



## **2019-2020 Annual Report**



## **November 16, 2020 NNABA Annual Meeting**

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**November 16, 2020**  
**NNABA Annual Meeting**  
10:00 a.m. – 12:00 p.m. MST

**To join via computer:**

<https://pillsburylaw.zoom.us/j/97641280031?pwd=cmpjZlJvRzVoa2d3dVpKS09RWDRXdz09>

Passcode: Pillsbury1

**To join via telephone:**

(877)853-5257 (Toll Free)

Webinar ID: 976 4128 0031

Passcode: 0041621545

- 10:00 Call to Order, Welcome, & Approval of Agenda**– Thomasina Real Bird, President
- 10:10 Remarks by American Bar Association Past Secretary** – Mary L. Smith, Past President
- 10:20 Remarks by American Bar Association President** – Patricia L. Refo
- 10:30 A Year In Review**
  - ❖ 2019-2020 President's Report – Robert O. Saunooke
  - ❖ Treasurer's Report – Phil Brodeen
- 10:40 Presentation by American Bar Association Tribal Court Fellow** – Honorable J. Matthew Martin
- 10:45 Presentations from Invited Organizations**
  - ❖ Doreen McPaul, Tribal In-House Counsel Association
  - ❖ Rodina Cave Parnall, American Indian Law Center, Inc. – Pre-Law Summer Institute
- 10:55 Recognition of Sponsors**
- 11:00 Coalition of Bar Associations of Color Report 2019-2020** – Makalika Naholowaa, Geneva EB Thompson, Robert O. Saunooke
- 11:05 NNABA Young Lawyers Committee Report** – Geneva EB Thompson
- 11:10 NNABA Foundation Scholarship Committee Report and Recognition of Scholarship Recipients** – Lauren Van Schilfgaarde
- 11:15 NNALSA President's Report** – Paulene Abeyta
- 11:20 Resolutions**
- 11:30 Annual Meeting Minutes and 2020 Membership Meeting Minutes** – Katie Jones, Secretary



**11:35 Elections**

- ❖ President-Elect
- ❖ Secretary
- ❖ At-Large Directors (3)

**11:50 Looking Forward** – Thomasina Real Bird, President 2020-2021

**12:00 Adjourn**



## **2019-2020 Board of Directors, Foundation Independent Directors, and Delegates**

### ***President***

Robert Saunooke (Eastern Band of Cherokee Indians)  
Saunooke Law Firm, PA

### ***President-Elect***

Thomasina Real Bird (Ihanktonwan Oyate)  
Patterson Earnhart Real Bird & Wilson LLP

### ***Past-President***

Joel West Williams (Cherokee Nation)  
Native American Rights Fund

### ***Secretary***

Katie Jones (Cherokee Nation)  
Kanji & Katzen PLLC

### ***Treasurer***

Phil Brodeen (Boise Fort Band of Chippewa)  
Brodeen & Paulsen PLLP

### ***Director***

Bree Blackhorse (Seminole Nation of Oklahoma)  
Kilpatrick Townsend & Stockton LLP

### ***Director***

Debra Gee (Navajo Nation)  
Chickasaw Nation

### ***Director***

Colleen Lamarre (Mohawk)  
Pillsbury Winthrop Shaw Pittman LLP

### ***Director***

Geneva EB Thompson (Cherokee Nation)  
Yurok Tribe

### ***Director***

Lauren Van Schilfgaarde (Cochiti Pueblo)  
UCLA School of Law

### ***Director***

Carolyn West (Eastern Band of Cherokee Indians)  
Eastern Band of Cherokee Indians



***Director***

Paulene Abeyta (Navajo Nation)  
National Native American Law Student Association (NNALSA) President  
University of Arizona

***Foundation Independent Director***

Diandra Benally (Navajo Nation)  
Fort McDowell Yavapai Nation

***Foundation Independent Director***

David Blackorby

***Foundation Independent Director***

Sandra McCandless  
Dentons US LLP

***NNABA Delegate to American Bar Association House Of Delegates***

Jerry Gardner (Cherokee)  
Tribal Law and Policy Institute

***NNABA Representatives to the American Bar Association Young Lawyers Division***

Geneva EB Thompson (Cherokee Nation)  
Yurok Tribe

Heather Torres (San Ildefonso Pueblo, Navajo)  
Tribal Law and Policy Institute

***NNABA Representative to the ABA Diversity & Inclusion Council***

Sunshine M. Nicholson (Secwépemc Nation)  
Fort Belknap Tribal Regulatory Authority



Dear NNABA Board and Members

It is hard to believe that it has been a year since our last meeting. I began this journey with optimism and a belief that everything we wanted to accomplish this year would get done. Although our numbers are small when compared to other bars of color, it has been my experience that the members and board of NNABA seem to accomplish more than much larger organizations. Even with all the help possible it quickly became clear that the path we were on would take more than the one year I had to serve as its President.

This year I was determined to personally visit reservations. Although I have practiced in the field of Native law, I rarely got the opportunity to interact or see the diversity, culture, and determination present within these nations. So, on April 7, 2019 I took off on my 2017 Harley Davidson Roadglide to see the country and learn about our people.

I rode a little over 58,000 miles. I visited over 50 reservations covering ground from South Florida to Northern Washington. California to the East Coast. I met Chiefs, Chairpersons, Tribal Councils, attorneys and most importantly amazing Tribal people. Diverse and different all with one thing in common, tenacity and survival.

In Pine Ridge I found some of the worst conditions imaginable. In South Florida with the Seminole Tribe I found unbelievable prosperity and success. I was struck at the distance between Tribes and wondered why we were not able to pull together as a larger collective to help one another. Why some Tribes struggled by themselves and others were able to make great strides in education, financial, and governmental strength. It was clear that NNABA had to do more and serve a larger purpose than simply legal ideas, scholarships and lobbying.

At each reservation I took time to stop and simply listen. Listen to the people and more importantly listen to mother earth. Sitting in the middle of Navajo, in 105-degree heat, I heard the wind as it continued its journey across the country. Bringing with it pieces of all those people and places it had crossed prior to reaching me. I tried to connect but always found myself falling short. That was probably my greatest struggle. Trying to find common ground with all the Tribal nations. It was clear that the things that helped each Tribe survive were also the biggest differences between them.

In the end the journey I took became more personal and led me to recommit myself to not only the goals of NNABA but to continue to reach out to our communities and try to help us all connect with one another. Our strengths will be our best hope for continuing to protect sovereignty; fight for our women and children; preserve our cultures; and insure that real truths are told about the Native people.

Members of NNABA continue to blaze new trails and set higher standards for the Native community. Some of our members have helped acknowledge personhood of our rivers and streams. Other members have funded, supported and conducted outreach to future young lawyers and students. As a group we provided leadership training to future leaders and lobbied



for not only Native issues but issues important to our other minority sisters and brothers. We collectively increased our membership and raised additional funding to help our organization sustain its long-term scholarship, education, and other goals.

We saw one of our former Presidents, Patty Ferguson-Bohnee, acknowledged by the ABA with the Spirit of Excellence award. We saw our former President Mary Smith announce her candidacy for President of the American Bar Association, the first Native American to do so.

NNABA spoke out on climate change, protection of our women and children, the missing and murdered and challenges to the Indian Child Welfare Act. 600 years after we encountered the European community, NNABA and the people, Tribes and attorneys it serves continue to engage in changing law, protecting sovereignty, and advancing issues of justice for the Native community.

One year is simply not enough. I wish I could continue this journey, but I know it is time to allow others to pick up the reigns of leadership that were given to me. I will be walking on from this position, but my feet and heart will not be far from NNABA and I will be there to help our next President fulfill her goals and ideals for our organization. We are all connected to our future through our past.

The examples of John Echohawk, Lawrence Baca, Kirk Kickingbird, Mary Smith and a host of others paved a rocky road so that future leadership can travel faster and accomplish more. It is my sincere hope that each of you will rededicate your time and energy to NNABA and its goals. That you will encourage others to join our organization and that you will do all that you can to help us connect with one another as attorneys, Tribal members, and help make our differences smaller and our similarities stronger.

This has been one of the greatest honors I have ever had. My failures during this year are my own. My successes came only because of the great help and assistance of the board and members of NNABA. Thank you all for your support, inspiration, and patience with me. I look forward to our continued progression and success and in working with Thomasina Real Bird as she strengthens our organization over the next year.

Unto he whom much is given much is required.

Wa Do

Robert Osley Saunooke  
2019-2020 President  
National Native American Bar Association





# TREASURER'S REPORT

Philip M. Brodeen  
NNABA Treasurer



November 16, 2020

Dear NNABA Members,

The Treasurer's Report is provided herein and details the financial activities of the National Native American Bar Association ("NNABA") for FY-2019. The report is provided on an annual basis to NNABA members at the NNABA Annual Meeting. The report comprises the following sections: Treasurer's Commentary and Recommendations; FY 2019 Income/Expenses; and FY 2019 Income/Expenses Graphs. Please let me know if you have any questions, comments, or concerns.

### **Treasurer's Commentary and Recommendations**

FY2019 was a strong fundraising year for both the Association and Foundation. In particular, the annual meeting resulted in approximately \$18,000 in sponsorships from companies, law firms, and individuals. The most significant donations provided to the Association were provided by Walmart (\$30,000), Microsoft (\$5,000), Intel (\$5,000); and the Eastern Band of Cherokee (\$5,000). The NNABA Foundation also received significant donations from the Shakopee Mdewakanton Sioux Community (\$20,000); NABA- DC (\$3419.95); NBC Universal (\$2,500); NIGA (\$2,500); and continuing sponsorship commitments from the Eastern Band of Cherokee and the Miccosukee Tribe. I expect fundraising efforts to be difficult during FY2020 and FY2021 due to COVID-19.

Expenses from FY2019 were down from the previous year by \$4,000. We spent less last year on travel. Relatedly, President Robert Saunooke provided in-kind contributions/did not seek reimbursement for all of his travel. These in-kind donations resulted in savings of nearly \$20,000 to NNABA. He also logged nearly 75,000 miles of mileage during his term as President, most of which was on his motorcycle. Chi-Miigwech (Big Thanks) to Rob for his generosity. I expect expenses in FY2020 to go down significantly due to a lack of travel resulting from the COVID-19 pandemic.

My transition into the Treasurer role has gone fairly smoothly. However, changing signatories on our main checking account, Native American Bank, was fraught with difficulties. The bank is located in Colorado and was often difficult to work with remotely. Relatedly, their online apps and interfaces do not operate as smoothly as larger banking establishments. I recommend exploring other options for our main accounts. I also recommend formalizing a budget formulation process in the future. Finally, we need to do a better job of tracking Director In-Kind contributions. Thank you for the opportunity to serve NNABA as your Treasurer.

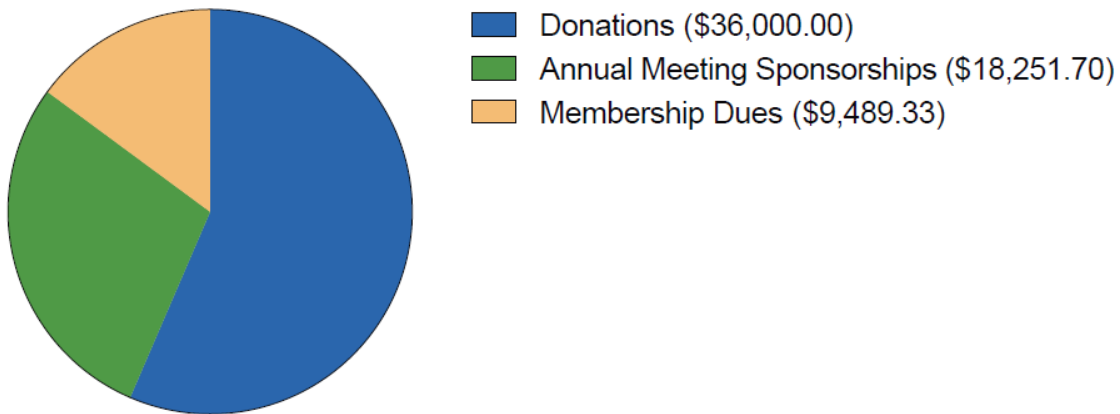
**NNABA Association FY2019**  
**Income/Expenses**

<b>Income</b>		<b>2019</b>
Donations		\$36,000.00
Annual Meeting Sponsorships		\$18,251.70
Membership Dues		\$9,489.33
<b>Total Income</b>		<b>\$63,741.03</b>
<b>Expenses</b>		
NNABA Annual Meeting		\$18,317.75
Young Lawyers' Committee		\$1,052.14
Postage & Shipping (including PO Box)		\$118.00
Travel:		
	NNABA Annual Meeting	\$1,176.46
	Misc. – CBLA, Civics & Law Academy	\$5,147.89
Sponsorships		\$7,331.32
Tech Support: Website, Cloud Storage		\$4,943.00
Misc.		\$6.00
<b>Total Expenses</b>		<b>\$38,092.56</b>
<b>Total Income</b>		<b>\$63,741.03</b>
<b>Total Expenses</b>		<b>\$38,092.56</b>
<b>Net Income</b>		<b>\$25,648.47</b>

Bank of America Total as of 3/28/2020	\$5,237.01
Native American Bank Total as of 01/22/2020	\$85,387.00
<b>Total Assets in Bank</b>	<b>\$90,624.36</b>

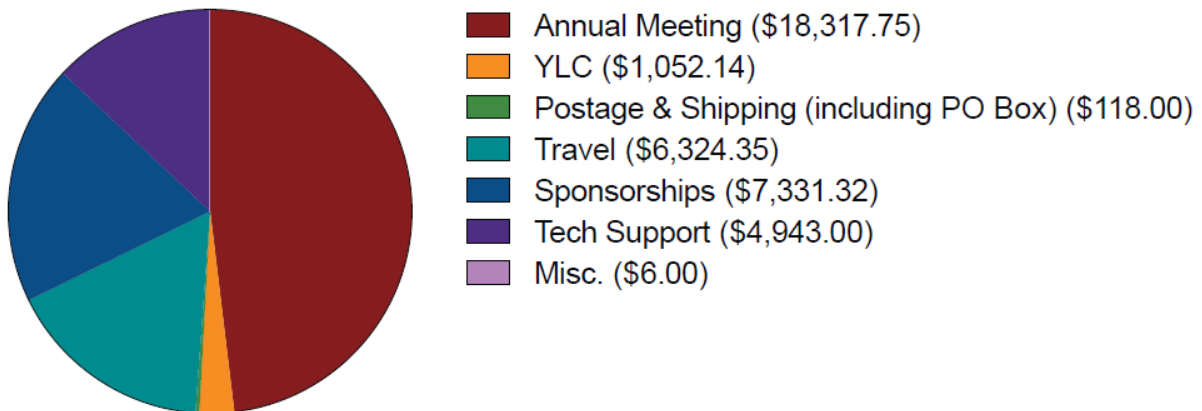
**NNABA Association FY2019**  
**Income/Expenses (Charts)**

**Income**



**Total = \$63,741.03**

**Expenses**



**Total = \$38,092.56**



# NHTSA TRIBAL SAFETY

Roadmap to a Safer Tomorrow



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## Terminology

**American Indians and Alaskan Natives.** The term “American Indians and Alaskan Natives” refers to the indigenous peoples from the regions of North America now encompassed by the continental United States and Alaska. The term includes a large number of distinct tribes, pueblos, villages, and communities, as well as a number of diverse ethnic groups.

**Culturally Appropriate.** Conforming to a culture's acceptable expressions and standards of behavior and thoughts.

**Federally Recognized Tribe.** A federally recognized tribe is an American Indian or Alaska Native tribal entity that is recognized as having a government-to-government relationship with the United States, with the responsibilities, powers, limitations, and obligations attached to that designation, and is eligible for funding and services from the Bureau of Indian Affairs. Furthermore, federally recognized tribes are recognized as possessing certain inherent rights of self-government (i.e., tribal sovereignty) and are entitled to receive certain federal benefits, services, and protections because of their special relationship with the United States. At present, there are 574 federally recognized American Indian and Alaska Native tribes and villages. See Appendices A and B for land areas of federally recognized Tribes.

**Native American.** The term “Native American” is used for the sake of brevity, and this usage is not meant to understate the distinct heterogeneity of American Indian and Alaska Native people. The Native American peoples of the continental United States are known as American Indians, and those from Alaska are known as Alaska Natives. American Indians and Alaska Natives are considered distinct racial groups. In the U.S. Census, for example, the federal government considers American Indian and Alaska Native to be racial categories. However, this document is concerned not only with race, but also the cultural identity of American Indian and Alaska Native people. A person may have American Indian and Alaska Native ancestry but very little cultural identification with it, or he or she may have a large percentage of non-native American ancestors but still identify as a member of his or her native culture.

**Reservation.** A federal Indian reservation is an area of land reserved for a tribe or tribes under treaty or other agreement with the United States, executive order, or federal statute or administrative action as permanent tribal homelands, and where the federal government holds title to the land in trust on behalf of the tribe. Approximately 56.2 million acres are held in trust by the United States for various Indian tribes and individuals. There are approximately 326 Indian land areas in the U.S. administered as federal Indian reservations (i.e., reservations, pueblos, rancherias, missions, villages, communities, etc.). The largest is the 16 million-acre Navajo Nation Reservation located in Arizona, New Mexico, and Utah.

**Tribal Lands.** The term “tribal lands” are Indian allotments located outside reservations.

**Tribal Nation.** See “Federally Recognized Tribe”.

**Native American Community.** Any native community, independent of land designation.

## Mission

The National Highway Traffic Safety Administration is responsible for keeping people safe on America's roadways through enforcing vehicle performance standards and partnerships with state and local governments. Our mission is to save lives, prevent injuries, and reduce economic costs due to road traffic crashes, through education, research, safety standards, and enforcement.

## Vision

NHTSA will lead a coordinated, culturally appropriate highway safety program to reduce deaths, injuries and crashes among vulnerable Native American road users.

The NHTSA Office of Regional Operations and Program Delivery (ROPD) developed a Tribal Safety Work Group in the Summer of 2018 to facilitate information sharing across regional and program offices. The Work Group meets virtually on a periodic basis, and membership grew as interest expanded. During the winter of 2019, the NHTSA Region 6 team led a series of strategic planning workshops with participation from seven field offices and the National Center for Statistics and Analysis, and the Offices of Communications and Consumer Information and Research and Program Development.

## Strategic Planning Overview

The strategic planning sessions identified six safety priorities for NHTSA. These safety priorities represent areas of greatest risk for Native American road users and will drive program resource allocation decisions. In addition, the planning sessions identified five capacity building activities that will facilitate information sharing and cultural competence amongst the NHTSA team. The Work Group emphasized the need to design and deliver culturally appropriate programs and resources that recognize the unique characteristics and challenges of Native American communities.

### Safety Priorities

1. Improve Collection and Analysis of Tribal Crash Data
2. Increase Seatbelt and Child Seat Usage
3. Decrease Alcohol and Drug-Impaired Driving Incidence and Resulting Fatalities
4. Decrease Pedestrian and Bicyclist Deaths and Injuries
5. Increase Vehicle Safety Recall Completion Rates on Tribal Lands
6. Improve Access to, and Coordination of, Emergency Medical Services on Tribal Lands

### Capacity Building Activities

1. Improve Cultural Understanding of American Indian/Alaskan Natives
2. Raise Awareness and Understanding of Tribal Safety Programs
3. Increase Collaboration with Federal Safety Partners
4. Develop Tribal Safety Resource Library
5. Strengthen the Relationship with Tribal Communities and Safety Partners



## *Native American Road Users: An At-risk Population*

These data provide important information about the problems associated with motor vehicle-related crashes involving Native Americans. Much more work is necessary to understand crash, injury, and fatality data in this at-risk population. For information on data limitations, see Safety Priority 1: Improve Collection and Analysis of Tribal Crash Data.

- ❖ On average, two Native American people die every day in motor vehicle crashes. (CDC)
- ❖ Native Americans are killed in motor vehicle crashes at rates 3 times higher than all races/ethnicities. (Indian Health Service)
- ❖ Native American fatalities increased from 511 in 2013 to 666 in 2017, a 30% increase. (FARS)
- ❖ Motor Vehicle Crashes are the leading cause of death for American Indians/Alaska Natives (AI/AN) ages 1-44. (CDC)
- ❖ According to the Centers for Disease Control web-based injury statistics query and reporting system (WISQRS), among children aged 0–12 years, American Indian and Alaska Native children have the highest traffic death rate of all racial/ethnic groups in the United States.
- ❖ Also at risk are infants less than one year of age - the motor vehicle traffic death rate among Native Americans is 8 times higher than that of non-Hispanic whites. (CDC)

Native American Traffic Safety Facts FARS 2013-2017							
Categories		Year					
		2013	2014	2015	2016	2017	Total 2013-2017
<b>1. Total Traffic Fatalities</b>	<b>a. All Native American Fatalities</b>	511	606	601	636	666	<b>3,020</b>
	<b>b. Native American Fatalities on Reservations</b>	180	207	213	219	230	<b>1,049</b>
	<b>c. All fatalities on reservation</b>	316	359	369	383	394	<b>1,821</b>

The following table illustrates that Native Americans experience higher fatality rates for unrestrained, alcohol impaired, speeding and pedestrian crashes.

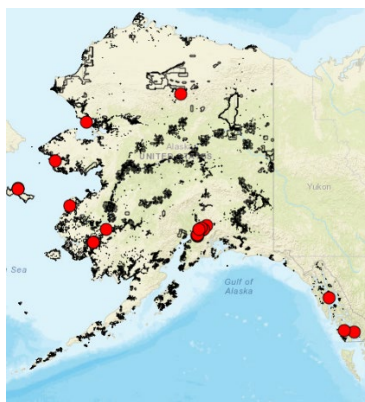
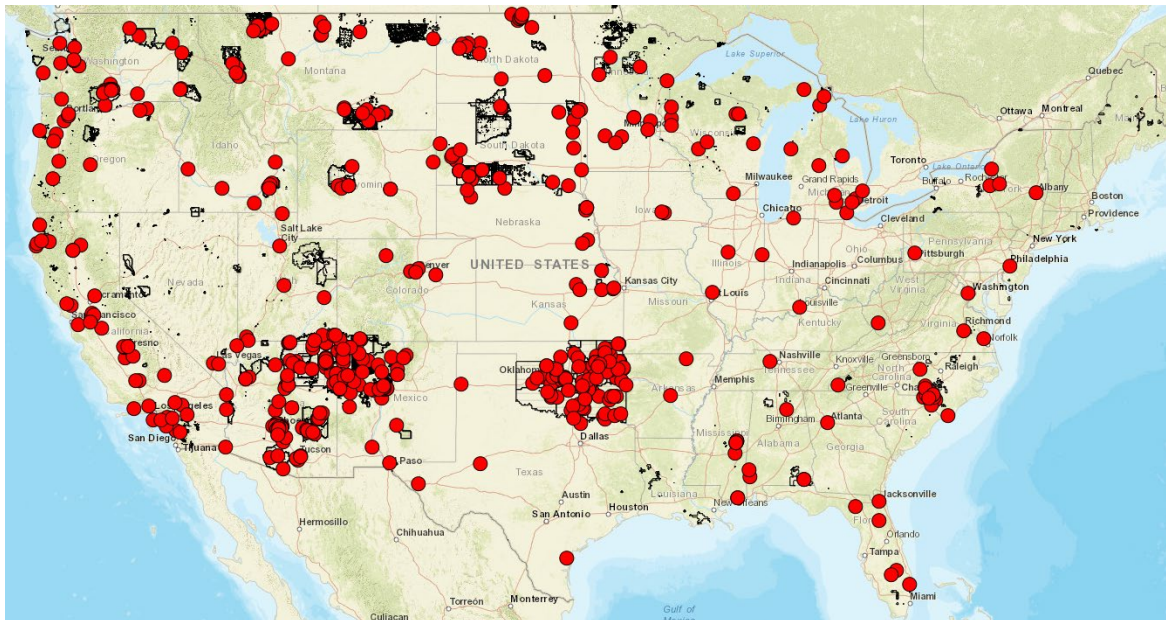
FARS Crash Factor	Native American 2013-2017	All Races 2013-2017
Unrestrained Fatalities	68%	48%
Alcohol Impaired Fatalities .08+	41%	29%
Speeding Fatalities	30%	27%
Pedestrian Fatalities	20%	18%

The following map depicts the geographic location of Native American motor vehicle fatalities for the year 2017.

General observations include:

- ❖ The majority of fatalities occur in the Western United States, and largely overlap reservation and tribal lands.
- ❖ The highest concentrations of fatalities are in Oklahoma, and the four corners area of New Mexico, Colorado, Arizona, and Utah.
- ❖ Secondary areas of concentration are North Dakota, South Dakota, and the Pacific Northwest States.
- ❖ High fatality concentrations occur in high Native American population centers.

## 2017 Native American Motor Vehicle Fatalities (most recent available)



## Capacity Building Activities

### *Capacity Building Activity 1:*

#### **Improve Cultural Understanding of American Indian/Alaska Natives**

The Work Group will lead continuing education and learning sessions to educate colleagues about working with American Indian and Alaskan Natives (hereafter referred to as Native Americans). Native Americans have the highest motor vehicle-related death rates of all racial and ethnic groups.. It is important for traffic safety professionals to understand that Native American cultural identity and background may affect receptiveness to Federal and State traffic safety programs and communication campaigns. NHTSA's largest and most successful safety campaigns are directed at impaired driving and seat belt use, yet a significant disparity persists for Native American motor vehicle fatalities involving these contributing factors. NHTSA should analyze why Native Americans are over-represented in fatalities despite the reductions in fatalities gained among other groups.

<https://www.cdc.gov/motorvehiclesafety/native/toolkit.html>

According to Substance Abuse and Mental Health Service Administration (SAMHSA), the following factors should be considered by behavioral health professionals working with Native American communities:

[https://store.samhsa.gov/sites/default/files/d7/priv/tip\\_61\\_aian\\_full\\_document\\_020419\\_0.pdf](https://store.samhsa.gov/sites/default/files/d7/priv/tip_61_aian_full_document_020419_0.pdf)

- Importance of historical trauma
- Acceptance of a holistic view of behavioral health
- Role of culture and cultural identity
- Significance of community
- Value of cultural awareness

The Work Group will reach out to subject matter experts for guidance and identify knowledgeable speakers for learning opportunities.

Short-term Goal: Engage in learning activities on a quarterly basis.

Long-term Goals: Develop an introductory guide to improve cultural understanding of Native Americans. Improve diversity and inclusion of the Native American community in NHTSA's programs.

Lead Office: Office of Regional Operations and Program Delivery with Region 6

### *Capacity Building Activity 2:*

#### **Raise Awareness and Understanding of Tribal Safety Programs**

The Work Group will educate NHTSA employees about tribal safety data, issues, and programs through existing and new communication venues and activities.

The importance of communicating effectively about the prevention of traffic safety deaths, injuries and crashes in the at-risk tribal communities is undisputed. NHTSA professionals should understand why this vulnerable population group, who live largely in rural communities, merit inclusion in NHTSA behavioral safety programs and communication campaigns. NHTSA employees who work directly on these activities with Native Americans should be culturally sensitive to these at-risk individuals and groups so that culturally relevant and effective communication strategies and materials will be well received.

As a result, immediate next steps are to:

- Provide educational sessions and other forums where tribal program, projects and initiatives are presented and discussed.
- Develop, disseminate tribal data, fact sheet and brief educational materials.
- Identify opportunities to make engagement with tribal communities more effectively and culturally-specific to individual tribes.

Short-term Goals: Publish articles in the Daily Communicator (or appropriate agency communication forum). Identify new opportunities that highlight best safety programs and practices in tribal communities.

Long-term Goal: Publish and provide communication materials and best practice examples and toolkits on the NHTSA TSM.gov website on an ongoing basis.

Lead Office: Office of Regional Operations and Program Delivery

### *Capacity Building Activity 3:*

#### **Increase Collaboration with Federal Safety Partners**

NHTSA will identify and leverage opportunities for safety partnerships with U.S. DOT and other Federal agencies. The Federal Highway Administration and Federal Transit Administration are DOT modes that make direct awards to federally recognized tribes. NHTSA, on the other hand, makes awards to the Bureau of Indian Affairs, which in turn administers grants to individual federally recognized tribes. Consequently, FHWA and FTA have established relationships with tribes and actively engage tribes on transportation safety issues. This presents NHTSA with an opportunity to learn from our modal partners' experience working with tribal governments.

FHWA's Office of Federal Lands Highway assembled a Safety Management System (SMS) Steering Committee to marshal stakeholders for tribal transportation safety. A Strategic Highway Safety Plan (SHSP) was developed with an accompanying Implementation Plan. The overarching goal of the Implementation Plan is for tribal governments to develop Tribal Highway Safety Improvement Programs (HSIP). The plan includes strategies that tribes can tailor to improve safety in their communities and develop in-house, self-sustaining expertise. Over 60% of federally recognized tribes have developed their own strategic transportation safety plans. SMS Steering Committee members include representatives from: FHWA, NHTSA, BIA, Centers for Disease Control, Indian Health Service, Menominee Indian Tribe of Wisconsin, Swinomish Indian Tribal Community, Navajo Nation, and Rosebud Sioux Tribe.

Representatives from NHTSA Region 6 and the National Center for Statistical Analysis serve on the SMS Committee. Other Federal agencies for potential NHTSA collaboration include Federal Transit Administration, National Park Service, and Substance Abuse and Mental Health Services Administration.

Short-term Goals: Maintain engagement with SMS Committee. Contact three Federal agencies to explore collaboration potential.

Long-term Goal: Develop a medium to communicate and share ideas with our Federal partners on a routine basis.

Lead Office: Office of Regional Operations and Program Delivery

## Capacity Building Activity 4:

### Develop Tribal Safety Resource Library

The Work Group will develop and maintain a Tribal Safety Resource Center. The Work Group identified the need for a central repository for tribal safety information. This need was consistently expressed through quarterly conference calls and strategic planning sessions. Information about currently active tribal safety programs is not widely known or distributed beyond the local level. NHTSA Regional Offices may learn about specific tribal projects through State Highway Safety Offices, the Bureau of Indian Affairs – Indian Highway Safety Program or Federal agencies such as the CDC and IHS. Knowledge of these programs is commonly communicated at regional conferences, local meetings, and on occasion, the national Lifesavers conference. There is far less tribal safety information available on the internet in the form of programmatic or research reports as compared to general population or other demographic groups.

The Work Group identified the need for “best practices” for tribal safety programs, recognizing the unique cultural differences of Native Americans and Tribal reservations. Traditional reference documents such as *Countermeasures That Work* rely on research conducted in general population settings. While the countermeasures themselves are proven, or show promise in the studied contexts, having examples of successful implementation in Native American communities may help identify which countermeasures are effective and suitable for wider adoption.

One notable exception is the CDC publication, *Tribal Motor Vehicle Injury Prevention, Best Practices Guide 2016*. The guide states, “This Guide was developed to share lessons learned from several American Indian/Alaska Native (AI/ AN) Tribes/Tribal Organizations that have tailored and carried out evidence-based strategies to reduce injury and death caused by motor vehicle crashes in AI/AN communities. Lessons learned and examples in this document include Tribes funded by the Centers for Disease Control and Prevention, Indian Health Service, and the Bureau of Indian Affairs.”

The Guide outlines five important components for Tribal Motor Vehicle Injury Prevention (TMVIP):

- Commitment
- Collaboration
- Data and Evaluation
- Tailored Evidence-Based Strategies
- Technical Support

Within each component, the Guide covers what is needed, lessons learned, case examples, resources, and calls to action for TMVIP programs. Representatives from NHTSA Region 6, FHWA, and the BIA Indian Highway Safety Program are cited as providing input, and FARS data were cited in the document. [https://www.cdc.gov/motorvehiclesafety/native/best\\_practices\\_guide.html](https://www.cdc.gov/motorvehiclesafety/native/best_practices_guide.html)





An additional resource is the FHWA maintained site [www.tribalsafety.org](http://www.tribalsafety.org). This site houses information from the aforementioned SMS Committee as well as engineering and driver/road user behavioral safety information. In 2019, NHTSA Region 6 worked with the web page administrator for tribalsafety.org to add information related to BIA and NHTSA grant fund availability. This website also houses several tribal transportation safety plans that include driver/road user behavioral issues such as speeding, impaired driving and child passenger safety.

Short-term Goals: Develop a repository of resources for internal NHTSA use. Share public facing information with OCCI and tribalsafety.org.

Long-term Goal: Collaborate with CDC in the next iteration of the Best Practices Guide.

