

**STATEMENT OF  
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UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE  
UNITED STATES SENATE  
COMMITTEE ON INDIAN AFFAIRS**

**May 22, 2024**

Aanii (Hello)! Good afternoon Chairman Schatz, Vice Chairman Murkowski, and members of the Committee. My name is Bryan Newland, and I am the Assistant Secretary for Indian Affairs at the Department of the Interior (Department). Thank you for the opportunity to present testimony on public safety and justice resources for Native communities.

The United States has a trust relationship with each of the 574 federally recognized Tribes and their Tribal citizens. Through these relationships, the United States has charged itself with obligations of the highest responsibility and trust—including the obligation to protect the existence of Indian Tribes and their citizens. This obligation is at its highest when it comes to protecting the physical safety and well-being of Indian people within Indian Country.

The Bureau of Indian Affairs (BIA) plays a crucial role in meeting this obligation on behalf of the United States.

Under President Biden and Secretary Haaland’s leadership, the Department has been working to improve our ability to meet our trust obligations to Indian Country, and to partner with Tribes to make their communities safer. For example, Secretary Haaland established the Missing and Murdered Unit (MMU) within the BIA just months after taking office. The MMU works closely with the Department of Justice, especially the Federal Bureau of Investigation (FBI), to coordinate a centralized intake process for missing and murdered case referrals and conduct investigative activities on current and previously unsolved investigations. On May 25, 2022, President Biden issued Executive Order 14074, “Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety,” to ensure agencies across the federal government, including public health agencies, are working together to improve the recruitment, retention, and mental well-being of public safety officers. On November 22, 2022, the Department executed a new interagency agreement with the Department of Justice to ensure better coordination with the FBI on criminal investigations in Indian Country.

The BIA has also partnered with Tribes to step up enforcement operations to combat the trafficking of illicit drugs in communities on Reservations across the nation. Drug trafficking and drug-related crime, including the ongoing opioid and methamphetamine crises, continue to escalate throughout Indian Country. Tribal officials have consistently called for action toward addressing an increasingly common cause of Indian Country crime by strengthening drug enforcement capabilities throughout the Nation. The Office of Justice Services (OJS) Division of Drug Enforcement (DDE) operates the largest nationwide network of drug enforcement agents

dedicated solely to Indian Country. Table 1 and Table 2 demonstrate that the OJS DDE is making an impact by intercepting illicit drugs in Indian Country.<sup>1</sup>

And the Administration has worked with this Committee, and with all of Congress, to support legislation and enact laws to improve public safety in Indian Country, including the historic reauthorization of the Violence Against Women Act.

Yet, there are many structural challenges that make it difficult for federal agencies and Tribes to fully ensure public safety in communities across Indian Country. I would like to focus on those structural challenges below.

### **Funding**

Presently, the Department funds public safety and justice services for only 198 out of the total 574 federally recognized Tribes. On March 4, 2024, the Department issued the “Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2021” (2021 TLOA report).<sup>2</sup> This report contains data for funding costs in Indian Country. In 2021, total BIA spending for law enforcement was \$446.7 million, \$125 million for detention facilities, and \$65.3 million for Tribal courts. The 2021 TLOA report estimates the total cost for public safety and justice programs is \$1.7 billion for law enforcement programs, \$284.2 million for existing detention centers, and \$1.5 billion for Tribal courts. Thus, the total estimated unmet obligations identified in the 2021 TLOA report for Tribal law enforcement, detention, and courts funding are just over \$3 billion. The total estimated public safety and justice staffing need for Indian Country is 29,436 full time equivalent personnel. These numbers demonstrate the continued need for additional investment to improve the ability of Tribal public safety systems to fully serve their communities.

To get more boots on the ground, BIA is utilizing different methods to increase the recruitment and retention of law enforcement officers and staff. The recruitment and retention of law enforcement officers and staff for Tribal law enforcement agencies continue to face unique challenges. These challenges include pay parity, the length of background investigations, lack of applicants, and officer wellness.

Currently, our foremost strategy is addressing pay parity by increasing BIA law enforcement pay levels to match with other federal law enforcement. To accomplish this, we completed an upgrade to our uniformed police officer positions during FY 2023, which increased career advancement opportunities, along with corresponding pay increases up to an additional \$30,000 annually for BIA law enforcement officers. We are also utilizing available hiring flexibilities and recruitment and retention bonuses to increase current staffing levels and better support those interested in fulfilling the Department’s unique mission in Tribal communities.

