



Feasibility Report:

Establishing an Initiative Specific to Hiring American Indian Veterans into U.S. Customs and Border Protection

November 27, 2018

Fiscal Year 2018 Report to Congress



Homeland
Security

Under Secretary for Management

Message from the Deputy Under Secretary for Management

November 27, 2018

I am pleased to provide the following report, “DHS Feasibility Study: Establishing an Initiative Specific to Hiring American Indian Veterans into U.S. Customs and Border Protection.”

This report is submitted pursuant to language in the Joint Explanatory Statement accompanying the Fiscal Year 2018 Department of Homeland Security (DHS) Appropriations Act (P.L. 115-141).

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable Kevin Yoder
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable Shelley Moore Capito
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

Inquiries relating to this report may be directed to me at (202) 447-3400.

Sincerely,



Chip Vulghum
Deputy Under Secretary for Management



Executive Summary

Border security is a top priority for DHS. Improving relations with tribal communities is one of the many ways that DHS can strengthen security measures while safeguarding the American people, our homeland, and our values.

The purpose of this report is to address the feasibility of establishing a tribal-specific branch within the U.S. Border Patrol (USBP), similar to U.S. Immigration and Customs Enforcement's Shadow Wolves Unit. This report contains data and information analysis, an overview of existing tribal liaison programs at U.S. Customs and Border Protection, potential barriers to establishing a stand-alone unit within USBP, and next steps.



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I. Legislative Language

This report is submitted pursuant to language in the Joint Explanatory Statement, which accompanies the Fiscal Year (FY) 2018 Department of Homeland Security (DHS) Appropriations Act (P.L. 115-141).

The Under Secretary for Management (USM) is directed to conduct a study on the feasibility of establishing an initiative to employ Native American veterans within the ranks of CBP, including the potential creation of a tribal-specific branch of the Border Patrol. Specifically, the study should evaluate how the hiring of Native American veterans could leverage tribal authorities to complement CBP authorities in support of the Border Patrol mission. In conducting this study, the USM should solicit input from tribes located along both the southern and northern borders. The results of this study shall be submitted to the Committees not later than 180 days after the date of enactment of this Act.

II. Background

This report focuses on the U.S. Border Patrol (USBP) (rather than U.S. Customs and Border Protection (CBP) as a whole) and U.S. Immigration and Customs Enforcement's (ICE) Shadow Wolves Unit, per the Joint Explanatory Statement language specifically identifying USBP. Further clarification from Senate Appropriations Subcommittee on Homeland Security staffers indicated that establishing a unit within the USBP like ICE's Shadow Wolves Unit should be the focus of this report.

USBP

USBP is organized into 20 sectors along the northern, southern, and coastal borders of the United States and its territories. The smallest sector is in Ramey, Puerto Rico, with 1 station, and the largest is Big Bend, Texas, with 12 stations. Border Patrol Agents (BPA) perform a range of duties, including tracking illegal entries into the United States, performing checkpoint inspections for smuggling of individuals and drugs, gathering intelligence, and liaising with border communities and law enforcement agencies.

On November 5, 2009, a Presidential Memorandum directed each department and agency to develop a detailed plan of action for compliance with Executive Order (EO) 13175, *Consultation and Coordination with Indian Tribal Governments*. As a result, CBP developed a work plan to implement EO 13175 with activities such as:

- Ensuring that tribal affairs practitioners are in areas where tribal governments have aboriginal lands and land crossing interests;
- Ensuring that tribal affairs practitioners interact with tribal governments and tribal staff in-person and via telephone on a continual basis;
- Developing working relationships that include cultural awareness training and more formal meetings for border crossing issues between CBP's Office of Field Operations (OFO), USBP, and tribes and tribal membership; and
- Promoting USBP's robust Border Community Liaison and Tribal Liaison units within its state, local, and tribal program representing all 20 sectors. Their main responsibility is to address concerns regarding issues of interest to tribal leadership and CBP activities.
 - For example, OFO and USBP met with tribal nations twice this year to discuss EO 13767 (*Border Security and Immigration Enforcement Improvements*) to provide clarity to the discussion of the border wall (i.e., funding, planning, and design).

ICE's Shadow Wolves Unit

ICE's Shadow Wolves Unit is a 9-member tactical patrol unit based on the American Indian Tohono O'odham Nation in southern Arizona. The Shadow Wolves Unit was formed through the use of Indian Preference, a special hiring authority granted by the Office of Personnel Management, used to fill vacancies with qualified American Indian candidates in accordance

with the Indian Reorganization Act of 1934 (Title 25, USC, Section 472). The Tohono O'odham Nation, patrolled by the Shadow Wolves and USBP's Tucson Sector, covers 2.8 million acres and includes mostly small, scattered villages. CBP transferred the Shadow Wolves Unit to ICE in October 2006. The unit is being used to enhance ICE investigations and operations on the Tohono O'odham Nation.

III. Methodology

DHS conducted a feasibility study to determine the impact of establishing a tribal-specific branch of USBP, similar to that of ICE's Shadow Wolves Unit.

Data

DHS used the following data to inform decisions and recommendations:

- At the end of FY 2017, the Department of Veterans Affairs identified:
 - The total population of veterans in the United States as 19,998,799; and
 - The percentage of American Indian/Alaska Natives (AI/AN) veterans in the United States as 0.72 percent.
- As of the second quarter of FY 2018:
 - The percentage of AI/AN veterans in DHS is 1.18 percent and within CBP is 1.07 percent;
 - CBP has 142 AI/AN BPAs onboard; 41 percent of whom are veterans; and
 - Arizona (14), California (12), and Texas (12) have the highest concentration of AI/AN BPAs veterans onboard.
- Thirteen of the 20 Border Patrol Sectors have tribal lands located within them.