Lead Office: Office of Regional Operations and Program Delivery with Office of Research and Program Development

## *Capacity Building Activity 5:*

### **Strengthen Relationship with Tribal Communities and Safety Partners**

NHTSA will engage Tribal, State, local, university and non-governmental organizations (NGOs) in highway safety program activities. Historically, NHTSA Regional Offices had limited direct working engagements with Tribal governments and organizations that work directly with Native American communities. This is due in part to the “State” Highway Safety Office organization of NHTSA grant funded programs. Unlike State governments, Tribal governments are sovereign nations (self-governing) and are not a subdivision of Federal or State governments. There are 574 federally recognized tribes located in the United States. These Tribal Nations have a formal Nation-to-Nation relationship with the U.S. government. Tribal Nations are independent and have unique challenges and resource availability.

NHTSA should engage individual tribes to make a larger impact on reducing fatalities. According to the U.S. Census data depicted below, the 2.9 million people identify as affiliated with the ten largest tribes. This represents 43% of the total American Indian and Alaskan Native population in the United States. (6.8 million) <https://www.census.gov/newsroom/facts-for-features/2019/aian-month.htm>

### Tribal Affiliation and Population

The U.S. Census measure of tribal affiliation is different from official tribal membership. Federally recognized tribes each set their own requirements for official membership, and most have strict rules for membership. In the census, people who mark “American Indian or Alaska Native” as their race are asked to write in their “enrolled or principal tribe.” Because the Census Bureau relies on self-

identification on matters of race, the census item simply measures affiliation, not official membership. The census is known to identify many more American Indians than are currently on any tribal membership list. The census data are used extensively to distribute federal funds and set policies.

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4207217/#:~:text=Tribal%20affiliation%20The%20census%20measure%20of%20tribal%20affiliation,official%20membership%20in%20their%20tribes%20and%20most%20have>

**TABLE 2: 10 federally recognized tribes with the highest percentage of American Indians and Alaska Natives (AI/ANs)**

	AI/ANs identifying as affiliated with at least one federally recognized tribe <sup>1,2</sup>	
	No.	%
<b>Tribe/Nation (State located)</b>		
Cherokee (NC and OK)*	767,195	26.39
Navajo Nation tribal grouping (AZ, NM, and UT)	332,129	11.42
Choctaw (MS, LA, and OK)*	159,630	5.49
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana (MT)	105,304	3.62
Muscogee (Creek) Nation (OK)	81,685	2.81
Iroquois tribal grouping (OK and NY)	81,002	2.79
Chippewa (MI and MN)*	73,471	2.53
Apache (AZ, NM, and OK)	69,180	2.38
Pueblo tribal grouping (NM and TX)	62,540	2.15
Chickasaw tribal grouping (OK)	52,278	1.80
<b>Total AI/AN individuals</b>	<b>2,907,272</b>	<b>100.00</b>

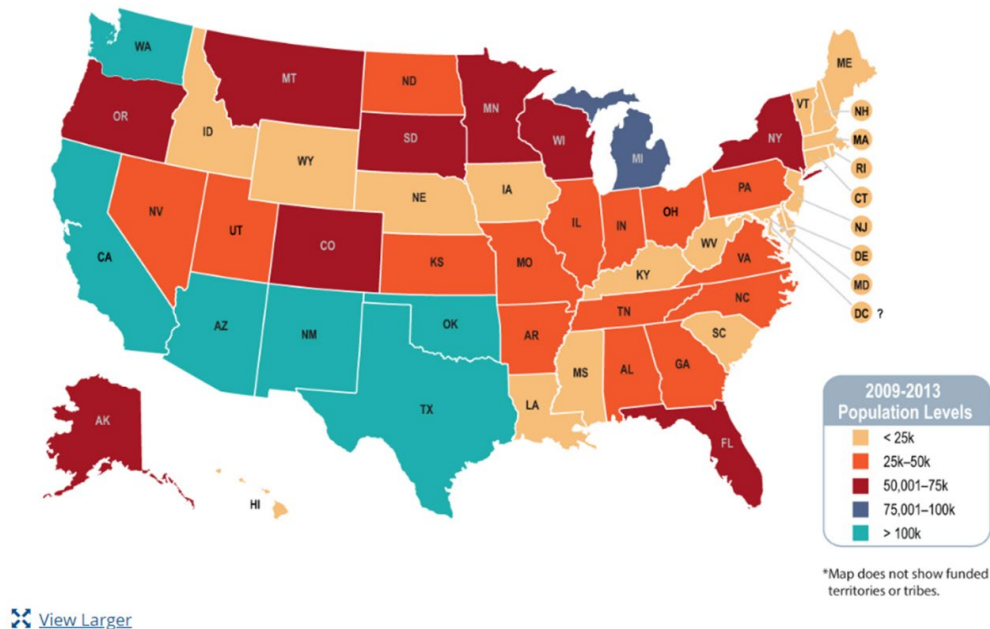
Population estimates from Census 2010. <https://www.cdc.gov/tribal/tribes-organizations-health/tribes/state-population.html>

Similarly, the following map depicts American Indian and Alaskan Native population by State. The largest concentration of Native Americans is in southwestern States, with one exception being Washington.

## Tribal Population

The map below shows the population of individuals who self-identify as American and Alaska Natives in each state.

**2009-2013 American Indian and Alaska Native State Populations**

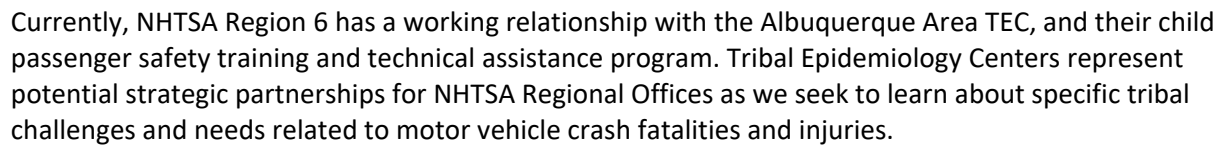


In addition to population and tribal affiliation data from the U.S. Census Bureau, the HHS-Indian Health Service (IHS) is a source of information for unintentional injury data and existing public health programs. In 1992, amendments to the Indian Health Care Improvement Act (IHCIA) authorized the establishment of Tribal Epidemiology Centers (TECs) to serve each IHS region. The amendments mandate that TECs perform a variety of functions in consultation with and on the request of Indian tribes, tribal organizations, and urban Indian organizations to elevate the health status of tribal and urban Indian communities, including:

- Collecting and monitoring data on the health status objectives of the IHS, Indian tribes, tribal organizations, and urban Indian organizations
- Evaluating delivery and data systems that impact Indian health
- Assisting tribes, tribal organizations, and urban Indian organizations to determine health status objectives and services needed to meet those objectives
- Recommending services to assist tribal communities
- Making recommendations to improve Indian healthcare delivery systems
- Providing technical assistance to tribes, tribal organizations and urban Indian organizations to develop local health priorities and disease incidence and prevalence rates
- Providing disease surveillance and promoting public health



## Tribal Epidemiology Centers and the Areas They Serve

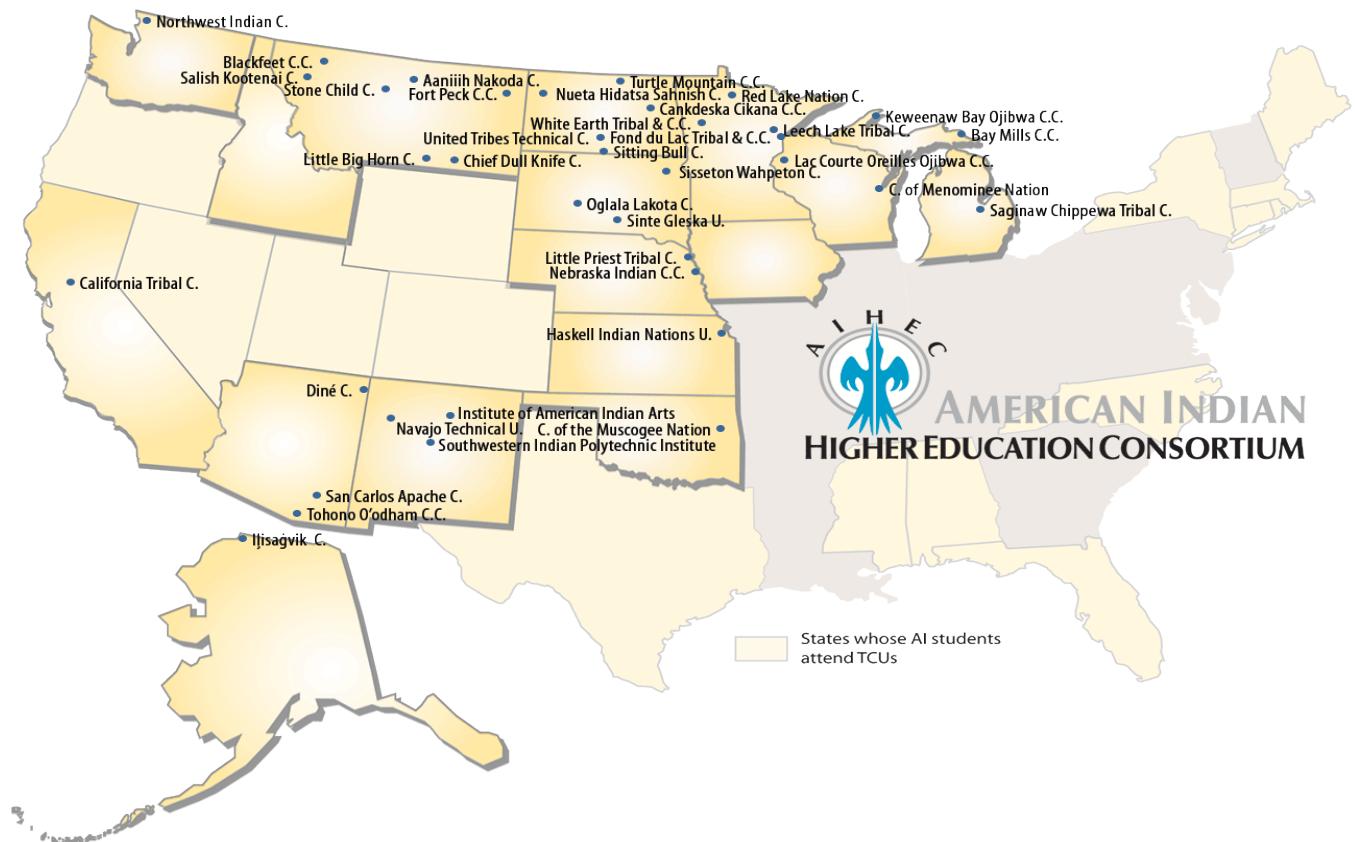


Additional potential strategic partners for NHTSA are tribal colleges and universities. The American Indian Higher Education Consortium (AIHEC) is a non-profit established in 1973, for the purpose of advocating for Federal policies to support American Indian/Alaska Native's in higher education. There are now 37 chartered tribal colleges and universities (TCUs) across the United States, each of which have the purpose to maintain tribal culture and provide local educational opportunities to reservations. <http://www.aihec.org/index.html>

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- Overarching Traffic Safety Avenues
  - Public/Community/Rural Health
  - Law Enforcement/Criminal Justice
  - Lay Advocates/Paralegals
  - Tribal Leadership
  - Social Work
  - Emergency Medical Services/Paramedics
  - Campus Radio Stations-Media Outreach

**Map of tribal colleges and universities and State origin of student enrollment.**



## Small Urban, Rural and Tribal Center on Mobility (SURTCOM)

The mission of SURTCOM is, “to conduct research and provide leadership, education, workforce development and technology transfer in all transportation-related aspects of mobility for people and goods, focusing specifically on small urban, rural and tribal areas.” The center is a collaboration between the Western Transportation Institute at Montana State University, Upper Great Plains Transportation Institute at North Dakota State University, and the Urban and Regional Planning program at Eastern

Washington University. SURTCOM research and programs are coordinated throughout Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, and South Dakota. <http://surtcom.org/>

**Short-term Goals:** Regional Offices coordinate with SHSOs to assess engaging Native American tribes, TECs, TCUs, and potential safety partners. Develop guide (brief) on working with State Highway Safety Offices to deliver tribal safety programs (e.g., New Mexico, South Dakota models).

**Long-term Goals:** Grow Native American active voice in NHTSA Tribal program planning and outreach. Engage key organizations, such as the National Congress of American Indians. ([www.ncai.org](http://www.ncai.org))

**Lead Office:** Regional Operations and Program Delivery with Research and Program Development

## Safety Priorities

### *Safety Priority 1:*

#### Improve Collection and Analysis of Tribal Crash Data

The National Center for Statistics and Analysis (NCSA) will continue to lead initiatives to improve collection and analysis of tribal crash data. NCSA will seek to accomplish this objective through 1) direct tribal technical assistance, and 2) through collaboration with FHWA's Office of Tribal Transportation and other Federal and tribal agencies.

NCSA's Traffic Records Division will continue to provide Tribes with free technical assistance to improve their crash data collection and use. The GO Team that was completed for the Confederated Tribes of the Colville Reservation (CTCR) in September 2019 established data sharing agreements between the CTCR Public Safety Division and State and local law enforcement and EMS agencies. The need for data sharing agreements is not uncommon among Tribal traffic safety units and future GO Teams could build on the success of the CTCR GO Team. Other potential GO Team assistance that could be provided to Tribes includes strategic plan development and problem identification through crash data analysis.

The Tribal Crash Reporting Toolkit is another form of technical assistance that will soon be available to Tribes. The Toolkit was originally conceived as a means to address the lack of resources that Tribes face as well as the inconsistent practice of collecting crash data – it is estimated that 20% of Tribes do not even collect crash data, much less share that data with State or Federal agencies (NCHRP REPORT 788). The Toolkit consists of six "Tools": 1) a fillable PDF crash form that is 100% compliant with the Model Minimum Uniform Crash Criteria, 2) a database being developed with free-to-use MS SQL Express, 3) an Officer's Instruction guide, 4) a Data Analysis guide, 5) a Quality Control guide, and 6) a Facts and Fictions guide intended to both promote the benefits of collecting crash data as well as dispelling common misconceptions. Currently in the pilot phase of development, the Toolkit will be available to Tribes in September 2020.

More broadly, NCSA Traffic Records and the NHTSA Region 6 Tribal Liaison will engage with Tribes and other Federal and State agencies that assist Tribes at the annual National Transportation in Indian Country Conference as well as other venues when possible, sharing NHTSA services and data findings. Furthermore, NHTSA will continue to participate in the Tribal Transportation Safety Management

System Steering Committee – with members from multiple Tribes, the Bureau of Indian Affairs, the Indian Health Service, and the Centers for Disease Control – working to identify and promote best practices in Tribal traffic safety.

Both making GO Teams available to Tribes (until 2018 they had only been available to States) and the idea for the Tribal Crash Reporting Toolkit came about through collaborative discussion between NCSA's Traffic Records Division and FHWA's Office of Tribal Transportation. The latter agency manages TribalSafety.org, which has numerous resources to help Tribes make better use of their crash data, to include the Tribal GO Team application as well as the Tribal Crash Reporting Toolkit when that becomes available.

Short-term Goals: Make the Tribal Crash Reporting Toolkit available by FY 2021 at no cost to Tribes. Attend and present at the annual National Transportation in Indian Country Conference.

Long-term Goal: Successfully complete at least two Tribal GO Teams by FY 2023 to assist Tribes with crash data collection and use.

Lead Office: National Center for Statistics and Analysis, with NHTSA Regions 5, 6 and 8.

Safety Priority 2:

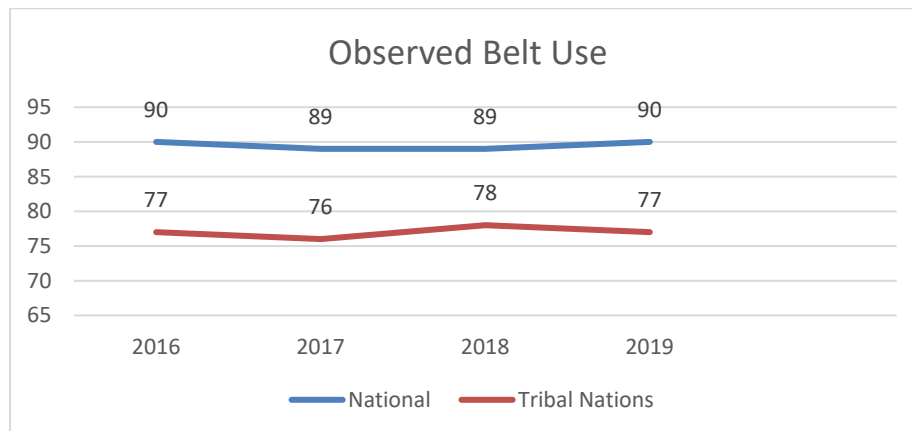
## Increase Seatbelt and Child Safety Seat Usage

The Work Group will strengthen occupant protection program delivery and evaluation in tribal communities.

### *Overrepresentation of Native Americans in Unbelted Fatalities*

Native Americans are over represented as unrestrained passenger vehicle occupants killed in crashes as reported by the FARS database. The national rate of unbelted passenger vehicle occupant fatalities is 48% for the 5-year period 2013-2017. Native Americans experienced a significantly higher rate (68%) over the same period.

The Bureau of Indian Affairs Indian Highway Safety Program conducts an annual seatbelt observation survey which is depicted below. The survey is conducted by trained observers at an average of 120 sites within 16 tribal reservations.



Observed belt use compliance percentage has remained stable over the past five years ranging from 76.8 to 78%. The national observed seat belt use survey has ranged from 89.6% to 90.7% during the same period. It is worth noting that pick-up truck drivers and passengers exhibit the lowest belt use rate by vehicle type (similar to national data). However, the survey indicates that urban/collector road types have lower belt use as compared to rural/arterial roads.

### Weighted Safety Belt Use by Vehicle, Occupant, Area & Road Type

	Drivers		Passengers		Drivers and Passengers	
	Percent Belted	Number <sup>1</sup>	Percent Belted	Number <sup>1</sup>	Percent Belted	Number <sup>1</sup>
All Cases	76.5%	13,410	79.2%	4,410	77.0%	17,820
Vehicle Type						
Auto	79.3%	5,290	77.6%	1,768	79.3%	7,058
Pickup	69.8%	4,257	73.5%	1,157	70.1%	5,414
SUV	80.9%	3,049	82.2%	1,126	81.5%	4,175
Van	82.5%	814	87.2%	359	83.0%	1,173
Occupant Sex						
Male	74.3%	8,110	74.9%	1,628	74.2%	9,738
Female	80.0%	5,297	82.6%	2,782	80.8%	8,079
Area & Road Type						
Urban/Collector	71.3%	6,440	72.2%	2,005	71.5%	8,445
Rural/Arterial	79.4%	6,970	82.7%	2,405	80.1%	9,375

<sup>1</sup>Included total number where belt use was observed and recorded; does not include cases in which belt use was unknown.

According to the Centers for Disease Control web-based injury statistics query and reporting system (WISQRS), among children aged 0–12 years, American Indian and Alaska Native children have the highest traffic death rate of all racial/ethnic groups in the United States. Also at risk are infants less than one year of age - the motor vehicle traffic death rate among Native Americans is 8 times higher than that of non-Hispanic whites. <https://www.cdc.gov/motorvehiclesafety/native/toolkit/ChildSafety.html>

#### Countermeasures

The Bureau of Indian Affairs Indian Highway Safety Program funds an average of 50 projects with 42 tribes in annual basis utilizing NHTSA Section 402 grant funds. Annual expenditures for the program are approximately \$5 million. Each of the funded projects includes occupant protection activities as part of the scope of work. In FY2019 the BIA provided funding to 35 tribal police departments for high-visibility enforcement of seat belt, speed, and impaired driving activities. These enforcement projects reported issuing a total of 19,970 safety belt violations and 2,638 child passenger safety violations throughout the year. These statistics include results for tribes participating in the annual NHTSA Click it or Ticket campaign.

In addition to high-visibility enforcement projects, the BIA funded 15 tribal governments to conduct child passenger projects in FY2019. Collectively, these projects expended approximately \$83,000 to purchase and distribute child safety seats to low income families. The seats are distributed through child safety seat check-up events and community health education programs. Child passenger safety programs are also administered by the Indian Health Service and some Tribal Epidemiology Centers,

such as the Albuquerque Area TEC. The Work Group identified the need to coordinate with other Federal, state, and local partners conducting child passenger safety effort to reduce redundancy and ensure maximum coverage.

Effective media messaging is a critical component of successful highway safety programs. Engaging the public to share messages of deterrence and education is vital to changing driver, passenger and child seat usage rates. Many State Highway Safety Offices spend more than a million dollars annually to create and place safety messaging through a variety of mediums including television, outdoor, print, and online. Conversely, the BIA IHSP does not fund a coordinated media campaign for all tribes. This is in large part due to statutory restriction requiring 95% of NHTSA funds awarded to the BIA to be expended by the tribes. In the BIA IHSP, media messaging is the responsibility of the individual tribes. Tribes receiving funding for high-visibility projects often include a budget of \$2000-\$5,000 for media messaging activities. These funds are rarely expended and often underutilized. While we do not know exactly why that is, some explanations may be: lack of media marketing/buying knowledge and experience, lack of information about the effectiveness of media campaigns when coupled with high-visibility enforcement, and small/rural media markets lack adequate venues to reach geographically disparate tribal reservations. A more formal assessment of the challenges tribes face in conducting media campaigns is needed.

**Short-term Goals:** Expand tribal HVE projects in high fatality areas. Coordinate child passenger safety efforts with other Federal, state and local safety partners. Conduct assessment of media markets and tribal capacity in high fatality areas.

**Long-term Goal:** Conduct a “national” assessment of occupant protection in Native American communities and lead a coordinated response to increase belt and child safety seat usage with our Federal, state, and local safety partners.

## *Safety Priority 3:*

### **Decrease Alcohol- and Drug-Impaired Driving**

NHTSA will strengthen impaired driving prevention, high-visibility enforcement and adjudication programs in tribal communities.

#### *Overrepresentation of Native Americans in Alcohol-Impaired Driving Fatalities*

Native Americans are overrepresented in alcohol impaired fatalities (those involving a driver with a BAC of .08+). For the period 2013-2017, 41% of Native American fatalities involved a driver with a BAC of .08+. This is significantly higher than the national rate of 29% for the same period.

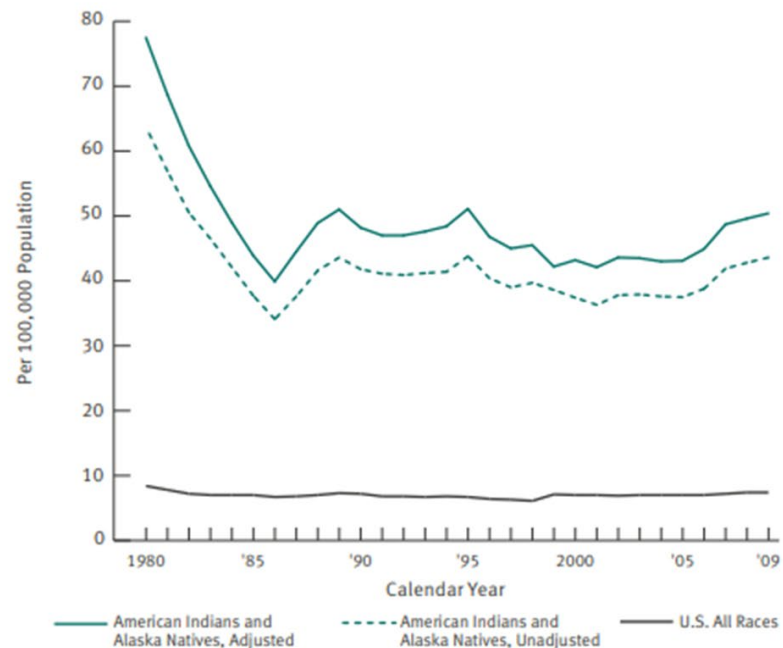
#### *Overrepresentation of Native Americans in Alcohol-Related Deaths*

Impaired driving is a behavioral activity often indicative of underlying issues such as substance abuse and mental health disorders (co-occurring disorders). Alcohol abuse is associated with higher rates of injuries and deaths. This is the case for the Native American population. According to the Indian Health Service, Native Americans experience an alcohol-related death rate over six times higher than all races.





Problem drinking is associated with injuries. The AI/AN population for years 2008-2010 has an age-adjusted alcohol-related death rate (50.4) that is over six times the U.S. all races and U.S. white rates (7.4 and 7.7, respectively). In the six years between 1979-1981 and 1985-1987, the AI/AN rate decreased 49 percent. In the twenty-three years from 1985-1987 to 2008-2010, AI/AN alcohol-related death rates increased by 26 percent, with some year-to-year fluctuating being apparent. These AI/AN rates have been adjusted to compensate for misreporting of AI/AN rate on state death certificates.

**Chart 38**
**Age-Adjusted Alcohol-Related Death Rates**


[https://www.ihs.gov/sites/dps/themes/responsive2017/display\\_objects/documents/Indian\\_Health\\_Focus\\_%20Injuries\\_2017\\_Edition\\_508.pdf](https://www.ihs.gov/sites/dps/themes/responsive2017/display_objects/documents/Indian_Health_Focus_%20Injuries_2017_Edition_508.pdf)

### *Alcohol/Drug Use, and Mental Health Disorders among Native American Youth*

According to SAMHSA, Native American youth are at a high risk for alcohol and drug use as well as and mental health disorders.

- Among U.S. adolescents ages 12 to 17 years, Native youth have the highest lifetime prevalence of major depressive episodes.
- Native American children are 70 percent more likely to be identified in school as students with an emotional disturbance.
- Suicide is the second cause of leading death – 2.5 times the national rate – for Native male youth in the 15- to 24-year-old age group.
- In 2013, among persons aged 12 years or older, the rate of substance dependence or abuse was higher among American Indians or Alaskan Natives than any other population group.
- In 2013, 38.7 percent of Native American adolescents aged 12 to 17 years had a lifetime prevalence of illicit drug use.

- Compared with the national average for adolescents aged 12 to 17 years, Native American adolescents had the highest rates of lifetime tobacco product use, marijuana use, nonmedical use of pain relievers, and nonmedical use of prescription-type psychotherapeutics.
- From 2003-2011, Native Americans were more likely to need alcohol or illicit drug use treatment than persons of other groups by age, gender, poverty level, and rural/urban residence.  
[https://www.samhsa.gov/sites/default/files/topics/tribal\\_affairs/ai-an-data-handout.pdf](https://www.samhsa.gov/sites/default/files/topics/tribal_affairs/ai-an-data-handout.pdf)

## Countermeasures

### High-Visibility Enforcement

The Bureau of Indian Affairs Indian Highway Safety Program funds an average of 50 projects with 42 tribes annually utilizing NHTSA Section 402 funds. Annual expenditures for the program are approximately \$5 million. Each high-visibility enforcement projects includes impaired driving activities as part of the scope of work. In FY2019, the BIA provided funding to 35 tribal police departments for high-visibility enforcement of seat belt, speed, and impaired driving activities. These high-visibility enforcement projects reported 3,251 impaired driving arrests. This includes arrests made during two impaired driving mobilizations. Data for each respective mobilization is in the tables below.

### ***Don't Shatter the Dream*** Impaired Driving Mobilization -December 14, 2018 - January 1, 2019

#### FY2019 Don't Shatter the Dream Ticket Statistics

145	DWI Arrest	171	Suspended Licenses
151	Safety Belt Citations	85	Uninsured Motorists
55	Child Safety Citations	1,400	Speeding
30	Felony Arrests	59	Reckless Driving
9	Recovered Stolen Vehicles	154	Crashes
124	Fugitives Apprehended	2	MVC Fatalities

#### FY2019 Drive Sober or Get Pulled Over Statistics (August 16-September 2, 2019)

123	DWI Arrest	109	Suspended Licenses
110	Safety Belt Citations	136	Uninsured Motorists
38	Child Safety Citations	1,785	Speeding
8	Felony Arrests	51	Reckless Driving
8	Recovered Stolen Vehicles	83	Crashes
87	Fugitives Apprehended	1	MVC Fatalities

### Tribal Law Enforcement and Impaired Driving Enforcement Training

There are more than 200 tribal police departments in Indian Country, serving an even larger number of tribal communities. These departments range in size from only 2 or 3 officers to more than 200 officers. The communities they serve are as small as the Grand Canyon-based Havasupai Tribe (with a population



of only 600 persons) and as large as the Navajo Nation (with a population of more than 250,000 residing in a land area larger than the State of Connecticut).

The most common administrative arrangement for police departments in Indian Country is organization under the Indian Self-Determination and Education Assistance Act of 1975. Also known as Public Law 93–638 (PL 93–638), this law gives tribes the opportunity to establish their own government functions by contracting with the Bureau of Indian Affairs. These "638" departments are administered by tribes under contract with the BIA's Division of Law Enforcement Services. Typically, the 638 contract establishes the department's organizational framework and performance standards and provides basic funding for the police function. Officers and nonsworn staff of these departments are tribal employees. Departments administered by the BIA are the second most common type of police department in Indian Country. Personnel in these departments are Federal employees. Inadequate funding is an obstacle to policing in Indian Country. Existing data suggest that tribes have between 55 and 75 percent of the resources available to non-Indian communities. <https://www.tribal-institute.org/lists/enforcement.htm>

Tribal governments exercise authority to establish traffic ordinances or laws through their respective governing structures. Traffic laws vary from tribe to tribe; however, many tribes have adopted impaired driving laws establishing a blood alcohol concentration of .08 or above as the legal presumption of impairment limit. This is a very good indicator that tribal governments recognize the danger impaired driving presents and the potential for saving lives laws can have. (All 50 States had adopted .08 laws by 2004.)

In order to accurately enforce .08 laws, officers must have a strong command of the Standardized Field Sobriety Tests (SFSTs). The ability to determine impairment of a driver on the roadside is critical to saving lives and gathering appropriate evidence for adjudication. Many tribal police officers receive basic training, free of cost, at the Bureau of Indian Affairs Indian Police Academy located in the Federal Law Enforcement Training Center in Artesia, New Mexico. The Indian Police Academy incorporated the Standardized Field Sobriety Testing (SFST) Course into the basic academy approximately 4 years ago. Any tribal officers that completed their basic academy training more than 4 years ago did not receive SFST training. The Indian Police Academy did not offer the SFST Course outside of the basic academy setting during this period, nor did they offer continuing education in the form of the SFST refresher course. Tribal officers that did not receive SFST training as part of the basic academy were left to their own resources to find training through State administered programs. The results of this approach are mixed, some States welcomed tribal officers to attend SFST training and some did not. The overriding factor was jurisdiction, if tribal officers are cross-designated with authority to enforce State impaired driving laws their access to State administered SFST training increased.

In the Fall of 2019, NHTSA collaborated with the BIA Indian Police Academy to offer the first SFST Instructor Course exclusively for tribal police officers. The course, held at Camp Grafton, North Dakota, resulted 27 officers representing 17 tribes being qualified to teach SFST courses to their fellow officers. Plans for FY20 include additional NHTSA facilitated courses to include SFST Refresher, Advanced Roadside Impaired Driving Enforcement (ARIDE), and an additional SFST Instructor course.

### Media Messaging

As stated previously, media messaging is a critical component of successful highway safety programs. Engaging the public to share messages of deterrence and education is vital to changing driver behavior for impaired driving.

The BIA-IHSP does not fund a coordinated impaired driving media campaign for all tribes. This is in large part due to statutory restriction requiring 95% of NHTSA funds awarded to the BIA to be expended by the tribes. In the BIA-IHSP media messaging is the responsibility of the individual tribes. Tribes receiving funding for high-visibility rarely expend funds budgeted for media messaging. While we do not know exactly why that is, some explanations may be: lack of media marketing/buying knowledge and experience, lack of information about the effectiveness of media campaigns when coupled with high-visibility enforcement, small/rural media markets that lack adequate mediums to geographically cover tribal reservations. A more formal assessment of the challenges tribes face in conducting media campaigns is needed.

## Establishing DWI Courts

According to the National Center for DWI Courts (NCDC) DWI Courts are the most successful strategy for holding repeat impaired drivers accountable while ensuring they receive life-saving treatment. DWI Courts address offenders' safety risk to the public and their needs for substance abuse and mental health treatment. Research studies have shown DWI Courts can make a measurable impact on recidivism.

A Michigan study found that participants were 19 times less likely to be re-arrested for another impaired-driving offense than offenders processed through a traditional court. DWI courts were also determined to be cost-effective and efficient. A Georgia evaluation found that DWI court participants had a recidivism rate of 15% compared to a recidivism rate of 35% among DWI offenders who were processed through traditional courts.

