

**STATEMENT OF
DARRYL LACOUNTE
DIRECTOR, BUREAU OF INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR
BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS**

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Good afternoon, Chair Gosar, Ranking Member Stansbury, and members of the Subcommittee. My name is Darryl LaCounte, I am the Director of the Bureau of Indian Affairs (BIA) at the U.S. Department of the Interior (Department). Thank you for the opportunity to discuss how the Bureau is addressing illegal drug trafficking in 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 BIA plays a crucial role in meeting this obligation on behalf of the United States and partnering with other Federal agencies to continue meeting this important obligation.

Current Actions

Interagency coordination is key to eradicating the presence of illegal drug trafficking. The BIA currently works with other Federal agencies, such as the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Department of Homeland Security, Border Patrol, and the High Intensity Drug Trafficking Area task forces to combat illegal drug trafficking in Tribal communities.

Our interagency investigations often target conspirators on and off Indian lands to effectively dismantle drug trafficking organizations. The BIA leverages internal intelligence analysis in cooperation with other Federal, State, and Tribal law enforcement agencies to combat the increasing amounts of controlled substances being trafficked into reservations through the United States Mail, Federal Express, private shipping companies, and Amtrak.

The Division of Drug Enforcement (DDE) under the Office of Justice Services (OJS) has conducted numerous marijuana eradication operations working with state and federal agencies in California. In previous years, the DDE assisted with the eradication of hundreds of thousands of illegally grown plants and the dismantling of grow operations.

OJS/DDE also conducts Mobile Enforcement Team (MET) operations on Reservations across the country. These deployments are in cooperation with the Tribes, States, and other Federal agencies. They involve the deployment of additional resources to a particular area to focus on the specifically identified issue in that area. These resources include additional agents, K9

teams, and specific equipment used to identify, gather, and present the necessary evidence to disrupt and dismantle drug trafficking in that area. Agents and officers conduct covert and overt drug investigations as appropriate for the area to remove the individuals involved and the drugs from the communities. The DDE also operates the largest nationwide network of drug enforcement agents dedicated solely to Indian Country. Table 1 and Table 2 demonstrate the impact that OJS DDE is making by intercepting illicit drugs in Indian Country.

To maximize effectiveness, we also increased our involvement with individual Tribal law enforcement agencies to develop more cohesive responses to drug trafficking and drug enforcement needs. 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 BIA has partnered with Tribes to step up enforcement operations to combat the trafficking of illicit drugs in communities on reservations across the nation. We also train Tribal law enforcement officers on how to spot and root out drug traffickers that are living within their communities.

The DDE assists Tribes with specific requests as well as general narcotics enforcement operations for individual Tribes. For Tribes that are located within Public Law 83-280 (P.L. 280) states, the State has primary jurisdiction for enforcement, but this has not stopped the BIA from working with states and Tribes to reduce the presence of drug trafficking organizations operating in Indian Country. As part of our cohesive response to combatting drug trafficking, BIA maintains close contact with the United States Attorney Offices responsible for prosecuting the complex criminal organizations affecting Indian Country to strengthen each case's credibility with the prosecutorial staff and strengthen relationships with local law enforcement.

Our partnership with Tribes has led to the successful seizures of illegal drugs, including illicit fentanyl. On the morning of May 27, 2024, a BIA-DDE law enforcement officer stopped a vehicle for speeding on Interstate 40 on the Pueblo of Laguna, New Mexico. On probable cause, the DDE officer searched the vehicle and discovered approximately 311,800 fentanyl pills, valued at \$12,472,000. Interagency coordination with Tribal law enforcement leads to successful operations.

These operations have been successful in combatting illicit drug trafficking in Native communities, but Tribal law enforcement continues to face structural challenges. Specifically, the President's FY 2025 Budget includes additional funding that would allow us to further strengthen these efforts and address these structural challenges.

Structural Challenges

Jurisdiction

Drug trafficking organizations, exploiting the myriad of jurisdictional issues surrounding Indian Country, target Native communities as delivery sites and for distribution of illegal drugs.

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

Congress has legislated to clarify criminal jurisdiction in Indian Country over the years. 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; and
- 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.

The successful implementation of these laws demonstrate that Indian Tribes and their law enforcement agencies are best suited to meet their public welfare needs. Despite these successes, additional jurisdictional cases have added more complexities to the framework.

In *McGirt v. Oklahoma*, the United States Supreme Court 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*, the Supreme Court 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.

Several reports, such as the Not Invisible Act Commission Report, provide recommendations on how to address 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.

Time and time again, Tribes have demonstrated that they can best meet the public welfare and safety needs of communities on their lands. As highlighted above, Congress has paired its legislation affirming Tribal jurisdiction and sovereignty with increased investments in Tribal justice systems. The Department supports energized investment in Tribal justice systems to address the structural challenges many Tribes face.

