

Indian Country Accomplishments of the Justice Department, 2009-Present

“From our work to empower Indian women under the landmark Violence Against Women Reauthorization Act, to the task force we established to safeguard children in Indian country from violence and abuse, we have made significant strides – in close partnership with tribal nations – to bolster the safety and security of all American Indian and Alaska Native communities. As we move forward, we will continue to expand on this critical work; to deepen our ongoing efforts; and to reaffirm our dedication to the promise of equal rights, equal protection, and equal justice for all.”

-- Attorney General Eric Holder

In June 2009, Attorney General Eric Holder launched a Department-wide initiative to enhance public safety in Indian Country. Significant progress has been made since then. This document offers highlights of the Department’s progress in the following areas: enhanced prosecution and training efforts; implementation of the Tribal Law and Order Act of 2010 (TLOA); grant opportunities; general litigation; civil rights; and outreach and consultation.

ENHANCING PROSECUTION, TRAINING AND OUTREACH EFFORTS TO KEEP TRIBAL COMMUNITIES SAFE

Passage of landmark legislation to Combat Violence Against Native Women

- On March 7, 2013, President Obama signed into the law the reauthorization of the Violence Against Women Act (VAWA 2013). This law contains provisions that significantly improve the safety of Native women and which importantly, allow federal and tribal law enforcement agencies to hold more perpetrators of domestic violence accountable for their crimes. Many of these critical provisions were drawn from the U.S. Department of Justice’s July 2011 proposal for new Federal legislation to combat violence against native women. The tribal provisions in VAWA 2013 address three significant legal gaps by: (1) recognizing certain tribes’ power to exercise concurrent criminal jurisdiction over domestic violence cases, regardless of whether the defendant is Indian or non-Indian; (2) clarifying that tribal courts have full civil jurisdiction to issue and enforce protection orders involving any person, Indian or non-Indian; and (3) creating new federal statutes to address crimes of violence, such as strangulation, committed against a spouse or intimate partner and providing more robust federal sentences for certain acts of domestic violence in Indian Country. The Senate-passed version of VAWA Reauthorization, S. 47, including these tribal provisions, passed both Houses of Congress with significant bi-partisan support.
- As of November 2014, federal prosecutors had charged more than 200 defendants under VAWA 2013’s enhanced federal assault statutes, and obtained more than 140 convictions. These numbers include more than 40 cases involving charges of strangulation or suffocation, often precursor offenses to domestic homicide.

Pilot Project for Tribal Jurisdiction Over Crimes of Domestic Violence

- VAWA 2013 recognizes tribes' inherent power to exercise special domestic violence criminal jurisdiction over certain defendants, regardless of their Indian or non-Indian status, who commit acts of domestic violence or dating violence or violate certain protection orders in Indian country. This new law generally takes effect on March 7, 2015, but also authorizes a voluntary "Pilot Project" to allow certain tribes to begin exercising special jurisdiction sooner. On February 6, 2014 the Pascua Yaqui Tribe of Arizona, the Tulalip Tribes of Washington, and the Umatilla Tribes of Oregon were selected for this Pilot Project. Since the pilots began, more than 20 criminal cases have been charged by tribal prosecutors against non-Indian domestic violence offenders, and several have been convicted of domestic violence crimes. Information related to the Pilot Project, related consultations, and other resources, may be found on the [VAWA Reauthorization 2013 page](#).

American Indian and Alaska Native Children Exposed to Violence Task Force

- Attorney General Holder created the task force in 2013 as part of his Defending Childhood initiative to prevent and reduce children's exposure to violence as victims and witnesses. The task force is also a component of the Justice Department's ongoing collaboration with leaders in American Indian and Alaska Native communities to improve public safety. The task force is comprised of a federal working group that includes U.S. Attorneys and officials from the Departments of the Interior and Justice and an advisory committee of experts on American Indian studies, child health and trauma and child welfare.
- On November 18, 2014, the Advisory Committee of the Attorney General's Task Force on American Indian and Alaska Native Children Exposed to Violence released a report outlining significant policy recommendations to the Justice Department. The report recommends a rebuilding of the current services provided to Indian Country, through increased partnering and coordination with tribes, and increased funding for programs to support American Indian and Alaska Native children. The report provides the Advisory Committee's vision for the development of effective, trauma informed, and culturally appropriate programs and services to protect American Indian and Alaska Native children exposed to violence.
- The report was the outcome of a year of public hearings of the advisory committee held in Alaska, Arizona, Florida, and North Dakota. The advisory committee hearings included tribal researchers, child advocates, domestic violence and sexual assault advocates, and local community members, tribal leaders, juvenile court judges, and juvenile justice system experts.