[https://www.dwicourts.org/wp-content/uploads/2016/09/MN\\_DWI\\_All\\_Site\\_Summary\\_August\\_2014\\_FINAL\\_FOR\\_OTs.pdf](https://www.dwicourts.org/wp-content/uploads/2016/09/MN_DWI_All_Site_Summary_August_2014_FINAL_FOR_OTs.pdf)

NHTSA's *Countermeasure That Work* rates DWI Courts "4 out of 5 stars." NHTSA has a long-established working relationship with the NCDC and supports annual DWI Court training to establish new courts across the country.

**Short-term Goals:** Expand tribal HVE projects in high fatality areas. Support SFST/ARIDE training for Law Enforcement. Conduct an assessment of media markets and tribal capacity in high fatality areas, Increase DWI Court training for Tribal Courts.

**Long-term Goal:** Conduct a "national" assessment of impaired driving in Native American communities and lead a coordinated response to reduce fatalities with our Federal, state, and local safety partners.

**Lead Office:** Office of Regional Operations and Program Delivery with the Impaired Driving Division

## Safety Priority 4:

### Decrease Pedestrian and Bicycle Deaths and Injuries

NHTSA will enhance pedestrian and bicycle safety programs in tribal communities, in conjunction with the Departmental Pedestrian and Bicycle Safety Initiative.

From 2013-2017, a total of 608 Native American pedestrians died in motor vehicle crashes. Walking is a prominent mode of transportation and physical exercise on reservations and tribal lands. Tribal lands are also more likely to lack safe walking trails, paths, and crosswalks to facilitate the travel of residents

and visitors. Crash data and observational surveys indicate that pedestrians are often left with limited options that expose them to the risk of being injured or killed by motor vehicles. Successful pedestrian and bicycle programs promote safe pedestrian and bicycle practices, educate drivers to share the road

safely with other road users, and provides safe facilities for pedestrians and bicyclists through a combination of policy, enforcement, communication, education, incentive, and engineering strategies.

Short-term Goal: Collaborate with New Mexico safety partners to carry out pedestrian and bicycle safety events and campaigns in Albuquerque and Gallup (Hopi, Navajo and Zuni Tribes).

Long-term Goal: Facilitate/lead pedestrian safety assessments with three Tribal Nations.

Lead Office: Office of Regional Operations and Program Delivery with Safety Countermeasures Division.

### *Safety Priority 5:*

#### **Increase Vehicle Safety Recall Completion Rates on Tribal Lands**

The Tribal Safety Intra-Agency Work Group will lead education and outreach initiatives to improve vehicle recall completion rates on tribal lands.

The Takata air bag recall is the largest vehicle safety recall in U.S. history. There are currently over 400,000 air bags on Tribal Nations that have yet to be repaired. It is imperative that these air bags get repaired as these defective air bags can cause injuries or even death if they deploy. Tribal Nation barriers to getting repairs completed include time constraints, distance to dealerships, and mistrust of dealers. The proposed communications and outreach tactics should address these barriers and educate the Tribal Nations audience of the urgency of getting vehicle safety recalls repaired.

Short-term Goals: Carry out vehicle safety events at Powwows. Enhance the BIA program to include relevant NHTSA communication campaigns (culturally-specific). Consider a pilot education program with the Navajo Nation.

Long-term Goal: Increase recall completion rates on tribal lands. Conduct vehicle safety education activities at key national events, including the National Congress of American Indians. ( [www.ncai.org](http://www.ncai.org) )

Lead Office: Office of Communications and Consumer Information

### *Safety Priority 6:*

#### **Improve Access to, and Coordination of, Emergency Medical Services**

Ensuring access to high-quality EMS services is growing more and more difficult for EMS agencies in rural areas around the country. The National Highway Traffic Safety Administration (NHTSA) is committed to supporting Tribal Nations in evaluating, and identifying, opportunities to enhance Emergency Medical Services (EMS) and 911 and operations in tribal communities.

The National Highway Traffic Safety Administration (NHTSA) can support the tribes in assessing and identifying opportunities to improve Emergency Medical Services (EMS) and 911 resources in tribal communities.

EMS on tribal lands may be offered by a wide variety of entities, including tribal ambulance services, tribal first responder programs, tribal health departments, tribal fire departments, community health workers, tribal hospitals and clinics; Indian Health Service (IHS) ambulance services, hospitals,

ambulatory care facilities, volunteer members of the public, and governmental or private non-Indian EMS organizations.

Timely activation and response of EMS services is essential to increase patients' odds of survival. Effectively providing EMS services in tribal or rural communities is challenging due to problems caused by resource availability, physical constraints of isolation, limited cellular signal, limited broadband, lack of connected road network, sparse population decreasing the chance of bystander EMS notification or care, large distances to cover for response or transport, limited medical facilities and land and/or climate extremes. These conditions likely increase complexities in provision of adequate EMS to American Indian and Alaska Native populations.

<https://jamanetwork.com/journals/jamasurgery/article-abstract/2723267>

## Short-term Goals:

- Assess tribal EMS resources and challenges to identify needs.
- Increase tribal EMS agency participation in the National EMS Information System (NEMSIS).
- Improve communications and collaboration between tribal EMS, Offices of EMS (OEMS), other NHTSA equities, IHS, Health Resources and Services Administration (HRSA) EMS for Children Program (EMS-C).
- Review OEMS and EMS-C tribal assessments and collaborate with the new IHS EMS nurse to improve opportunities for research, outreach and collaboration to better inform grants, education and future assessments.
- Ensure tribal EMS agencies have access to data collection systems, are providing data to the National EMS Information System (NEMSIS) and are participating in the National Association of EMS Officials (NASEMSO) Data Managers Council to foster the development of metrics, performance measures and research to improve tribal EMS.

## Long-term Goals:

- Increase first responder training for local law enforcement, community health workers, and/or other appropriate tribal entities to increase access to prehospital emergency medical care. Collaborate with tribes to do 911/EMS assessments to better understand the needs of their communities and areas where access to timely services can be improved.
- Improve communications and collaboration between tribal EMS and local or state EMS.

Lead Office: NHTSA Office Of Emergency Medical Services

### Conclusion

The establishment of the Tribal Safety Working Group and the safety priorities articulated in this document represent a commitment by NHTSA to improve safety for Native American road users. The Tribal Safety Roadmap will serve as a guide to NHTSA as we conduct business with our diverse stakeholders. Institutional knowledge, experience, and resources will be applied systematically to reduce fatalities and injuries amongst this vulnerable population. We will make every effort to educate ourselves on culturally appropriate communication practices to ensure delivery of programs and services are well received and successful.

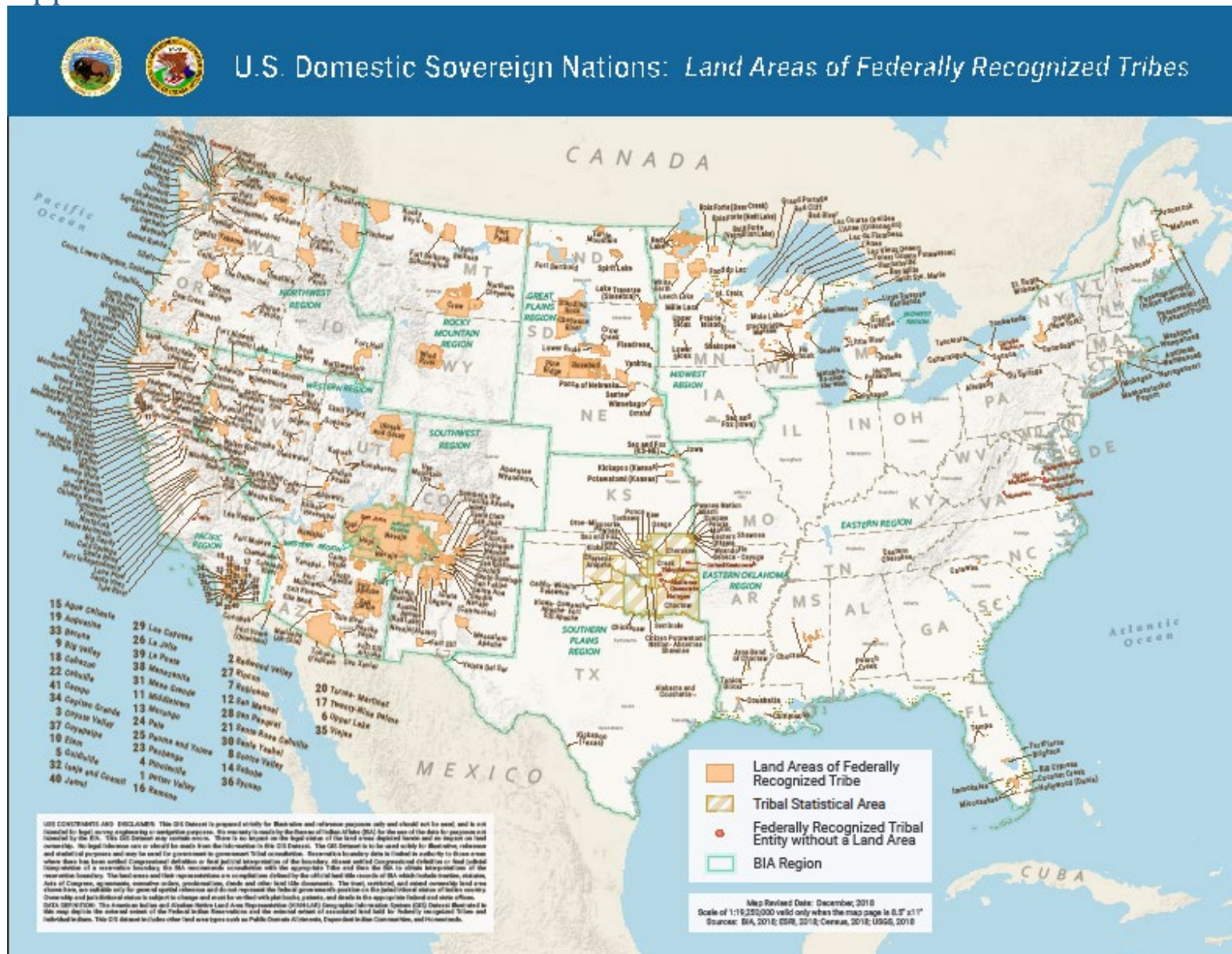
Next steps include:

- ❖ Communicate our priorities to external stakeholders and partners.
- ❖ Develop annual action plans for each safety priority.
- ❖ Meet quarterly to report on progress made towards short and long term goals.
- ❖ Review and analyze data, as available, to adjust plans and activities to better meet needs.





## Appendix A



[https://biamaps.doi.gov/bogs/gallery/PDF/IndianLands\\_ANSI\\_A\\_v8.pdf](https://biamaps.doi.gov/bogs/gallery/PDF/IndianLands_ANSI_A_v8.pdf)



**U.S. Domestic Sovereign Nations: Alaska Native Federal Land Areas**

**Arctic Slope**

- 1 Kaktovik
- 2 Nalaeq
- 3 Anaktuvuk Pass
- 4 Arctic Slope
- 5 Barrow
- 6 Asqasuk
- 7 Wainwright
- 8 Point Lay IRA
- 9 Point Hope IRA

**Bering Straits**

- 21 Unalakleet
- 22 Shaktovik
- 23 Koyuk
- 24 St. Michael IRA
- 25 Elm IRA
- 26 Stebbins
- 27 Chukot
- 28 White Mountain AK
- 29 King Island
- 30 Council
- 31 Nome
- 32 Solomon
- 33 Shishmaref IRA
- 34 Mary's Igloo
- 35 Teller
- 36 Brevig Mission
- 37 Wales
- 38 Diomedes
- 39 Savoonga
- 40 Gambell

**NANA**

- 10 Kobuk
- 11 Shungnak
- 12 Ambler
- 13 Selkirk
- 14 Kiana
- 15 Noorvik
- 16 Buckland
- 17 Kotzebue
- 18 Deering
- 19 Noodin
- 20 Kivalina

**Aleut**

- 41 Stony River
- 42 Sleetsmate
- 43 Red Devil
- 44 Crooked Creek
- 45 Chavchavak
- 46 Aniak
- 47 Kalagag

**Bristol Bay**

- 101 Falea Pass
- 102 Akutan
- 103 Onawalingin
- 104 Nikolai
- 105 St. George
- 106 Saint Paul
- 107 Atka

**Chugach**

- 159 Eyek
- 160 Tetlinak
- 161 Port Graham
- 162 Nanwalek

**Cook Inlet**

- 127 Chignik Lagoon
- 128 Aleknagik
- 129 Port Heiden
- 130 Chignik Lake
- 131 Menikofak
- 132 Perryville
- 133 Twin Hills
- 134 Toplek

**Doyon**

- 190 Eagle
- 191 Northway
- 192 Tetlin
- 193 Tanacross
- 194 Chalkyitsik
- 195 Circle
- 196 Dot Lake
- 197 Healy Lake
- 198 Fort Yukon
- 199 Arctic Village
- 200 Venetie IRA
- 201 Venetie
- 202 Beeter

**Sealaska**

- 145 Chikilak
- 146 Eklutna
- 147 Knik
- 148 Kenaitze
- 149 Inuvialut Bay Tribe
- 150 Cheema
- 151 Georgetown
- 152 Portage Creek
- 153 Ugenik
- 154 Tjonek
- 155 Kanelitza
- 156 Salamatoff
- 157 Nulitichik
- 158 Beldovie

**Ahtna**

- 178 Hoonah
- 179 Chilkoot
- 180 Chikot
- 181 Yakutat
- 182 Mentasta
- 183 Chitina
- 184 Ches-Na
- 185 Gakona
- 186 Kluti-Kash
- 187 Gulkahe
- 188 Tazlina
- 189 Centwell

**Legend**

- Alaska Native Village
- Federal Indian Land Area
- Alaska Native Corporation Boundary
- BIA Region

Scale of 1:14,000,000 valid only when the map page is 8.5" X 11"  
Map Date: September, 2003

**Source:** BIA, CGS, Census, USGS

**USE CONSTRAINTS AND DISCLAIMER:**  
This GIS Dataset is prepared strictly for illustrative and reference purposes only and should not be used, and is not intended for legal, survey, engineering or navigation purposes. No warranty is made by the Bureau of Indian Affairs (BIA) for the use of the data for purposes not intended by the BIA. This GIS Dataset may contain errors. There is no impact on the legal status of the land areas depicted herein and no impact on land ownership. No legal inference can or should be made from the information in this GIS Dataset. The GIS Dataset is to be used solely for illustrative, reference and statistical purposes and may be used for government to government Tribal consultation. Reservation boundary data is limited in authority to those areas where there has been settled Congressional definition or final judicial interpretation of the boundary. Absent settled Congressional definition or final judicial interpretation of a reservation boundary, the BIA recommends consultation with the appropriate Tribe and then the BIA to obtain interpretations of the reservation boundary. The land areas and their representations are compilations defined by the official land file records of BIA which include treaties, statutes, Acts of Congress, agreements, executive orders, proclamations, deeds and other land title documents. The trust, restricted, and rental ownership land areas shown here, are suitable only for general spatial reference and do not represent the federal government's position on the jurisdictional status of Indian country. Ownership and jurisdictional status is subject to change and must be verified with plot books, patents, and deeds in the appropriate federal and state offices.

**DATA DEFINITION:** The American Indian and Alaska Native Land Area Representation (AIANALAS) Geographic Information System (GIS) Dataset illustrated in this map depicts the external extent of Federal Indian Reservations and the external extent of associated land held for federally recognized Tribes and individual Indians. This GIS dataset includes other land area types such as Public Domain Allotments, Dependent Indian Communities and Homesteads.



## **Rodina Cave Parnall**

### ***Biography***

Rodina Cave Parnall (*Quechua (Peruvian Indian)*) is the Director of the Pre-Law Summer Institute (PLSI). Rodina attended the PLSI program in 1998, tutored in 1999, and taught the Indian Law course in 2011 and 2016.

Rodina recently served, by Presidential appointment, as Senior Policy Advisor to the Assistant Secretary-Indian Affairs in the U.S. Department of the Interior. Before that, she practiced law in New Mexico and Arizona representing Indian tribes and tribal entities in legal and administrative proceedings, in environmental matters, and on several large breach-of-trust cases in federal courts. In addition to her Indian law practice, she is experienced in complex litigation and appeals in federal and state courts.

Rodina has been an adjunct professor at the University of New Mexico School of Law and an Associate Judge on the Southwest Intertribal Court of Appeals (SWITCA). In 2014, she received the New Mexico State Bar Indian Law Section Outstanding Achievement Award. She graduated in 2001 from the Arizona State University College of Law with a Certificate in Indian Law and the Outstanding Law Graduate Award for 2001. She holds a Bachelor of Business Administration and a Master of Education from the University of Massachusetts Amherst.

Rodina clerked for the Honorable William C. Canby, Jr. with the U.S. Court of Appeals for the Ninth Circuit.,





## FRESHMAN YEAR

- Grades count in the law school admissions process. Start college with your best work.

## SOPHOMORE YEAR

- Consider registering for formal logic and writing classes
- Begin saving for LSAT prep materials and tests
- Build relationships with your professors and employers because you will need letters of recommendation later

## JUNIOR YEAR

- Meet with your school's pre-law advisor to discuss the law school application process
- Order LSAT prep materials or register for a prep course
  - Find an LSAT prep course that works with your schedule
  - Khan Academy has developed the first free and official LSAT Prep program in collaboration with LSAC
- Start researching law schools
  - What are their application deadlines? How much is tuition? Programs offered?
  - Attend open house events, schedule an interview with admissions staff, or attend a law school class
- Register for and take the June LSAT
- Submit your application to the Pipeline to Law Workshop (sponsored by the Native American Pipeline to Law Initiative)

## SENIOR YEAR

- Become familiar with your LSAC JD Applicant Account: This is the same account you will use to register for the LSAT, and where transcripts and letters of recommendation are sent to build your law school application and profile
- To be a competitive candidate, APPLY EARLY!
- Give professors and employers plenty of time to complete recommendation letters
- Research scholarships
- In August, fill out the Free Application for Federal Student Aid (FAFSA) via mobile app
- Visit an LSAC law school forum
- Apply to the Pre-Law Summer Institute for American Indians and Alaska Natives (PLSI)
- After graduation, submit an updated transcript with spring grades

# American Indian & Alaska Native PRE-LAW RESOURCES

## NATIVE AMERICAN PIPELINE TO LAW INITIATIVE

<https://law.asu.edu/faculty/centers/ilp/pipeline-to-law>

- Sign-up for the next set of pre-law advising workshops designed for Native American pre-law students
- Connect with mentorship opportunities

## PRE-LAW SUMMER INSTITUTE

<https://www.aile-inc.org/PLSI>

- Learn about the 8-week summer program that prepares American Indians and Alaska Natives for the rigors of law school
- Gain access to continued support throughout law school and bar examination preparation

## LAW SCHOOL ADMISSION COUNCIL (LSAC)

<https://www.lsac.org/>

- Prepare for the law school application process
- Sign-up for the Law School Admission Test (LSAT)
- Find resources to help you choose a law school

## KHAN ACADEMY

<https://www.khanacademy.org/>

- Sign-up for a free LSAT preparatory course

## FINANCIAL RESOURCES

THE AMERICAN INDIAN GRADUATE CENTER (AIGC)

<https://www.aigcs.org/>

INDIGENOUS EDUCATION, INC. (Cobell Scholarships)

<http://cobellscholar.org/>

FREE APPLICATION FOR FEDERAL STUDENT AID (FAFSA)

<https://studentaid.ed.gov/sa/fafsa>



The Pre-Law Summer Institute is partly funded by the Law School Admission Council



NATIONAL  
NATIVE AMERICAN  
BAR ASSOCIATION

# **Congratulations to our 2020 Bar Review Scholarship Recipients**



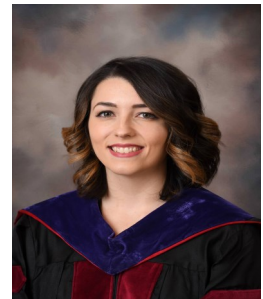
**Amber Holland**



**Gaylen Edmo**



**Summer Blaze Aubrey**



**Victoria Wilson**



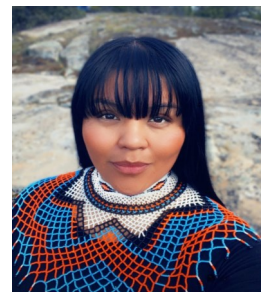
**Candace Begody**



**William Crowell**



**Brian Garcia**



**Janet Bill**



**Kaylee Correa**



**Violette Cloud**



## Diversity & Inclusion (D&I) Advisory Council Delegate Report 2019-2020

### ***NNABA Representative to the ABA Diversity & Inclusion Council***

Sunshine M. Nicholson (Secwépemc Nation)

Fort Belknap Tribal Regulatory Authority

I was appointed my position on April 10, 2019, at our annual NNABA meeting. However, after overview calls, I discovered that the actual transition of the delegation was not until the annual ABA meeting in August 2019. I received my orientation materials and virtually attended the D&I orientation call on October 25, 2019. We had a Council call on November 12, 2019. I submitted a NNABA collaboration form outlining our organizational goal for Native American diversity in the legal profession. Unfortunately, I was unable to attend the D&I Conference Council meeting on February 16, 2020, in Austin, TX. On May 6, 2020, I attended the virtual D&I Advisory Council meeting where COVID-19's threat to diversity in the legal profession was discussed and how other groups are handling activities (e.g. moot court competitions, annual meetings, voting, etc.) during the pandemic. I truly appreciate Linda Benally's continued efforts on the D&I Advisory Council and for helping me get started. I look forward to continuing as NNABA's delegate on the D&I Advisory Council.

## THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION

### RESOLUTION #2020-XX

#### **TITLE: Urging Adoption and Implementation of the United Nations Declaration on the Rights of Indigenous Peoples**

**WHEREAS**, the National Native American Bar Association (“NNABA”) was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA promotes and addresses social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, Native Americans have been the subject of exclusionary policies and language which sought to erase Native Americans from the body politic of the United States since its founding, including by the United States Supreme Court, which stated in *Johnson v. M’Intosh* that Native Americans are not “citizens” but instead “perpetual inhabitants” of the United States “with diminutive rights,” at the hands of the “discovery and conquest” by European colonizers; and

**WHEREAS**, Indigenous people were actively involved in the drafting and implementation process of the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) since 1999; and

**WHEREAS**, the Declaration is an historic statement of rights intended to guard against the genocide, the theft of lands and resources, the discrimination, and the political exclusion that tribal nations and many other Indigenous Peoples have suffered – and too often continue to suffer today; and

**WHEREAS**, the Declaration contains the “minimum standards for the survival, dignity and well-being of the Indigenous Peoples of the world”; and

**WHEREAS**, NNABA believes that implementation of the Declaration by the United Nations, the government of the United States, individual states, and other governments—including tribal nations—is critical for protecting and furthering the rights of Indigenous Peoples both domestically and internationally; and

**WHEREAS**, years after the adoption of the Declaration, Indigenous rights are still regularly violated, with Indigenous Peoples in all regions continuing to face atrocities that violate their individual and collective rights; and

**WHEREAS**, Indigenous peoples and individuals will benefit vastly if the principles of the Declaration are implemented by the United States, the individual states, tribal governments; and other governments; and

**WHEREAS**, much work remains to be done to implement the Declaration; and

**WHEREAS**, Indigenous peoples have the opportunity to set an example for nations, states, and other governments regarding the importance of implementing the Declaration; and

**WHEREAS**, some tribal governments and Native nations have already begun to set such an example by adopting Resolutions stating various types of support for the Declaration;

**NOW THEREFORE BE IT RESOLVED**, that NNABA hereby endorses the Declaration, and commits to undertaking efforts to encourage implementation of the Declaration through awareness-building and advocacy activities;

**BE IT FURTHER RESOLVED**, that NNABA encourages Native nations and other Indigenous peoples to consider endorsing and/or adopting the Declaration as tribal law; and

**BE IT FURTHER RESOLVED**, that NNABA calls on the federal government to commit to the implementation of the Declaration, including through the development on a national action plan;

**BE IT FURTHER RESOLVED**, that NNABA calls on all state and local governments to commit to the implementation of the Declaration;

**BE IT FINALLY RESOLVED**, that NNABA supports this resolution as policy until it is withdrawn or modified by subsequent resolution.

**AMERICAN BAR ASSOCIATION**

***SECTION ON CIVIL RIGHTS AND SOCIAL JUSTICE  
NATIONAL NATIVE AMERICAN BAR ASSOCIATION***

**REPORT TO THE HOUSE OF DELEGATES**

**RESOLUTION**

**RESOLVED**, That the American Bar Association urges federal, state, local, territorial, and tribal governments to endorse and implement the United Nations Declaration on the Rights of Indigenous Peoples.

**FURTHER RESOLVED**, That the American Bar Association urges Congress to enact legislation that mandates the U.S. government to:

1. In consultation and cooperation with the indigenous peoples in the United States, take all measures necessary to ensure the laws of United States are consistent with the Declaration.
2. Prepare and implement an action plan to achieve the objectives of the Declaration.
3. Prepare and deliver an annual report on the progress that has been made towards implementing the measure and achieving the goals in the action plan.



## **REPORT**

In 2007, following decades of advocacy by indigenous peoples, the United Nations (“UN”) General Assembly adopted the Declaration on the Rights of Indigenous Peoples (the “Declaration”).<sup>1</sup> This is a standard-setting document supported by 150 Nation-States, including the United States, committing to the individual and collective rights of indigenous peoples, which have for so long been disregarded in legal systems around the world. The Declaration recognizes that indigenous peoples have rights to self-determination, equality, property, culture, health, and economic well-being, among many others. It calls on States to undertake legal reform that will remedy past violations and ensure current protections for indigenous peoples’ rights.<sup>2</sup>

In the United Nations (UN) system, Declarations are official texts adopted by resolution of the General Assembly, which is comprised of all Member-States of the UN. The Declaration on the Rights of Indigenous Peoples was adopted by vote of 144 States in favor, 11 abstaining, and 4 against. The four “no” votes were made by States which all subsequently reversed course and now support the UN Declaration (including the United States). As such, the Declaration represents the world community’s recognition of standards for the just treatment of indigenous peoples, as advanced by indigenous peoples themselves.

By the terms of the UN Charter, General Assembly resolutions are generally “recommendatory” rather than “binding” in nature.<sup>3</sup> Yet, sometimes, Declarations are so widely accepted that they come to embody “customary international” or “general principles” of international law. The Universal Declaration on Human Rights of 1948 is one example. The Declaration on the Rights of Indigenous Peoples is starting to move in this direction. Moreover, the Declaration operates as a source of interpretation of States’ obligations to indigenous peoples under international treaties, such as the International Covenant on Civil and Political Rights and Convention on the Elimination of Racial Discrimination.

Support for the Declaration falls directly in line with existing ABA policy *and* goals. Goal IV of the ABA is to advance the rule of law, which includes the objective to “work for just laws, including *human rights*, and a fair legal process” (emphasis added).<sup>4</sup> The ABA has called generally to “advance the promotion and observance of international human rights.” 94 A114D Moreover, the ABA has long-supported tribal self-determination. Towards these ends, the endorsement and implementation of the Declaration is the necessary next step for the advancement of the rule of law by bringing federal Indian law into a human rights framework.

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<sup>1</sup> G.A. Res. 61/295, ¶ 12, U.N. Doc. A/RES/61/295 (Sept. 13, 2007).

<sup>2</sup> Id.

<sup>3</sup> [Charter of the United Nations](#) (Jun. 26, 1945),

<sup>4</sup> [American Bar Association Policy and Procedures Handbook, 2019-2020](#), 1.

## The Era of Implementation

Today's challenge is to "implement" the Declaration or, stated another way, to make its promises real in the lives of indigenous people. In 2019, for example, British Columbia passed legislation to bring provincial law into alignment with the Declaration.<sup>5</sup> In New Zealand, Maori and national lawmakers have joined forces in the development of a national action plan, with the assistance of the UN Expert Mechanism on the Rights of Indigenous Peoples, to implement the Declaration. In Mexico City, a new constitution expressly incorporates the Declaration as a matter of law.

President Obama expressed support for the Declaration in 2010,<sup>6</sup> ushering in a new era of opportunity to reform longstanding injustices embodied in federal Indian law.<sup>7</sup> However, little movement has been made to codify the Declaration into U.S. law. On August 11, 2014, the California Legislature adopted Assembly Joint Resolution 42, Indigenous Peoples: Declaration of Rights, to endorse "the principles of the United Nations Declaration on the Rights of Indigenous Peoples adopted by the United Nations General Assembly."<sup>8</sup> On May 10, 2019, Attorney General of the State of Washington implemented an AG office policy to require free, prior and informed consent prior to taking certain actions that directly and tangibly affect Tribes, rights or tribal lands.<sup>9</sup> Meanwhile, the Yurok Tribal Council on August 24, 2012 passed Resolution 12-24 declaring the Yurok Tribe's support of the Declaration.<sup>10</sup> Other tribes have similarly endorsed and/or adopted the Declaration.<sup>11</sup>

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<sup>5</sup> Bill 41, [Declaration on the Rights of Indigenous Peoples Act](#), 4th Session, 41st Parliament, British Columbia, 2019.

<sup>6</sup> The White House Office of Press Secretary, "[Remarks by the President at the White House Tribal Nations Conference](#)" (Dec. 16, 2010). United States State Department, "[Announcement of U.S. Support for the United Nations Declaration on the Rights of Indigenous Peoples: Initiatives to Promote the Government-to-Government Relationship & Improve the Lives of Indigenous Peoples](#)," (2012).

<sup>7</sup> WALTER R. ECHO-HAWK, IN THE LIGHT OF JUSTICE: THE RISE OF HUMAN RIGHTS IN NATIVE AMERICA AND THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES 252–53 (2013).

<sup>8</sup> California Assembly Joint Resolution, Indigenous Peoples: Declaration of Rights, No. 42 (Aug. 14, 2014), available at [http://leginfo.ca.gov/faces/billTextClient.xhtml?bill\\_id=201320140AJR42](http://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201320140AJR42).

<sup>9</sup> Washington State Office of the Attorney General, "[Tribal Consent & Consultation Policy](#)" (May 10, 2019).

<sup>10</sup> Yurok Tribal Council Resolution, Yurok Tribe Support for the United Nations Declaration on the Rights of Indigenous Peoples, No. 12-24 (Aug. 24, 2012).

<sup>11</sup> See e.g. Seminole Nation of Oklahoma, "A Tribal Resolution of the Seminole Nation of Oklahoma Affirming the United Nations Declaration on the Rights of Indigenous Peoples," [TR 2010-26](#) (March 6, 2010); Pit River Tribe of California, "A Tribal Resolution of the Pit River Tribe of California Affirming the United Nations Declaration on the Rights of Indigenous Peoples," [Resolution No. 12-03-05](#) (May 29, 2012); and Muscogee (Creek) Nation, "Adopting A Declaration on the Rights of Indigenous Peoples and Directing Said Declaration into Mvskoke Language" MCN Tribal Resolution 16-149 (Sep. 24, 2016), <https://creekdistrictcourt.com/wp-content/uploads/2019/08/TR16-149.pdf>.

## Federal Indian Law: A Discourse of Conquest

The foundations of U.S. federal Indian law are built on racialized notions of Indian inferiority.<sup>12</sup> Ironically, customary international law was initially used by early American courts to inject the doctrine of discovery into U.S. law.<sup>13</sup> The international law “doctrine of discovery” addresses the relationship with a native people having claim to “discovered” land. The U.S. Supreme Court adopted this international law in *Johnson v. McIntosh* and found while indigenous people were the rightful “occupants” of the soil, the U.S. government, as the “discoverers,” had exclusive title to the land and thus could ultimately determine ownership of it.<sup>14</sup>

The doctrine of discovery is pervasive throughout many Supreme Court cases, most notably in *Tee-Hit-Ton Indians v. United States*.<sup>15</sup> Justice Reed in the 1955 *Tee-Hit-Ton* decision held that the rights of tribes to their traditional lands are not protected by the Fifth Amendment because they are not proprietary and only amounted to the mere “right of occupancy” at the sufferance of the U.S. government.<sup>16</sup>

The doctrine of discovery is joined by several other legal tools that are archaic both in their dehumanization of indigenous peoples, and in their unjust approach to indigenous rights. Tribes are legally classified as “dependent domestic sovereigns,”<sup>17</sup> over which Congress possesses uncharacteristically unchecked plenary power to curtail tribal authority at any moment.<sup>18</sup> The Supreme Court wields expansive authority to trim tribal

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<sup>12</sup> Native American Rights Fund – University of Colorado Joint Project, [\*Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States: A Call to Action for Inspired Advocacy in Indian Country\*](#) (March 15-16, 2019 Conference Report).

