in violence on Indian lands, the FBI's Indian Country crime unit has decreased in personnel over the past two decades.

OVERVIEW: Tribal Forestry and Wildland Fire Prevention Programs

The Mescalero Apache Tribe has managed our forests in a manner that promotes the growth of food and medicinal plants, protects places of religious importance as well as our wildlife and watershed. Our forests have sustained our people, our economy, and our resources for millennia.

For more than a century, Mescalero shared our forest management practices with BIA's Mescalero Agency Branch of Forestry when it was established in 1910. For much of this time, a small staff of three professional foresters and 2 forestry technicians completed planning, environmental compliance, and administration for nearly 17 million board feet of timber sales annually. The crew also conducted fire management and fuels management projects throughout our Forest. In 2022, due to significant budget cuts, the Tribal Council passed a Resolution to contract for the BIA Forestry and Natural Resources activities, which allowed the Tribe to set priorities and objectives for managing our forest.

With the advent of the National Fire Plan in the late 1990's, the BIA Branch of Forestry worked with the Tribe to develop strategic ridgetop fuel breaks and implement wildland urban interface treatments around residential and recreational areas across the Reservation. Through this program, the Tribe treated 63,968 acres through hazardous fuels reduction projects. These projects were coordinated with harvest operations, recognizing that understory thinning alone would not reduce the potential for destructive crown fires.

While our forest management practices attempt to armor our Reservation, fire knows no boundaries. The Mescalero Reservation is sandwiched between the northern and southern sections of the LNF. To protect our Tribal Forest from damage caused by the mismanagement of adjacent federal forests, Mescalero helped develop and advocate for enactment of the Tribal Forest Protection Act of 2004 ("TFPA"). In 2006, Mescalero worked with LNF to develop the 16 Springs Stewardship contract, which completed approximately \$6,000,000 of fuels treatments in the LNF along the Tribe's southern boundary. For more than two decades now, the Tribe and LNF have worked to blend established management methods with traditional knowledge and science. The TFPA continues to be a useful tool to help the Tribe expand the implementation of our healthy forest management practices to nearby lands. However, the Act needs to be expanded and updated.

Prior to this relationship with LNF and the authorities extended by the TFPA, Tribal leadership had longstanding concerns about the very dense forest conditions in LNF. Due to unhealthy condition of the LNF, we saw the escalation of insect populations, including bark beetles and other defoliators on the Reservation, and large swaths of USFS forest lands die around us.

The need for federal-tribal collaboration and the implementation of positive Tribal Forest management practices into federal forests was highlighted by the Little Bear Fire. The fire started modestly on June 4, 2012, caused by lightning in the White Mountain wilderness in LNF. Over the first five days, LNF deployed few assets to contain what it thought was a non-threatening fire. Firefighters worked only day shifts, air tanker resources were not utilized, and helicopter water drops were minimal. On the fifth day, the fire jumped the fire line and high winds turned the fire into a devastating inferno. By that night, the fire had blazed through the Tribal ski area, Ski Apache Resort, and crossed onto Tribal lands. Within two weeks, the Little Bear Fire burned 35,339 acres

in LNF, 8,522 acres of private land, 112 acres of state land and 357 acres of the Reservation. The fire destroyed more than 255 buildings and homes and burned 44,500 acres of prime watershed. The overall estimated cost of the fire, including suppression and damages, exceeded \$100 million.

The Little Bear Fire's impacts provided a clear contrast between the healthier tribal forests and much less healthy LNF, demonstrating the need for continued funding of smart fuels management projects and increased funding for Tribal Forestry Management.

In 2008, the Tribe completed cost-effective hazardous fuels reduction project on a portion of the Reservation called Eagle Creek. As the Little Bear Fire moved across the landscape, the previously treated Eagle Creek project area was used as a defensible space to turn the Fire away from the densely forested terrain of the North Fork of the Rio Ruidoso and prevented complete devastation of the Village of Ruidoso and its source waters. The Little Bear Fire is proof positive that hazardous fuels reduction projects work.

The work of Tribal Forest managers nationwide has proven effective to protecting lives and property throughout Indian Country while maintaining the healthiest forests in the nation. This work is not sustainable without an adequate consistent funding stream.

Operating on a shoestring budget, the Mescalero Apache Tribe's Division of Resource Management and Protection has provided high quality forestry services on the Reservation. Despite the importance of this mission, federal budget cuts caused a 43% reduction in staffing levels to manage the Mescalero Apache Forest since 2016. Additional cuts, implemented over the past two decades, have further strained our ability to continue our forestry practices.

REQUESTS: BIA Forestry and Wildland Fire Management Funding and Report Language

The 2023 IFMAT IV Report found that BIA Forestry receives one-third of the funds that federal forest managers receive (\$3.89 per acre for Tribal forests vs. \$12.24 / acre for Federal forests).

We support the IFMAT IV recommendations to increase BIA Tribal Forestry funding by \$96 million over FY'24 enacted levels, increase fire preparedness by \$42 million, and establish a separate budget line for tribal forest roads to be funded at \$89 million/year. This funding would bring Indian forest funding closer to parity with federal forests.

Of the approximately 56 million acres of Indian trust land, more than 18 million acres are forest lands. The Forest Service shares approximately 4,000 miles of boundaries with Indian lands, and most of the Forest Service and BLM lands were carved out of Indian Reservations and ancestral Tribal homelands and include lands on which Tribal governments exercise legal treaty rights.

The Little Bear Fire is proof that mismanagement of nearby federal lands can easily destroy thousands of acres of adjacent Indian lands. The TFPA is working to improve Tribal government input in federal forestry decision-making, but it has fallen far short. Few federal land management agencies implement Tribal Forest management practices or incorporate Tribal forestry knowledge. TFPA Tribal work should extend beyond adjacent lands and be authorized throughout certain federal Forest Service and BLM lands with which Tribes have proven connections.

We urge the Subcommittee to include report language that will extend the TFPA authority *throughout* Forest Service and BLM lands to achieve landscape-scale management where the federal lands encompass land ceded to the United States by Treaty, are located within the boundaries of a current or former Reservation or are adjudicated to be tribal homeland.