Native American Issues Subcommittee

- Currently, U.S. Attorneys from 25 districts with Indian Country or one or more federally recognized tribes serve on the Attorney General's Advisory Council (AGAC) Native

American Issues Subcommittee (NAIS). The NAIS focuses exclusively on Indian Country issues, both criminal and civil, and is responsible for making policy recommendations to the Attorney General regarding public safety and legal issues. The NAIS met on several occasions in 2014 including in August on the Navajo Nation in Arizona in conjunction with the Four Corners Conference, which is hosted by the U.S. Attorney's in Utah, Arizona, Colorado and New Mexico. The NAIS meeting focused on the issues of juvenile justice and offender reentry. During this meeting, the NAIS and senior Department of Justice and Interior officials consulted with tribal leaders from across the Southwest.

- In 2011, 2012, and 2013 the NAIS convened on numerous occasions. During that time, the NAIS has met and consulted with tribes in Rapid City and Pine Ridge, South Dakota; Missoula, Montana; Bismarck, North Dakota; and Hood River, Oregon. In July 2011 the NAIS joined Attorney General Eric Holder in Rapid City, South Dakota, and on the Pine Ridge Indian Reservation, to hear from tribal leaders, law enforcement officials, and community members about public safety issues, including violence against Native American women.

U.S. Attorney's Office Tribal Liaisons

- Every U.S. Attorney with Indian Country jurisdiction has appointed at least one tribal liaison to serve as the USAO's primary point of contact with tribes in the district.

Supporting Implementation of the Sex Offender Registration and Notification Act (SORNA)

- The Department through the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering and Tracking (SMART) continues to provide support to tribal jurisdictions that have opted to implement SORNA. Of the 161 eligible tribes, 74 have been found to have substantially implemented SORNA and the rest are continuing to work towards substantial compliance.
- In order to support substantial implementation of SORNA, the Department developed a number of different innovative projects, including: (1) the SMART Office developed a pilot project to assist tribes needing to submit fingerprints. This project sent equipment and training to four tribal police departments to facilitate direct submission; (2) The SMART Office also worked with the FBI to develop a work around for submission of DNA. This work around allows tribes to directly submit DNA of offenders to the FBI via mail in kits that are provided at no cost to tribal law enforcement. (3) The Department continues to work with Tribes, States, local and Federal partners in order to facilitate the submission of offender information into NCIC/NSOR. (4) The Tribal and Territory Sex Offender Registry System (TTSORS). This system allows tribes to set up a SORNA compliant public website and public notification system at no cost to them. At this time over 100 tribes have utilized TTSORS to set up public sex offender websites linked to the National Sex Offender Public Website (NSOPW) which is administered by SMART.

Enhanced Training for Prosecutors and Law Enforcement Working in Indian Country

- In July 2010, EOUSA launched the National Indian Country Training Initiative (NICTI) to ensure that Department prosecutors, as well as state and tribal criminal justice personnel, receive the training and support needed to address the particular challenges relevant to Indian Country prosecutions. The training effort is led by the Department's National Indian Country Training Coordinator. In 2012, the NICTI delivered training in 16 states and at the National Advocacy Center in Columbia, S.C. to approximately 2,500 federal, state and tribal stakeholders on a host of criminal justice issues. In addition, the NICTI, with funding from the Office for Victims of Crime, completed a training DVD and resource manual on "Using Federal Law to Prosecute Domestic Violence Crimes in Indian Country." This free training DVD highlights the substantive law and four successful federal prosecutions; it models best practice where federal and tribal partners worked collaboratively to ensure justice for the victim and accountability for the offender.
- In January 2013, the NICTI partnered with the National Strangulation Training Institute to deliver the first-ever national Indian Country training on the investigation and prosecution of non-fatal strangulation and suffocation offenses. The training drew attendance from 17 tribes, U.S. Attorney's Offices, the FBI and the Bureau of Indian Affairs. The training, held at the National Advocacy Center in Columbia, S.C., provided an in-depth examination of the mechanics of strangulation and suffocation from a medical, legal and law enforcement perspective.
- In October 2012, the Environment and Natural Resources Division (ENRD) of the Department, in partnership with the NICTI, developed and held the first-ever joint federal-tribal training program on wildlife and pollution enforcement issues. The course was designed for tribal and federal enforcement personnel and prosecutors who work to protect tribal lands and resources, and members of more than 60 different tribes signed up to participate as students and faculty. The course sought to promote federal-tribal partnerships in this area and to help tribes further develop the capacity to assume a greater role in enforcing environmental and wildlife laws affecting tribal lands.
- Since 2011, the Department's Access to Justice Initiative has partnered with the U.S. Department of the Interior's BIA Office of Tribal Justice Services to develop the Tribal Court Trial Advocacy Training Program. This three-day trial advocacy course is designed to improve the trial skills of judges, public defenders, and prosecutors who appear in tribal courts. Nine trainings have been held in Rapid City, S.D., Phoenix, Ariz., Duluth, Minn., Ignacio, Colo., Great Falls, Mont., Chinle, Navajo Nation, Seattle, Wash., and Albuquerque, N.M., and additional trainings are being scheduled for the coming year. All trainings are free and are staffed by attorneys from the Initiative, BIA, and Assistant U.S. Attorneys who practice in Indian Country, the EOUSA Native American Issues Coordinator, Assistant Federal Public Defenders, and tribal prosecutors, public defenders, and judges.