<sup>13</sup> Robert J. Miller, *The Doctrine of Discovery: The International Law of Colonialism*, THE INDIGENOUS PEOPLES’ JOURNAL OF LAW, CULTURE & RESISTANCE, 36-7 (2019), available at <https://escholarship.org/uc/item/3cj6w4mj>.

<sup>14</sup> *Johnson v. McIntosh*, 21 U.S. 543, 574 (1823); see Angela R. Riley, *The History of Native American Lands and the Supreme Court*, J. OF S. CT. HISTORY 369, 370 (2014) The doctrine of discovery was based on the practice of “[t]he exclusion of all other Europeans . . . gave to the nation making the discovery the sole right of acquiring the soil from the natives, and establishing settlements upon it. It was a right with which no Europeans could interfere. It was a right which all asserted for themselves, and to the assertion of which, by others, all assented.” *McIntosh*, 21 U.S. at 573.

<sup>15</sup> 348 U.S. 272 (1955).

<sup>16</sup> *Id.* at 289–90; see Kent McNeil, *How the New Deal Became a Raw Deal for Indian Nations: Justice Stanley Reed and the Tee-Hit-Ton Decision on Indian Title*, 44 Am. Indian L. R. 1, 2 - 9 (2019). *Tee-Hit-Ton*, 348 U.S. at 290–91 (“Our conclusion does not uphold harshness as against tenderness toward the Indians, but it leaves with Congress, where it belongs, the policy of Indian gratuities for the termination of Indian occupancy of Government-owned land rather than making compensation for its value a rigid constitutional principle.”); compared to United States Constitution, Amendment 5 (“nor shall private property be taken for public use, without just compensation.”). But see, *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980) (holding that the 1877 Act abrogated the Fort Laramie Treaty, while permissible, effected a taking of tribal property necessitating a “just compensation” to the Lakota.).

<sup>17</sup> *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

<sup>18</sup> See e.g. *United States v. Kagama*, 118 U.S. 375, 380-85 (1886) (“These Indian tribes are the wards of the nation. . . . From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power.”). Also see *Lonewolf v. Hitchcock*, 187 U.S. 553, 565 (1903) (noting Congressional “[p]lenary authority over the tribal relations of the Indians” as nonjusticiable).

sovereignty at will through the doctrine of implicit divestiture.<sup>19</sup> So long as the basis of federal Indian law is rooted in judicial notions of race, conquest, and colonialism, tribes and indigenous peoples are unable to enjoy equality and nondiscrimination. A shift in U.S. federal Indian law is required and should include the adoption of new international human rights legal norms. The Declaration on the Rights of Indigenous Peoples offers a framework for doing so.

## Human Rights Framework

In its most basic form, a human rights framework is the recognition of the “right to have rights.”<sup>20</sup> Critically, for indigenous peoples, human rights encompass both individual freedoms and collective rights in self-determination, property, and culture.<sup>21</sup> Human rights from an indigenous perspective includes the right to exist as a *people*. As indigenous peoples are increasingly asserting their collective autonomy in governance, culture, and economic matters, many have coalesced around the use of human rights as an instrument of decolonization and self-determination.<sup>22</sup> Rights should not and cannot be subject to the political whims of their colonizer.

The Declaration adopts this universal human rights standard and provides legal principles and policies in the indigenous context. Notably this includes self-determination. For indigenous people, self-determination is two-pronged: political and cultural.

## The Declaration in the United States

The Declaration was developed by indigenous leaders, scholars, communities, and advocates who gathered together for decades to articulate their own aspirations for an instrument that would reflect their values and lifeways.<sup>23</sup> They negotiated the terms of the Declaration over many years with representatives of national governments. Due to the indigenous leaders and advocates efforts, in 2007 the nation states of the United Nations overwhelmingly voted for the General Assembly to adopt the Declaration.

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<sup>19</sup> Native American Rights Fund – University of Colorado Joint Project, [\*Implementing the United Nations Declaration on the Rights of Indigenous Peoples in the United States: A Call to Action for Inspired Advocacy in Indian Country\*](#) n.28 (March 15-16, 2019 Conference Report) (“The so-called ‘implicit divestiture’ doctrine refers to the Supreme Court’s finding in several cases that tribes and tribal governments had lost certain inherent or reserved powers not through any act of Congress but rather because the Court deemed such powers inconsistent with their dependent status within the United States.”)

<sup>20</sup> See HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 296 (1951).

<sup>21</sup> Kristen A. Carpenter and Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 CAL. L. REV. 173, 175 (2014).

<sup>22</sup> Carpenter and Riley at 180.

<sup>23</sup> JAMES (SA’KE’J) YOUNGBLOOD HENDERSON, *INDIGENOUS DIPLOMACY AND THE RIGHTS OF PEOPLES: ACHIEVING UN RECOGNITION* (2008). For other viewpoints on the often contentious process of drafting the Declaration, see *MAKING THE DECLARATION WORK: THE UNITED NATIONS DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* (Claire Charters & Rudolfo Stavenhagen eds., 2009) *REFLECTIONS ON THE UN DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES* (Stephen Allen & Alexandra Xanthaki eds., 2011) and *CHARMAINE WHITE FACE & ZUMILA WOBAGA, INDIGENOUS NATIONS’ RIGHTS IN THE BALANCE: AN ANALYSIS OF THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLE* (2013).

Perhaps most fundamental is the Declaration's recognition of indigenous peoples' right to "self-determination" and related provisions as follows:

- "Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development."<sup>24</sup>
- "Indigenous peoples... have the right to autonomy or self-government in matters relating to their internal and local affairs."<sup>25</sup>
- "Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State."<sup>26</sup>
- "Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, practices, and ... juridical systems or customs, in accordance with international human rights standards."<sup>27</sup>

In the United States, indigenous peoples have long been exercising these rights and responsibilities, including through their own tribal lawmaking institutions. Through the adoption and implementation of colonizing policies, these rights face serious challenges and over time tribal jurisdiction has significantly diminished.<sup>28</sup> In these respects, the Declaration offers powerful affirmation of the inherent rights of indigenous peoples to both their laws and lawmaking institutions and to the obligations of the United States to implement the Declaration and support the exercise of indigenous civil and criminal jurisdiction.

The Declaration also acknowledges that indigenous peoples' societies are individual and collective in nature, comprised of both rights and responsibilities, and shaped by intergenerational relationships among humans and the natural world.<sup>29</sup> Indigenous peoples in the United States have a long history caring for and living with the land.<sup>30</sup> To continue these practices on ancestral lands, many tribal governments wish to strengthen the federal-tribal and state-tribal "consultation" processes, and state equivalent laws. The Declaration provides legal authority to strengthen consultation practices to apply the

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<sup>24</sup> Declaration, Art. 3.

<sup>25</sup> Declaration, Art. 4.

<sup>26</sup> Declaration, Art. 5.

<sup>27</sup> Declaration, Art. 34.

<sup>28</sup> See e.g. *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) (holding tribes lack adjudicative and legislative jurisdiction over nonmember conduct on a federally granted right-of-way) and *Nevada v. Hicks*, 533 U.S. 353 (2001) (holding tribes lack adjudicative and legislative jurisdiction over state officer on-reservation conduct because the conduct is not essential to tribal self-government or internal relations and because states retain inherent jurisdiction on reservations with regard to off-reservation violations of state law).

<sup>29</sup> Declaration, Art. 1, 13, 35.

<sup>30</sup> See *as an example*, M. KAT ANDERSON, *TENDING THE WILD: NATIVE AMERICAN KNOWLEDGE AND THE MANAGEMENT OF CALIFORNIA'S NATURAL RESOURCES* (2005).

standard of “free, prior, and informed consent” (“FPIC”).<sup>31</sup> FPIC governs cooperation and consultation regarding legislative and administrative policies and actions that may affect indigenous peoples and their lands, natural resources, cultural sites, economic infrastructures, health, and wellbeing.

As for the protection and respect to indigenous peoples’ culture, the Declaration recognizes that indigenous peoples have a right to their distinctive cultures generally, as well as to languages, religion, traditional knowledge, and repatriation of human remains and ceremonial objects. To the extent that U.S. policy historically sought to eradicate indigenous peoples’ cultures, and currently offers very few remedial or ongoing protections in the realm of cultural rights, adopting the Declaration can strengthen indigenous peoples access to cultural sites; improve access to indigenous knowledge, histories, and languages that are stored in Western museums, schools, libraries, and private collections; and return ancestral remains and ceremonial burial items home.<sup>32</sup>

The Declaration further recognizes indigenous peoples’ current rights to land, environment, and natural resources while also requiring restitution for certain takings of their lands and resources in the past.<sup>33</sup> While the U.S. government is slow to return stolen lands back to indigenous peoples, allowing access to federal lands, or incorporating indigenous knowledges into land management practices, some states and local governments are moving toward land repatriations and access to ancestral lands and resources.<sup>34</sup> For example, on September 25, 2020, California Governor Gavin Newsom issued a Statement of Administration Policy declared that the state would “seek opportunities to support California tribes’ co-management of and access to natural lands” within tribal nations’ ancestral territories and “work cooperatively with California tribes ... in acquiring natural lands in excess of State needs.”<sup>35</sup> Further, Governor Newsom on October 7, 2020 issued an executive order declaring the California will conserve 30 percent of land and coastal water by 2030 and incorporate tribal ecological knowledge and expertise in land management and conservation practices.<sup>36</sup>

Lastly, the Declaration through Article 37 provides for nation states to recognize the rights in treaties and other agreements entered into between nation states and indigenous peoples and indigenous nations.<sup>37</sup> As most colonial powers, the United States has a history of not honoring their agreements to tribal nations. Adopting the Declaration and bringing to light the past agreements made between the United States and tribal nations

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<sup>31</sup> Declaration, Art. 19. The FPIC standard is implemented throughout the Declaration.

<sup>32</sup> Declaration, Arts. 11 - 15, 31.

<sup>33</sup> Declaration, Arts. 25 - 29.

<sup>34</sup> See *Pueblo of Jemez v United States*, 350 F.Supp(3d) 1052, 1094, n 15 (citing the Declaration in support of the point that, “both international law and other common-law countries’ law recognize aboriginal title”); Advisory Council on Historic Preservation, “United Nations Declaration on the Rights of Indigenous Peoples”, [www.achp.gov/indian-tribes-andnative-hawaiians/united-nations-declaration-rights-indigenous-peoples](http://www.achp.gov/indian-tribes-andnative-hawaiians/united-nations-declaration-rights-indigenous-peoples).

<sup>35</sup> Governor Gavin Newsom, Statement of Administration Policy: Native American Ancestral Lands (Sept. 25, 2020).

<sup>36</sup> California Executive Order N-82-20 (Oct. 7, 2020).

<sup>37</sup> Declaration, Art. 37. See ABA 80M110, in which the ABA urges for the recognitions and fulfillment of the federal government’s treaty and trust obligations to tribes.



will respect the human and sovereign rights of indigenous nations and ensure the U.S. government is kept to its word.<sup>38</sup>

## Encouraging Compliance by the United States and Other Governments

The responsibility to implement the Declaration falls ultimately on the United Nations and nation states, such as the United States. Article 42 provides:

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, ***and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.*** (emphasis added)

As noted above, the United States has already expressed support for the Declaration, becoming one of 150 States around the world to embrace its global standards for the treatment of indigenous peoples. The United States has not yet passed implementing legislation to bring federal law into compliance with the Declaration. Thus, implementation by the federal government is still quite nascent.

Attorneys can encourage their clients, whether governmental or private, to adopt the policies of the Declaration and pursue the implementation of a human rights framework for U.S. law. Through the development of tribal, federal, state, local, and territorial laws, policies, and agreements informed by the Declaration, the United States and other governments can begin to comply with the international legal norms to move the country forward in adopting a human rights framework and dismantle the archaic, colonial doctrine of discovery.

## In Line with Existing ABA Policy

The Declaration is an international expression of human rights and indigenous rights norms that have long been embraced by the ABA. The ABA has a long policy history of supporting tribes, and by extension indigenous people, as separate sovereigns with the rights to self-determination and self-government.

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<sup>38</sup> *McGirt v. Oklahoma*, 591 U.S. \_\_\_\_ (2020).

On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever. In exchange for ceding “all their land, East of the Mississippi river,” the U. S. government agreed by treaty that “[t]he Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians.” Treaty With the Creeks, Arts. I, XIV, Mar. 24, 1832, 7 Stat. 366, 368 (1832 Treaty). Both parties settled on boundary lines for a new and “permanent home to the whole Creek nation,” located in what is now Oklahoma. Treaty With the Creeks, preamble, Feb. 14, 1833, 7 Stat. 418 (1833 Treaty). The government further promised that “[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves.” 1832 Treaty, Art. XIV, 7 Stat. 368.

Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, **we hold the government to its word.**



First and foremost, Goal IV of the ABA is to advance the rule of law, which includes the objective to “work for just laws, including *human rights*, and a fair legal process” (emphasis added).<sup>39</sup>

### **ABA Policy Regarding Tribal Sovereignty**

The ABA has significant policy regarding specifically indigenous self-determination and the critical need to support tribes in their own self-government. 2015 MM 111A adopted the recommendations contained in the Indian Law and Order Commission’s Nov. 2013 Report, noting “tribes, as sovereign, should have the option to fully or partially opt out of [the] jurisdictional maze.”<sup>40</sup> 2020 AM 116 and 2012 AM 301 urged Congress to strengthen tribal jurisdiction to address crimes of gender-based violence committed on tribal lands in the reauthorization of the Violence Against Women Act.<sup>41</sup> 2008 AM 117A urged for long-term funding for tribal justice systems, noting “‘the effective operation of tribal courts is essential to promote the sovereignty and self-governance of the Indian tribes.’ As the Supreme Court has recognized: ‘Tribal courts play a vital role in tribal self-government, and the Federal Government has consistently encouraged their development.’”<sup>42</sup>

2015 AM 113 urged for the prompt implementation of certain recommendations of the U.S. Attorney General’s Advisory Committee on American Indian/Alaska Native Children Exposed to Violence report.<sup>43</sup> That includes calling on Congress to restore the inherent authority of tribes to assert full criminal jurisdiction, for the federal executive branch to engage in comprehensive consultation with tribes, and for the development of culturally-specific tribal codes.

2019 AM 111 urged for the recognition of the responsibility to address climate change. The report to the resolution noted that the active role of the United States in the negotiations and signing of the United Nations Framework Convention on Climate Change in 1992, an international legal framework.

The ABA has long taken a stance supporting Native peoples, including upholding the federal responsibility to indigenous peoples. In 1980, the ABA adopted 1980 MM110, urging strict adherence to Indian treaty obligations. The report to the resolution notes:

The trust responsibility imposes on the United States an important standard of conduct. In *Seminole Nation v. United States*, 316 U.S. 286 (1942), the Supreme

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<sup>39</sup> [American Bar Association Policy and Procedures Handbook, 2019-2020](#), 1.

<sup>40</sup> ABA 2015 MM 111A <https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/feb-15-make-native-america-safer.authcheckdam.pdf>

<sup>41</sup> ABA 2012 AM 301 <https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/aug-12-violence-against-women.authcheckdam.pdf>

<sup>42</sup> ABA 2008 AM 117A, at 3, available at [https://www.americanbar.org/content/dam/aba/directories/policy/2008\\_am\\_117a.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/directories/policy/2008_am_117a.authcheckdam.pdf)

<sup>43</sup> ABA Resolution 113 (2015) <https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/aug-15-violence-against-children.authcheckdam.pdf>

Court stated that the United States “has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealing with the Indians should therefore be judged by the most exacting fiduciary standards.” Id. at 297. ... Under the trust responsibility to Indian tribes, specifically recognized by Congress and the courts and secured by the treaties, statutes, and 150 years of judicial precedent, Indian tribes should be able to look to the future confident that the federal government will approach its obligation to Indian tribes in a manner consistent with its duty of protection.

80M110, 2-3.

In addition, the ABA has expressed support for indigenous self-determination in other arenas, including child welfare. The ABA has explicitly supported the Indian Child Welfare Act,<sup>44</sup> and its constitutionality.<sup>45</sup> 2002 AM 110 urges the resolution of Indian reserved eater right claims, noting “the opportunity to address historic injustices and fulfill the continuing federal trust obligation to support viable tribal communities...” 1990 MM 106A urges for an amendment to the American Indian Religious Freedom Act.

### **ABA Policy Regarding International Human Rights Law**

Moreover, the ABA simultaneously has robust and comprehensive policy calling for a human rights approach to U.S. law. 79A104 supports the accession of the United States to the American Convention of Human Rights. 6/94BOG2.4 calls for the enforcement of judgment of the Inter-American Court of Human Rights. 11/94BOG2.7 calls for the protection of women’s human rights, including support for the ratification by the United States of the Convention on the Elimination of All Forms of Discrimination Against Women. The ABA cited to “international human rights principles” when urging for federal relief to Haitian women and children in 10A302. The ABA has called generally to “advance the promotion and observance of international human rights.” 94 A114D

Support for and encouraging the implementation of the United Nations Declaration on the Rights of Indigenous Peoples is a natural extension of ABA human rights policy. Given the deplorably racist foundation of U.S. Indian law, it is an imperative.

Respectfully submitted,

Angela J. Scott  
Chair, ABA Section of Civil Rights and Social Justice  
February 2021

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<sup>44</sup> 111A AM 2013

<sup>45</sup> ABA 2013 AM 111A at 4

<https://www.americanbar.org/content/dam/aba/administrative/crsj/committee/feb-15-make-native-america-safer.authcheckdam.pdf>

## **GENERAL INFORMATION FORM**

Submitting Entity: Section on Civil Rights and Social Justice

Submitted By: Angela J. Scott, Section Chair

1. Summary of Resolution(s). Urges federal, state, territorial, and tribal endorsement and adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Calls specifically on Congress to develop a plan to implement.

2. Approval by Submitting Entity.

The Section of Civil Rights and Social Justice approved the resolution on \_\_\_\_\_, 2020.

The National Native American Bar Association approved cosponsorship on \_\_\_\_\_.

3. Has this or a similar resolution been submitted to the House or Board previously? No.

4. What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?

Nothing directly on point. ABA policy calling for the support of tribal sovereignty and for the advancement of international human rights law would both be supported and advanced by this resolution.

5. If this is a late report, what urgency exists which requires action at this meeting of the House? N/A

6. Status of Legislation. N/A

7. Brief explanation regarding plans for implementation of the policy, if adopted by the House of Delegates.

The Section will work with relevant stakeholders within and outside of the American Bar Association and the Governmental Affairs Office to implement the policy.

8. Cost to the Association. The adoption of this proposed resolution would result in only minor indirect costs associated with Section staff time devoted to the policy subject matter as part of the staff members' overall substantive responsibilities.

9. Disclosure of Interest. N/A

10. Referrals.

Center for Human Rights

Commission on Homelessness and Poverty  
Commission on Racial & Ethnic Diversity in the Profession  
Commission on Youth at Risk  
Government and Public Sector Lawyers Division  
Law Practice Division  
National Conference of Federal Trial Judges  
Section of Litigation  
Standing Committee on Legal Aid & Indigent Defense  
Criminal Justice Section  
Section of State & Local Government Law  
Diversity and Inclusion Center  
National Association of Criminal Defense Lawyers  
Coalition on Racial and Ethnic Justice

11. Contact Name and Address Information.

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## **EXECUTIVE SUMMARY**

### **1. Summary of the Resolution**

Urges federal, state, territorial, and tribal endorsement and adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Calls specifically on Congress to develop a plan to implement. Urges attorneys to engage in pro-bono activities to support these efforts.

### **2. Summary of the Issue that the Resolution Addresses**

U.S. Indian law is uniquely antiquated, rooted in racist policy that has yet to be rejected. Rather, colonialist justifications like Indian inferiority and savagery continue to be implemented to diminish tribal jurisdiction, property rights, cultural rights, and existence.

### **3. Please Explain How the Proposed Policy Position Will Address the Issue**

The United Nations Declaration on the Rights of Indigenous Peoples, an international declaration endorsed by the United States, calls for a reconfiguration of government-to-government relations between States and indigenous peoples. Yet, the Declaration has yet to be domesticated into U.S. law. This resolution calls for a jump-start to that process, for the U.S. to have a sense of urgency in reorienting policies with tribal nations within a human and indigenous rights framework, and finally dispel with the embarrassingly horrific case law currently informing our federal Indian law.

### **4. Summary of Minority Views or Opposition Internal and/or External to the ABA Which Have Been Identified**

Implementation of the Declaration will take a concerted, comprehensive, and exhaustive examination of existing federal *and* state statutes and case law. The work and time will be immense. Undoubtedly, current federal and state power dynamics in relation to tribes will be questioned and likely diminished.

## Appendix V. The Declaration

The General Assembly,

Taking note of the recommendation of the Human Rights Council contained in its resolution 1/2 of 29 June 2006, by which the Council adopted the text of the United Nations Declaration on the Rights of Indigenous Peoples,

Recalling its resolution 61/178 of 20 December 2006,<sup>46</sup> by which it decided to defer consideration of and action on the Declaration to allow time for further consultations thereon, and also decided to conclude its consideration before the end of the sixty-first session of the General Assembly,

Adopts the United Nations Declaration on the Rights of Indigenous Peoples as contained in the annex to the present resolution.

*107th plenary meeting  
13 September 2007*

### Annex United Nations Declaration on the Rights of Indigenous Peoples

The General Assembly,  
Guided by the purposes and principles of the Charter of the United Nations, and good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

Affirming that indigenous peoples are equal to all other peoples, while recognizing the right of all peoples to be different, to consider themselves different, and to be respected as such,

Affirming also that all peoples contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

Affirming further that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

Reaffirming that indigenous peoples, in the exercise of their rights, should be free from discrimination of any kind,

Concerned that indigenous peoples have suffered from historic injustices as a result of, inter alia, their colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests,

Recognizing the urgent need to respect and promote the inherent rights of indigenous peoples which derive from their political, economic and social structures and from their cultures, spiritual traditions, histories and philosophies, especially their rights to their lands, territories and resources,

Welcoming the fact that indigenous peoples are organizing themselves for political, economic, social and cultural enhancement and in order to bring to an end all forms of discrimination and oppression wherever they occur,

Convinced that control by indigenous peoples over developments affecting them and their lands, territories and resources will enable them to maintain and strengthen their institutions, cultures and traditions, and to promote their development in accordance with their aspirations and needs,

Recognizing that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable and equitable development and proper management of the environment,

Emphasizing the contribution of the demilitarization of the lands and territories of indigenous peoples to peace, economic and social progress and development, understanding and friendly relations among nations and peoples of the world,

Recognizing in particular the right of indigenous families and communities to retain shared responsibility for the upbringing, training, education and well-being of their children, consistent with the rights of the child,

Considering that the rights affirmed in treaties, agreements and other constructive arrangements between States and indigenous peoples are, in some situations, matters of international concern, interest, responsibility and character,

Considering also that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership between indigenous peoples and States,

Acknowledging that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights,<sup>47</sup> as well as the Vienna Declaration and Programme of Action,<sup>48</sup> affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

<sup>46</sup> See *Official Records of the General Assembly, Sixty-first Session, Supplement No. 53 (A/61/53)*, part one, chap. II, sect. A.

<sup>47</sup> See resolution 2200 A (XXI), annex.

<sup>48</sup> A/CONF.157/24(Part I), chap. III

Bearing in mind that nothing in this Declaration may be used to deny any peoples their right to self-determination, exercised in conformity with international law,

Convinced that the recognition of the rights of indigenous peoples in this Declaration will enhance harmonious and cooperative relations between the State and indigenous peoples, based on principles of justice, democracy, and respect for human rights, non-discrimination and good faith,

Encouraging States to comply with and effectively implement all their obligations as they apply to indigenous peoples under international instruments, in particular those related to human rights, in consultation and cooperation with the peoples concerned,

Emphasizing that the United Nations has an important and continuing role to play in promoting and protecting the rights of indigenous peoples,

Believing that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of indigenous peoples and in the development of relevant activities of the United Nations system in this field,

Recognizing and reaffirming that indigenous individuals are entitled without discrimination to all human rights recognized in international law, and that indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples,

Recognizing that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration,

Solemnly proclaims the following United Nations Declaration on the Rights of Indigenous Peoples as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

#### Article 1

Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights<sup>49</sup> and international human rights law.

#### Article 2

Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their indigenous origin or identity.

#### Article 3

Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

#### Article 4

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.

#### Article 5

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State.

#### Article 6

Every indigenous individual has the right to a nationality.

#### Article 7

1. Indigenous individuals have the rights to life, physical and mental

integrity, liberty and security of person.

2. Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.

#### Article 8

1. Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.

2. States shall provide effective mechanisms for prevention of, and redress for:

(a) Any action which has the aim or effect of depriving them of their integrity as distinct peoples, or of their cultural values or ethnic identities;

(b) Any action which has the aim or effect of dispossessing them of their lands, territories or resources;

(c) Any form of forced population transfer which has the aim or effect of violating or undermining any of their rights;

(d) Any form of forced assimilation or integration;

(e) Any form of propaganda designed to promote or incite racial or ethnic discrimination directed against them.

#### Article 9

Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right.

#### Article 10

Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.

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<sup>49</sup> Resolution 217 A (III).



#### Article 11

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.

2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### Article 12

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.

2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

#### Article 13

1. Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.

2. States shall take effective measures to ensure that this right is protected and also to ensure that indigenous peoples can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means.

#### Article 14

1. Indigenous peoples have the right to establish and control their educational systems and institutions providing education in their own languages, in a manner appropriate to their cultural methods of teaching and learning.

2. Indigenous individuals, particularly children, have the right to all levels and forms of education of the State without discrimination.

3. States shall, in conjunction with indigenous peoples, take effective measures, in order for indigenous individuals, particularly children, including those living outside their communities, to have access, when possible, to an education in their own culture and provided in their own language.

#### Article 15

1. Indigenous peoples have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education and public information.

2. States shall take effective measures, in consultation and cooperation with the indigenous peoples concerned, to combat prejudice and eliminate discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all other segments of society.

#### Article 16

1. Indigenous peoples have the right to establish their own media in their own languages and to have access to all forms of non-indigenous media without discrimination.

2. States shall take effective measures to ensure that State-owned media duly reflect indigenous cultural diversity. States, without prejudice to ensuring full freedom of expression, should encourage privately owned media to adequately reflect indigenous cultural diversity.

#### Article 17

1. Indigenous individuals and peoples have the right to enjoy fully all rights established under applicable international and domestic labour law.

2. States shall in consultation and cooperation with indigenous peoples

take specific measures to protect indigenous children from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development, taking into account their special vulnerability and the importance of education for their empowerment.

3. Indigenous individuals have the right not to be subjected to any discriminatory conditions of labour and, inter alia, employment or salary.

#### Article 18

Indigenous peoples have the right to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

#### Article 19

States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.

#### Article 20

1. Indigenous peoples have the right to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development, and to engage freely in all their traditional and other economic activities.

2. Indigenous peoples deprived of their means of subsistence and development are entitled to just and fair redress.

#### Article 21

1. Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia, in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

2. States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.

#### Article 22

1. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.

2. States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.

#### Article 23

Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to be actively involved in developing and determining health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programmes through their own institutions.

#### Article 24

1. Indigenous peoples have the right to their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals. Indigenous individuals also have the right to access, without any discrimination, to all social and health services.

2. Indigenous individuals have an equal right to the enjoyment of the highest attainable standard of physical and mental health. States shall take the necessary steps with a view to achieving progressively the full realization of this right.

#### Article 25

Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise

occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.

#### Article 26

1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.

2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.

3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

#### Article 27

States shall establish and implement, in conjunction with indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process.

#### Article 28

1. Indigenous peoples have the right to redress, by means that can include restitution or, when this is not possible, just, fair and equitable compensation, for the lands, territories and resources which they have traditionally owned or otherwise occupied or used, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent.

2. Unless otherwise freely agreed upon by the peoples concerned, compensation shall take the form of lands, territories and resources equal in quality, size and legal status or of

monetary compensation or other appropriate redress.

#### Article 29

1. Indigenous peoples have the right to the conservation and protection of the environment and the productive capacity of their lands or territories and resources. States shall establish and implement assistance programmes for indigenous peoples for such conservation and protection, without discrimination.

2. States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in the lands or territories of indigenous peoples without their free, prior and informed consent.

3. States shall also take effective measures to ensure, as needed, that programmes for monitoring, maintaining and restoring the health of indigenous peoples, as developed and implemented by the peoples affected by such materials, are duly implemented.

#### Article 30

1. Military activities shall not take place in the lands or territories of indigenous peoples, unless justified by a relevant public interest or otherwise freely agreed with or requested by the indigenous peoples concerned.

2. States shall undertake effective consultations with the indigenous peoples concerned, through appropriate procedures and in particular through their representative institutions, prior to using their lands or territories for military activities.

#### Article 31

1. Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge of the properties of fauna and flora, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the right to maintain, control, protect and develop their intellectual

property over such cultural heritage, traditional knowledge, and traditional cultural expressions.

2. In conjunction with indigenous peoples, States shall take effective measures to recognize and protect the exercise of these rights.

#### Article 32

1. Indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and other resources.

2. States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.

3. States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental economic, social, cultural or spiritual impact.

#### Article 33

1. Indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. This does not impair the right of indigenous individuals to obtain citizenship of the States in which they live.

2. Indigenous peoples have the right to determine the structures and to select the membership of their institutions in accordance with their own procedures.

#### Article 34

Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards.

#### Article 35

Indigenous peoples have the right to determine the responsibilities of individuals to their communities.

#### Article 36

1. Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities for spiritual, cultural, political, economic and social purposes, with their own members as well as other peoples across borders.

2. States in consultation and cooperation with indigenous peoples, shall take effective measures to facilitate the exercise and ensure the implementation of this right.

#### Article 37

1. Indigenous peoples have the right to the recognition, observance and enforcement of treaties, agreements and other constructive arrangements concluded with States or their successors and to have States honour and respect such treaties, agreements and other constructive arrangements.

2. Nothing in this Declaration may be interpreted as diminishing or eliminating the rights of indigenous peoples contained in treaties, agreements and other constructive arrangements.

#### Article 38

States in consultation and cooperation with indigenous peoples, shall take the appropriate measures, including legislative measures, to achieve the ends of this Declaration.

#### Article 39

Indigenous peoples have the right to have access to financial and technical assistance from States and through international cooperation, for the enjoyment of the rights contained in this Declaration.

#### Article 40

Indigenous peoples have the right to access to and prompt decision through just and fair procedures for the resolution of conflicts and disputes with States or other parties, as well as to effective remedies for all infringements of their individual and collective rights. Such a decision shall give due consideration to the

customs, traditions, rules and legal systems of the indigenous peoples concerned and international human rights.

#### Article 41

The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of indigenous peoples on issues affecting them shall be established.

#### Article 42

The United Nations, its bodies, including the Permanent Forum on Indigenous Issues, and specialized agencies, including at the country level, and States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.

#### Article 43

The right recognized herein constitute the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world.

#### Article 44

All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals.

#### Article 45

Nothing in this Declaration may be construed as diminishing or extinguishing the rights indigenous peoples have now or may acquire in the future.

#### Article 46

1. Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.

2. In the exercise of the rights enunciated in the present Declaration, human rights and fundamental freedoms of all shall be respected. The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be nondiscriminatory and strictly necessary solely for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.