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<sup>1</sup> For example, Table 1 below contains drug seizure data from the Division of Drug Enforcement from 2015 to 2023. Table 2 contains fentanyl seizure data from fiscal years 2018 to 2023.

<sup>2</sup> See: [https://www.bia.gov/sites/default/files/media\\_document/2021\\_tloa\\_report\\_final\\_508\\_compliant.pdf](https://www.bia.gov/sites/default/files/media_document/2021_tloa_report_final_508_compliant.pdf)

On November 1, 2023, the Department released “Not One More: Findings and Recommendations of the Not Invisible Act Commission” report<sup>3</sup> (NIAC report) in coordination with the Department of Justice. The Commission provided recommendations to the Secretary of the Interior and the Attorney General on six topic areas, including the recruitment and retention of Tribal and BIA law enforcement.

To increase recruitment and retention, the Commission recommended that Congress make Tribal law enforcement eligible for federal retirement benefits. The BIA testified in several hearings in support of the proposed legislation to extend federal benefits to Tribal law enforcement. This legislation will help with Tribes’ ability to recruit and retain law enforcement and increase the overall safety of their communities.

The Department’s Law Enforcement Task Force (Task Force) also released their 2023 report on October 27, 2023, which includes a list of findings and recommendations to improve all the Department’s law enforcement programs.<sup>4</sup> That list includes a finding from all Bureaus within the Department citing the length of time to complete background investigations as an impediment to filling open positions in a timely manner. The Task Force recommends streamlining the background investigation process to increase the timeliness of the hiring process.

The BIA has testified in strong support of streamlining the background investigation process as proposed in introduced legislation, specifically the Parity for Tribal Law Enforcement Act. The BIA Office of Justice Services assists Indian Tribes in conducting background investigations for Tribal law enforcement recruits and welcomes a demonstration program to eliminate one of the biggest obstacles to recruitment—the lengthy background investigation process—which would result in the expedited hiring of qualified law enforcement recruits. Currently, our team meets on a weekly basis to ensure the hiring process and background checks move as quickly as possible.

In the past 20 years, Congress has commissioned several reports assessing the state of Tribal law enforcement and public safety, including through the Not Invisible Act, Savanna’s Act, and the Tribal Law and Order Act. The Department has contributed to various reports on the state of Tribal law enforcement. The Department has also provided information for many Government Accountability Office and Congressional Research Service reports. Each report reaches many of the same conclusions, including that Tribal law enforcement needs more funding. Strengthening the Department’s continued support of 198 federally recognized Tribal police forces and working toward fully funding all 574 Tribes remains a top priority.

## **Jurisdiction**

The jurisdictional framework between Indian Tribes, the federal government, and states is complex, especially with respect to determining criminal jurisdiction. Congress and the courts have tied criminal jurisdiction to several factors to determine who exercises jurisdiction. These

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<sup>3</sup>See: [https://www.justice.gov/d9/2023-11/34%20NIAC%20Final%20Report\\_version%2011.1.23\\_FINAL.pdf](https://www.justice.gov/d9/2023-11/34%20NIAC%20Final%20Report_version%2011.1.23_FINAL.pdf)

<sup>4</sup> See: <https://www.doi.gov/sites/doi.gov/files/doi-letf-aspiration-to-action.pdf>

factors include type of crime, Indian or non-Indian status of the defendant, Indian or non-Indian status of the victim, and whether or not the crime scene lies within Indian Country. These factors impose significant transaction costs on officers, policymakers, attorneys, judges, and advocates working to address public safety challenges in Indian Country. In Indian Country, determining these factors is often a complex element to be resolved before beginning an investigation.

However, Congress, has legislated to clarify and affirm criminal jurisdiction in Indian Country. These enactments include:

- The 1968 amendments to P.L. 83-280 (P.L. 280), which required states to obtain the consent of the Indian Tribe prior to exercising criminal jurisdiction in Indian Country and permitted states to withdraw from the jurisdictional arrangement;
- The 1991 amendments to the Indian Civil Rights Act, which affirmed Indian Tribes' inherent criminal jurisdiction over non-member Indians;
- The 2010 Tribal Law and Order Act, which enhanced the criminal sentencing authority of Tribal courts;
- The 2013 reauthorization of the Violence Against Women Act, which recognized and affirmed Indian Tribes' inherent jurisdiction to prosecute non-Indians for certain crimes committed in Indian Country;
- The 2022 reauthorization of the Violence Against Women Act, which expanded and reaffirmed Indian Tribes' inherent jurisdiction to prosecute non-Indians for additional crimes committed in Indian Country.