Traditional Justice Practices as Alternatives to Incarceration:

- The Access to Justice Initiative and the U.S. Department of the Interior's Bureau of Indian Affairs, Office of Justice Services, Office of Tribal Justice Support co-sponsored an expert group meeting in April 2013 on the use of traditional Native American justice practices to respond to criminal and delinquent behavior. The one-day roundtable meeting brought together leaders and experts on the use of traditional justice practices to discuss the benefits and challenges of these programs and processes and developed recommendations to the Federal Government on how to support these practices. In September 2014, ATJ issued a report summarizing the expert group's discussions and recommendations, which was disseminated to tribal criminal justice stakeholders in furtherance of the Tribal Law and Order Act's mandate that both Departments help tribes develop alternatives to incarceration:
<http://www.justice.gov/sites/default/files/atj/legacy/2014/10/09/expert-working-group-report--native-american-traditional-justice-practices.pdf>.

Information Sharing with Tribal Governments

- Since 2009, the FBI's Uniform Crime Reporting (UCR) Program Office has coordinated with the Bureau of Indian Affairs and the Justice Department's Office of Justice Programs to increase the number of tribes that qualify for Justice Assistance Grants (JAG) eligibility. This has been accomplished primarily through liaison efforts and presentations to increase awareness at tribal law enforcement conferences.

TRIBAL LAW & ORDER ACT (TLOA) IMPLEMENTATION

On May 30, 2013, and Aug. 26, 2014, the Department released the first two reports to Congress entitled *Indian Country Investigations and Prosecutions* which provide a range of enforcement statistics required under the Tribal Law and Order Act of 2010. The reports, based on data compiled from the FBI and the case management system used by U.S. Attorney's Offices (USAO) with Indian Country jurisdiction shows among other things a substantial increase in Indian Country criminal prosecutions since Fiscal Year 2009.

Among other facts and information, the reports showed the following:

- Federal prosecutors continue to bring a substantial number of cases to federal court. Cases filed against defendants in Indian Country have increased by 34 percent from FY 2009 to FY 2013, from 1,091 cases filed in fiscal year (FY) 2009 to 1,138 in FY 2010 to 1,547 in FY 2011 to 1,677 in FY 2012, and to 1,462 in FY 2013.
- USAO data for calendar year (CY) 2013 show that 34 percent (853) of all Indian country submissions for prosecution (2,542) were declined for prosecution. In CY 2012, USAOs declined approximately 31 percent (965) of all (3145) Indian country submissions for prosecution. USAO data for CY 2011 indicate that just under 37 percent (1,041) of all Indian country submissions for prosecution (2,840) were declined. Overall, a substantial majority of Indian Country criminal cases opened by USAOs were prosecuted.

- Of the cases that were declined for federal prosecution, most were declined for insufficient evidence or because they were referred to another prosecuting authority, such as the tribe, for potential prosecution.
- Although declination rates are an imperfect means of evaluating the effectiveness of criminal justice in Indian country or elsewhere, the second report shows that with few exceptions, areas where the largest populations of American Indian people live and suffer from the most serious crime rates, such as the Southwest and the Northern Plains states (which together handled approximately 70 percent of the 2,542 cases resolved in 2013), federal declination rates were the lowest in the nation. For instance, South Dakota had the second to highest number of cases resolved in the country last year, 470 cases, and one of the lowest declination rates of 26 percent. Arizona resolved the highest number of cases, 733 cases, and had a declination rate of 28 percent.

Read the reports at www.justice.gov/tribal/tribal-law-and-order-act

Establishment of the Office of Tribal Justice as Separate Component within the Justice Department

- On November 17, 2010, Attorney General Holder announced the establishment of the Office of Tribal Justice (OTJ) as a separate component within the organizational structure of the Department. OTJ has a key role in the Department's ongoing initiative to improve public safety in Indian Country, and serves as an important resource on matters of Indian law. In late 2012, Tracy Toulou, who had served on detail as OTJ Director since 2000, was selected as the first permanent Director of the Office.

Bureau of Prisons Pilot Project to House Tribal Offenders Sentenced in Tribal Courts

- In November 2010, the Bureau of Prisons (BOP) launched a four-year pilot program to accept certain tribal offenders sentenced in tribal courts for placement in BOP institutions. The pilot program allows any federally recognized tribe to request that BOP incarcerate a person convicted of a violent crime under the terms of the TLOA. Since the first inmate was accepted on November 20, 2012, an additional five inmates were admitted under the program before its conclusion in November 2014.