3. The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith.

## THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION

### RESOLUTION #2020-XX

#### **TITLE: Urging Representation of Native People in Studies of Diversity, Equity, and Inclusion Efforts at All Levels of the Legal Profession**

**WHEREAS**, the National Native American Bar Association (“NNABA”) was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA promotes and addresses social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, Native Americans have been the subject of exclusionary policies and language which sought to erase Native Americans from the body politic of the United States since its founding, including by the United States Supreme Court, which stated in *Johnson v. M’Intosh* that Native Americans are not “citizens” but instead “perpetual inhabitants” of the United States “with diminutive rights,” at the hands of the “discovery and conquest” by European colonizers; and

**WHEREAS**, but one example of the United States’ exclusion of Native Americans from the legal framework of the United States occurred during passage of the Fourteenth Amendment to the United States Constitution, during which Congress expressly excluded “Indians not taxed” from citizenship along with an ability to participate in the electoral process; and

**WHEREAS**, rampant exclusion and erasure of Native Americans continues in the United States, with a recent example being that, even though Native Americans are largely acknowledged to have played a pivotal role in the recent 2020 presidential election, including but not limited to the outcome of the election in Arizona, a major news network included Native Americans in the catchall category of “something else” when describing the breakdown of the electorate; and

**WHEREAS**, Native Americans have, among American minority groups, unique legal issues stemming from Native tribal sovereignty and the lack of recognition thereof by many levels of government in this country, the unique constitutional status of Native Americans, centuries of legal precedents addressing Native status and its implications; and

**WHEREAS**, a 2015 National Native American Bar Association study found that there were 2,640 Native American attorneys in the United States, comprising 0.2% of the more than 1.2 million lawyers in the United States; and

**WHEREAS**, the United States Census Bureau estimates that, in 2019, American Indian and Alaska Native people constituted 2.15% of the population of the United States; and

**WHEREAS**, the American Bar Association’s National Lawyer Population Survey results for 2020 indicated that the number of Native lawyers in the United States rounds down to zero percent and that Native American lawyers are declining as a share of the population of lawyers compared to other minority groups; and

**WHEREAS**, it is impossible to identify the number of Native Hawaiian attorneys because the United States Census Bureau does not count Native Hawaiians separately from other “Other Pacific Islanders”; and

**WHEREAS**, despite the significance of the law and legal profession to Native Americans, Native Americans remain underrepresented in the legal profession to a striking degree, and indeed, considering the American Bar Association’s National Lawyer Population Survey results for 2020, Native Americans are more underrepresented in the legal profession than any other minority group in the United States; and

**WHEREAS**, Native American lawyers and law students are regularly rendered invisible, even in studies purporting to present the struggles of people of color more broadly in the legal profession, and to highlight diversity, equity, and inclusion efforts and challenges; and

**WHEREAS**, one prominent example of this phenomenon involved a 2020 study by The Center for Women in Law and the National Association for Law Placement Foundation titled “Women of Color – A Study of Law Student Experiences,” and

**WHEREAS**, the introduction to this study specifically notes that “women of color are not a unitary block - the data shows their experiences often differ considerably, depending on their specific race/ethnicity,” and

**WHEREAS**, despite acknowledging the significant variance in experience for women law students of color based on race/ethnicity, the study fails to engage in any separate reporting for Native American law students, citing the “low number of responses” from Native law students; and

**WHEREAS**, the study authors rebuffed efforts, after publication, to obtain more data from Native students through contacts at Native American Law Student Association chapters nationwide; and

**WHEREAS**, this reaction is consistent with NNABA’s 2015 study “The Pursuit of Inclusion: An In-Depth Exploration of the Experiences and Perspectives of Native American Attorneys in the Legal Profession,” which concluded that “[t]raditional diversity and inclusion programs are not reaching Native American attorneys. ‘Inclusion’ in these programs does not seem to extend to Indian lawyers”; and

**WHEREAS**, the invisibility of Native American women in the legal profession is specifically detrimental in view of the Missing and Murdered Indigenous Women and Girls crisis in the United States, as a result of which murder is the third-leading cause of death among Native American women and more than four in five Native American women will experience violence in their lifetime; and

**WHEREAS**, improved efforts to obtain data for use in studies of Native American law students and legal professionals are needed to ensure the unique challenges and experiences of Native American law students and lawyers are reflected in studies addressing topics of diversity, equity,



and inclusion, in order to improve representation of Native Americans in the legal profession more broadly.

**NOW THEREFORE BE IT RESOLVED**, that the National Native American Bar Association calls upon The Center for Women in Law and the National Association for Law Placement Foundation to supplement their “Women of Color – A Study of Law Student Experiences” study by engaging in specific efforts to target Native law students in order to obtain statistically meaningful data.

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association calls upon all organizations studying the legal profession to engage in specific efforts to ensure Native Americans are not subject to the erasure which continues to plague the Native American legal community even as such studies ostensibly seek to remedy this erasure as to other minority groups.

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association calls upon law schools, law firms, legal employers, and relevant educational institutions to make intentional efforts to reduce barriers to entry into the legal profession for Native Americans, in order to increase the representation of Native Americans in the legal profession, particularly in view of the importance of the law and legal profession to Native people.

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association encourages Native Americans to explore a career in the legal profession, in order to address the social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians, and to protect the rights of Native Americans and Native communities in the United States.

**BE IT FINALLY RESOLVED**, that NNABA supports this resolution as policy until it is withdrawn or modified by subsequent resolution.

## THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION

### RESOLUTION # [2020-\_\_]

#### **TITLE: Calling on Congress to Introduce and Support Reparation Legislation for the Treatment of American Indians and Alaska Natives**

**WHEREAS**, the National Native American Bar Association (“NNABA”) was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA promotes and addresses social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, reparations, or the concept of governmental compensation for past wrongs, has been a recent policy topic in the mainstream media and politics, including the 2020 presidential elections; and

**WHEREAS**, the vast majority of the national reparations conversation so far has not addressed the United States’ litany of wrongs and human rights violations undertaken against American Indian and Alaska Native people, ignoring the forced removal, land theft, and genocide that the United States is founded on; and

**WHEREAS**, the atrocities the United States has carried out against American Indians and Alaska Natives can be directly traced to the European “Doctrine of Discovery” and its religious, cultural, and racially based ideas of the superiority of Europeans over indigenous people; and

**WHEREAS**, the Doctrine of Discovery was embraced by the United States Supreme Court in *Johnson v. M’Intosh*, a case that continues to serve as the foundation of modern U.S. Indian policy, where the Court referred to Indians as “heathens” in justifying the United States’ attempt to divest Tribes of Indian land, resources and governmental rights; and

**WHEREAS**, since *M’Intosh*, all three branches of the United States government have continued to apply this imperialist doctrine to justify the decisions and policies that have sought to assimilate, dispossess, and eliminate every aspect of American Indian and Alaska Native life, culture and sovereignty; and

**WHEREAS**, the United States’ policies and actions have profoundly handicapped American Indian and Alaska Native sovereignty and self-determination and continue to present barriers to the creation of Tribal economic success and American Indian and Alaska Native peoples access to jobs, housing, education, and health care; and

**WHEREAS**, while various efforts have been made to settle American Indian and Alaska Native claims for the United States’ historical wrongdoings, those efforts have been woefully inadequate due to procedural hurdles and the inadequate representation and remedies that do not account for Tribal treaty rights or Tribes standing as sovereign governments; and

**WHEREAS**, for these reasons, in order to meaningfully address the long legacy of legal and moral harms inflicted on American Indians and Alaska Natives, the United States must study and enact a policy of reparations; and

**WHEREAS**, any reparations policy should be developed with and informed by American Indians and Alaska Natives who continue to suffer from the inter-generational historical trauma inflicted by the United States and should not be limited to monetary compensation; and

**NOW THEREFORE BE IT RESOLVED**, that NNABA hereby calls on members of the United States Congress to develop, introduce, and support legislation that seeks to address the policies, decisions, and institutions of the United States which have caused and continue to cause historical trauma and harm to American Indians and Alaska Natives through enactment of reparations legislation.

**BE IT FURTHER RESOLVED**, that NNABA makes the recommendations set forth in Exhibit A to the United States Congress;

**BE IT FINALLY RESOLVED** that NNABA supports this resolution as policy until it is withdrawn or modified by subsequent resolution.

**Exhibit A**

**Reparations for American Indians –**

**A White Paper on the Necessary First Step to Healing Historical Wrongs**

*[attached]*

# Reparations for American Indians – A White Paper on the Necessary First Step to Healing Historical Wrongs

## I. INTRODUCTION

There is a common misconception that reparations can be applied uniformly to all historically disadvantaged minority groups. Search the news for discussions regarding reparative efforts and one will notice that minority races are often lumped together as one homogenous group and characterized as wanting one thing—money.

Initial suggestions of reparations are often met with valid, but preemptive questions Who deserves reparations? What form of payment is warranted? How much will they be paid? Who is responsible for paying them? These questions look past the *purpose* of restorative efforts and targets only the *practicalities* of their implementation. This paper will describe why reparations to American Indians are necessary, why these reparations need to be informed by the unique experiences of different tribes and tribal peoples, and how these reparations can go beyond naked monetary payments to take the form of policies and economic development initiatives.

Just as minority groups must be separated so injuries can be separately compartmentalized, so must individual Native American Tribes. The first inhabitants of this country have unique stories to tell and have all been impacted differently by actions of the United States. In seeking to remedy these harms, the United States must first accept the fact that the devastation imposed on Native Americans through the enactment of governmental programs is ultimately irreparable. Generations of lost time on culturally sacred lands can never be returned. Murdered children, wives, and husbands can never be brought back to life. The aftershock from these historical atrocities committed against Native American tribes continues to plague its members today. As a result, “writing a check” will never be enough to make the original inhabitants of this land whole. However, ignoring wrongs and convoluting the purpose of reparative efforts with the practicalities of their implementation is not a response that is consistent with the values of this country.

From a legal perspective, American society embraces the notion that harms should be remedied. When a state commits a wrong, that state should be responsible for the harm caused to the injured. If something is broken, it should be repaired. The fact that this country was built via human rights violations of an entire group of people is no longer a farfetched concept. Those historical traumas have transcended through generations and are starkly visible today. Tribes and the United States must work together via meaningful consultation to mitigate the generations of damage that has been imposed on tribal members.

Reparations are generally framed as a financial or non-financial payment intended to restore a victim back to where they would have been had the wrong not occurred. Tribes are distinct nations, so no two tribes have the same history. As a result, there is no one-size-fits-all approach to restoration. Therefore, reparations need not be consistent in their application, rather, reparations should take on the form most suitable to repairing the specific harm imposed. Reparations are best implemented through an omnibus bill, and the United States need not enact

separate reparations legislation for each tribe. However, general reparation legislation must be developed through consultation with tribes to understand and address differing experiences and needs. Reparations can go beyond monetary payments and take unique and long lasting forms.

### **A. Origins of Reparations**

*“Everyone has the right to an effective remedy by the component national tribunals for acts violating the fundamental rights granted him by constitution or by law.”*- Universal Declaration of Human Rights Article 8

Indigenous peoples implemented, and some continue to implement, a variety of justice systems that generally differed from the European adversarial, punitive model of justice. These Indigenous justice systems have been described as peacemaking or restorative justice. Any form of Indigenous justice also tends to be viewed as a healing process.<sup>1</sup>

Based on the principles and values of restorative justice and peacemaking, reparations should not be viewed solely as a product of European origin, but rather a concept inherent within Indigenous justice. While the community seeks to regain dignity and control over the conflict, and accountability from the United States, the repair of the relationship will need to be determined within each community. For example, in 1613 the Haudenosaunee made a treaty with the Dutch settlers via a wampum belt. This wampum belt depicted two rows of purple beads, which signified the relationship between the Dutch and the Haudenosaunee:

*We shall call each other Brother, as we are equal. In one canoe is our way of life, laws, and people. In the other is your ship with laws, religion, and people. Our vessels will travel side by side down the river of life. Each will respect the ways of each other and will not interfere with the other, forever.*<sup>2</sup>

This relationship based on equality and respect served as the foundation for subsequent treaty agreements with the United States.<sup>3</sup> Such a relationship could serve as the goal for Native Nations seeking reparations from the United States.

The composition of reparations is essentially limitless, but broadly speaking, there are two main categories which any type of reparation can fall under. First, material reparations involve the restoration of something to the injured. Examples of material reparations may include the restitution of communal lands, the return of cultural or religious property, the implementation of rehabilitation plans, or monetary compensation. Second, symbolic reparations typically involve transcending the black letter of the law and focusing on relationship building as an investment for a better future for all parties. Examples of symbolic reparations include story and truth-telling, apologies to victims, and the creation of reports to be studied by future generations.

### **B. The Case for Reparations**

American politics and peoplehood have always centered to some extent on nationalism and patriotism. Regardless of politics, to celebrate freedom and democracy while forgetting America's genocide of its Indigenous peoples and theft of their land is patriotism à la carte.<sup>4</sup> The United States is directly responsible for creating and implementing foundational theories of law, including



the doctrine of discovery, from which essentially all historical atrocities against Native Americans stem. These foundational theories and their devastating effects stand in the way of tribal sovereignty and the success of Native American communities.

For many tribes, reparations are the only path to healing. The history of the United States is replete with unique harms specific to Native Americans, including Boarding Schools, Allotment policies, and Removal policies. These harms resulted in the theft of homeland, culture, identity, and intergenerational historical trauma. Thus, many of the resources that were either destroyed or taken by the United States are non-fungible, meaning these resources cannot be interchanged with other resources. For example, there is no replacement for an Indigenous language that was lost through United States' policies of assimilation. There is no replacement for cultural resources like the Black Hills, the center of the Sioux universe, or the San Francisco Peaks, one of the four sacred Navajo Nation mountains. There is no replacement for spiritually and materially valuable buffalo populations that were decimated by Westward expansion. Monetary compensation is inadequate to tribes who have experienced these losses; the resources that were lost have unique meaning to the community and fulfill purposes that only those resources can fulfill. Thus, the United States must contemplate reparations that represent true atonement as well as creative solutions to the problems caused by such losses.

Reparations have become a popular policy topic in mainstream media and politics, especially during the 2020 presidential election season. While growing in popularity, calls for the United States to atone for its wrongdoings are not new. The United States has advocated for or provided reparations for victims of the Holocaust and Japanese Internment,<sup>5</sup> and there have been efforts to secure reparations for slavery since slavery was abolished.<sup>6</sup> Recently, theories regarding the necessity and justifications for reparations are gaining traction. Two particularly persuasive theories on reparations include ethical collectivism theory and restitution theory. Ethical collectivism asserts that members of a group have group-level rights and duties. Under ethical collectivism theory, reparations are just because the two groups, here the wrongdoers/colonizers and the victims/colonized, are the same even though time has passed.<sup>7</sup> Within the context of reparations for Native Americans the two groups are easily identifiable, especially since colonization is not a historical event but rather an ongoing process.<sup>8</sup> Under restitution theory, there is a strong case for reparations where the government is the wrongdoer.<sup>9</sup> As every citizen of the United States benefitted from oppressive political violence against Native Americans through securing Native land and resources for settlement and development, Native Americans deserve restitution from their government that has wronged them.<sup>10</sup>

As the arguments for reparations become more persuasive, arguments against reparations grow weaker. Taxpayers who object to the use of their taxes for reparations do not have constitutional standing, because federal expenditures cannot be challenged unless the expenditure violates the Establishment Clause<sup>11</sup> Additionally, arguments regarding who should be eligible to receive the reparations are easily dismissed as the tribes and Native American communities who experienced atrocities remain intact today as politically and culturally cohesive groups. As opposed to reparations for slavery of African Americans, there are no issues of identification of recipient groups since the reparations owed to Native Americans are group reparations not

individual reparations. As arguments for reparations become more cogent and arguments against become weaker, the case for reparations for Native Americans has become a topic which must, at the very least, be seriously addressed.

## II. DOCTRINE OF DISCOVERY

*"Our nation was born in genocide when it embraced the doctrine that the original American, the Indian, was an inferior race... We are perhaps the only nation which tried as a matter of national policy to wipe out its indigenous population. Moreover, we elevated that tragic experience into a noble crusade. Indeed, even today we have not permitted ourselves to reject or feel remorse for this shameful episode. - Rev. Martin Luther King, Jr. <sup>12</sup>*

Seizure of Native American lands and resources has been "justified" by a Eurocentric Christian vision of conquest and superiority, dating back to the Crusades in 1095.<sup>13</sup> During the fifteenth and sixteenth centuries, the Christian nations of Europe embraced this vision by claiming that non-Christian, non-European lands throughout the world could be appropriated by Christians as a matter of divine right.<sup>14</sup> When colonists first made contact with North America, the arriving immigrants were instructed by European nations to acknowledge the legal rights of the Indigenous nations of North America to secure a peaceful and orderly settlement.<sup>15</sup> However, the colonists frequently adopted the opinion that Native Americans did not possess recognizable property rights to the land in which they occupied due to the fact that the "discovered" lands were inhabited by non-Christian, non-European individuals.<sup>16</sup> European nations eventually granted colonists the right to govern Native peoples which restricted tribal international political relationships and trade.<sup>17</sup> As a result, the sovereignty of the tribes was unilaterally eroded throughout the early colonization period so that "Indians could be disposed of the lands they claimed by a race of cultivators destined... to plant the seeds of a superior civilization in the New World."<sup>18</sup>

The primary legal doctrine used by colonists to justify the dispossession of indigenous communities from their lands is commonly known as the Doctrine of Discovery.<sup>19</sup> According to the Doctrine of Discovery, European arrival on discovered lands essentially converted the Indigenous owners into tenants on those lands. The underlying title to the land belonged to the discovering sovereign, in this case, the Europeans (and eventually the United States).<sup>20</sup> In 1823, the United States Supreme Court affirmed the centuries-old Doctrine of Discovery.<sup>21</sup> In *Johnson v. M'Intosh*, Chief Justice John Marshall explained that "all the nations of Europe, who have acquired territory on this continent, have asserted in themselves, and have recognized in others, the exclusive right of the discoverer to appropriate the lands occupied by the Indians."<sup>22</sup> Marshall stated the original Indian inhabitants of the United States were "fierce savages, whose occupation was war... [t]o leave them in possession of their country, was to leave the country a wilderness."<sup>23</sup> The Court further held that the U.S. government had become the owner of all the land within the United States by virtue of the "discovery" of the North America continent by Europeans and the "conquest" of its inhabitants.<sup>24</sup> Despite the fact that Native Americans had existed on North American soil as sovereign nations for thousands of years prior to European contact, the United

States relied upon the Doctrine of Discovery to provide a self-assured foundation to empire in the New World.<sup>25</sup> Almost 200 years later, the Doctrine of Discovery is still good law.<sup>26</sup>

Although the Doctrine of Discovery concept is widely criticized by modern scholars and tribes alike, the doctrine has been used by all three branches of the United States government to justify the decisions and policies that have sought to assimilate, dispossess, and eliminate every aspect of Native American life, prosperity, and sovereignty. The United States continues to enforce its Doctrine of Discovery principles over Native Americans by exercising control over tribal political, commercial, real estate, and other property issues.<sup>27</sup> From a Constitutional perspective, blurred lines between the separation of church and state are ever-present when the federal government and the Supreme Court frequently apply the Christian-centric doctrine to unilaterally assume plenary power over Indian nations and their resources.<sup>28</sup> The United States must acknowledge these policies are built upon religious and ethnocentric prejudices central to the formation of its nationhood and have resulted in gross injustices against the original sovereigns of this land.

### III. HISTORICAL ATROCITIES

*"It's called genocide. That's what it was: genocide. There's no other way to describe it. And that's the way it needs to be described in history books."*

-California Gov. Gavin Newsom

What follows are examples of historical atrocities committed by the United States against Native Americans. These historical atrocities were committed in furtherance of or in relation to the Doctrine of Discovery and other United States imperialist doctrines, such as the plenary power doctrine. This is not an exhaustive list of examples, but rather a sample of well-documented events and policies that have had lasting effects upon Native American communities.

#### A. Indian Removal

*They took...everything we had on our farms, and put them in one large building. We told them that we would rather die than leave our lands; but we could not help ourselves...Many died on the road. Two of my children died. After we reached the new land, all of my horses died. The water was very bad. All our cattle died; not one was left. I stayed until one hundred and fifty-eight of my people had died. Then I ran away with thirty of my people...*

-Standing Bear, Ponca, 1879

From the early to mid-1800s the United States forcibly removed thousands of Native Americans from their homelands.<sup>29</sup> Indian Removal was an explicit national policy implemented by the United States federal government in order to acquire lands for white settlement.<sup>30</sup> Indian Removal stems from and relates to the Doctrine of Discovery in furthering westward expansion and dispossessing land from Native Americans. Additionally, underlying legal principles of the Doctrine of Discovery remained at work when the Removal Act of 1830 required tribal consent for removal and sale of their original lands through treaty.<sup>31</sup> Though in most cases the consent for

removal was fraudulent, the implementation of those principles nevertheless legitimized the taking of Native American land through law.<sup>32</sup>

Indian Removal policy resulted in the displacement of many tribes and the death of thousands of Native Americans, not only on the forced marches, but upon arrival to new reservations due to disease and starvation.<sup>33</sup>

## **B. Allotment**

*I spent the early days of my life on the farm up here of 3000 acres, and arranged to be comfortable in my old age; but the allotment scheme came along and struck me during the crop season. . . I have 60 acres of land left . . . I have a piece of property that doesn't support me, and is not worth a cent to me, under the same inexorable, cruel provisions of the Curtis law that swept away our treaties, our system of nationality, our very existence, and wrested out of our possession our vast territory...*

—Dewitt Clinton Duncan, Cherokee Nation<sup>34</sup>

The Dawes General Allotment Act of 1887 forcibly broke tribal landholdings into individual land ownership that could become alienable.<sup>35</sup> Small parcels of land were given out to individual Native Americans, and the 60 million acres of “surplus” land was then opened up to white settlement.<sup>36</sup> Individual landholders were made vulnerable to land speculators and squatters who were able to purchase land, often fraudulently, from Native Americans.<sup>37</sup> The Allotment Act resulted in the loss of over 90 million acres of Native American owned land, and led to impoverishment, social upheaval, and a complex system of Indian and non-Indian owned land within many reservations.<sup>38</sup> Allotment legislation sought to destroy the “savagery” of tribal autonomy and to force Native Americans into the American melting pot.<sup>39</sup> Through allotment the United States exercised its authority based on the Doctrine of Discovery more strongly than ever by seeking to end tribal existence under the force of law.<sup>40</sup>

## **C. Boarding Schools**

*The soldiers came and rounded up as many Blackfeet children as they could. The government decided we were to get White Man's education by force...Once there our belongings were taken from us, even the little medicine bags our mothers had given us to protect us from harm. Everything was placed in a heap and set afire... Next was the long hair, the pride of all the Indians. The boys, one by one, would break down and cry when they saw their braids thrown on the floor...We were told never to talk Indian and if we were caught, we got a strapping with a leather belt...I remember one evening when we were all lined up in a room and one of the boys said something in Indian to another boy. The man in charge of us pounced on the boy, caught him by the shirt, and threw him across the room. Later we found out that his collar bone was broken.*

—Lone Wolf, Blackfeet Nation<sup>41</sup>

The United States continued to implement its policy of forced assimilation by systematically removing Native American children from their families to place them in government or church-run boarding schools, with the objective of expunging them of their Native American identities.<sup>42</sup> By attempting to assimilate new generations of Native Americans into the dominant white culture, the United States continued to operate under the Doctrine of Discovery's assertion of religious and cultural superiority. Army officer Richard Pratt, founder of the Carlisle Indian school, coined the phrase, "kill the Indian, save the man," in instituting the boarding school policy in the 1880s, which continued well into the mid-1900s.<sup>43</sup> Children were forced to abandon all their cultural ways, including clothing, hair, religion, and language, and often suffered abuse.<sup>44</sup>

#### **D. Buffalo Genocide**

*Everything the Kiowas had came from the buffalo. Their tipis were made of buffalo hides, so were their clothes and their moccasins. They ate buffalo meat. Their containers were made of hide, or of bladders or stomachs. The buffalo were the life of the Kiowas. Then the white men hired hunters to do nothing but kill the buffalo. Up and down the plains those men ranged, shooting sometimes as many as a hundred buffalo a day. Behind them came the skinners with their wagons. They piled the hides and bones into the wagons until they were full, and then took their loads to the new railroad stations that were being built, to be shipped east to the market. Sometimes there would be a pile of bones as high as a man, stretching a mile along the railroad track.*

-Old Lady Horse, Kiowa Tribe<sup>45</sup>

In the mid-nineteenth century, professional hunters severely thinned the buffalo herds on the Great Plains. Part of the reason for the increase in hunting of buffalo by white hunters was an international demand for buffalo hide, the other reason being the desire of the United States to expand Western settlement by acquiring lands of Plains Indians.<sup>46</sup> Not only did the United States deliberately refuse to enact legislation to prevent over-hunting of buffalo, but the United States Army actively encouraged white hunters to exterminate buffalo.<sup>47</sup> Hunting methods were systematic, the weapons designated for the job were of the highest quality.<sup>48</sup> It is estimated that nearly 10 million buffalo were killed within 10 years.<sup>49</sup> Once the buffalo were gone from the Great Plains, the United States government and land speculators could easily force Native Americans into signing treaties and moving onto reservations, since the only other choice was starvation.<sup>50</sup>

#### **E. Land Dispossession: Pick-Sloan Plan**

*[The] Pick-Sloan Plan was, without doubt, the single most destructive act ever perpetrated on any tribe by the United States.*

-Vine Deloria Jr., Standing Rock Sioux<sup>51</sup>

The Pick-Sloan Plan was a collection of Congressional projects authorized by the 1944 Flood Control Act.<sup>52</sup> The 1944 Flood Control Act authorized the Army Corps of Engineers to construct and operate five massive earthen dams on the Missouri River for flood control, navigation, and hydropower.<sup>53</sup> The Pick-Sloan Plan did not mention any mitigation for impacts upon tribes within the area. The Pick-Sloan plan forcibly took 350,000 acres of the most fertile riparian land from tribes and Native American individuals. Burial grounds along the Missouri River, the ancestral homeland of the Sioux Nation, the Mandan Nation, and several Missouri Basin tribes, were completely destroyed to complete the projects.<sup>54</sup> Subsequently, the Tribes rich agricultural, timber, hunting, and livestock practices either disappeared or became unproductive. Tribes were relocated, but the new areas lacked infrastructure such as roads, irrigation, schools, and community facilities. Tribes continue to feel impacts of the project as acres of their land and cultural resources erode with every dam release.<sup>55</sup>

The Pick-Sloan Plan is not an isolated story, but rather emblematic of the historic and ongoing erosion of tribal land. While the taking of Indian land by Congress is largely connected to the plenary power doctrine,<sup>56</sup> it also reflects the Doctrine of Discovery in demonstrating notions of United States superiority by placing the desire for natural resources and land above the wellbeing of tribes.

#### **F. Taking of Paha Sapa/Black Hills**

*The government offered compensation...of \$350 million. Of course the People of the Seven Council Fires rejected that offer. The Black Hills are a sacred grandmother to us, filled with sacred power sites. How can one sell a sacred grandmother?*

—Leonard Little Finger, Oglala Sioux<sup>57</sup>

After numerous military engagements, the Sioux Nation and the United States entered into the Fort Laramie Treaty in 1868.<sup>58</sup> The Fort Laramie Treaty designated land for the Sioux Reservation, including the Black Hills.<sup>59</sup> The Black Hills are central to the Sioux Nation's creation story, necessary for continued religious and spiritual sustenance, and are often called the center of the Sioux Nation universe.<sup>60</sup> Years after the Fort Laramie Treaty had been in force, vast quantities of gold and silver were discovered in the Black Hills, increasing the demand for white settlement in the area.<sup>61</sup> At first the United States Army prevented prospectors and settlers from trespassing on the Sioux Nation reservation, as trespassing on the reservation was prohibited under the Fort Laramie Treaty. Soon after however, the United States abandoned its Fort Laramie Treaty obligations and negotiated with Sioux Nation leaders for the Black Hills.<sup>62</sup> The Fort Laramie Treaty required the consent of three-fourth of adult Sioux males before the Sioux Nation could cede any reservation land. The United States ignored this requirement and only received signatures ceding the Black Hills from 10% of the adult male Sioux population.<sup>63</sup> In 1877 the United States passed an Act ratifying this fraudulent agreement, legitimating an invasion of settlers into the Black Hills.<sup>64</sup>

As early as 1920 the Sioux Nation has attempted to litigate the taking of the Black Hills.<sup>65</sup> Finally in *United States v. Sioux Nation of Indians*, the Supreme Court awarded \$17 million to the



Sioux Nation for the United States' taking of the Black Hills.<sup>66</sup> The award in *United States v. Sioux Nation* has grown to over \$1.3 billion in a trust fund.<sup>67</sup> The Sioux Nation refuses to take the award, as they believe taking the money would constitute a final sales transaction and foreclose future claims related to the Black Hills.<sup>68</sup> Despite the Sioux Nation being one of the poorest tribes in the country,<sup>69</sup> no amount of money, even \$1.3 billion dollars, is enough to purchase the Black Hills.

#### **G. Desecration of San Francisco Peaks**

*The hearts of my people will again be broken, their health will inevitably suffer, and we will again witness the continued erosion of one of the oldest indigenous cultures in North America at the hands of the US Government.*

- Joe Shirley, Navajo Nation President<sup>70</sup>

The San Francisco Peaks of Northern Arizona are sacred to several tribes, including the Navajo Nation, Havasupai Tribe, White Mountain Apache Nation, Yavapai-Apache Nation, Hualapai Tribe, and Hopi Tribe. These tribes conduct religious ceremonies on the Peaks and gather plants, water, and other materials from the Peaks to make medicine bundles.<sup>71</sup> In the 1930s the United States Forest Service designated the Snowbowl ski area on the San Francisco Peaks.<sup>72</sup> In 2005 the Forest Service approved a proposal to create artificial snow for the Snowbowl using recycled sewage water.<sup>73</sup> In 2008, the Ninth Circuit Court of Appeals in *Navajo Nation v. United States Forest Service* held that the spraying of 1.5 million gallons of recycled sewage water per day on the San Francisco Peaks did not substantially burden free exercise of religion by tribes who practiced ceremonies on the Peaks.<sup>74</sup>

The Court stated that even if the government action would virtually destroy the ability of the various tribes to practice their religion, the government cannot satisfy every citizen's religious needs and beliefs.<sup>75</sup> The United States Forest Service actions and the court's review of those actions reflect a belief of the superiority of white, Christian religion and culture over Native American religion and culture. Although the court in *Navajo Nation v. United States Forest Service* argued that the decision is based on the need to treat all religions equally under the law, as some have pointed out, spraying sewage water on any Christian church would not be tolerated.<sup>76</sup>

#### **H. Uranium and Coal Mining**

*We, the residents of Black Mesa, were never consulted or told about the area to be mined, otherwise we could have opposed it... Now it is getting hazy and gray outside. The coal mine is causing it. Because of the bad air, animals are not well, they don't feel well. They don't know what is happening and are dying. Animals are worrying, that is why they are dying...I want to see the burial grounds left alone. All of my relatives' graves are being disturbed. I want to see the mining stopped.*

-Asa Bazhonoodah, Navajo Nation<sup>77</sup>

A history of inadequately regulated extractive activities within or near Native American communities in the western United States has resulted in environmental harm, serious health

problems for Native American communities, and negative impacts to lands vital to Native American society, spirituality, and culture.<sup>78</sup> Shortcomings in consultations with tribes and the ultimate authority of the United States to permit and approve extractive projects without tribal participation and consent has left tribes largely unable to participate in meaningful dialogue on projects affecting their lands, resources, and communities.<sup>79</sup> Uranium and coal mining in particular has impacted the Navajo Nation.<sup>80</sup><sup>81</sup> For a more detailed discussion, *See* Joseph Hoover et al., *Elevated Arsenic and Uranium Concentrations in Unregulated Water Sources on the Navajo Nation, USA*, (August 23, 2016).

#### **IV. EFFECTS OF ATROCITIES: HISTORICAL TRAUMA AND POOR SOCIOECONOMIC CONDITIONS**

Historical atrocities committed by the United States against Native Americans and tribes had immediate consequences. But beyond the initial devastating effects, these historical atrocities produced several effects that manifest in current and new generations to this day. In particular, historical atrocities created historical trauma that has negative impacts on the daily lives of Native Americans. Poor socioeconomic conditions of Native American communities can be traced to United States implementation of policies related to historical atrocities as well.

##### **A. Historical Trauma**

Historical trauma is cumulative emotional and psychological wounding over an individual's lifespan and across generations, emanating from massive group trauma.<sup>82</sup> Historical trauma can be broken into three phases.<sup>83</sup> First, the dominant culture perpetrates mass trauma on a population leading to cultural, familial, societal, and economic devastation. Second, the original generation responds to trauma showing biological, societal, and psychological symptoms. Third, the initial responses are conveyed to successive generations through environmental and psychological factors, prejudice, and discrimination.<sup>84</sup>

Colonization and historical atrocities resulted in the disruption of Native American social structures.<sup>85</sup> The United States' deliberate implementation of devastating forced assimilation policies and land dispossession eroded traditional family and community ties which resulted in traumatic losses for Native American communities.<sup>86</sup> Preliminary results of empirical studies suggest thoughts about historical losses are associated with symptoms of emotional distress and can manifest psychological issues and toxic behaviors.<sup>87</sup> Historical losses may interrupt optimal functioning, influence parenting, or contribute to maladaptive behaviors. The harms that have led to this trauma did not come from an isolated event, the harm is perpetual and ongoing.<sup>88</sup> Native Americans experience daily reminders of losses of land, traditional family systems, traditional languages, religious ceremonies, and healing practices. For Native Americans, historical losses are only "historical" in the sense that they began a long time ago.<sup>89</sup> Historical trauma links the past to the present, and demonstrates why reparations are necessary since harms towards Native American communities are continuous.<sup>90</sup> While the United States tends to focus on individual wrongdoers and individual victims when administering justice, historical trauma validates the need for group reparations in illustrating harm throughout groups and across generations.<sup>91</sup>

##### **B. Socioeconomic Conditions**

Colonization and the legal doctrines used to effectuate colonization resulted in historical atrocities and wrongdoings against Native Americans and tribes across the United States. Policies implemented by the United States to further colonization resulted in poor socioeconomic conditions that persist to this day.

