



2021 Action Plan for Tribal Consultation and Strengthening Nation- to-Nation Relationships

June 28, 2021



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Message to the Director of the Office of Management and Budget

June 28, 2021

I am pleased to present the Department of Homeland Security's *2021 Action Plan for Tribal Consultation and Strengthening Nation-to-Nation Relationships*. This plan is prepared in response to the President's January 26 *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*¹ outlining the Department's action plans to implement Executive Order 13175, *Consultation and Collaboration with Indian Tribal Governments*.²

This plan is focused on three goals:

1. Increase accountability for including tribal concerns in decision-making and consultation.
2. Increase tribal involvement in Department actions and decision-making.
3. Increase the Department workforce's capacity and capability to collaborate and consult with Tribal Nations.

The goals are implemented through four action items:

- A. Update the Department's Tribal Consultation Policy
- B. Create a Tribal Advisory Council
- C. Develop Awareness Level Training
- D. Increase Coordination of Consultation Efforts

The Department continues to create a culture where respect for the nation-to-nation relationships with Tribal Nations is embedded in how the Department operates.

Sincerely,

A handwritten signature in black ink that reads "Alejandro N. Mayorkas".

Alejandro N. Mayorkas
Secretary

¹ Memorandum of January 26, 2021, *Tribal Consultation and Strengthening Nation-to-Nation Relationships*. Federal Register Vol. 86, No. 18, Friday, January 29, 2021, Presidential Documents, 7491-7492.
<https://www.govinfo.gov/content/pkg/FR-2021-01-29/pdf/2021-02075.pdf>

² Executive Order 13175 of November 6, 2000, *Consultation and Coordination With Indian Tribal Governments*. Federal Register Vol. 65, No. 218, November 9, 2000, Presidential Documents, 67249-67252
<https://www.govinfo.gov/content/pkg/FR-2000-11-09/pdf/00-29003.pdf>

1. Background

On January 26, 2021, President Biden issued the memorandum, *Tribal Consultation and Strengthening Nation-to-Nation Relationships* reaffirming Executive Order 13175, *Consultation and Coordination with Indian Tribal Governments* (November 6, 2000) (E.O. 13175), and requiring executive departments to regularly engage in meaningful consultation and coordination with Tribal Nations. The President's Memorandum requires the Department of Homeland Security (Department) to develop a plan of action for its implementation of E.O. 13175 and to regularly report on progress and update this plan.

The Department has a vital mission: to secure the nation from the many threats it faces. This is accomplished through the dedication of more than 240,000 employees in jobs that range from aviation and border security to emergency response, from cybersecurity analyst to chemical facility inspector. The Department's duties are wide-ranging, and its goal of keeping America safe is clear. The Department's primary Components are U.S. Citizenship and Immigration Services, U.S. Coast Guard, U.S. Customs and Border Protection, Cybersecurity and Infrastructure Security Agency, Federal Emergency Management Agency, U.S. Immigration and Customs Enforcement, U.S. Secret Service, and Transportation Security Administration. In 2009, each of the Department's Components and Offices, with tribal affairs portfolios, appointed a senior-level tribal affairs point of contact. In 2011, the Office of Intergovernmental Affairs established a full-time position of Tribal Affairs Director. Components and Offices establish tribal affairs positions to support mission requirements and develop meaningful relationships with Tribal Nations in the Department's areas of operation. The Department coordinates internal consultation and collaboration efforts between a network of approximately 300 professionals across the Department.

Purpose, Review, and Responsibilities

The purpose of this plan is to outline actionable items the Department will undertake related to tribal consultation and strengthening the nation-to-nation relationships with Tribal Nations.

The plan is reviewed annually and updated as necessary. The Department will report on its progress or updates annually. The annual review process includes consultation with Tribal Nations, Alaska Native Corporations, and tribal organizations.

The Department's senior official responsible for the implementation of this action plan is the Assistant Secretary for Partnership and Engagement. Each component and office across the Department supports this plan where equities exist.

Consultation Process for this Effort

On March 26, 2021, to provide Tribal Nations an update on progress toward the development of this plan the Department broadcast notice of its intent to release a Dear Tribal Leader Letter (DTLL)³ initiating formal consultation. The draft DTLL was discussed during the Department's hosted monthly tribal collaboration call on March 31, 2021. The Department issued the DTLL

³ <https://www.dhs.gov/publication/dhs-tribal-consultation-policy>

on April 14, 2021, initiating formal consultation with Tribal Nations and Alaska Native Corporations. The Department hosted a formal consultation including six scheduled consultation sessions between April 29 and May 11 and accepted comments until May 25, 2021. A review of written comments and minutes from consultation calls and coding of primary themes followed the closure of the consultation period, and this plan was developed from consideration of the core themes. Staff from across the Department attended various consultations, and minutes from each consultation were shared with tribal affairs staff across the Department. The comments and resulting action items will help inform various focus areas for the consultation.