Memorandum of Agreement on Alcohol and Substance Abuse

- The Departments of Justice, Interior and Health and Human Services entered into a Memorandum of Agreement (MOA) that the agencies would collectively, among other things: determine the scope of the alcohol and substance abuse problems faced by American Indians and Alaska Natives, identify the resources each agency can bring to bear on the problem, and set minimum standards for applying those resources. This multi-agency collaboration has produced quarterly "Prevention and Recovery" newsletters with information about grant programs, tribal programs, and policy initiatives designed to address alcohol and substance abuse in American Indian and Alaska Native communities. The

newsletters and more information about this evolving collaboration are available at www.samhsa.gov/tloa/.

Long Term Plan for Building and Sustaining Tribal Justice Systems

- The Departments of Justice and the Interior, working in close coordination with other federal agency partners, developed a long term plan to build and sustain tribal justice systems. Formal consultation sessions and focus groups were held to develop the plan.

Rule on Assumption of Concurrent Federal Criminal Jurisdiction

- The Department published its final rule in December 2011 to implement Section 221 of the TLOA, which authorizes the Attorney General to assume concurrent jurisdiction over certain crimes committed on tribal lands. Through this rule, an Indian tribe that is subject to Public Law 280 may request that the federal government accept concurrent jurisdiction within the tribe's Indian Country and, if the Attorney General consents, federal authorities can investigate and prosecute criminal offenses. Public Law 280 is the 1953 law that mandated the transfer of federal law enforcement jurisdiction for certain tribes to six states. Several tribes have submitted requests for assumption by the Attorney General of concurrent federal criminal jurisdiction, which the Department currently is reviewing.
- On March 15, 2013, the Department of Justice granted a request by the White Earth Nation for the United States to assume concurrent criminal jurisdiction on the 1,300 square mile White Earth reservation in northern Minnesota. The decision was the first action of its kind under the landmark Tribal Law and Order Act of 2010 (TLOA), which granted the Justice Department discretion to accept concurrent federal jurisdiction to prosecute major crimes within areas of Indian country that are also subject to state criminal jurisdiction under Public Law 280. The decision, relayed on March 14 in a letter to the tribe signed by Deputy Attorney General Cole, took effect on June 1, 2013. Tribal, state and county prosecutors and law enforcement agencies will also continue to have criminal jurisdiction on the reservation.

Native American Issues Coordinator Designated in EOUSA

- The Department's Native American Issues Coordinator, designated in EOUSA, provides advice and assistance to USAOs on legal and policy issues pertaining to Native Americans and Indian Country, and serves as a liaison between the USAOs, the NAIS, and other Department components and law enforcement agencies. The Coordinator's work involves several issues affecting Indian Country, including, among many others, the implementation of the Tribal Justice Plan, which focuses on re-entry, alternatives to incarceration, and detention; jurisdictional issues for criminal and civil matters; outreach efforts between the Department, other federal agencies, and local jurisdictions; requests for assumption of concurrent federal jurisdiction under the TLOA; and issues involving federal, state, and tribal law enforcement authority, cooperation, and emergency response in Indian Country.

Additional Resources to Combat Sexual Assault in Indian Country

- In accordance with Section 265 of the TLOA, the Office for Victims of Crime (OVC), in partnership with the FBI's Office of Victim Assistance (OVA) and the Indian Health Service, is leading an effort to enhance the response to tribal victims of sexual violence. The AI/AN Sexual Assault Nurse Examiner-Sexual Assault Response Team (SANE-SART) Initiative addresses the comprehensive needs of tribal victims of sexual violence. From the outset of the project in 2010, OVC and its federal and tribal partners have focused on the challenge of building the capacity of tribal communities to provide coordinated, community-based, victim-centered responses to sexual violence. The 5-year project encompasses three demonstration sites, coordinators at the Indian Health Service and the FBI, training and technical assistance, and support from the Attorney General's federal advisory committee and multidisciplinary working groups—all committed to institutionalizing sustainable, culturally relevant, evidence-based practices to meet the needs of tribal victims of sexual assault. More information about the initiative and its multiple components is available at www.ovc.gov/AIANSane-Sart/

Highlights from the initiative's efforts in the past 12 months include the following:

- Three tribal demonstration sites are now operating functional SANE-SART programs and are poised to provide services to both child and adult victims of sexual assault.
- In November 2014, OVC's National Coordination Committee on the AI/AN SANE-SART Initiative finalized its *Report to the U.S. Attorney General on Improving Federal Agency Response to Sexual Violence in Tribal Nations: Issues and Recommendations* and submitted it to the Attorney General.
- OVC established a multi-disciplinary working group of Indian country professionals who have significant experience in developing a coordinated community response to sexual violence to aid in the creation of a national strategy to enhance the ability of tribal governments and their partners to respond to sexual violence. The first draft of the national strategy was completed in early 2014 based on the recommendations of the working group members.