These enactments demonstrate that Indian Tribes themselves can best meet the public welfare and safety needs of communities within their jurisdiction. Despite the successful restoration of jurisdiction over certain crimes, the Supreme Court of the United States (SCOTUS) added more complexities to the framework.

In *McGirt v. Oklahoma*, SCOTUS held that the Muscogee Creek Nation continued to have criminal jurisdiction over all the land reserved for the Tribe in an 1866 Treaty. This decision was complicated by the Court's decision in *Castro-Huerta v. Oklahoma*. In *Castro-Huerta*, SCOTUS determined that the federal government and states have concurrent jurisdiction over non-Indians who commit crimes against Indians in Indian Country. This recognition of states' expanded jurisdiction occurred without the consent of sovereign federally recognized Tribes, and without regard to the weight of the historical understanding of the limits on state authority in Indian Country, which Congress has relied upon in enacting legislation involving Indian Country jurisdiction, including 18 U.S.C. § 1152. These decisions combined with P.L. 280 jurisdiction make Indian Country jurisdiction more complex, confusing, and ripe for unintended consequences.

The NIAC report contained recommendations on addressing the jurisdictional complexities within Indian Country. These recommendations include 1) amending P.L. 280 to allow Tribes to

opt out of state jurisdiction and 2) restoring jurisdiction to Tribes to be able to prosecute all crimes that occur on Tribal lands.

### *Tribal Courts*

Tribal courts are an essential aspect of Tribal sovereignty and are an opportunity for Tribes to run their own justice systems. There are approximately 400 Tribal justice systems throughout the nation. The focus of all these courts is to address the underlying causes of issues “upstream” to prevent tragic crimes from occurring which debilitate Native communities. Tribes are better suited to provide best practices and discuss challenges with their peers.

Many Tribes are reforming or creating judicial systems which incorporate traditional and cultural aspects to create a more effective measure to address trauma induced circumstances within their communities through Healing to Wellness Tribal Courts.

Healing to Wellness courts have provided positive results in healing and strengthening Tribal communities. These courts address child dependency and family matters brought by the Tribal Social Service Directorate and play an essential role in family reunification by providing support and services needed for parents who wish to complete a family reunification plan. Tribes have seen an improvement in the reunification process when relatives and community members provide encouragement and support to those families needing assistance. Reunification is more successful through the Healing to Wellness court process, as is addressing addiction issues, which often go hand in hand with child dependency cases.

Additional resources are needed to ensure the continued success of Tribal courts. The NIAC report recommended increasing funding for Tribal Courts for safety, equipment, and technology.

### **Other Resource Challenges**

Many resources are needed to help fully staff Tribal public safety agencies. This includes housing, updated equipment, and the improvement of Tribal public safety data collection.

Housing for Tribal public safety staff is important for recruitment and retention. Many Tribal communities are in remote areas and law enforcement recruits often must relocate to those communities for their jobs. It is no secret that housing needs within Tribal communities are very high. Housing conditions vary from community to community, but homes are often overcrowded, lack running water and heat, and need replacement. These conditions combined with traveling long distances from home to work contribute to fatigue on Tribal law enforcement staff and the faster deterioration of public safety equipment.

The Task Force report and NIAC report specified that Department law enforcement officers identified having updated equipment and technology resources as one of the top priorities needed to support their safety. Ensuring all Tribal officers have access to reliable, top-tier equipment can contribute to their safety in the field. Because many Tribal communities and homes are located in remote areas with unpaved roads, public safety vehicles accumulate greater wear and tear and need to be routinely replaced. Tribal law enforcement officers often respond to high-risk calls alone in remote areas and face greater rates of death in the line of duty. They heavily rely on field communications, like land mobile radios, to respond to calls and maintain officer

safety. Expanded radio coverage would minimize “no coverage” areas, and video and data capabilities should be included to increase officer safety and reduce the stress of uncertainty regarding whether assistance will be available.