#### ***a. High Rates of Death and Illness***

National data trends continue to illustrate a grim reality for the health of Native Americans. Life expectancy for Native Americans is 5.5 years less than the average American.<sup>92</sup> Native Americans continue to die at higher rate than other Americans in many categories, including chronic liver disease and cirrhosis, diabetes mellitus, unintentional injuries, assault/homicide, and chronic lower respiratory diseases.<sup>93</sup> Native Americans experience higher rates of mental and behavioral health challenges compared to other populations in the United States.<sup>94</sup> Native Americans have the highest rates of suicide and drug induced deaths of any group in the United States.<sup>95</sup> Indigenous women are more than twice as likely as all other women to be victims of violence and one in three Indigenous women will be raped in her lifetime.<sup>96</sup> Native Americans on reservations generally lack access to emergency services, health care facilities that provide preventative healthcare, and healthy food options.<sup>97</sup> Factors contributing to high incidences of death and disease among Native Americans include poverty, inadequate housing, discrimination in delivery of health services, limited access to services, and low educational achievement.<sup>98</sup>

The United States history of mistreating Native Americans has had lasting impacts upon the health of Native American communities. Native Americans have always had social and health problems, but colonization wiped out the family and cultural systems that dealt with and resolved these problems. Colonization of Native nations led to social disruptions in the form of poverty, substance and alcohol abuse, disproportionately high health problems, and substandard education and healthcare.<sup>99</sup> Deliberate colonial policies such as the geographical isolation of Native American communities on reservations has had dangerous consequences for Native American health and safety. Native Americans learned to distrust the people who colonized them and their lands, and thus distrusted the institutions the colonizers created, as a result of oppressive policies, treaty violations, and broken promises.<sup>100</sup> Euro-American service providers were also distrusted as they either intentionally or unintentionally imposed their values, beliefs, and systems of care upon individuals, families, and communities for whom these services or practices may be harmful or ineffective. The factors leading to poor health such as low income and low educational attainment reflect disparities in wealth and power that have endured since early colonization. These disparities have created an environment that makes it practically impossible for Native Americans to thrive.<sup>101</sup>

#### ***b. Environmental Justice Concerns***

Native American communities and tribes face a disproportionate effect from environmental problems upon certain demographic groups, that jeopardize health and safety. Because many tribes and Native American communities have cultural and religious connections to landscapes and natural resources such as bodies of water, they are also disproportionately harmed when these resources are threatened or damaged.<sup>102</sup> Native American communities have been dangerously

polluted by uranium and coal mining. Mainstream media has recently covered tribes and Native American communities challenging construction of pipelines, fracking, and drilling near cultural resources and Native American communities. Climate change also has a disproportionate effect on Native American communities as it causes further loss of lands and threatens natural resources that are crucial for religious purposes or subsistence lifestyles.<sup>103</sup>

These issues are directly related to the United States' colonial policies. Because colonization involves acquisition of Indigenous land and resources, the United States has made decisions without regard to the wellbeing of tribes and Native American communities whose very existence is an obstacle to those goals. Water protectors consider pipeline construction to be just another example in a long history of the federal government acting to the detriment of Indigenous people.<sup>104</sup> Colonization has also pushed or relocated Native Americans and tribes to less desirable locations that are more susceptible to damage from climate change.<sup>105</sup>

### *c. Poverty and Lack of Economic Development*

National data shows that Native Americans have fallen behind in terms of economic success as well. According to the American Housing Survey, Native Americans are 1.9 times more likely to live in inadequate housing compared to non-Hispanic white populations.<sup>106</sup> The total number of Native American owned employment firms in 2016 was just 29,089 out of 5,601,758 employment firms.<sup>107</sup> In comparison, the number of white owned firms in 2016 was 4,534,290.<sup>108</sup> The unemployment rate for Native Americans in 2017 was 10.2% while the national unemployment rate was just 3.7%.<sup>109</sup> In 2016 the median household income of single race Native Americans was \$39,719 compared to the national average of \$57,617.<sup>110</sup>

While a variety of factors contribute to economic status and success, and there are a variety of different theories as to why poverty is such a reoccurring issue for Native Americans,<sup>111</sup> the current status of Native American socioeconomic conditions illustrate a need for reparations. It is not difficult to see the connection between historical atrocities committed by the United States that destroyed Indigenous education, took valuable land and resources, and impaired health and the current environments that make it difficult for Native American communities to succeed.<sup>112</sup> Reparations provide a material benefit to communities that are in the process of healing from historical trauma associated with historical atrocities. Considering the overall poverty and slow economic development of Native American communities, reparations in the form of economic and policy development are a natural outflow as a forward-looking, restorative remedy. In the long run, considering the current socioeconomic status of Native Americans and the need to further tribal self-sufficiency, reparations are an investment in the future of the United States.

## **V. RECOMMENDATIONS**

The ultimate goal of reparations for Native Americans is to secure a national apology and receive compensation for the United States' oppressive political violence against them. Implementation of these reparations would restore some measure of power and resources to the Native Nations so that they may individually have agency in determining the best course of action for the tribe. Restoring power and agency to tribes leads to an increased opportunity for tribal economic development, including clean energy projects and community-based development

projects. These actions ultimately allow Native Nations and cultures to flourish and transform, improving the public perception of Native Americans in the United States. Reparative efforts with Native Americans can take a variety of forms, including: policy reform and development, public apology, restorative community based justice, self-help reparations and land acknowledgement.

### **A. Failed Attempts At Reparations**

Past attempts to provide redress for historical wrongs committed by various nations or governments, including attempts by the United States to address wrongs against Native Americans, while admirable, have been seen as inadequate or unsuccessful. Two forms of reparations previously undertaken include individual monetary awards and adjudications. The discussion below highlights some of the shortcomings of these efforts, and then recommends ways reparations could be implemented to improve their effectiveness.

#### ***a. Individual Monetary Awards***

Some countries offered monetary awards to individual survivors of historical atrocities as a form of reparations. In South Africa the Truth and Reconciliation Commission (“TRC”) was created to investigate human rights violations that occurred during apartheid. The TRC included a committee that was solely focused on reparation and rehabilitation of apartheid victims. This committee had no independent budget and only recommended reparations programs to the government; it was unable to implement the reparations on its own. The TRC published recommendations in 1998 that the South African government pay victims \$3,500 per year for six years. The South African government has only paid 18,000 people a onetime grant of \$3,500.<sup>113</sup> More than 4,000 apartheid victims who were promised a monetary award in the TRC recommendations report have never received compensation.<sup>114</sup>

As the result of a class action litigation, in 2017 the Ontario Superior Court ordered the Canadian government to provide \$875 million in reparations to survivors of Canada’s residential school era.<sup>115</sup> Similar to survivors of United States Indian boarding schools, survivors of Canada’s assimilative policies suffered not only loss of language and culture but also physical and sexual abuse while attending these schools. Organizations that investigate the residential school era and provide support to the survivors found the deal to be inadequate as a resolution to unspeakable crimes against Canada’s Indigenous children. Some community organizations are providing tools for survivors to heal at their own pace. These tools include therapy, wellness workshops, and traditional healing such as sweat lodges and ceremonies.<sup>116</sup> Community based approaches such as these suggest a need for an ongoing commitment to heal communities and multiple types of reparations, as opposed to a one-time payout. The process is still underway, and survivors have not yet received their payouts.

The Canadian and South African examples illustrate that not only are individual monetary awards difficult to administer, but they are often viewed by survivors as inadequate in allowing communities to move forward. Survivors of historical atrocities have noted that material reparations felt hollow without an official and societal acknowledgement that they were wronged.<sup>117</sup> Many victims are focused on securing positive forward-looking measures that could improve the chances of future generations. Single payments are not enough to provide for the

repair that is meant to sustain generations, especially when historical atrocities effect entire communities and family systems.<sup>118</sup>

### ***b. Adjudications***

Fueled by the horror of the treatment of ethnic minorities, particularly the treatment of Jewish people in Europe, the United States began to consider the human rights dimension of its treatment of Native Americans shortly after World War II. Some United States policymakers argued the assertion of ‘manifest destiny’ over Native Americans was strikingly similar to the ambitions of Hitler in gaining more ‘lebensraum’ for the German people during the land invasions of Czechoslovakia and Poland.<sup>119</sup> Until this point, Indian land claims were often settled disproportionately, giving preference to those who had the resources to efficiently move through the claims system. Due to the direct conflict with the spirit of post-war egalitarianism, Congress enacted the Indian Claims Commission Act (ICCA) in 1946 to give Indian tribes equal access to the Court of Claims.<sup>120</sup> Essentially, the ICCA provided tribes with a method to bring future claims against the United States, while simultaneously creating a commission to investigate and settle historic wrongs arising before 1946.<sup>121</sup> The ICCA certainly had reparative aspects, in that it intended to give tribes an individual way to settle land confiscation claims against the United States. However, despite these positive intentions, the Act did not explicitly acknowledge the governmental wrongs inflicted upon Native Americans nor did it issue an apology to the tribes. Instead, the Act’s major goal— was one of forced assimilation, “to permanently settle ancient tribal grievances in order to prepare them for the termination of their special status under United States Law.”<sup>122</sup> Additionally, as the ICC was a claims court, the only remedy tribes could recover were monetary damages. This is significant because the United States did not show any concern with remedying non-fungible losses or returning the sacred lands to tribes; rather, the ICCA sought to extinguish claims with only monetary payments, that were often too low, without accepting blame for the historic wrongs committed by the United States. The focus of these adjudications was often absolving the United States of liability, rather than healing and remedying wrongs.

## **B. Process**

Reparations should be viewed as a process, particularly a healing process. While this process may change and need to be adapted to fit each recipient tribe or Native American community, the following steps are integral to any form of reparation.

### ***a. Community-based consultation first***

It is imperative the recipient community or tribe ultimately decides the priorities and design of the reparation.<sup>123</sup> However the community should not be burdened with the costs and labor of designing the reparations, instead the United States in creating the reparation should operate at the direction of the community. This may require additional preliminary steps such as the creation of special committees or agencies that work closely with and support the community in creating a reparation. Consulting with the recipient tribe or Native American community is critical since some reparations will be for all Native Americans, while others will need to be tribe or community specific. For example, allotment and boarding schools affected tribes and Native American communities across the nation and thus the reparations for allotment and boarding schools should



be designed with all tribes in mind. Yet only a few specific tribes would receive reparations for an atrocity such as land confiscation administered under the Pick-Sloan Act. When working with tribes to create reparations, the United States should keep in mind Native Americans are not an undifferentiated population with a uniform bloc of interests.<sup>124</sup>

#### ***b. Collaborative Studies***

It is also necessary for studies and investigations to be conducted prior to designing the reparations. These studies and investigations would have objectives of: 1) identifying wrongdoings and atrocities; 2) identifying continuing wrongs; 3) identifying the victims, survivors, and/or recipient tribes or Native American communities; 4) determining the effects of the wrongdoings, atrocities, and continuing wrongs; and 5) determining types of reparations and possible solutions.<sup>125</sup> These studies and investigations must be completed in collaboration with the tribes and Native American communities receiving the reparations. The findings and information produced in these studies and investigations will also serve as an assertion of obligation on behalf of the United States to provide reparations.

#### ***c. Education of Public/Truth Sharing/Acknowledgement***

Once the studies and investigations are completed by the United States they should be published in official reports and widely disseminated, with the permission of the recipient tribes or communities. The tribes or Native American communities may want to keep the findings within the community or may want a limited release of the reports. Tribes may also wish to edit the reports to protect survivors and victims. Alternatively, the United States and the recipient tribe or Native American community may wish to engage in an educational campaign in order to ensure the report reaches a wide audience. Allowing the findings to be shared is a critical step in the reparations process as public acknowledgement of the wrongdoing.

This stage of the reparations process may also include an official announcement that reparations will be provided to the recipient tribe or Native American community. Even if the investigation or study is completed in stages, there may be a need to consult with the tribe or community about the findings regarding the atrocities and effects before making a final decision on the design of the reparation. This stage in the reparations process may also include a public apology, if the recipient tribe or Native American community has expressed a desire to receive one. Acknowledgement serves as a meaningful step towards restoration, recognizing not only the wrongdoings committed by the United States against Native Americans, but also the suffering endured by the recipient.

#### ***d. Accountability/Implementation/Enforcement***

One of the final stages in the reparations process will be to enforce the reparations. The enforcement stage should identify who will be implementing and enforcing the reparations, and any accountability measures that can be put in place to ensure that retrogression and resistance in implementing reparations is addressed. It may also be necessary to include additional stages of the reparations process after enforcement. These stages could include conducting post-enforcement evaluations. The purpose of these evaluations would be to identify any deficiencies

of the reparations and how the reparations are or are not helping the community to heal. Once evaluations are conducted the United States should again work with tribes to redesign or amend the reparations.

### **C. Potential Forms**

There are several potential forms of reparations that would benefit Native Americans, tribes, and the United States as a whole. The reparation should always be explicitly framed as a reparation in order to acknowledge the wrongdoing that occurred as well as the beginning of a healing process. While the following descriptions serve as examples, the ultimate reparation must be created in collaboration with the recipient tribe or Native American community. This is not an exhaustive list of potential forms of reparations, the four forms described below are intended to give tribes and the United States a starting point in visualizing the success of these programs.

#### ***a. Policy Reform/Development***

Historical atrocities and colonization created structural inequalities that systemically disadvantage Native Americans and tribes. To right these structural wrongs, the United States must restore some measure of power and resources to Native Nations.<sup>126</sup> There are several policy areas that could be developed or reformed in order to restore self-sufficiency that was lost through historical atrocities.

An example of reparations in the form of policy development is the 1978 Indian Child Welfare Act (“ICWA”).<sup>127</sup> While not explicitly developed as a reparation, the form and implementation of ICWA is regarded as an attempt to reverse assimilative policies leading to mass removal of Native children, recognize and respect familial traditions and responsibilities of Native American nations, and restore agency to tribes.<sup>128</sup> The ICWA legislative hearings collected testimony which allowed for recognition of not only historical wrongs regarding Indian child welfare but also ongoing wrongs of disproportionate removal of Indian children into the foster care system.<sup>129</sup> ICWA sought to put an end to continuing wrongs against Native American families by empowering tribes to intervene in child welfare proceedings. Seeking to stop colonization from doing further damage to Native American communities reflects an integral forward-looking aspect of reparations. A component of reparations that was missing from ICWA was a type of enforcement or accountability mechanism, something to ensure that the reparations would be implemented. ICWA has not been consistently applied and is often resisted by foster care workers as well as members of the non-Indian public who wrongfully challenge ICWA as an unconstitutional racial preference.<sup>130</sup>

#### ***i. Economic Development***

Reparations should include policies that drive economic development, in order to improve the socioeconomic status of tribal communities. When community-based economic development projects are classified as reparations, the wrongdoing to the tribe or community as a whole is recognized.<sup>131</sup> Having a single project to focus on is also symbolically powerful as it provides a starting point as well as visual representation in rebuilding social and community structures that were destroyed by colonization. Such projects also give the community or tribe a voice in

prioritizing and designing projects that are most important.<sup>132</sup> Economic development projects are an attractive form of reparations as they avoid the dilemma of choosing between reparations and other priorities.<sup>133</sup>

A more specific type of reparative development project is the implementation of clean energy on Native lands. Creating reparations in the form of clean energy projects for tribes is a common-sense response to not only the geographic isolation of tribes through Removal, but also allowing harmful extractive industries such as mining near Native American communities. Indigenous lands have great wind and solar potential, as well as hydroelectric and geothermal resources.<sup>134</sup> Some tribes have even created tribally owned utilities.<sup>135</sup> Unfortunately there are many regulatory and tax structures that make it difficult for tribes to currently develop clean energy. Reparations that remove these hurdles and fully support clean energy projects provide a means of moving forward from historical atrocities that ravaged Native communities. Clean energy projects also involve a forward-looking component of reparations by allowing tribes to sustainably support future generations.

Economic development projects as a form of reparations does have drawbacks. The biggest drawback is that it conflates two separate obligations of the government: making reparations for wrongs it committed and providing essential services to the population.<sup>136</sup> Some have criticized this approach to reparation as an abdication of the government's duties and taking focus away from the act of wrongdoing.<sup>137</sup> This is particularly relevant for tribes since the United States has a unique legal trust responsibility to tribes. In the 19<sup>th</sup> century, the United States had an active, paternalist role in carrying out its trust responsibility.<sup>138</sup> Yet as federal Indian law and policy has shifted over time, the federal government has placed greater emphasis on strengthening the self-determination of tribes by funding tribes so they can administer their own programs.<sup>139</sup> However, programs providing healthcare and education have suffered due to underfunding, demonstrating a failure of the United States to meet its trust responsibilities.<sup>140</sup>

For separate reasons, the United States should remedy both its failure to meet trust obligations and the historical atrocities it has committed. The economic development policy drawback of conflation with government obligations may be easily overcome through conscious framing, design, and communication that such projects are redress for historical harms, and not merely a fulfillment of existing duties. Providing reparations to tribes for committing devastating historical atrocities against them is a separate obligation that goes beyond typical bounds of law and relies instead on notions of justice, atonement, and restoration.

## **ii. Language Revitalization**

Language revitalization is another obvious remedy to historical atrocities that attempted to wipe out Native American culture. Language loss is directly related to the boarding school experience.<sup>141</sup> Tribes such as the Cherokee Nation and Mille Lacs Band of Ojibwe have created online language classes and language immersion programs for schools.<sup>142</sup> Policies that support these efforts would be a direct response to the United States destruction of Native language and culture. Indigenous language revitalization is also often linked to a larger project of tribes

attempting to regain political autonomy, a land base, or regain a sense of identity.<sup>143</sup> Additionally, there is evidence that language revitalization programs help Indigenous students obtain higher educational performance and develop a positive self-image.<sup>144</sup> The United States implementing a nationwide policy that fully supports language revitalization will be particularly impactful as it is often difficult to set up an immersion school that complies with local and state regulations.<sup>145</sup>

### **iii. Governance**

Reparations should also include policies that develop and restore governance of Native Nations. Historical atrocities such as Removal, Allotment, Boarding Schools, Land Dispossession, and other assimilation policies deeply disrupted traditional governance structures for Native Nations. Some federal policies such as the Indian Reorganization Act of 1934 and Termination policies terminated tribes or forced them to adopt Euro-American forms of governance. Thus, creating policies that recognize and restore traditional governance structures would help tribes and Native American communities regain political autonomy. Imagining different forms of officially recognized tribal governments would be a meaningful reparation considering the complexity of similar processes such as legal federal recognition of tribal governments. Another possibility is to give Native American communities who no longer have a government structure an autonomous state or territory within the United States. These actions provide a necessary foundation for restoring governments or autonomy that such communities would otherwise lack.<sup>146</sup> Another idea is providing Native American communities and tribes with more political representation in Congress.<sup>147</sup> This would acknowledge the discrepancy between colonization removing political power from tribes and yet the federal government making decisions that affect tribes and Indigenous land without tribes having a fair say.

#### ***b. Public Apologies***

A public apology is a necessary part of reparations. An attempted apology issued by the United States in 2009 was hidden in an unrelated piece of legislation and received little public attention, which cheapens the effect of its sincerity. Native Americans deserve more than a shameful apology buried deep within a defense appropriation spending bill for the official depredations, ill-conceived policies, and the breaking of covenants by the Federal Government regarding Indian tribes. The bill disclaims that the apology in no way supports any legal claims, nor does it settle any claims against the United States. Further, citation of the killing of Indian women and children, the Trail of Tears, the Long Walk, the Sand Creek Massacre, Wounded Knee, the theft of tribal lands and resources, the breaking of treaties, and the removal of Indian children were removed from the final draft of the bill.

A proper apology should come in its own stand-alone legislation or order to give it the importance that it deserves. It should acknowledge the horrific atrocities authorized and carried out by the United States and the long-lasting effects of those actions. A formal apology must be sincere, and also look to the future, towards healing and reconciliation.

As an example, in June 2019, California's Governor Gavin Newsom authorized a stand-alone executive order which recognizes and apologizes for the brutal treatment of Native Americans and the implementation of prejudicial policies against Native Americans. The Executive Order also calls for the Governor's Tribal Advisor to establish a "Truth and Healing Council" to investigate these admitted historical atrocities and consult with Native American tribes so that Native Americans can be more accurately represented. Unlike the federal defense appropriations bill, Governor Newsom's apology on its face appears to be more direct, sincere, and calls for specific action to take reparative steps in improving the relationship between the State government and its tribes.

### *c. Restorative/Community based justice*

Some communities may prefer reparations that are more symbolic, rather than material in nature. Yet apologies and reports are not the only types of symbolic reparations. Indigenous justice systems present a way for the community to heal that is focused more on repairing relationships. For example, in 2001 the estate of Lakota leader Crazy Horse settled a defamation lawsuit over the use of his name in the marketing of Crazy Horse malt liquor.<sup>148</sup> The estate wanted to stop breweries from distributing the alcoholic beverage because the tribal leader denounced the introduction of alcohol to American Indians. One of the named defendants personally travelled to the reservation to issue an apology to the plaintiff's and also made a non-monetary peace offering settlement. In addition to the public apology, the defendant offered 32 blankets, 32 braids of sweet grass, 32 twists of tobacco, and 7 thoroughbred horses.<sup>149</sup> The recipients of the peace offering acknowledged the importance of a large company conducting due diligence in learning about Sioux culture and extending non-monetary compensation to restore justice. The tribal members also viewed the offering as an "awakening" in that the company took the time to recognize the tribal members as human beings.<sup>150</sup>

This type of symbolic gesture, combined with elements of traditional peacemaking, signifies a deep emotional effort on behalf of the wrongdoer to make things right. And as with any reparation, the Crazy Horse liquor example illustrates what reparations look like when they are defined by the recipient community's culture and traditions. To implement restorative justice requires consultation, research, and due diligence with Indian tribes. The United States should seek to implement targeted, culturally informed reparations wherever possible.

### *d. Land Returns and Stewardship Models of Property*

Returning land to tribes and Native American communities is a powerful and healing form of reparations. Indigenous people come from the land, are defined by the land, and have a responsibility to the earth that is integral to their identity as peoples.<sup>151</sup> A symbiotic relationship is formed between the Indigenous peoples and lands that they regard as sacred, as the lands benefit from the stewardship of Indigenous groups.<sup>152</sup> Because sacred land and landscapes are tied to the unity and identity of tribes and Native American communities, the taking of such lands by the United States is considered an attempt to destroy the tribe or community itself, and return of the land is an appropriate remedy.

A key example illustrating land returns as reparations is the return of Blue Lake to Taos Pueblo. Located in the Sangre de Cristo Mountains of New Mexico, Blue Lake is a ceremonial and religious site for the Taos Pueblo. In 1906 President Theodore Roosevelt created a national forest that included Blue Lake within its boundaries, opening up Blue Lake for recreational use by the public.<sup>153</sup> Taos Pueblo issued a fierce campaign to regain exclusive use of Blue Lake. In the 1930s the United States issued Taos Pueblo permits to use the land. In 1965, the ICC ruled in favor of Taos Pueblo but only awarded monetary compensation.<sup>154</sup> Like the Sioux Nation's stance on the Black Hills, Taos Pueblo refused to accept money in exchange for its most sacred land. After years of negotiations and attempts at legislation through Congress, Taos Pueblo sought help from President Nixon. The Nixon administration had a poor record with racial minorities, and the Blue Lake issue caught the administration's attention as a public relations opportunity. Blue Lake had become a national symbol of Native Americans and the Nixon administration saw this as a chance to repair the strained relationship between the "Indian community" and the United States.<sup>155</sup> With the support of Nixon in 1970, a bill finally passed that returned complete ownership of Blue Lake to Taos Pueblo. To this day Blue Lake is off-limits to all but members of Taos Pueblo.<sup>156</sup>

The Blue Lake case illustrates the importance of timing as well as the commercial value of the land, especially in comparison to the Black Hills which have never been returned to the Sioux Nation. The story of the return of Blue Lake is also indicative of how expensive and difficult land returns can be for tribes and Native American communities to accomplish on their own. Thus, reparative returns of land to tribes and Native American communities are extremely powerful, as the decision to return lands as a form of reparation acknowledges the United States wrongdoing without forcing tribes and Indigenous communities to engage in an uphill battle with their limited resources.

Another option involves reparations centered on a stewardship model of cultural property. A stewardship model of property would secure Indian entitlement to property without transferring title from the current government or non-Indian owner. Focusing on cultural property claims within the framework of stewardship thus takes emphasis off property title and ownership. Certain Indigenous cultural property is inextricably bound up with peoplehood, and as such is both non-fungible and necessary to a people's identity formation.<sup>157</sup> There is often a reluctance on the part of Indigenous peoples to characterize their relationship to their land in terms of ownership and dominion.<sup>158</sup> And in many cases, it is simply not possible to coordinate a return of land to the tribe or Native American community. Thus, reparations may instead reflect Indigenous traditions of property.

The United States has already engaged with a stewardship model for handling Native American property via implementation of the Native American Graves Protection and Repatriation Act ("NAGPRA").<sup>159</sup> Under NAGPRA, tribes do not have a property right in the ancestor, but rather a right in the nature of a custodian to hold and protect the ancestor until burial.<sup>160</sup> Reparations that are centered on a stewardship model of Indigenous property would go beyond consultation with tribes and actually prevent activities such as extractive industries and recreation on sacred sites during certain periods or within certain areas. While stewardship models do not

mandate a transfer of title or widespread exclusion of other from the cultural property, in contrast to land returns, stewardship models do expressly recognize the interest of Native Americans in the preservation and maintenance of continued access to sacred places.<sup>161</sup> A reparation that gives tribes and Native Americans stewardship rights to cultural properties is a potential compromise that still acknowledges the rights of Indigenous peoples to these lands.

Historical atrocities resulted in the taking or loss of one of the most important resources that tribes and Native American communities have—land. Land is connected to culture, identity, language, and governance, and is integral to indigenous communities. Return of lands is not only important culturally, but also could solve jurisdictional issues resulting from checkerboarded land as a result of allotment policies. Tribes may also be able to develop revenue-generating business with the acquisition of lands.<sup>162</sup> With these considerations in mind, any manner of land return which is classified as a reparation has great significance to tribes or Native American communities.

#### **D. Conclusion**

Reparations represent much more than compensation. They represent a process of healing that includes acknowledgement, atonement, understanding, and moving forward. Reflection on the pain and hardships suffered by Native Americans and tribes leads to the idea of reparations as not only an emotional reaction but a logical reaction as well. In fact, reparations become something of a necessity once one realizes that the United States continues to justify its harmful actions in something as supposedly neutral and just as legal doctrine. As Ta' Nehesi Coates stated in relation to reparations for African Americans, reparations represent an existential question for all Americans. In reckoning with the United States treatment of Native Americans, Americans must accept that the conditions under which tribes and Native Americans exist are not inexplicable but rather exactly what the United States intended to result from centuries of legal policy. Not only were these atrocities committed in furtherance of imperialist and racist legal doctrines including the Doctrine of Discovery, but often these atrocities were committed with the desire to eradicate Native Americans from this country completely. These atrocities have left Native Americans and tribes in desperate circumstances. Tribes and Indigenous communities are overflowing with beautiful culture, art, knowledge, and ideas to contribute to this country. Many of the psychological and socioeconomic effects of these atrocities weaken not just the communities but also this nation as a whole. As a matter of right, justice, and morality the United States must view reparations for Native peoples not only as atonement, but an investment in its people and future.

The path forward in providing reparations to Indian tribes need not be a single monetary payout to tribal members. As explained above, multiple creative options exist for the United States to engage with tribes and provide meaningful reparations with widespread and long-lasting benefits.

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<sup>2</sup> Onondaga Nation People of the Hills <https://www.onondaganation.org/history/quotes/>



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- <sup>3</sup> Chief Irving Powless Jr., Treaty Making, Treaty of Canandalgua <http://honorthetworow.org/wp-content/uploads/2012/01/IrvPowlessTreaty-makingWEB.pdf>.
- <sup>4</sup> See generally Ta-Nehisi Coates, The Case for Reparations, *The Atlantic* (June 2014).
- <sup>5</sup> See Civil Liberties Act of 1988, 50a U.S.C. § 1989 et seq.; Kurt Schwerin, German Compensation for Victims of Nazi Persecution, 67 *Nw. U. L. Rev.* 479 (1972).
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- <sup>10</sup> *Id.* at 700.
- <sup>11</sup> *Id.* at 714.
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- <sup>17</sup> Robert J. Miller, *The Doctrine of Discovery in American Indian Law*, 42 *Idaho L. Rev.* 1 (2005).
- <sup>18</sup> *Id.*
- <sup>19</sup> Pevar at 24 (2012).
- <sup>20</sup> *Id.*
- <sup>21</sup> See *Johnson v. M'Intosh*, 21 U.S. 543 (1823).
- <sup>22</sup> *Id.* at 584.
- <sup>23</sup> *Id.* at 590.
- <sup>24</sup> Pevar at 24 (Citing *Johnson*).
- <sup>25</sup> *Id.*
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- <sup>27</sup> *E.g.*, 25 U.S.C. §§ 81, 177 (2000).
- <sup>28</sup> Steven T. Newcomb, *The Evidence of Christian Nationalism in Federal Indian Law* 337 (1992).
- <sup>29</sup> Felix S. Cohen's *Handbook of Federal Indian Law* 41 (2012 ed.).
- <sup>30</sup> *Id.* at 41-51.
- <sup>31</sup> Robert J. Miller, *The Doctrine of Discovery in American Indian Law*, 42 *Idaho L. Rev.* at 113 (2005).
- <sup>32</sup> *Id.*
- <sup>33</sup> Grant Foreman, *Indian Removal* 96-98, 177, 184, 296.
- <sup>34</sup> Peter Nabokov, *Native American Testimony* 267 (1999).
- <sup>35</sup> Cohen's *Handbook* at 71-79.
- <sup>36</sup> Judith Royster, *Legacy of Allotment*, 9, 13 (1995).
- <sup>37</sup> *Id.* at 12.
- <sup>38</sup> Anaya UN Report 8; Cohen's *Handbook* at 74.
- <sup>39</sup> Cohen's *Handbook* at 72, 75 (2012 ed.).
- <sup>40</sup> Robert J. Miller, *The Doctrine of Discovery in American Indian Law*, 42 *Idaho L. Rev.* at 114 (2005).
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- <sup>43</sup> Cohen's *Handbook* at 76.
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- <sup>48</sup> C. Mair, *The American Bison: Its Habits, Method of Capture and Economic Use in the North-West*, in *The Transactions of the Royal Society of Canada*, volume VIII, section II, 1890.
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<sup>54</sup> *Id.* at 145, 158.

<sup>55</sup> *Id.* at 199, 216.

<sup>56</sup> *Id.* at 159-161.

<sup>57</sup> Leonard Little Finger, *We Walk on Our Ancestors: The Sacredness of the Black Hills*, Cultural Survival Quarterly Magazine (March 2014).

<sup>58</sup> *United States v. Sioux Nation of Indians*, 448 U.S. 371, 374 (1980).

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<sup>60</sup> Kirsten Matoy Carlson, 29 Ga. St. U. L. Rev. 685, 700-701, 703 (Spring 2013).

<sup>61</sup> *Sioux Nation of Indians*, at 377.

<sup>62</sup> *Id.* at 377-379.

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<sup>65</sup> *Id.* at 371 (1980).

<sup>66</sup> *Id.*

<sup>67</sup> *Why the Sioux are Refusing \$1.3 Billion*, PBS News Hour (August 24, 2011).

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<sup>70</sup> Lawrence Hamilton, *Sacred vs Profane: Conflict Over the San Francisco Peaks*, Mountain Research and Development 26(4), 366-367, (November 1, 2006).

<sup>71</sup> *Navajo Nation v. U.S. Forest Service*, 535 F. 3d 1058, 1063-1064 (9th Cir. 2008).

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<sup>75</sup> *Id.* at 1073.

<sup>76</sup> Joshua A. Edwards, *Yellow Snow on Sacred Sites: A Failed Application of the Religious Freedom Restoration Act*, 34 Am. Indian L. Rev. 151 (2010).