Tribal Crime Data Collection Activities, 2012

- In October 2012, the Bureau of Justice Statistics (BJS) released the report *Tribal Crime Data Collection Activities 2012*, pursuant to TLOA which requires annual reporting on Indian country crime data. This report includes information on the 2010 census population data for American Indians and Alaska Natives (AIAN); tribal law enforcement agency personnel; tribal Edward Byrne Memorial Justice Assistance Grant (JAG) program awards; improvements in tribes reporting crime data to the FBI's Uniform Crime Reporting Program (UCR); tribal specific crimes known to law enforcement; federal justice statistics on investigations and charges filed by United States Attorneys for crimes committed in Indian

Country; and highlights the new BJS Indian Country justice statistics webpage:
<http://www.bjs.gov/index.cfm?ty=tp&tid=200000>

Intergovernmental Collaboration

- The TLOA directs the Attorney General to provide technical assistance on strategies to promote intergovernmental collaboration and relationships among state, tribal, and local partners that effectively combat crime and fill jurisdictional and service gaps to enhance public safety and access to justice for all citizens. BJA recognizes these service gaps and continues to promote and support tribal-state-federal collaborations through several avenues: providing training and technical assistance on collaborative public safety efforts, developing promising strategies, publications and webinars highlighting efforts in tribal-state collaboration; and maintenance of the Walking on Common Ground website (www.WalkingOnCommonGround.org). The website highlights tribal/state courts collaboration, promising strategies and provides resource toolkits to assist others.
- Some of these outcomes and promising strategies of joint collaborative efforts are highlighted in BJA's 2013 Intergovernmental Collaboration on Criminal Justice Webinar Series. For more information: www.bja.gov/Events/Tribal-State_PublicSafetyAgreementsWebinar.pdf

GRANT OPPORTUNITIES

Streamlined Grant Solicitation Process for Tribal Communities

- In February 2010, the Department announced a streamlined approach for American Indian and Alaska Native tribes to apply for funding opportunities. The Coordinated Tribal Assistance Solicitation (CTAS) serves as a single application for existing tribal government-specific grant programs administered by the Office of Justice Programs (OJP), Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW). The creation of this streamlined process comes in response to tribes' concerns that the Department's grants were not flexible enough, and that a single application would significantly improve the ability to apply for and receive funding. In September 2014, DOJ announced the award of 169 grants totaling \$87 million to American Indian tribes and Alaska Native villages, tribal consortia, and tribal designees. Over the past five years, DOJ has awarded over 1,100 grants totaling more than \$530 million.
- On November 20, 2014, the Department of Justice announced the opening of the grant solicitation period for comprehensive funding to support public safety, victim services and crime prevention improvements in American Indian and Alaska Native communities. The department's Fiscal Year (FY) 2015 Coordinated Tribal Assistance Solicitation (CTAS) was posted at www.justice.gov/tribal/open-sol.html. The solicitation closes on Feb. 24, 2015. Information about the consolidated solicitation is available at www.justice.gov/tribal/. A fact sheet on CTAS is available at www.justice.gov/tribal/ctas2013/ctas-factsheet.pdf.

- On November 20, 2015, the department's Fiscal Year (FY) 2015 Coordinated Tribal Assistance Solicitation (CTAS) was posted at www.justice.gov/tribal/open-sol.html. The solicitation closes on Feb. 24, 2015.

PROTECTING TRIBAL RESOURCES AND SOVEREIGNTY

Historic Settlements of Trust Litigation

- In 2010, the Departments of Justice and the Interior reached a historic \$3.4 billion settlement resolving the litigation in *Cobell v. Salazar*, an Indian trust class-action lawsuit that had been pending for 15 years. The settlement, approved by the court and Congress, provides for payments to over 400,000 individual Indians who had Individual Indian Money accounts or an interest in trust or restricted land managed by the Department of the Interior.
- Since January 2009, the United States has settled the trust accounting and trust mismanagement claims of more than 80 federally recognized tribes and paid more than \$2.5 billion in compensation to those tribes, resolving decades-long and costly litigation. For instance, in September 2014, Attorney General Eric Holder and U.S. Secretary of the Interior Sally Jewell announced the settlement of a lawsuit filed by the Navajo Nation regarding the U.S. government's management of funds and natural resources that it holds in trust for the Navajo Nation. The settlement resolves a long-standing dispute, with some of the claims dating back more than 50 years, and brings to an end protracted litigation that has burdened both the Navajo Nation and the United States.
- All of the tribal trust case settlements provide for measures that will lead to strengthened management of tribal trust assets and non-monetary resources and to improved communications between the Department of the Interior and the tribes. The Department, along with the Interior and Treasury Departments, is continuing settlement negotiations with other tribes that still have pending trust accounting and trust mismanagement claims against the United States.