Staffing

Congress has commissioned many reports to investigate the public safety concerns of Native communities and each report reaches the same conclusion: we need to address big structural challenges, such as staffing, to guarantee the safety of people in Tribal communities.

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)¹ which contains funding cost data for law enforcement in Indian Country. In 2021, total BIA spending for law enforcement was \$256.4 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

¹ U.S. Dep’t of the Interior, Bureau of Indian Affairs, Office of Justice Serv., Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country, 2021 (Feb. 2024), https://www.bia.gov/sites/default/files/media_document/2021_tloa_report_final_508_compliant.pdf

personnel. These numbers demonstrate the continued need for additional investment to improve the ability of Tribal public safety systems to fully serve their communities.

Congress provided an additional \$131.2 million for public safety and justice programs in Indian Country for fiscal years 2022 and 2023. However, the additional resources only moved the needle four percentage points above the 13 percent of the total need cited in the 2021 TLOA report.²

With our current budget, BIA is working to improve law enforcement operations by focusing on recruitment incentives like pay parity. 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. However, to support the additional pay raises in 2024 and 2025 plus increases in other fixed costs, the additional funding included in the 2025 Budget is critical.

At the requested level for fiscal year 2025, the DDE currently funds 53 BIA criminal investigator positions and eight K-9 officer positions that are strategically located throughout the country to help mitigate the jurisdictional complexities and prosecutorial challenges that make Indian communities disproportionately vulnerable to systematic infiltration by trafficking organizations. Our drug agents also work alongside other federal partners on task forces pursuing highly technical investigations such as court ordered Title III wire intercepts, Organized Crime Drug Enforcement Task Forces cases, Racketeer Influenced and Corrupt Organization cases, High Intensity Drug Trafficking Area cases, synthetic cannabinoid cases, and multi-jurisdictional cases.

Despite these coordinated efforts, there is still a shortage of law enforcement on the ground. Understaffing results in a lack of timely responses to incidents, a perception that Tribal law enforcement does not care about the community, and it negatively impacts Tribal economies. Staffing shortages also have a notable impact on mental health and the overall well-being of Tribal law enforcement, which lead to resignations.

Equipment and other resources

International drug trafficking organizations often have access to sophisticated equipment and military-grade weapons to protect their operations. Accordingly, ensuring that Tribal law enforcement officers have the resources to address these issues, such as updated equipment, access to technology resources, and housing, is a top safety priority for Tribal law enforcement. Specifically, guaranteeing Tribal officers' access to reliable, top-tier equipment like the MX908 multi-mission portable Mass spectrometer for the roadside identification of illegal drugs, as well

² See 2021 TLOA report, footnote 1, p. 1.

as technology like license plate readers and facial recognition software, can greatly contribute to their effectiveness in the field.

Adequate housing and infrastructure is a challenge in many Tribal communities. We ask Tribal law enforcement officers to live within the communities they serve, but they face housing challenges such as cost, or they are unable to bring their families due to the size of the available residence. This is a barrier to retaining law enforcement employees. Furthermore, many Tribal communities and homes are located in remote areas with unpaved roads, thus public safety vehicles accumulate greater wear and tear and need more frequent routine replacement.

Due to the remote nature of many Tribal communities, Tribal law enforcement officers often respond to high-risk calls alone 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. But many Tribal areas do not have sufficient radio coverage which delays response times, investigations, and jeopardizes officer safety. Expanded radio coverage to minimize “no coverage” areas and include video and data capabilities is vital to increasing officer safety.

A number of reports commissioned by Congress affirm that these structural challenges make it harder to keep people safe in Indian Country. While the data conveys the seriousness of illegal drug trafficking in Indian Country, we are unable to measure the resulting impact to victims, affected families, and the already strained Tribal justice and social service systems in these communities. Addressing these challenges requires coordination across the federal government and with Tribal leaders to fulfill our trust responsibility.

The Department continues to prioritize and reinforce Tribal sovereignty and self-determination by providing support and resources to improving public safety and combat illegal drug trafficking in Indian Country.

Chair Gosar, Ranking Member Stansbury, and members of the Subcommittee, 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

Amount of Drugs Seized (pounds)									
<i>Note: Totals may not add due to rounding.</i>									
	2015 Achieved	2016 Achieved	2017 Achieved	2018 Achieved	2019 Achieved	2020 Achieved	2021 Achieved	2022 Achieved	2023 Achieved
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 ³	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
<i>Totals in Pounds</i>	26,419	16,607	12,900	62,601.49	22,149.6	16,876.6	285,964.11	17,729.75	10,492.80

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.

³ 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 2

Division of Drug Enforcement Fentanyl Seizures		
Fiscal Year	Sum of Fentanyl Powder (lbs.)	Sum of Fentanyl Pills (drug units)
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
<i>Total</i>	167.54	1,148,433.05

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