<sup>77</sup> Peter Nabokov, *Native American Testimony*, 397-400 (1999).

<sup>78</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples*, James Anaya ¶ 41, U.N. Doc. A/HRC/21/47/Add.1 (August 30, 2012); U.N. Human Rights Council, *Report of the Special Rapporteur on the Rights of Indigenous Peoples*, ¶ 7, U.N. Doc. A/HRC/36/46/Add.1 (September 11-29, 2017); Joseph Hoover, Melissa Gonzales, Yolanda Barney, Johnye Lewis, *Elevated Arsenic and Uranium Concentrations in Unregulated Water Sources on the Navajo Nation, USA*, published online August 23, 2016, 1.

<sup>79</sup> U.N. Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples on her mission to the United States of America*, ¶ 14, U.N. Doc. A/HRC/36/46/Add.1 (September 11-29, 2017).

<sup>80</sup> Joseph Hoover et al., *Elevated Arsenic and Uranium Concentrations in Unregulated Water Sources on the Navajo Nation, USA*, (August 23, 2016) (stating over 500 abandoned uranium mines are located throughout the Navajo Nation).

<sup>81</sup> For a more detailed discussion, *See* Joseph Hoover et al., *Elevated Arsenic and Uranium Concentrations in Unregulated Water Sources on the Navajo Nation, USA*, (August 23, 2016); *See also* Doug Brugge and Rob Goble, 2002: *The History of Uranium Mining and the Navajo People* American Journal of Public Health 92, 1410; *Elevated Concentrations of U and Co-occurring Metals in Abandoned Mine Wastes in a Northeastern Arizona Native American Community*, Environmental Science & Technology 8507 (July 9, 2015).

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- <sup>89</sup> *Id.* at 128.
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- <sup>162</sup> Krakoff, *Repairing Reparations*, at 266.



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# APPENDIX



**National Native American Bar Association  
Annual Meeting  
April 10, 2019  
11:30 am – 4:30 pm  
Sandia Resort & Casino, Ballroom C**

**MEETING MINUTES**

**Call to Order**

- Joel called the meeting to order at 12:15pm. All attending provided a brief introduction.

**Approval of Agenda**

- Mike moved to approve agenda, Thomasina seconded. All attending approved. See Appendix A.

**Approval of Minutes from the 2018 Annual Meeting**

- Lawrence Baca moved to approve, Mike seconded. All attending approved.

**A Year in Review: 2018-2019**

**President's Report – Joel West Williams**

- The board held a strategic planning session in August 2018. During the session, the board established two focus areas for the year:
- Producing more content for our membership. Did that through webinars in partnership with other organizations. One webinar was on land-into-trust regulations, other on traditional indigenous knowledge in environmental decision making. Going forward, would like to increase the offerings and our internal capacity to develop those programs.
- Focus on young lawyers and produce additional resources for them.
  - Collaborative Bar Leadership Academy (CBLA) trains young lawyers to become bar leaders. During this bar year, NNABA paid for three Native lawyers to attend. This is the fifth year that NNABA has participated in CBLA.
  - The Young Lawyers Committee has been very active, Kori Cordero will discuss their work later in the meeting. Have organized several “What Do Lawyers Do?” panels for high school students. Also sent one Native high schooler to go to the National Civics and Law Academy in DC.

- Financially support students in pursuing law school. NNABA funds LSAT prep courses through partnerships with ABA and California Indian Law Association. We also offer bar scholarships for graduating Native law students.

#### Treasurer's Report – Thomasina Real Bird

- Our fiscal year is January 1 to December 31, which is different from our bar year (April to April). NNABA's 2018 total income was \$31,000 in donations and \$16,659.65 in membership dues. We are a completely volunteer organization, so we reimburse directors for their travel. The annual meeting is our largest expense. See page 6 of the Annual Report (Appendix B).
- We still have some funds in Bank of America. The plan is to transfer all funds to the Native American Bank.
- Mike motioned to accept the Treasurer's Report; Rob seconded. All attending approved.

#### ABA Delegate Report – Jerry Gardner

- Two resolutions are coming up in the ABA that NNABA should consider co-sponsoring. First is for permanent funding for IHS and exemption from sequestration. Second is ICWA. ABA already has a resolution supporting ICWA. We are working on another resolution to support tribes in defending ICWA's constitutionality in the *Brackeen* case. Both resolutions are still being drafted, and they will be presented to NNABA when finalized.
- Also working to get ABA letters in support of VAWA special domestic violence criminal jurisdiction and the added crimes, as well as the VAWA authorization bill recently passed by the House.

#### Report on 2018-2019 Coalition of Bar Associations of Color (CBAC)

- CBAC was founded 20 years ago to collaborate on issues of common interest. Meet every February in DC and do lobbying work on the Hill. This year the focus areas were VAWA, immigration, judicial nominations, and voting rights. It's very helpful to have other bar associations supporting Native issues.
- Makalika: In the past, there was discussion of including the National LGBT Bar and the Southeast Asian Bar Association (SABA) in CBAC. Was that discussed at this year's meeting?
- Joel: No discussion of that this year. But that doesn't mean there's opposition to it.
- Rob: Recently met with the incoming ABA President about diversity initiatives. Wouldn't be surprised if this happened. As the CBAC hosts next year, NNABA can make this suggestion.



- SABA Rep: Would be very interested in discussing this further.

## **Presentations from Partner Organizations**

### Nikki Borchardt Campbell, National American Indian Court Judges Association (NAICJA)

- This week marks 50th anniversary of NAICJA. Work on judicial capacity building and provided targeted technical assistance. Also support court clerk and admin personnel. Partnered with National Council of Juvenile Court Judges to increase our capacity to provide cutting edge training to tribal judges. Work very closely with state court judges, do training together, visit the Hill together, etc. – it expands our reach. All technical assistance and training are free to tribal courts.
- Tribaljustice.org: Website tracks innovative and new practices.
- Have discussed a joint membership with the ABA because so many tribal attorneys are sitting on the bench or are interested in serving as judges.
- Rob: Yes, this would have a great opportunity to increase the tribal voice at the ABA.

### Kate Rosier, Indian Legal Program, Arizona State University's Sandra Day O'Connor College of Law

- Have been working with NNABA since 2015 on the Pipeline to Law program. So far we've had five programs across the country. This year, the 6th program will be at Berkeley Law.
- Five-day program, what law school is about, how to properly apply. Participants get a free test prep course of their choosing. Testmasters presents at the program, but their course might not work for all students.
- Despite the free course, LSAT scores weren't going up. So we're making it harder for students to get the free test prep course. They have to pre-register for the LSAT, explain why they've selected a certain course, and provide a detailed application timeline. Scores have gone up, which is great. Some students haven't seen gains, so we're working with the test prep courses to figure out why – is it a work issue, a language issue, etc.?
- Still having issues with students reporting back to the program. Did they get into law school, where are they going, etc. Most of the students who follow through are going to law school somewhere.
- This year, we are bringing in partners like the Access Group to discuss the financial aid process.

- This year's program was funded by a grant of \$30k from Walmart. That covers the LSAT prep courses, food, hotel, and emergency travel assistance (otherwise students are expected to cover their travel). Long-term goal is to have the program run from an endowment.
- About 140 students have gone through the program. Our program is non-recruit, meaning the schools work together to ensure that students are choosing schools that are the right fit for them.

Rodina Cave Parnall, Pre-Law Summer Institute, American Indian Law Center, Inc.

- ABA Judicial Clerkship Program (JCP): Correlation between doing a judicial clerkship and later becoming a member of the judiciary. PLSI is recognized as a law school for the program.
- JCP Committee is working on a clerkship handbook and instructional videos for Native students.
- Native American Bar Passage Initiative:
  - Since 2015, PLSI has offered bar course reimbursements to PLSI alums; last year opened it up to all Native law students. We do this because we know that if you work while studying for the bar exam, your chances of success drop.
  - There's very little data about Native American bar passage, so we're developing a survey. Want to figure out what makes people successful, what helped for retakers, etc.
- Target pre-law advisors that work with Native students. Over 40 people recently attended a pre-law advisors conference.
- We are apprehensive about funding, we survive on BIE grants.
- Diandra: NNABA should also make donation to the PLSI bar scholarships.
- See Appendix C for Rodina's Powerpoint.

Charisse Abbie, Tribal Judicial Center, National Judicial College

- Provide continuing education for judges. Last year, 250 tribal court judges and personnel attended their trainings. Recently resurrected the tribal advisory board, which has 18 members.
- This year, we will have a judicial academy for lawyers who hope to become judges. It will be the last week in August 2019, and the inaugural course will have 40 participants.

Please help spread the word. NNABA could also sponsor someone to attend. Currently have no tribal attorneys signed up to participate.

- Joel: We can circulate an announcement to our membership.

### Awards

- Joel and Diandra awarded plaques to PLSI and the Pipeline to Law Initiative to recognize their wonderful work.

## **NNABA Committee Reports**

### In-House & Corporate Counsel Committee

- Colleen Lamarre is the chair. She had a client emergency and was not able to attend the meeting. So Joel gave this report.
- Colleen and Sandra did a table at the ABA Employment Law Conference in San Francisco. There's a desire to reach out to Native practitioners who are working outside of Indian law. Employment law issues also come up in Indian Country.
- In the coming year, one of committee's goals is to roll out at least two webinars that are tailored to in-house and corporate counsel.
- Colleen is also a part of the Young Lawyers Division of the ABA. One of their initiatives is the Men of Color Project. Hunter Cox is a part of that Project.
- At ABA Midyear, Colleen and Joel participated in voting rights panel and gave an Indian Country perspective.

### Judicial Committee – Joel Williams, Chair

- Jen Weddle used to chair this committee, but now she's on the ABA's Standing Committee on the Judiciary, so Joel has taken over as chair.
- The judiciary is an ongoing challenge. Only one Native judge on the federal district courts and one federal magistrate judge. We support nominations of Native judges. We also will endorse non-Native judges if they have a strong Indian law background. Did this for Carlos Samour earlier this year, who was appointed to the Colorado Supreme Court.
- Landscape is changing. Process is very different now than it has been in the past. Joel has had a few good meetings at the White House about judicial candidates.
- Any Native attorneys who are interested in becoming to judges should reach out to NNABA for support.

- State court judges are very important as well. States deal with Indian issues. They also are a pipeline for federal judgeships. Prior judicial experience is a very important qualification, especially for minority candidates.

#### Young Lawyers Committee – Kori Cordero, Chair

- YLC has focused on the recruitment and retention of Native law students.
- Has conducted “What Do Lawyer’s Do?” panels across the country to encourage Native students to pursue higher education and law school.
- Launched a new Native Law Pipeline Initiative in partnership with the California Indian Law Association. Funded by California Change Lawyers and the NNABA Foundation. Two-day workshop for Native students to assist them in applying for law school. Participants will receive a Kaplan LSAT prep course scholarship.

#### Annual Event Committee – Diandra Benally, Chair

- Tonight we will have a showing of *Dawnland* and a panel afterward. Worked with NNALSA to hold a career fair on Friday.
- Event would not be possible without our sponsors. This year we set a goal of \$19,000, and we exceeded that goal. Extra funding will be donated to the Foundation to fund scholarships.
- This meeting is for our membership. Please let us know if you have any feedback.

#### **Presentations from Partnering Sponsors**

##### Vanessa Bailey – Intel

- Director of Intellectual Property Policy; also chair of Intel’s Native American recruiting. Partner with AISES. Didn’t have any Native interns. Hard to recruit Native lawyers because most just want to work on tribal law and are not interested in corporate law.
- Sarah Crawford: NNALSA would be a good partner in reaching out to law students. Would be great to have Intel participate in next fall’s career fair at DC Fed Bar Conference and NNALSA resume books.

##### Bernie Coerber, Walmart

- Walmart has a Tribal Voices group. Grateful to NNABA for its work.

#### Nader Khoursanni, NBC Universal

- NBC is a media company. Its lawyers are interested in helping with pro bono for tribes and Native issues.

#### Makalika Naholowa'a, Microsoft

- Microsoft's goal: Empower every person and every organization on the planet to do more. We strive to be a diverse and inclusive company. It's hard to ask everyone to be your customer when not all communities have a seat at the table.
- External and internal efforts. NNABA is part of external efforts. Internal: Native Americans at Microsoft is a long-standing group at company, but law department has not been involved much. Microsoft has 14,000 lawyers, and only 2 lawyers and 1 paralegal identify as Native. There is a lot of opportunity to do more.
- Ideas on how Microsoft can deepen partnership with NNABA: Partner with NNABA to host CBAC next year.

#### Awards

- Joel and Diandra awarded plaques to Walmart, NBC Universal, and Microsoft to acknowledge their outstanding support and partnership.

#### **Scholarship Committee Report and Awards – Lauren van Schilfgaarde**

- Scholarship is meant to help Native students cover all bar expenses, not just the cost of the course, but also living expenses. In application, asked students to share student loan debt, transcripts, and a personal statement. Awarded nine scholarships this year.
- Three of the scholarship awardees (Sarah Crawford, Roshanna Toya, Alexander Mallory) were present at the meeting and gave short remarks of thanks.

#### **Reports from Regional American Indian Bar Associations**

##### Northwest Indian Bar Association – Sarah Lawson

- Represent Native lawyers in Washington, Oregon, Idaho, and Alaska. Provided 7 scholarships to students enrolled in Northwest law schools. Also provide 2-3 bar stipends each year. Annual dinner will be on September 5 at Bob Anderson's University of Washington Indian law CLE. Working to provide small travel stipends for students to attend NNALSA Moot Court, PLSI, and Pipeline to Law Initiative.

#### NNALSA – Sarah Crawford

- 175 dues-paying members, 30 chapters. Had an excellent moot court competition at University of Arizona. Revamped grants to local chapters. Partnered with NNABA to provide an Indian Country Clerkship Scholarship for students to work at tribes for the summer. Deadline is tonight and already have 6-7 applications. Will announce winner at Fed Bar awards luncheon on Friday. Career Fair on Friday from 10am-12pm.

#### NABA Arizona – Diandra Benally

- Awarded 10 scholarships to Native law students in Arizona. Have a golf tournament fundraiser coming up on May 5. Also have holiday fundraisers and solicit donations for Native families.

#### Minnesota American Indian Bar Association – Forrest Tahdooahnippah

- Two biggest events: annual CLE and golf tournament. Fund scholarships for Minnesota Native law students as well as bar stipends.

#### Native Hawaiian Bar Association – Makalika Naholwaa

- Can get a lifetime membership even if you're not in Hawaii. Lots of discussion and webinars about sacred sites. Funding a training program on how to integrate family healing process into practice.

#### California Indian Law Association – Geneva Thompson

- Geneva wasn't to attend the meeting, but she provided a written update. See Appendix D.

#### **Resolutions – Joel West Williams**

- All resolutions were passed unanimously by the board. See Appendix E.
  - Resolution #2019-01: In Support of the Tribal Adoption Parity Act
  - Resolution #2019-02: In Support of Upholding the Indian Child Welfare Act
  - Resolution #2019-03: Urging States and Municipalities to Replace Columbus Day with Indigenous Peoples' Day
  - Resolution #2019-04: Calling on Congress to Pass Legislation Addressing Violent Crime in Indian Country and Providing Victim Assistance
- Sarah Crawford mentioned that when she worked in Senator Tim Johnson's office, she helped get the Tribal Adoption Parity Act drafted and introduced.
- Thanks to Phil Brodeen, Diandra Benally, and Lauren van Schilgaarde for their hard work in drafting the resolutions.

- Any NNABA member can introduce a resolution.

## **Elections**

- President-Elect: Thomasina Real Bird
  - Motion from Diandra and seconded by Lauren to nominate Thomasina for president-elect. Mike motioned to close nominations, seconded by Rob, all approved closing nominations. All present approved Thomasina's nomination by voice vote.
- Two At-Large Directors: Debra Gee (Navajo citizen, Chickasaw Nation counsel) and Carolyn West (Eastern Cherokee)
  - Mike McBride and David Blackorby are not seeking re-election of their board appointments. Joel thanked them for their service and awarded them plaques.
  - Mike nominated Debra Gee (Navajo citizen, Chickasaw Nation counsel), Diandra seconded.
  - Rob nominated Carolyn West (Eastern Cherokee), second from Sunshine Nicholson.
  - Thomasina nominated Kori, Lauren seconded. Kori declined nomination but will take another committee role.
  - Makalika proposed having extra board members because we are hosting CBAC this year.
  - Rob motioned to close nominations, Mike seconded. All present approved closing nominations.
  - All present approved Debra Gee and Carolyn West by voice vote.
- Treasurer: Phil Brodeen
  - Not nominated by the membership at large, nominated by the board.
  - Diandra nominated Phil Brodeen, Rob and Thomasina seconded.
  - Rob moved to close nominations, Mike seconded, all approved closing nominations.
  - All present directors approved Phil Brodeen for treasurer.
- ABA Young Lawyers Division Reps: Geneva Thompson and Heather Torres

- Thomasina nominated Geneva, seconded by Diandra. Diandra motioned to close nominations, Rob seconded, all present approved closing nominations.
- Alternate ABA YLD Rep: Kori nominated Heather Torres, Rob seconded. Lauren moved to close nominations, Rob seconded, all present approved closing nominations.
- ABA YLD Council Position: Colleen Lamarre
  - Colleen will continue in this position. Lauren re-nominated Colleen, Phil seconded. Diandra moved to close nominations, Rob seconded, all present approved closing nominations.
- ABA House of Delegates Rep: Jerry Gardner
  - Rob re-nominated Jerry, Thomasina seconded. Diandra moved to close nominations, Lauren seconded, all present approved closing nominations.
- ABA Diversity and Inclusion Council Rep: Sunshine Nicholson
  - Thomasina nominated Sunshine Nicholson, Lauren seconded. Rob moved to close nominations, Kori seconded, all present approved closing nominations.
- NNABA Foundation Independent Directors: Diandra Benally and David Blackorby
  - Jim Goodman didn't want to seek another term, and Phil is becoming NNABA Treasurer.
  - Thomasina nominated Diandra Benally, Kori seconded.
  - Diandra nominated David Blackorby, Rob seconded.
  - Rob moved to close nominations, John Echohawk seconded, all present approved closing nominations.
  - Rob moved to approve their nominations, Thomasina seconded, all present directors approved.

### **Looking Forward – Rob Saunooke, President-Elect**

- Board thanked Joel for his year of wonderful service. Rob gifted Joel a wooden bear carved by a Cherokee artist.
- Rob: When we band together as Native attorneys, we are stronger together. Told the story of a Native law student at UC Irvine who encountered many challenges in law school.



She attended the ABA Judicial Clerkship Program and met Kori Cordero and Geneva Thompson, who inspired her to keep working hard and persevere. Rob gifted Kori and Geneva Cherokee carvings of water baskets to signify their work as water carriers for Native students.

- All of us here have benefitted from others, let's give that back. We can all do just a little bit more – that will help NNABA get to the next level. We need to be at the same level as the other bars of color.
- Goals for the upcoming year:
  - Increase membership. What do people need to get excited about NNABA?
  - Increase collaboration with regional bars. Hold our meetings at the regional meetings.
  - Increase our financial participation.
- Rob committed to get on his motorcycle and visit 50 tribes and urge them to donate to NNABA.

### **Adjournment**

- Phil motioned to adjourn, Lawrence Baca seconded. All present approved. Meeting adjourned at 4:25pm.



**National Native American Bar Association Membership Meeting**  
**October 1, 2020**  
**9:00 A.M. PDT/10:00 A.M. MDT/ 11:00 A.M. CDT/12:00 P.M. EDT**

Presiding: Thomasina Real Bird, President  
Location: WebEx Video

**MEETING MINUTES**

**1) Welcome – Thomasina Real Bird**

Meeting called to order at 9:05am Pacific.

**2) Introductions**

All attendees introduced themselves by stating their name, tribal affiliation, employment, NNABA board or committee participation, and their thoughts on a “silver lining” of the pandemic.

**3) Virtual Sign-In and Confirmation of Quorum**

Bylaws provide that 10% of the membership must be present for a quorum. With our current membership, this meant 13 members. Quorum reached.

**Attendees:**

1. Aaron Koenck
2. Arielle Wagner
3. Christine Jordan
4. Colleen Lamarre
5. Curtis Laclaire
6. Dan Lewerenz
7. David Blackorby
8. David Buchanan
9. Deborah Boling
10. Debra Gee
11. Geneva Thompson
12. Heather Torres
13. Jerry Gardner
14. Joel West Williams
15. John Echohawk
16. Kaniah Konkoly-Thege
17. Katie Jones

18. Lauren van Schilfgaarde
19. Lawrence Baca
20. Leah Sixkiller
21. Loren Kieve
22. Matt Archer-Beck
23. Mike McBride III
24. Paulene Abyeta
25. Phil Brodeen
26. Richard Armstrong
27. Rob Saunooke
28. Sandra McCandless
29. Sunshine Nicholson
30. Sunshine Parker
31. Thomasina Real Bird
32. Vanessa Bailey
33. Veronica Newcomer

#### **4) Approval of Agenda**

Rob Saunooke moved to approve the agenda. Geneva Thompson seconded. All present approved.

#### **5) President's Report – Thomasina Real Bird**

##### **a) Indigenous Law Graduation**

NNABA was a co-sponsor. Over 100 graduating Native law students participated. Hope that it will continue after the pandemic. Recording is available here:

<https://www.youtube.com/watch?v=-vWsc0qLwR0>

##### **b) Website Reorganization**

Thomasina is working on reorganizing the website to better showcase NNABA's work.

##### **c) Legal Profession Studies**

In recent months, there have been two legal profession studies that have left out Native Americans.

The first is a report by the Center for Women in the Law that studied the experiences of women of color in law school. It completely left out Native American women. Various attorneys, including NNABA board members, and law professors held a meeting with the study's authors about the omission. Unfortunately it was not a fruitful discussion – they were not receptive to our concerns and were not willing to supplement the study.

The second problematic study was one by the ABA Commission on Women in the Profession looking at the experiences of women lawyers of color at least 15 years into practice. The link to the study is:

<https://www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbe>

[hind-int-f-web-061020-003.pdf](#). This one also completely left out Native women, which was especially concerning because so many of us do work with the ABA. We plan to continue discussion with the new ABA President to see if the Commission will agree to supplement the study. We have gathered the names of 20 Native women lawyers who could participate. Richard Armstrong asked if there was a point of contact at the ABA for the membership to submit additional comments. Thomasina said that she had a conversation about this with Mary Smith, former ABA Secretary and past NNABA president. Mary Smith said that NNABA's concerns have been elevated to the ABA President's position. The membership can contact the new ABA President Trish Refo: [https://www.americanbar.org/groups/leadership/aba\\_officers/patricia-lee-refo/](https://www.americanbar.org/groups/leadership/aba_officers/patricia-lee-refo/)

NNABA is looking at next steps for updating our 2015 study, "The Pursuit of Inclusion." The membership should expect to see something on that soon.

**d) Letters of Support/Statements**

Recently NNABA has worked with the other CBAC bars on various letters of support and statements. These have included:

- A statement standing in solidarity with Black Lives Matter
- A letter to Roger Goodell about the Washington football team name. This was sent just a few days before the team name change. Think that the collective effort from the Native community nationwide contributed to that change.
- A letter of support to Governor Newsom of California to require mandatory diversity on state corporate boards.
- A letter to the New York state court system asking for the posthumous bar admission of Ely Parker.

**e) Poster Project**

NNABA is working on a poster project to highlight Native attorneys and inspire Native youth. This project was inspired by a University of Nebraska project about Natives in STEM. Thomasina is working with former NNABA board member Kori Kordero on this. Will ask the membership to participate.

**6) Discussion & Approval**

**a) Reschedule the 2020 Virtual Annual Meeting**

Thomasina: The bylaws require this membership meeting to change the date of the Annual Meeting and require the rescheduled Annual Meeting to be held 30 days after this membership meeting. The Annual Meeting will likely be for 4-5 hours depending on the agenda.

The membership discussed which dates would work.

Phil Brodeen moved to reschedule the Annual Meeting on a virtual platform for Monday, November 16 at 9am pacific. Colleen LaMarre seconded. All present approved.

**b) Board Vacancies and Election Process**

- i) President-Elect**
- ii) Secretary**
- iii) Three At-Large Board of Directors Members**

The President-Elect and Secretary are considered members of the Executive Board. The President-Elect is a three-year commitment. There are three at-large board of director vacancies; the bylaws permit current directors to run again. The bylaws require a nomination from the floor. Will take nominations during the Annual Meeting on November 16. If you plan to nominate yourself or someone else, please let Thomasina know for planning purposes.

Thomasina will make appointments for committee positions; the bylaws allow her to do that. If you are currently serving in a committee position and would like to continue, please let Thomasina know.

**c) Other Items**

Christine Jordan is the Native liaison for the Federal Bar Association's Diversity and Inclusion Committee.

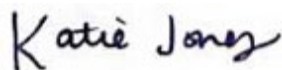
**Please renew your membership!** Thomasina noted that the board is looking at revamping our membership to be more include. If anyone is interested in volunteering for that or on any other NNABA committee, please let Thomasina know. You do not need to be on the board. Currently need someone to spreadhead PR; we get lots of requests for NNABA to participate in speaking opportunities and board members are not always available.

Paulene Abeyta (NNALSA President) encouraged everyone to join NNALSA as an alumni member at <https://www.joinit.org/o/nationalnalsa>. NNALSA is looking for mentors and guest speakers.

**7) Adjourn**

Rob Saunooke moved to adjourn; Paulene Abeyta seconded. All present approved. Meeting adjourned at 10:25am Pacific.

Respectfully submitted,



Katie Jones, Secretary (2019-2020)

## THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION

### RESOLUTION #2019-010

#### **TITLE: Urging All Levels of Government to Protect the Voting Rights of Native People**

**WHEREAS**, the National Native American Bar Association (“NNABA”) was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors, and law students, and NNABA promotes and addresses social, cultural, political, and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, Native people were largely deprived of the right to vote in elections in the United States from the beginning of democratic self-government throughout most of the history of the United States, along with many other minority groups; and

**WHEREAS**, even during passage of the Fourteenth Amendment to the United States Constitution, which aimed to address the citizenship and equal protection of various minority groups, Congress specifically excluded “Indians not taxed” from citizenship and an ability to participate in the electoral process; and

**WHEREAS**, even though the Fifteenth Amendment granted all United States citizens the right to vote regardless of race, most levels of government continued to exclude Native people from citizenship and an ability to participate in the electoral process; and

**WHEREAS**, the United States Supreme Court held, in *Elk v. Wilkins*, 112 U.S. 94 (1884), that the lawsuit of an American Indian man seeking to register to vote must be dismissed because “[t]he plaintiff, not being a citizen of the United States under the Fourteenth Amendment of the Constitution, has been deprived of no right secured by the Fifteenth Amendment, and cannot maintain this action;” and

**WHEREAS**, it was not until 1924, with the passage of the Snyder Act, that the federal government recognized the United States citizenship of Native peoples; and

**WHEREAS**, even after the passage of the Snyder Act, many states and local governments withheld voting rights from Native peoples, using the same mechanisms and strategies, such as poll taxes, literacy tests, fraud and intimidation, that kept other minorities from exercising that right; and

**WHEREAS**, Native peoples were not fully enfranchised in law until 1962, when New Mexico removed its state-level restrictions on voting for Native peoples, and only achieved real-life voting rights with the 1965 passage of the Voting Rights Act and subsequent legislation in 1970, 1975, and 1982; and

**WHEREAS**, Native peoples still face difficulty accessing the right to vote, difficulties which include: physical isolation in rural communities and on remote reservations, which creates long travel times to polls; technological isolation and lack of access to voting information; language barriers; high levels of poverty; and lower rates of permanent housing; and

**WHEREAS**, these difficulties have been compounded by efforts by state and local governments to disenfranchise Native voters, including requiring Native voters to provide proof of residence at physical “911” addresses for voter registration, onerous voter identification requirements, a refusal to accept post office box addresses or tribal identification cards at polls, unnecessarily heavy police presence at polling stations, and inappropriate and/or inaccessible polling stations; and

**WHEREAS**, federal courts have ignored these efforts to disenfranchise Native voters and have refused to strike state-level restrictions designed to keep Native voters from accessing the polls, as the Eighth Circuit Court of Appeals most recently did in *Brakebill et al. v. Jaeger*, No. 18-1725 (8th Cir. 2019), which vacated a lower court’s statewide injunction against enforcement of North Dakota’s onerous voter identification and physical address requirement; and

**WHEREAS**, improved voter protections are needed to address and prevent these voter suppression efforts, to ensure that Native voters have equal access to the electoral process, and to provide equal access to resources and other information regarding federal and state elections.

**NOW THEREFORE BE IT RESOLVED**, that the National Native American Bar Association calls upon Congress to pass the Native American Voting Rights Act of 2019, which would enact measures such as increasing Native access to voter registration sites and polling locations; authorize tribal identification cards for voting purposes; bolster Native voter registration, education, and election participation efforts; authorize a first-of-its-kind Native American Voting Rights Task Force; and prohibit states from undertaking discriminatory actions without Department of Justice agreement and government-to-government consultation.

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association calls upon Congress to ensure there is adequate funding for those who oversee and conduct the election process, including sufficient funding to provide rural polling locations, training, and alternate forms of voting other than in person ballot casting.

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association calls upon the United States Supreme Court and all levels of federal, state, and tribal courts to enforce existing laws that protect Native voters from disenfranchisement and Native voters’ access to the polls.

**BE IT FINALLY RESOLVED**, that the National Native American Bar Association calls upon the Department of Justice to vigorously enforce all federal laws relating to elections and voter protection, send federal observers to Indian Country and other Native communities to document voting problems and discrimination, and file actions when Native voters are discriminated against in the voting process.

### CERTIFICATION

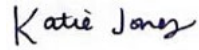
The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on October 2, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.



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Robert Saunooke, President

ATTEST:



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Katie Jones, Secretary



## **Resolution of the NATIONAL NATIVE AMERICAN BAR ASSOCIATION**

### **RESOLUTION # 2019 – 009**

#### **TITLE: Protect and Enhance Indian Health Service Funding**

**WHEREAS**, the National Native American Bar Association (“NNABA”) works to promote issues important to the Native American community and to improve professional opportunities for Native American lawyers, we do hereby establish and submit the following resolution;

**WHEREAS**, NNABA was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors, and law students, and NNABA strives to be a leader on social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians;

**WHEREAS**, the United States government, pursuant to numerous treaties with Indian tribes and a unique government-to-government relationship with all tribes, owes a duty to provide for the health and welfare of all American Indian and Alaska Native people;

**WHEREAS**, pursuant to that duty, the Indian Health Service (IHS), a division within the United States Department of Health and Human Services, provides medical and health services to over 2 million American Indian and Alaska Native people, including through direct services, through funds provided to tribally-operated health facilities, and through the Urban Indian Health Program;

**WHEREAS**, the IHS has historically, and continues to be drastically underfunded;<sup>1</sup>

**WHEREAS**, delayed year-to-year funding, including unanticipated political federal government shutdowns such as the recent December 22, 2018 to January 25, 2019 shutdown, causes alarming impacts on the provision of health care services, as well as impacts the ability to properly plan and manage resources;

**WHEREAS**, in light of IHS’s underfunding, unilateral federal reductions in spending, such as the Fiscal Year 2013 federal budget sequestration, cause disproportionate damage to American Indian and Alaska Native people and their ability to receive primary health care and disease prevention services;

**WHEREAS**, the similarly-situated agency, the Veterans Health Administration, which provides direct medical care to a specific segment of the United States population as a result of federal policy, was identified by Congress as suffering from these same barriers, and as such Congress authorized work-arounds, including advance appropriations (funding available one year or more after the year of the appropriation, which allows programs to avert funding gaps and avoid short-term continuing resolutions), and exemption from sequestrations;

**WHEREAS**, like the Veterans Health Administration, IHS requires advance appropriations and sequestration exemption to avoid the threat and effects of government shutdowns, to avoid the constant need for short-term continuing resolutions, to address the harmful effects of federal budget sequestrations, and to improve the ability of IHS providers to budget, recruit, retain, provide services, maintain facilities, and perform necessary construction efforts; and

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<sup>1</sup> Jessica Farb, *Indian Health Service: Spending Levels and Characteristics of IHS and Three Other Federal Health Care Programs*, U.S. Government Accountability Office (Dec. 10, 2018), <https://www.gao.gov/assets/700/695871.pdf> (comparing funding levels between IHS, the Veterans Health Administration, Medicare, and Medicaid. The GAO report noted that in 2016, IHS health care expenditures per person were only \$2,834, compared to \$9,990 per person for federal health care spending nationwide.)