Securing Tribal Lands

- The Department's Environment and Natural Resources Division litigates in support of tribal lands. The Department helped the Saginaw Chippewa Indian Tribe establish the existence and boundaries of its reservation through a 2010 settlement between the Tribe, the United States, the State of Michigan, and local governments, which included a series of landmark intergovernmental agreements that provide much-needed clarity regarding authority over law enforcement, child welfare, taxation, and land use matters. In addition, the Department successfully supported the existence of the Yankton Sioux Reservation in South Dakota by defeating claims that the reservation had been disestablished.

- The Department also successfully defended the Secretary of the Interior's decisions to take land into trust for various tribes. These decisions expand tribes' land bases and enhance their ability to provide housing and economic development opportunities for their communities.
- The Department has worked closely with the Department of the Interior to address the Supreme Court's 2009 decision in *Carcieri v. Salazar* holding that Interior could not take land into trust for tribes that had not been "under federal jurisdiction" when the Indian Reorganization Act was enacted in 1934. The Department helped Interior develop a framework to determine whether a tribe was "under federal jurisdiction" at that time, thus addressing the uncertainty created by the *Carcieri* decision and allowing Interior to address the backlog of trust applications that developed in the wake of that decision.

Since then, the Department has defended Interior's decisions to take land into trust under the new post-*Carcieri* framework and it continues to do so. In January 2013, the Department secured favorable decisions in two cases where plaintiffs sought, based in part on *Carcieri*, a preliminary injunction or restraining order precluding Interior from taking land into trust on behalf of two Indian tribes in California.

- The Department also filed a precedent-setting amicus brief on behalf of the United States in a tribal court defending tribal reservation boundaries. In *Village of Pender v. Parker*, the Department supported the Omaha Tribe's argument that an act of Congress did not alter or diminish the Tribe's reservation boundary. In February 2013, the tribal court held that the reservation boundaries remain intact. On return of the case to the federal district court in Nebraska, the Department intervened in the case and filed a successful motion for summary judgment, resulting in a federal district court determination that the reservation boundary was not changed by Congress.
- In a case of first impression, the Department secured dismissal of a case that concerned the assertion of local authority over Indian trust lands. The Department argued in *Oneida Nation of Wisconsin v. Village of Hobart* that state or local regulation of tribal lands was improper under the facts of that case. The court ultimately provided the relief that the Oneida Nation sought.

Preserving Tribal Culture through Access to Eagle Feathers

- On October 12, 2012, the Department announced a policy addressing the ability of members of federally recognized Indian tribes to use the feathers and other parts of eagles and other federally protected birds, an issue of great cultural and religious significance to many tribes and their members. Attorney General Eric Holder signed the new policy after extensive Department consultation with tribal leaders and tribal groups. The Attorney General's memorandum is the first formal policy statement adopted by the Justice Department on this issue. It clarifies and expands on longstanding Department practice, consistent with the Department of the Interior's 35-year old Morton Policy, of not prosecuting tribal members for possessing or using eagle feathers and other protected bird parts while continuing to prosecute tribal members and nonmembers alike for killing protected birds without a permit

or for commercializing federally protected birds or bird parts. The policy is located at www.justice.gov/ag/ef-policy.pdf

- In an important victory, the Tenth Circuit held in *United States v. Wilgus* that the government could provide tribal members with exclusive access to eagle feathers for religious purposes, under exceptions to federal laws prohibiting possession of these wildlife resources.

Supporting Tribal Courts and Tribal Sovereignty

- The Department's Environment and Natural Resources Division litigates in support of tribal sovereignty. For example, in *Water Wheel Camp Recreation Area, Inc. v. Gary LaRance*, the Department successfully supported tribal court jurisdiction to exclude non-Indians from tribal land. The Ninth Circuit's ruling will help address long-standing problems with non-Indians encroaching on tribal lands and provides strong precedent in support of tribal courts.
- In the Supreme Court case of *Hogan v. Kaltag Tribal Council* and the Ninth Circuit case of *Parks v. Native Village of Minto*, the Department helped successfully support the inherent sovereignty of Alaska Native village tribal courts to adjudicate child custody matters.
- The Department defended the validity of tribe-specific employment preferences in leases relating to a particular tribe's trust resources. The Department successfully argued that such preferences are based on political classifications, grounded in the government-to-government relationship between the United States and tribal nations, and are therefore permissible under Title VII of the Civil Rights Act.