Activities

DHS conducted the following activities in order to complete the study:

- Met with DHS stakeholders (Office of the Chief Human Capital Officer, DHS Tribal Government Affairs, CBP, Office for Civil Rights and Civil Liberties, and ICE) on May 10, 2018, to discuss the study and conduct information gathering;
- Met with subject matter experts on June 6, 2018, to discuss ICE's Shadow Wolves Unit, including lessons learned from having a tribal-specific branch within ICE;
- Met with stakeholders on June 11, 2018, to detail the pros and cons of suggested recommendations; and
- Consulted with American Indian veterans at conferences in Yakima, Washington, and Kansas City, Missouri, in early June 2018 to gather general thoughts on overall desire of American Indians to work for the Federal Government.

IV. Analysis/Discussion

DHS faces several challenges that may impact the feasibility of creating a tribal-specific unit within USBP.

100-Mile Requirement

During a BPA's first 3 years, he/she is required to work at least 100 miles from his/her current residence. DHS instituted the 100-mile requirement in 2012 to prohibit the initial assignment of BPA trainees to duty stations within a 100-mile radius of their pre-employment home of record. CBP designed this policy to prevent corruption and the appearance of close community associations with citizens and activities inconsistent with USBP's mission. This policy only applies to initial appointments of BPA trainees required to serve a probationary period. This policy does not impact a BPA's future career decision or his/her ability to apply for, or be selected for, positions that are near his/her pre-employment home of record.

The 100-mile rule presents an issue, as the intent of the legislative language is that American Indian veterans would serve as liaisons on their tribal lands between USBP and their respective tribes. If American Indian veterans are not permitted to work within 100 miles of their home, the intent of the language would not be met. In addition, anecdotal information gathered at the conferences in Washington and Missouri indicated that some tribal members who are veterans feel a strong sense of loyalty to their respective tribes and prefer to return home after serving in the military, versus taking a job that would require them to live away from home.

Initial Duty Assignments

Initial duty assignments for all new BPAs are to sectors on the southwest border. Experience has proven that the logistics of field training is better managed, and that the level of experience gained and skill levels developed by new agents is superior, when assigned to the larger and busier southwest border sectors. Transfers of BPAs later in their careers are handled through transfer programs that are negotiated with and/or agreed upon by the National Border Patrol Council, the bargaining unit that represents all nonsupervisory/nonmanagerial agents. These challenges could affect the ability to assign specific individuals to specific sectors in a timely fashion, especially along the northern and coastal sectors.

Special Hiring Authority

The only hiring authority that can be leveraged to hire American Indians specifically is Indian Preference, granted by OPM. CBP does not have the use of Indian Preference as a special hiring authority, which is essential in targeting American Indians for employment into a tribal-specific branch. In addition, the use of Veterans Preference would not guarantee that American Indian candidates would be identified.

Career Advancement

Creating a tribal-specific unit within USBP may have unintended consequences of creating barriers to career advancement. Lessons learned from standing up the Shadow Wolves Unit is that the Shadow Wolves themselves were hired for a specific function within that unit. However, since the unit is so small, there is only one supervisor and consequently no room for growth. The current Shadow Wolves are not able to transfer to other areas of ICE easily due to the excepted service/special hiring authority that hired them in the first place. This is creating an unintentional barrier to career growth.

Specialized Skills and Experience

ICE indicated that the Shadow Wolves Unit is known for its ability to track and apprehend smugglers in parts of the southwestern United States across difficult desert terrain and mountainous areas where tracks left by smugglers are nearly indistinguishable. CBP also indicated that BPAs are equipped with the same skillset and are trained to track alien and drug smugglers as they attempt to smuggle illegal commodities across the border, concluding that a specialized unit within USBP is not warranted. In addition, CBP has robust tribal and community liaison programs to work with tribes on border crossing challenges and other issues that may arise.

Diversity

USBP is a proponent of a diverse and integrated workforce. All agents have the same responsibilities, and all have the same opportunities to apply to specialty units, usually after their probationary period is completed. Race and ethnicity are not determining factors for any USBP specialty unit or assignment, and to begin such practice may have the unintended consequence of disenfranchising employees.

V. Conclusion and Next Steps

The Department gave much consideration to how USBP can meet the congressional intent expressed in the Joint Explanatory Statement. Several items and next steps, which are more feasible to implement in lieu of a standalone unit, came to light as a result:

- CBP's Veterans Employment Program Manager will schedule in-person discussions with USBP's tribal and community liaison programs to promote successful strategies that American Indian applicants can employ to be considered for its numerous law enforcement (e.g., BPAs, CBP Officers, Marine Interdiction Agents, Air Interdiction Agents) and national nonlaw enforcement opportunities (e.g., Intelligence Research Specialists, Management Analysts, IT Specialists, Auditors, Maintenance Mechanics, etc.);
- CBP's tribal and community liaisons will work through existing channels or establish new channels based on input from tribal nations about ways that would facilitate awareness of USBP employment opportunities; and
- CBP will conduct recruiting webinars with targeted marketing to American Indians in order to increase awareness of opportunities with CBP.

Appendix: Abbreviations

Abbreviation	Definition
AI/AN	American Indian/Alaska Natives
BPA	Border Patrol Agent
CBP	Customs and Border Protection
DHS	Department of Homeland Security
EO	Executive Order
FY	Fiscal Year
ICE	Immigration and Customs Enforcement
OFO	Office of Field Operations
USBP	U.S. Border Patrol
USM	Under Secretary for Management