**WHEREAS**, sufficient, consistent, and predictable funding is required as part of the federal government's trust responsibility to Indian tribes;

**NOW THEREFORE BE IT RESOLVED** that the National Native American Bar Association calls for the enactment of federal legislation that would bring stability and certainty to the IHS budget by changing its funding to advance appropriations, such as proposed in the Indian Programs Advance Appropriations Act (H.R. 1128 and S. 229) and the Indian Health Service Advance Appropriations Act of 2019 (H.R. 1135), and provide an exemption from federal budget sequestrations;

**BE IT FINALLY RESOLVED** that NNABA supports this resolution as a policy priority until it is withdrawn or modified by subsequent resolution.

### **CERTIFICATION**

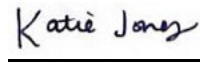
The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on October 2, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.



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Robert Saunooke, President

ATTEST:



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Katie Jones, Secretary

## **Resolution of the NATIONAL NATIVE AMERICAN BAR ASSOCIATION**

### **RESOLUTION # 2019 – 08**

#### **TITLE: Support for Immigrant Communities**

**WHEREAS**, the National Native American Bar Association (“NNABA”) works to promote issues important to the Native American community and to improve professional opportunities for Native American lawyers, we do hereby establish and submit the following resolution;

**WHEREAS**, NNABA was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors, and law students, and NNABA strives to be a leader on social, cultural, political, and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians;

**WHEREAS**, borders are arbitrary constructions by countries, restricting the movement of people, including Indigenous communities who have traveled the land since time immemorial, prior to the erection of colonial border lines;

**WHEREAS**, Indigenous communities were crossed by borders and did not cross the borders;

**WHEREAS**, the borders of the United States separated Native communities and tribes when they were created and continue to separate Native communities and tribes today;

**WHEREAS**, the 1848 Treaty of Guadalupe Hidalgo ended the Mexican-American War and established the U.S.-Mexico border, negotiations of which excluded Native communities who lived in the land annexed to the United States and traveled throughout the annexed land;

**WHEREAS**, the U.S.-Mexico border always criminalized the movement of certain people, for example Article XI of the Treaty guaranteed provisions to directly punish Indians who sought to cross the new border;

**WHEREAS**, today, increased militarized policing, the emboldening of white supremacist ideas, and the entrenching of both by U.S. immigration policy has resulted in the escalation of a humanitarian crisis at the U.S.-Mexico border;

**WHEREAS**, people seeking to cross the southern border have been met with violence, internment, inhumane and illegal treatment, and death;

**WHEREAS**, during the Trump Administration, over 20 people have died in Migrant Detention Centers (“internment camps”), including children;

**WHEREAS**, migrants being held in these internment camps face appalling, unsanitary conditions;

**WHEREAS**, children are being separated from their families and sent to separate internment camps where they also face deplorable conditions, death, and possible unsanctioned adoption;

**WHEREAS**, migrants are forced to leave their home countries because of social, political, ecological, and climate crises, the majority of which stem from disastrous U.S. foreign policies, practices, and interference;

**WHEREAS**, policing of the southern border and border policy directly impacts and infringes on tribal sovereignty for tribes located at or near the border;

**WHEREAS**, the United States has a long history of interning minority communities, including the internment of Japanese-Americans during WWII and the creation of the reservation system;

**WHEREAS**, the United States is violating its own laws by turning away asylum seekers at the border and not processing asylum requests;

**WHEREAS**, United States immigration policies have complex and unique impacts on Native communities who need to cross the borders to access their ancestral and present lands, sacred sites, and natural resources, as well as to visit and connect with their families and communities;

**NOW THEREFORE BE IT RESOLVED** that the National Native American Bar Association declares its support for migrant communities;

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association condemns the current treatment of migrants at the border;

**BE IT FURTHER RESOLVED**, the National Native American Bar Association calls for the shutdown of migrant detention centers nationwide;

**BE IT FURTHER RESOLVED**, the National Native American Bar Association calls for the immediate cease of family separation and an immediate reunion of families who have been separated at the border;

**BE IT FURTHER RESOLVED**, the National Native American Bar Association calls for the immediate need for new immigration policy in the United States;

**BE IT FINALLY RESOLVED** that NNABA supports this resolution as a policy priority until it is withdrawn or modified by subsequent resolution.

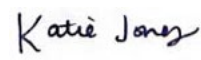
#### **CERTIFICATION**

The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on October 2, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.



Robert Saunooke, President

ATTEST:



Katie Jones, Secretary

## **Resolution of the NATIONAL NATIVE AMERICAN BAR ASSOCIATION**

### **RESOLUTION # 2019 – 007**

#### **TITLE: Support for Swift Political, Economic, and Social Actions to Address the Harms of the Climate Crisis**

**WHEREAS**, the National Native American Bar Association (“NNABA”) works to promote issues important to the Native American community and to improve professional opportunities for Native American lawyers, we do hereby establish and submit the following resolution; and

**WHEREAS**, NNABA was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors, and law students, and NNABA strives to be a leader on social, cultural, political, and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians;

**WHEREAS**, the past five years (2014-2018) are “the warmest years in the modern record” and in 2018 the average surface temperatures around the world were 1.5 degrees Fahrenheit (0.83 degrees Celsius) warmer than they were about 40 to 70 years ago.<sup>1</sup>

**WHEREAS**, Indigenous people and nations have lived in relation to their ancestral lands, waters, and ecosystems since time immemorial and have deep traditional ecological knowledge, which is essential to the future protection of lands, waters, and all other natural resources from the climate change crisis;

**WHEREAS**, the UN special rapporteur Victoria Tauli-Corpuz has stated “Indigenous people’s rights need to be protected in the best way possible, not just for them but because they are also able to provide solutions to many of the world’s problems from climate change to biological diversity.”<sup>2</sup>;

**WHEREAS**, American Indigenous peoples have unique cultures, rights, lands, natural resources, sacred sites, and subsistence lifestyles impacted by changes in the climate, including sea level rise, ocean acidification, natural disasters, erosion, and flooding; and

**WHEREAS**, the land that is currently treated as “Indian country” or is otherwise within the territorial jurisdiction of Native nations is but a small remnant of the territories that historically comprised Indigenous homelands and waters;

**WHEREAS**, much of the land that Native nations historically inhabited is currently held by the United States and administered as federal public lands;

**WHEREAS**, Articles 8-12 of the United Nations Declaration on the Rights of Indigenous Peoples (“the Declaration”) recognizes and respects that indigenous peoples have a right to their culture and the right not to be removed from their territories without free, prior, and informed consent;

**WHEREAS**, Articles 25-30 of the Declaration recognizes and respects the self-determination of indigenous peoples, and in particular, their rights to territories and natural resources;

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<sup>1</sup> National Aeronautics and Space Administration, *2018 Fourth Warmest Year in Continued Warming Trend, According to NASA*, NOAA (Feb. 6, 2019), <https://climate.nasa.gov/news/2841/2018-fourth-warmest-year-in-continued-warming-trend-according-to-nasa-noaa/> (last visited April 21, 2019).

<sup>2</sup> Matthew Taylor, *Protect Indigenous People to Help Fight Climate Change, says UN Rapporteur*, THE GUARDIAN (Oct. 6, 2017), <https://www.theguardian.com/world/2017/oct/06/protect-lives-indigenous-people-can-limit-climate-change-says-un> (last visited July 22, 2019).

**WHEREAS**, Indigenous peoples have experienced disproportionate adverse impacts on culture, human, and environmental health, traditional lifestyles, food systems, survival, and self-determination;

**WHEREAS**, Indigenous peoples have specifically experienced disproportionate adverse impacts associated with mining for uranium and the disposal of nuclear waste;

**WHEREAS**, Indigenous voices, of both recognized and unrecognized Native nations, need to be included in climate discussions in order to maintain and preserve the cultural heritage of Native communities;

**WHEREAS**, the National Native American Bar Association passed Resolution # 2011-3, Support for Inclusion of Tribes in Climate Change Discussions, which called on the United States Government to name tribal representatives to the United States' delegations participating in international climate change conversations, to ensure that the Executive Branch consulted with American Indians, Alaska Natives, and Native Hawaiians on climate change, and to provide adequate and equitable financial and other support;

**WHEREAS**, the National Native American Bar Association passed Resolution #2015-8, Supporting Pocantico Call to Action on Climate Impacts and Cultural Heritage, to call for the inclusion of American Indigenous peoples at all levels of climate policy discussions and urges all officials—local, state, federal, and international—to (1) take actions to reduce the impact of climate change on tribal communities and tribal cultural heritages, (2) take action to combat land loss and erosion impacting tribal communities; (3) include tribal communities in discussions regarding cultural heritage protection and loss of tribal lands; and (4) consult tribal communities on relocation issues;

**WHEREAS**, American Bar Association 2019 House of Delegate Resolution #111 calls for action by federal, state, local, territorial, and tribal governments, and the private sector to address the climate change crisis; and

**WHEREAS**, the United States of America and the rest of the world must quickly change political, economic, and social institutions and policies to address the climate change crisis.

**BE IT RESOLVED**, that the National Native American Bar Association urges federal, state, local, territorial, and tribal governments, and the private sector, to recognize their obligation to address climate change and take action to achieve the following goals:

- (1) reduce U.S. greenhouse gas emissions to net zero or below as soon as possible, consistent with the latest peer-reviewed science; and
- (2) work with other nation states and Native nations to reduce global greenhouse gas emissions to net zero or below and to hold the increase in the global average temperature to the lowest possible increase above pre-industrial levels;
- (3) develop and encourage the building of renewable energy sources that do not inflict environmental injustice on indigenous and other communities of color. As an example, prohibit nuclear energy because of the harms associated with uranium mining and nuclear waste.

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association urges Congress to enact legislation that would require all federal, state, local, and territorial governments to:

- (1) conduct meaningful government-to-government consultation and obtain free, prior, and informed consent for all decisions that affect indigenous peoples and their traditional and ancestral territories;
- (2) honor all treaties and agreements with indigenous peoples; and

(3) protect and enforce the sovereignty and land rights of indigenous peoples.

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association urges Congress to ratify and fully bind the United States of America to the United Nations Declaration of the Rights of Indigenous People;

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association urges Congress to enact legislation that would:

(1) utilize a broad range of legal mechanisms and removal of legal barriers to reduce greenhouse gas emissions;

(2) utilize a broad range of legal mechanisms to encourage and enable adaptation to climate change by federal, state, local, territorial, and tribal governments, and the private sector;

(3) focus its policy and legal efforts in communities that are and will be disproportionately impacted by the climate change crisis; and

(4) recognize and incorporate sustainable development principles in reducing greenhouse gas emissions and adapting to climate change, in order to simultaneously promote economic development, social well-being, national security, and environmental protection. Some of these principles include, but are not limited to: returning ancestral lands and waters to Native nations to protect and manage; provide funding and political support for the development of green jobs and renewable energy infrastructure in lower socio-economic communities, communities of color, and Indian Country; and to remove dams and restore water ways to their natural conditions;

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association urges the United States government to:

(1) engage in active and constructive international discussions under the United Nations Framework Convention on Climate Change and its progeny, and

(2) remain in, negotiate, or ratify treaties and other agreements to reduce greenhouse gas emissions and adapt to climate change;

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association urges lawyers to engage in pro bono activities to aid efforts to reduce greenhouse gas emissions and adapt to climate change, and to advise their clients of the risks and opportunities that climate change provides; and

**BE IT FINALLY RESOLVED** that NNABA supports this resolution as a policy priority until it is withdrawn or modified by subsequent resolution.

### **CERTIFICATION**

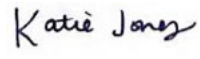
The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on October 2, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.



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Robert Saunooke, President

ATTEST:



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Katie Jones, Secretary



## **Resolution of the NATIONAL NATIVE AMERICAN BAR ASSOCIATION**

### **RESOLUTION # 2019 – 006**

#### **TITLE: Support for Native Hawaiians, Mauna Kea Protectors, and Mauna Kea**

**WHEREAS**, the National Native American Bar Association (“NNABA”) works to promote issues important to the Native American community and to improve professional opportunities for Native American lawyers, we do hereby establish and submit the following resolution; and

**WHEREAS**, NNABA was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors, and law students, and NNABA strives to be a leader on social, cultural, political, and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians;

**WHEREAS**, the Native Hawaiian monarchy was illegally overthrown in 1893;

**WHEREAS**, the public land belonging to the Kanaka Maoli (Indigenous Peoples of Hawai’i) was illegally ceded and annexed to the United States government in 1898;

**WHEREAS**, Hawaii became a state in 1959 and the United States transferred the remaining public lands back to the state;

**WHEREAS**, President Bill Clinton’s 1993 apology confirmed the illegal taking of Native Hawaiian’s lands;

**WHEREAS**, many Kanaka Maoli and Kia’i Mauna (protectors, caretakers, and guards of the mountain) are organized against the proposed construction of a Thirty Meter Telescope (TMT) on the summit of Mauna a Wākea (also known by its shortened name Mauna Kea);

**WHEREAS**, Mauna a Wākea is the realm of gods, the meeting place of Papahānaumoku (Earth Mother) and Wākea (Sky Father), and the piko (umbilical cord) of the Kanaka Maoli people, making the summit a sacred place;

**WHEREAS**, in 1968, the Hawai’i State Board of Land and Natural Resources began leasing the summit to the University of Hawai’i for the construction of telescopes. Through this process, 13 telescopes currently exist on the summit of Mauna a Wākea and Kanaka Maoli leaders and the public have protested each of these developments;

**WHEREAS**, the proposed TMT project, if allowed to be constructed as currently planned, would be located on the summit of Mauna a Wākea and would be 18 stories tall and cover over 5 acres;

**WHEREAS**, Kanaka Maoli and Kia’i Mauna want to protect what is left of their sacred mountain from overdevelopment;

**WHEREAS**, Kanaka Maoli and Kia’i Mauna have opposed the TMT project for ten years;

**WHEREAS**, despite the questionable environmental review process and the failure to protect the cultural landscape of Mauna a Wākea, the TMT proponents are attempting to begin construction;

**WHEREAS**, the universities, private companies, and the State of Hawaii have failed to consult and collaborate with the Native Hawaiians to find a location of the TMT that would respect Kanaka Maoli cultural resources;

**WHEREAS**, the actions of the TMT proponents and the State of Hawai'i are in violation of the international legal norms set forth in the United Nations Declaration of the Rights of Indigenous People;

**WHEREAS**, at least 33 Kūpuna (Hawaiian elders) have been arrested for peacefully protecting Mauna a Wākea;

**WHEREAS**, Governor Ige of Hawaii issued a state of emergency over Mauna a Wākea on July 17, 2019;

**WHEREAS**, Governor Ige of Hawaii later rescinded that state of emergency on July 26, 2019;

**WHEREAS**, Indigenous communities around the world stand with Kanaka Maoli, Kia'i Mauna, and Mauna a Wākea;

**NOW THEREFORE BE IT RESOLVED** that the National Native American Bar Association declares its support to Kanaka Maoli, Kia'i Mauna, and Mauna a Wākea;

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association declares that Kanaka Maoli, Tribes, and other indigenous communities are protecting their sacred lands from desecration are not states of emergencies;

**BE IT FURTHER RESOLVED**, that the National Native American Bar Association calls on the TMT International Observatory LLC to select a new location of the TMT that will not harm indigenous sacred sites, cultural landscapes, or cultural resources;

**BE IT FURTHER RESOLVED**, the National Native American Bar Association calls on the State of Hawai'i to prohibit, unconditionally, the use of any and all unwarranted force against Kanaka Maoli and Kia'i Mauna, including the use of any Long Range Acoustic Devices (LRAD) or "less-than-lethal" weapons and crowd control devices capable of inflicting bodily or psychological harm;

**BE IT FURTHER RESOLVED**, the National Native American Bar Association calls on the State of Hawai'i to ensure the safety of all who wish to exercise their cultural practices and right to peaceful expression and opposition;

**BE IT FURTHER RESOLVED**, the National Native American Bar Association calls on the State of Hawai'i to drop any legal proceedings and fines levied against the Kanaka Maoli, Kia'i Mauna, and Kūpuna arrested while peacefully protecting their sacred homeland;

**BE IT FINALLY RESOLVED** that NNABA supports this resolution as a policy priority until it is withdrawn or modified by subsequent resolution.

### **CERTIFICATION**

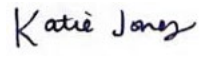
The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on October 2, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.



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Robert Saunooke, President

ATTEST:



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Katie Jones, Secretary

## THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION

RESOLUTION #2019-05

**TITLE:** Appointment of Treasurer and Authorization as the Designated Signatory on the Association's Bank of America and Native American Bank Accounts

**WHEREAS**, we as directors of the National Native American Bar Association ("NNABA") work to promote issues important to the Native American community and to improve professional opportunities for Native American lawyers, we do hereby establish and submit the following resolution; and

**WHEREAS**, NNABA was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA strives to be a leader on social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, Article V, Section 5.6(a) of the Association Bylaws states that the Treasurer shall be appointed by resolution adopted by a majority of all the directors of the Association then in office; and

**WHEREAS**, on April 6, 2016, Association convened for its Annual Meeting in Scottsdale, Arizona and elected new officers and appointed a new treasurer.

**NOW THEREFORE BE IT RESOLVED**, that the NNABA Board, consistent with the Association's Bylaws, does hereby remove Thomasina Real Bird as the Treasurer of NNABA, effective as of the date of the Annual Meeting; and

**BE IT FURTHER RESOLVED**, that the NNABA Board, consistent with the Association's Bylaws, does hereby remove Thomasina Real Bird as a designated signatory on the Association's Bank of America and Native American Bank Accounts, effective as of the date of the Annual Meeting; and

**BE IT FURTHER RESOLVED**, that the Board, consistent with the Bylaws, does hereby appoint Philip Brodeen as the Treasurer of Association and elects new officers, effective as of the date of the Annual Meeting; and

**BE IT FURTHER RESOLVED**, that the NNABA Board authorizes Philip Brodeen to be a designated signatory on the Association's Bank of America account until such time as removed as a designated signatory; and

**BE IT FURTHER RESOLVED**, that the NNABA Board authorizes Philip Brodeen to be a designated signatory on the Association's Bank of America and Native American Bank accounts until such time as removed as a designated signatory; and

**BE IT FURTHER RESOLVED**, that Article V, Section V.6 (b) of the Association Bylaws states that the Treasurer shall have custody of the corporate funds and securities and other valuables in the name and to the credit of the Association into depositories designated by the Board of Directors; and

**BE IT FINALLY RESOLVED,** that Thomasina Real Bird is to transfer custody of the corporate funds and securities and other valuables in the name and to the credit of the Association immediately to Treasurer Philip Brodeen.

#### **CERTIFICATION**

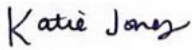
The foregoing resolution was adopted by the membership of the National Native American Bar Association at its Annual Meeting on April 10, 2019.



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Robert Saunooke, President

ATTEST:



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Katie Jones, Recording Secretary

# THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION

## RESOLUTION # 2019-04

### **TITLE: Calling on Congress to Pass Legislation Addressing Violent Crime in Indian Country and Providing Victim Assistance**

**WHEREAS**, the National Native American Bar Association (“NNABA”) was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA promotes and addresses social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, domestic violence in Indian country is at epidemic levels,<sup>1</sup> and American Indian and Alaska Native (AI/AN) women are less likely to have access to needed services;<sup>2</sup> and

**WHEREAS**, Special Domestic Violence Criminal Jurisdiction (SDVCJ) provisions included in the 2013 Reauthorization of the Violence Against Women Act (VAWA) reaffirmed tribal authority to exercise limited inherent criminal jurisdiction over non-Indians for dating violence, domestic violence, and the violation of protection orders,<sup>3</sup> which improved the safety and security of reservation residents;<sup>4</sup> and

**WHEREAS**, tribal nations that have implemented VAWA’s SDVCJ provisions have proven that tribes can and do afford non-Indians Congressionally-sanctioned due process protections, including a right of review in federal court on a habeas corpus petition; and

**WHEREAS**, SDVCJ has proven effective in addressing certain crimes in Indian Country, but as a consequence of the limited nature of this jurisdiction, other gender-based

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<sup>1</sup> See NCAI Policy Research Center, *Research Policy Update: Violence Against American Indian and Alaska Native Women*, National Congress of American Indians (Feb. 2018), [http://www.ncai.org/policy-issues/tribal-governance/public-safety-and-justice/violence-against-women/VAWA\\_Data\\_Brief\\_FINAL\\_2\\_1\\_2018.pdf](http://www.ncai.org/policy-issues/tribal-governance/public-safety-and-justice/violence-against-women/VAWA_Data_Brief_FINAL_2_1_2018.pdf) (noting that AI/AN women experience higher rates of domestic violence); André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, U.S. Department of Justice (May 2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf> (noting that more than four in five AI/AN women have experienced violence in their lifetime; more than half of AI/AN women have experienced sexual violence in their lifetime; and the murder rate of AI/AN women is almost three times that of non-Hispanic White women).

<sup>2</sup> See NCAI Policy Research Center, *supra* note 1 (“AI/AN women are 2.5 times as likely as non-Hispanic white women to lack access to needed services.”).

<sup>3</sup> 25 U.S.C. § 1304(c).

<sup>4</sup> See Angela R. Riley, *Crime and Governance in Indian Country*, 63 UCLA L. REV. 1564, 1572 (2016) (“[I]mplementation has been a success in several respects. Tribes have provided defendants with the requisite procedural protections, and the preliminary data reveal that the laws are improving the safety and security of reservation residents.”). See also National Congress of American Indians, *VAWA 2013’s Special Domestic Violence Criminal Jurisdiction Five-Year Report* (Mar. 20, 2018), [www.ncai.org/resources/ncai-publications/SDVCJ\\_5\\_Year\\_Report.pdf](http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf) (noting that within the first five years of SDVCJ implementation, there were 143 arrests resulting in 74 convictions. The 85 defendants accounted for 378 prior contacts with tribal police. At least 73 defendants had criminal records.)

violence committed by non-Indians, such as sexual assault, trafficking crimes, stalking crimes, as well as attendant crimes to domestic violence, such as child abuse and assaults on tribal police officers and bailiffs, cannot be tribally prosecuted;

**WHEREAS**, victims of such crimes in Indian Country often lack access to victim resources;

**WHEREAS**, tribal nations and their law enforcement authorities lack access to federal crime information databases that would aid in protecting people in their jurisdictions, investigating crime, and bringing perpetrators to justice;

**WHEREAS**, tribal nations have a moral obligation to ensure the protection of their entire community regardless of race, citizenship, or relations to tribal citizens, which in turn mandates that tribal nations have the ability to hold all perpetrators accountable for crimes committed in their communities; and

**WHEREAS**, NNABA's goal is to ensure that violent crime will not be tolerated on tribal lands, and the reauthorization of VAWA will bring great benefits to Indian communities and their neighbors in public safety, health, productivity, economic development, and the well-being of our people.

**NOW THEREFORE BE IT RESOLVED**, NNABA calls on the United States Congress to pass legislation reaffirming the inherent authority of tribal nations to prosecute crimes committed by non-Indians against Indians in Indian Country, including sexual assault, trafficking crimes, stalking crimes, child abuse, and crimes that co-occur with those offenses such as assaults on tribal police officers and bailiffs;

**NOW THEREFORE BE IT FUTHER RESOLVED**, NNABA calls on the United States Congress to pass legislation providing tribal nations with access to crime databases necessary to prevent and investigate crimes and to bring perpetrators to justice;


**NOW THEREFORE BE IT FURTHER RESOLVED**, NNABA calls on the United States Congress to pass legislation creating a permanent set-aside for tribal nations in the Crime Victims Fund;

**NOW THEREFORE BE IT FURTHER RESOLVED**, that NNABA calls on the United States Congress to reauthorize VAWA; and

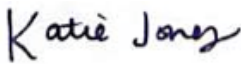
**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NNABA until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on April 10, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.

  
\_\_\_\_\_  
Joel W. Williams, President

ATTEST:

  
\_\_\_\_\_  
Katie Jones, Secretary



**THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION**

**RESOLUTION #2019-03**

**TITLE: URGING STATES AND MUNICIPALITIES TO REPLACE COLUMBUS DAY WITH INDIGENOUS PEOPLES' DAY**

**WHEREAS**, the National Native American Bar Association (“NNABA”) was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA promotes and addresses social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, Columbus Day commemorates Italian explorer Christopher Columbus and is a U.S. federally recognized holiday on the second Monday of October; and

**WHEREAS**, replacing Columbus Day with Indigenous Peoples' Day is an important step to eliminate the false narrative that Columbus discovered America and educates the public of the pain and losses suffered by Native American peoples; and

**WHEREAS**, replacing Columbus Day with Indigenous Peoples' Day will affirm the legacy of the indigenous people who occupied the North American continent long before Columbus and the resiliency of over five (5) million indigenous people who live in the U.S today; and

**WHEREAS**, since 1992, a growing number of states and municipalities have replaced, and continue to replace Columbus Day with Indigenous Peoples' Day or Native American Day to recognize and commemorate the resiliency and strength of indigenous communities.

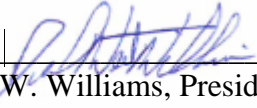
**NOW THEREFORE BE IT RESOLVED** that NNABA urges states and municipalities to recognize, rename, and/or replace the second Monday of October as Indigenous Peoples' Day; and

**BE IT FURTHER RESOLVED** that NNABA supports states and municipalities that have already replaced Columbus Day with Indigenous Peoples' Day or Native American Day; and

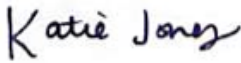
**BE IT FINALLY RESOLVED** that NNABA supports this resolution as a policy priority until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on April 10, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.

  
\_\_\_\_\_  
Joel W. Williams, President

ATTEST:

  
\_\_\_\_\_  
Katie Jones, Secretary

# THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION

## RESOLUTION # 2019-02

### TITLE: IN SUPPORT OF UPHOLDING THE INDIAN CHILD WELFARE ACT (ICWA)

**WHEREAS**, the National Native American Bar Association (“NNABA”) was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA promotes and addresses social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, Congress passed the Indian Child Welfare Act (“ICWA”) in 1978 to protect Indian culture and tribal integrity from the systematic removal of Indian children by public and private agencies;<sup>1</sup> and

**WHEREAS**, prior to the passage of ICWA, Indian children were placed in foster care and adoptive homes at a rate nineteen (19) times higher than non-Indian children, and in some states, eighty-five percent (85%) of all Indian children were placed in non-Indian homes;<sup>2</sup> and

**WHEREAS**, ICWA is recognized as the gold standard for child welfare policy and practice and should be uniformly applied to all Indian children;<sup>3</sup> and

**WHEREAS**, for 40 years, ICWA has protected Indian children by ensuring stability and security within Indian families, and guaranteeing tribal governments, with their state partners, have a role in keeping Indian families together, and helping Indian children retain their cultural identity and heritage; and

**WHEREAS**, in 2016, the Department of Interior promulgated a Final Rule for ICWA to clarify the law and provide uniformity in the application of ICWA;<sup>4</sup> and

**WHEREAS**, ICWA and the Final Rule have been the subject of litigation challenging the constitutionality, general rules, and applicability of ICWA;<sup>5</sup> and

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<sup>1</sup> Indian Child Welfare Act of 1978 § 1901, 25 U.S.C. § 1901(4) (2017)

<sup>2</sup> *Indian Child Welfare Program: Hearings Before the Subcomm. on Indian Affairs of the Comm. on Interior and Insular Affairs of the U.S. S.*, 93th Cong. 15-17, (1974), (statement of William Byler, Exec. Dir., Ass’n on Am. Indian Affairs, Inc.).

<sup>3</sup> Casey Family Programs, *Comment Letter on Proposed Indian Child Welfare Act Proceedings* (Mar. 15, 2015), <http://www.nativeamericanbar.org/wp-content/uploads/2014/01/CFP-et-al-Support-Letter-Re-Proposed-ICWA-Regulations.pdf>

<sup>4</sup> 81 Fed. Reg. 38778-01 (June 14, 2016)

<sup>5</sup> See *Carter v. Tahsuda*, No. 17-15839, 2018 WL 3720025, at 1-2 (9th Cir. Aug. 6, 2018) (finding plaintiffs challenging ICWA failed to state a claim); *National Council For Adoption v. Jewell*, 156 F.Supp.3d 727 (E.D. Va. 2015) (upholding ICWA under the APA); *Doe v. Hunter*, No. 4:15-cv-00471-JED-FHM (N.D. Okla. Mar. 3, 2017) (dismissing ICWA case); *Renteria v. Cuellar*, No. 2:16-cv-01685-MCE-AC (E.D. Cal. Dec. 12, 2016) (finding ICWA complaint moot); and *S.S. v. Stephanie*, 388 P.3d 569 (Ariz. App. Div. 1. 2017) (upholding ICWA in light of equal protection claims).

**WHEREAS**, preservation of ICWA is of ongoing and critical importance because Indian children continue to be removed from homes at a rate 2.6 times higher than the rate than non-Indian children<sup>6</sup> and 56% of Indian children continue to be placed in non-Indian homes.<sup>7</sup>

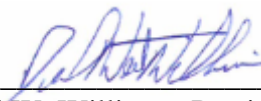
**WHEREAS**, litigation as well as associated media campaigns and legislative efforts attacking the validity of ICWA threatens the welfare of Indian children as well as the political and cultural integrity of Indian tribes.

**NOW THEREFORE BE IT RESOLVED** that NNABA supports the defense of ICWA's validity through litigation, legislation, and administrative action;

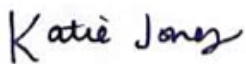
**BE IT FINALLY RESOLVED** that NNABA supports this resolution as a policy priority until it is withdrawn or modified by subsequent resolution.

### **CERTIFICATION**

The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on April 10, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.

  
\_\_\_\_\_  
Joel W. Williams, President

ATTEST:

  
\_\_\_\_\_  
Katie Jones, Secretary

<sup>6</sup> National Council of Juveniles and Family Court Judges, *Disproportionality Rates for Children of Color in Foster Care* 14 (2015), [https://www.ncjfcj.org/sites/default/files/NCJFCJ-Disproportionality-TAB-2015\\_0.pdf](https://www.ncjfcj.org/sites/default/files/NCJFCJ-Disproportionality-TAB-2015_0.pdf)

<sup>7</sup> National Council for Adoption, *Interracial Adoptive Families and Their Children* 109 (2009) <https://www.adoptioncouncil.org/publications/adoption-factbook.html>

# **THE NATIONAL NATIVE AMERICAN BAR ASSOCIATION**

## **RESOLUTION # 2019- 01**

### **TITLE: IN SUPPORT OF THE TRIBAL ADOPTION PARITY ACT**

**WHEREAS**, the National Native American Bar Association (“NNABA”) was founded in 1973 and serves as the national association for Native American attorneys, judges, law professors and law students, and NNABA promotes and addresses social, cultural, political and legal issues affecting American Indians, Alaska Natives, and Native Hawaiians; and

**WHEREAS**, the adoption tax credit was enacted by Congress to mitigate the financial burden experienced by families adopting children and to reduce the number of children awaiting adoption by permitting adoptive parents to claim an adoption credit in certain situations; and

**WHEREAS**, the adoption tax credit was enacted by Congress to incentivize the adoption of the most vulnerable children in the child welfare system, those with special needs; and

**WHEREAS**, when an adopted child is considered “special needs”, as determined by a court with competent jurisdiction, families do not need to document qualified upfront adoption expenses because adopting a child with special needs is likely to result in costs even after the adoption is finalized; and

**WHEREAS**, under current law, the adoptive parents of a child with special needs who is adopted in tribal court do not qualify for the special needs adoption credit because the IRS does not recognize tribal determinations with regard to whether the child is considered “special needs”; and

**WHEREAS**, this oversight results in Indian children who have special needs and their adoptive families losing out on the benefits Congress intended them to have through the adoption tax credit; and

**WHEREAS**, the Tribal Adoption Parity Act attempts to correct this inequity by recognizing and providing parity to tribal determinations of special needs in adoption proceedings.

**NOW THEREFORE BE IT RESOLVED** that NNABA supports the Tribal Adoption Parity Act and urges Congress to enact the legislation into law; and

**BE IT FINALLY RESOLVED** that NNABA supports this resolution as a policy priority until it is withdrawn or modified by subsequent resolution.

### **CERTIFICATION**

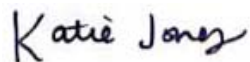
The foregoing Resolution was adopted by the Board of Directors of the National Native American Bar Association, on April 10, 2019, via online voting pursuant to § 4.9 of the Native American Bar Association Bylaws.



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Joel W. Williams, President

ATTEST:



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Katie Jones, Secretary