



Feasibility Study:

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

December 2, 2019

Fiscal Year 2019 Report to Congress



**Homeland
Security**

Under Secretary for Management

Message from Office of the Under Secretary for Management

December 2, 2019

I am pleased to provide the following report, “Feasibility Study: Establishing an Initiative Specific to Hiring American Indian Veterans into U.S. Customs and Border Protection,” which has been prepared by the Department of Homeland Security’s (DHS) Office of the Chief Human Capital Officer.

This report has been compiled pursuant to language set forth in Senate Report 115-283 accompanying the Fiscal Year 2019 DHS Appropriations Act (P.L. 116-6).

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

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

The Honorable Chuck Fleischmann
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,



R.D. Alles
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 U.S. Customs and Border Protection's (CBP) 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 CBP, potential barriers to establishing a stand-alone unit within USBP, and next steps.



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

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I. Legislative Language

This report was compiled pursuant to language in Senate Report 115-283 accompanying the Fiscal Year (FY) 2019 U.S. Department of Homeland Security (DHS) Appropriations Act (P.L. 116-6).

Senate Report 115-283 includes the following language:

The Committee directs the Undersecretary for Management [USM] to conduct a feasibility study for a program unique to Native American veterans, including a possible Tribal-specific branch of the Border Patrol, to make use of the potential for unique authorities across Tribal-controlled areas of the northern border. In conducting this study, the USM should solicit input from Tribes located along the northern border. The results of this study shall be submitted to the Committee as soon as they become available.

II. Background

This report focuses on U.S. Customs and Border Protection's (CBP) U.S. Border Patrol (USBP) (rather than CBP as a whole) and American Indian/Alaska Native (AI/AN) veteran hiring. Further clarification from Senate Appropriations Subcommittee on Homeland Security staff indicates that establishing a unit within USBP like the U.S. Immigration and Customs Enforcement (ICE) 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 in 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, 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.

ICE Homeland Security Investigations Shadow Wolves Unit

In 1972, the Shadow Wolves were created by an act of Congress as an initiative to track drug smugglers on Native American lands in the American Southwest. The Federal Government agreed to honor the Tohono O'odham Nation's mandate that officers have at least one-fourth Native American ancestry from a federally recognized tribe to represent their community better.

On April 14, 1974, under ICE's legacy agency, the U.S. Customs Service, the first seven Customs Patrol Officers were sworn in. Their primary duties included patrolling and tracking drug smugglers attempting to smuggle contraband through the 76-mile stretch of the Tohono O'odham Nation's territory that runs along the U.S.-Mexico border. In its current state, the Shadow Wolves are a nine-member Tactical Officer unit of Federal law enforcement officers

within ICE Homeland Security Investigations (HSI) based in the American Indian Tohono O'odham Nation in southern Arizona. The members are composed of Native Americans from several tribes, including Tohono O'odham, Blackfeet, Sioux, and Navajo. Of the nine remaining Shadow Wolves, five are veterans of the U.S. Armed Forces.

DHS formed the Shadow Wolves Unit using Indian Preference, a special hiring authority granted by the Office of Personnel Management (OPM), used to fill vacancies with qualified American Indian candidates in accordance with the Indian Reorganization Act of 1934 (Title 25, United States Code, 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 HSI in October 2006 to enhance ICE HSI investigations and operations on the Tohono O'odham Nation. To address a changing smuggling culture effectively, ICE HSI currently has the Shadow Wolves assigned to the Native American Targeted Investigation of Violent Enterprises Task Force and to the Border Enforcement Security Task Force at the ICE HSI Office in Arizona. In their current role, Shadow Wolves are now able to use a holistic approach that encompasses their custom tracking skills with expertise such as surveillance, enforcement operations, interviews, evidence collection, and the cultivation of confidential informants to enhance their mission for ICE HSI.

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 2018, the U.S. Department of Veterans Affairs identified:
 - The total population of veterans in the United States was 19,602,316.
 - Approximately 137,000 of those U.S. veterans were AI/AN, which is nearly 0.7 percent of all veterans in the United States.
- As of FY 2019 (April 27, 2019):
 - Approximately 23 percent (55,570) of DHS's 244,077 employees were veterans. Nearly 0.3 percent (644) of DHS employees were AI/AN veterans.
 - Of the 60,432 CBP employees, approximately 29 percent (17,300) were veterans. Nearly 0.3 percent (174) of CBP employees were AI/AN veterans.
 - CBP had 135 AI/AN BPAs onboard, 56 of whom (41.5 percent) were veterans.
- Arizona (14), California (12), and Texas (9) had 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; and
- Met with stakeholders on June 11, 2018, to detail the pros and cons of suggested recommendations.

IV. Analysis/Discussion

DHS faces several challenges that may have an impact on 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 affect a BPA's future career decision or his/her ability to apply for, or to 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 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 the skill levels developed by new agents are 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. Schedule A 213.3111(e) grants ICE, by way of the Authorized Excepted Authorities within DHS, the authority to hire ICE Tactical Officer (Shadow Wolves), not to exceed 25.

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 because of the excepted service/special hiring authority that hired them in the first place. This authority 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.

USBP is committed to fostering a diverse workforce and engages in many recruiting activities focused on attracting AI/AN candidates. In FY 2019, USBP participated in 95 events, and additional events are scheduled that target AI/AN audiences. These events include college and university visits, webinars, job expos, and strategic partnerships with sporting organizations. One of the highlights is USBP's multifaceted efforts using its Professional Bull Rider partnership, which includes events in Sioux Falls, South Dakota; Albuquerque, New Mexico; Window Rock, Arizona (event hosted by the Navajo Nation); and Dallas/Fort Worth, Texas. Additionally, one USBP-sponsored Professional Bull Rider is an American Indian with Navajo roots.

V. Conclusion and Next Steps

The Department gave much consideration as to how USBP can meet the congressional intent expressed in the Senate Report language. 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 continue to schedule in-person discussions with USBP's tribal and community liaison programs to promote successful strategies that AI 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, Information Technology 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 AIs in order to increase awareness of opportunities with CBP.

Appendix: Abbreviations

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