Protecting Tribal Rights and Natural Resources

- The Indian Resources Section of the Department's Environmental and Natural Resources Division continued to assert water rights claims for the benefit of tribes in order to secure safe and reliable drinking water for tribes, as well as water for sanitation, economic development, and other purposes. In particular, the Department contributed to six landmark Indian water rights settlements and corresponding statutes which, when fully implemented, will resolve complex and contentious water rights issues in New Mexico, Arizona, Montana, and Nevada. The Department also successfully defended claims for the benefit of the Klamath Tribes in the Klamath Basin Adjudication in Oregon, for the Confederated Tribes of the Yakama Nation in the Yakima River Basin in Washington, and the Pyramid Lake Paiute Tribe in Nevada. The Department remains involved in 29 complex water rights adjudications in nearly every western state.
- The Department is engaged in litigation to protect treaty fishing rights of tribes in the Pacific Northwest. In *United States v. Washington*, the United States sought to address decline in the quality and quantity of fish habitat caused by development pressures in western Washington, and in particular, the question of habitat loss caused by poorly constructed and maintained culverts beneath state roads, which impede the passage of fish to spawning

grounds and block the access of juvenile fish to the ocean. In March 2013, the court issued a permanent injunction requiring the State to inventory remaining fish-blocking culverts within six months and provide for fish passage at culverts with specified upstream habitat within 17 years.

- The Department is committed to the principles of environmental justice, including for tribal communities, and has incorporated environmental justice principles into its cases by working with tribal members to address pollution on their lands. For example, the Environment and Natural Resources Division worked closely with members of the Ute Indian Tribe in reaching a consent decree that resolved Clean Air Act violations at five natural gas compressor stations on the Uintah and Ouray Reservation in Utah. Under the settlement, defendant QEP Field Services (formerly Questar Gas Management Co.) will fund a Tribal Clean Air Trust Fund that will fund beneficial environmental projects on the Reservation. In addition, the defendant will pay a \$3.6 million penalty and install pollution controls that will reduce emissions.
- The Department also successfully sought recovery for cleanup of environmental contamination in Indian country. In *Tronox, Inc. v. Anadarko Petroleum Corp.*, the United States obtained a \$5.15 billion settlement related to the environmental liabilities of the historic Kerr-McGee Corporation, including \$985 million to be paid to U.S. EPA to fund the cleanup of approximately 50 abandoned uranium mines in and around the Navajo Nation.
- ENRD also successfully defended the Indian Health Service's efforts to supply modern sewer and water supply systems on the Santa Ysabel reservation in San Diego County for homes whose occupants had previously hauled water from a communal tank on a daily basis.

PROTECTING THE CIVIL RIGHTS OF AMERICAN INDIANS AND ALASKA NATIVES

American Indian and Alaska Native Voting Rights

- On June 9, 2014, Attorney General Holder criticized election practices that adversely affect the ability of American Indian and Alaska Native populations to exercise their right to vote, including inaccessible polling places in tribal areas, English-only ballots for areas with limited English proficiency, and "precinct realignment" practices that attempt to combine geographically isolated Native communities. Attorney General Holder announced that the Justice Department would officially enter formal consultations with sovereign tribes to consider a legislative proposal that would require any state or local election administrator whose territory includes part or all of an Indian reservation, an Alaskan native village, or other tribal lands to locate at least one polling place in a venue selected by the tribal government. The Department has completed consultations and remains firmly committed to seeking a legislative solution to this problem.

- The Department's Civil Rights Division has been active in enforcing the voting rights of Native Americans, including the right to vote without discrimination and the right, in some jurisdictions, to have voter information available in certain Native languages. Since 2009, the Division has enforced Native American voting rights in Alaska, Arizona, Mississippi, New Mexico, and South Dakota.
- In 2013 and 2014, the Civil Rights Division has filed amicus briefs/statement of interest briefs in *Toyukak, et al. v. Treadwell, et al.*, No. 3:13-cv-00137 (D. Alaska) and *Wandering Medicine, et al. v. McCulloch, et al.*, No. 1:12-CV-135 (D. Mont.) and No. 12-35926 (9th Cir.), two cases brought by Alaska Native and American Indian private plaintiffs under the Voting Rights Act. *Toyukak* involves a challenge under the language minority provisions of Section 203 of the Act regarding the translation of election information into the Alaska Native languages in the Dillingham, Wade Hampton and Yukon-Koyukuk Census Areas in Alaska. The *Wandering Medicine* plaintiffs allege that the lack of early voting and late registration opportunities for Native American voters in Big Horn, Blaine, and Rosebud Counties in Montana is a violation of Section 2 of the Act.
- For election monitoring for the November 2014 general election, the Division monitored three counties under the Voting Rights Act where there are significant populations of Native American voters: in Cibola County, New Mexico, Charles Mix County, South Dakota, and Shannon County, South Dakota.