Another component to ensuring Tribal law enforcement officer safety is access to law enforcement data systems. State and federal law enforcement agencies utilize their own data systems to track important information like warrants, missing individuals, unsolved crimes, evidence, and the level of danger a person charged with or convicted of a crime poses. These systems often do not communicate with each other and contribute to data gaps in Tribal communities. Tribal law enforcement agencies also do not always have access to these systems. Even if they do have access, individuals must be trained to use federal systems and many Tribal law enforcement agencies often do not have the staff to take advantage of that training. Consolidating those existing law enforcement systems would improve the capture of public safety data, and allowing Tribal law enforcement agencies to access that consolidated system would also ensure Tribal officer safety in the field.

### **Conclusion**

Under the historic leadership of Secretary Haaland, the Department and BIA continue to develop and work on meaningful solutions to assist Tribal law enforcement and Tribal communities. This work includes prioritizing and reinforcing Tribal sovereignty and self-determination by supporting Tribal Nations and delivering important resources to increase public safety in Tribal communities.

Chairman Schatz, Vice Chairman Murkowski, and members of the Committee, thank you for the opportunity to provide the Department’s views. We look forward to working with Congress to affirm and support Tribal sovereignty and public safety within Tribal communities. I am happy to answer any questions that you may have.

**TABLE 1**

<b>Amount of Drugs Seized (pounds)</b>									
<i>Note: Totals may not add due to rounding.</i>									
	<b>2015 Achieved</b>	<b>2016 Achieved</b>	<b>2017 Achieved</b>	<b>2018 Achieved</b>	<b>2019 Achieved</b>	<b>2020 Achieved</b>	<b>2021 Achieved</b>	<b>2022 Achieved</b>	<b>2023 Achieved</b>
Cocaine Powder	1.00	105.70	54.15	34.19	96.8	38.5	797.4	173.513	67.112
Cocaine Crack	0.758	0.375	0.60	110.56	1.0	1.4	0.56	.6134	1327.460
Heroin	5.74	67.83	16.49	47.89	42.1	64.5	162.9	40.580	10.193
MDMA (Ecstasy)	.002	29.16	0.29	.33	7.7	2.6	1.5	101.416	4.789
Meth Crystal	64.90	64.21	56.13	248.21	72.6	336	188.36	2866.958	514.399
Meth Powder	0	20.93	34.88	264.46	475.7	1,019.9	880.4	636.095	1295.247
Processed Marijuana	1,725	2,173	6,223.89	19,413.62	5,460.9	4,413.5	50,660	6988.911	6429.285
Prescription Drugs Seized	96.58	96.21	8.0	53.66	106.2	12.3	54.04	28.539	34.343
Other Drugs Seized <sup>5</sup>	72.29	70.78	409	227.63	15,220.6	125.2	764.3	3361.338	693.693
Marijuana (# Plants = lbs.)	24,453	13,979	6,097	42,201	666.1	10,862.7	232,455	3531.78	119.276
<b><i>Totals in Pounds</i></b>	<b>26,419</b>	<b>16,607</b>	<b>12,900</b>	<b>62,601.49</b>	<b>22,149.6</b>	<b>16,876.6</b>	<b>285,964.11</b>	<b>17,729.75</b>	<b>10,492.80</b>

<sup>5</sup> This category includes drug seizures conducted within Indian Country by other law enforcement agencies that did not involve BIA Office of Justice Services or Division of Drug Enforcement, including seizure of fentanyl. Table 2 below provides seizure information for fentanyl only.

Table 1 depicts the overall drugs seized in Indian Country from FY 2015 through FY 2023. The totals were derived from the Office of Justice Services crime statistics database, which includes the monthly drug reports submitted by Tribal programs, the Department of the Interior Incident Management, Analysis and Reporting System, and the BIA Division of Drug Enforcement case logs.



**TABLE 2**

<b>Division of Drug Enforcement Fentanyl Seizures</b>		
<b>Fiscal Year</b>	<b>Sum of Fentanyl Powder (lbs.)</b>	<b>Sum of Fentanyl Pills (drug units)</b>
2018		17,900.00
2019	0.014	3,463.00
2020	8.92	257,491.00
2021	38.42	108,064.97
2022	45.50	263,411.00
2023	74.69	498,103.08
<b><i>Total</i></b>	<b>167.54</b>	<b>1,148,433.05</b>

Table 2 depicts the overall fentanyl seizures conducted by the BIA Division of Drug Enforcement.