The DTLL provided an outline of the Department's interests in consulting in four focus areas: (a) the POTUS *Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships*; (b) the base-level tribal training as required in the *Consolidated Appropriations Act, 2021*; (c) the requirement to update the Department's tribal consultation policy as recommended in Government Accountability Office (GAO) report 19-22; and (d) identification of any additional actions related to international repatriation efforts recommended in GAO report 18-537. Each of these is explained below.

POTUS Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships

The Presidential Memorandum entitled *Tribal Consultation and Strengthening Nation-to-Nation Relationships* was signed on January 26, 2021. The memorandum required that the Department consult with Tribal Nations and submit this plan to the Director of the Office of Management and Budget within 90 days. The memorandum reestablishes requirements for annual reporting on updates and actions taken to implement the plan. The memorandum requires that annual reports, with any proposed updates, to this plan, are then submitted to the Assistant to the President for Domestic Policy and the Director of the Office of Management and Budget by September 26 each year. The Department's annual reports will address the period from July 1 to June 30.

Consolidated Appropriations Act, 2021

The explanatory statement accompanying Division F of the *Consolidated Appropriations Act, 2021*, Pub. L. No. 116-260,⁴ requires that by June 27, 2021, "the Department shall consult and work with tribes to update the mandatory base level tribal training course for DHS personnel, including full-time employees, part-time employees, and contractors who have regular interactions with tribal members or are likely to encounter tribal members at their duty station." The DTLL outlined the Department's efforts in consulting with Tribal Nations to update training requirements.

GAO-19-22

GAO issued report 19-22, entitled *TRIBAL CONSULTATION: Additional Federal Actions Needed for Infrastructure Projects* was released on April 19, 2019.⁵ The Department responded affirmatively to recommendations in the report and is working toward reviewing and revising its

⁴ <https://www.appropriations.senate.gov/imo/media/doc/Division%20F%20-%20Homeland%20Security%20Statement%20FY21.pdf>

⁵ Government Accountability Office (2019). GAO-19-22, <https://www.gao.gov/products/GAO-19-22>

tribal consultation policy. The Department hosted a series of consultations in early 2020 and extended consultations due to COVID-19. Timing of the Presidential Memorandum of January 26, and consultation required in the *Consolidated Appropriations Act, 2021*, allowed the Department to combine its consultation efforts.

GAO-18-537

GAO issued report 18-537, *NATIVE AMERICAN CULTURAL PROPERTY: Additional Agency Actions Needed to Assist Tribes with Repatriating Items from Overseas Auctions* on September 5, 2018.⁶ The Department responded affirmatively to the recommendations in the report, including strengthening interagency collaboration and implementing leading collaboration practices. To ensure the GAO recommendations are addressed, the Department consulted with Tribal Nations to identify any unrealized mechanisms that can ensure tribal representatives have points of contact in the Department for their international repatriation efforts.

2. Core Themes

Core themes identified in consultation that have guided the development of this plan:

- Tribal Nations have interests in further adoption of the principles of the *United Nations Declaration on Rights of Indigenous Peoples*⁷ with a focus on free, prior, and informed consent.⁸ These principles are grounded in the purpose of meaningful consultation on matters that may have tribal implications. Consultation should be a matter of practice and not an afterthought.
- Tribal Nations have shared frustrations with differing tribal consultation policies and practices across federal agencies. The Department should support the interagency development of a model tribal consultation policy that can be adopted across the Executive Branch.
- Open communication and collaboration must occur across the Department. The Department's approach to collaboration, coordination, and consultation must be rooted in recognizing that Tribal Nations are sovereign governments with inherent self-governance and self-determination rights. The value added to decision-making informed through open collaborative and formal consultation with Tribal Nations must be emphasized.
- Timely consultation is necessary. Tribal Nations continue to stress that for a consultation to be meaningful, it must occur early and often. The Department must consider tribal input before developing policy, implementation actions, legislative, or budget recommendations that may affect a Tribal Nation.

⁶ Government Accountability Office (2018), GAO-18-537, <https://www.gao.gov/products/GAO-18-537>

⁷ United Nations Declaration on the Rights of Indigenous Peoples. (2007). https://www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf

⁸ Department of State. (2011). *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*. <https://2009-2017.state.gov/documents/organization/154782.pdf>

- Tribal Nations shared that the Department can increase its effectiveness in consultation by sharing outcomes and reporting on how it utilized tribal input. Tribal Nations have shared that they often receive no feedback from federal agencies on how their input was considered or adjudicated.
- Tribal Nations have expressed concerns that federal employees who lack understanding of the importance of tribal self-government and fulfillment of the federal fiduciary trust responsibility may perceive the E.O. 13175 procedural requirement as burdensome. Tribal Nations have encouraged the Department to focus on the spirit and intent of E.O. 13175 in addition to its specific requirements.
- Tribal Nations have shared that for appropriate consultation to occur with Tribal Nation leaders that Department officials must have appropriate authorities. Often a tribal consultation official is not appointed, and staff without any delegated authorities are tasked to carry out consultation.

3. Goals and Actions

The Department developed the following goals for this plan following consultation with Tribal Nations:

1. Increase accountability for including tribal concerns in decision-making and consultation.
2. Increase tribal involvement in Department actions and decision-making.
3. Increase the Department workforce's capacity and capability to collaborate and consult with Tribal Nations.

Action A. Update the Department's Tribal Consultation Policy

In response to GAO-19-22, the Department began a process of updating its tribal consultation policy and issued a DTLL on October 23, 2019, initiating consultation. Due to nationwide COVID-19 response activities, the consultation period was extended to June 1, 2020. The Department was in the final drafting stages during the 2020 election process and determined it prudent to hold the promulgation of a final plan until the change in administration to allow for integration of policy direction into the tribal consultation policy. The updated policy will strengthen nation-to-nation relationships by ensuring meaningful consultation while working to obtain a consensus on potentially controversial actions. Some key criteria for the final draft of the tribal consultation directive and its draft implementing instruction are:

1. The policy must ensure timely and meaningful consultation before decisions are made where tribal implications exist. Sharing policies, actions, legislative, or budgetary recommendations is not consultation.
2. The waiver request process will be streamlined with a focus on increasing opportunities for flexibility of any statutory or regulatory requirements where the Department has discretion.
3. The integration of the concepts free, prior, and informed consent.

Related Goal: 1. Increase accountability for including tribal concerns in decision-making and consultation.

Responsibilities: The Assistant Secretary for Partnership and Engagement is the principal responsible for updating the Department's tribal consultation policy. The Deputy Assistant Secretary for Intergovernmental Affairs oversees the day-to-day tribal government affairs activities, and the Director of Tribal Government Affairs carries out the requirements to coordinate with Components and Offices in the update and revision.

Milestones:

1. Complete internal revisions (Mid-July 2021)
2. Final draft shared with Tribal Nations and input adjudicated (Mid-August 2021)
3. Staff to Management Directorate (September 2021)
4. Finalized, updated, and implemented (December 2021)
5. Review Component and Office alignment with updated policy (June 2022)

Action B. Create a Tribal Advisory Council

Creating a tribal advisory council to support all missions will synchronize efforts to strengthen nation-to-nation relationships and implementation of E.O. 13175. The Department plans for the advisory body to be made up of subject-matter experts from Indian country who are recommended by Components and Offices.

Related Goal: 2. Increase tribal involvement in Department actions and decision-making.

Responsibilities: The Assistant Secretary for Partnership and Engagement is the principal and provides policy direction. The Deputy Assistant Secretary for Intergovernmental Affairs oversees the creation of the council. The Director of Tribal Government Affairs carries out the requirements to coordinate with Components and Offices in the creation of the council.

Milestones:

1. Develop draft charter (Mid-August 2021)
2. Identify budget requirements (Mid-August 2021)
3. Identify interested tribal government and tribal organization SME's (September 2021)
4. Establish the initial council and first meeting (January 2022)

Action C. Develop Awareness Level Training

The Department is committed to developing awareness level training to fully support staff that work with Tribal Nations and their citizens. The awareness level training will provide basic information on treaties and trust responsibilities, tribal government structures and status as sovereigns, best practices, cultural awareness and considerations, resources, working with Tribal Nations and tribal organizations, and the Department's efforts in supporting Tribal Nations in their homeland security efforts.

Related Goal: 3. Increase the Department workforce's capacity and capability to collaborate and consult with Tribal Nations.

Responsibilities: The Office of Partnership and Engagement is responsible for initial funding and resources for this effort. The Director of Tribal Government Affairs will carry out activities on the development of the training and will work with the Office of the Chief Human Capital Officer on this action item.

Milestones:

1. Draft outline (Mid-August 2021)
2. Conduct a training needs analysis (September 2021)
3. Pilot training and delivery (January 2022)
4. Develop final training program (April 2022)

Action D. Increase Coordination of Consultation Efforts

Collaborating with other federal agencies in consultation efforts and consultation during various regional and national tribal events can save tribal resources. The Department should combine consultation efforts as appropriate with other federal agencies. A successful practice identified by many federal agencies is to conduct an annual tribal consultation during national or regional events where tribal leaders may be in the same location.

Related Goal: 2. Increase tribal involvement in Department actions and decision making.

Responsibilities: The Director of Tribal Government Affairs carries out the requirements to coordinate with Components and Offices to plan interdepartmental consultation.

Milestones:

1. Support other federal agencies in developing collaborative approaches and combining like consultation efforts (ongoing)
2. Host an annual consultation session (May 2022)

4. Designation of the Principal Official

The Assistant Secretary for Partnership and Engagement is the Department's official responsible for coordination and implementation of this plan and progress reports as required by paragraph (b) of Section 1 of the President's Memorandum of January 26, 2021.

The staff point of contact is David Munro, Director of Tribal Affairs, Office of Intergovernmental Affairs, Office of Partnership and Engagement, david.munro@hq.dhs.gov, 202-360-8998.