Navajo Nation Human Rights Commission

On July 15, 2013, the Civil Rights Division's Indian Working Group signed a Memorandum of Understanding (MOU) between the Navajo Nation Human Rights Commission and the Civil Rights Division's Indian Working Group (IWG). The commission was established by the Navajo Nation to operate as a clearinghouse entity to address discriminatory actions against citizens of the Navajo Nation. The commission is authorized to receive reports of discriminatory and racially motivated acts perpetrated against citizens of the Navajo Nation and refer such incidents to the proper authorities.

The MOU:

- Establishes a communication process that will ensure that civil rights violations are brought to the IWG when the civil rights of a member of the Navajo Nation is violated.
- Outlines procedures and provides guidance to the Commission and IWG in sharing information about civil rights
- Provides for a series of discussions, including face-to-face meetings and teleconferences. There have been several teleconferences between the IWG and the Commission, and two in-person meetings between the Commission and the IWG including representatives from other Department components, the USAO's in New Mexico and Arizona and the FBI.

Almost every Civil Rights Division Section has some involvement in American Indian and Alaska Native civil rights enforcement. Just during 2014:

- The Educational Opportunities Section reached a settlement (February 2014) with the Ganado School District to make sure its Navajo students and parents who are English language learners have equal access to school programs (under the Equal Educational Opportunities Act of 1974). The school will work to identify English language learners, provide language access instruction and materials, train teachers, tell students and parents about ELL programs and other essential information in accessible language, and monitor its success.
- The Division participated as amicus in support of plaintiffs-appellees in *Native American Council of Tribes, et al. v. Weber, et al.* (8th Cir.) under the Religious Land Use and Institutionalized Persons Act (RLUIPA). Prison officials banned tobacco use in the prison, including the ritual use of tobacco in plaintiffs' Native American worship, claiming that tobacco use was "not traditional" in plaintiffs' faith. The district court ruled in plaintiffs' favor and entered a remedial decree providing for limited ritual tobacco use in the prison. The Division argued that prison officials improperly relied on their own interpretation of plaintiffs' religious tenets in banning tobacco and that the district court appropriately called on them to show they considered less restrictive alternatives before they imposed the tobacco ban. The Division also argued that the district court correctly relied on other prisons' policies permitting ritual tobacco when it concluded that a total tobacco ban was not the least restrictive means available for controlling contraband and ensuring prison security. The Eighth Circuit agreed with our brief and affirmed the district court's decision.
- The Division filed an amicus brief, along with the Environment and Natural Resources Division, in *Oglala Sioux Tribe v. Van Hunnik*, in the District Court for South Dakota. The brief set out the requirements of the Due Process clause and the Indian Child Welfare Act in the context of removal of Native American children from their families and placement in state custody or with non-Native families. The brief established that Native American parents must be given notice of the evidence against them and an opportunity to be heard at hearings to remove their children from them, and that these requirements apply even at early removal hearings. The brief also made clear that the Indian Child Welfare Act requires that, when a state removes Native American children from their parents in an emergency, the state must return Native American children to their parents as soon as the emergency is over.

Landmark Settlement Reached with Native American Farmers Claiming Discrimination by USDA

- On October 19, 2010, Attorney General Holder and Secretary of Agriculture Tom Vilsack announced a landmark settlement of the *Keepseagle* class-action lawsuit filed against the Department of Agriculture (USDA) by Native American farmers and ranchers. The settlement ends more than a decade of litigation concerning discrimination complaints from Native Americans generally covering the period from 1981 to 1999.

Prosecution of Hate Crimes and Human Trafficking

- Since January 2009, the Department's Civil Rights Division, working with the U.S. Attorneys' Offices, has prosecuted civil rights crimes victimizing Native Americans through sex trafficking, hate crimes, and police brutality, including prosecuting:
 - Defendants for sex trafficking Native American children and adults in South Dakota;
 - Police officers for beating Native American victims in Arizona and Montana;
 - Corrections officers for beating a Native American detainee in North Carolina;
 - Defendants who committed hate crimes against Native Americans, including three defendants in New Mexico for using force to cause bodily injury to a Native American man under the Shepard Byrd Hate Crimes Prevention Act of 2009 and two defendants who assaulted and threatened an Alaska Native in Anchorage.

OUTREACH AND CONSULTATION WITH TRIBAL PARTNERS

Increased Cooperation and Consultation with Tribes

- In October 2009, the Attorney General convened the Department's Tribal Nations Listening Session on Public Safety and Law Enforcement in St. Paul, Minn. Nearly 300 tribal leaders representing approximately 100 tribes attended the session. In addition to representatives from nearly all of the Department's components, representatives of the Departments of the Interior, Health and Human Services, Housing and Urban Development, Education, and Homeland Security also participated.
- In July 2011, Attorney General Holder visited South Dakota to meet with tribal leaders in Rapid City and visited the Pine Ridge Reservation.
- In June 2014, Attorney General Holder spoke at the Fourth Annual Tribal Consultation Conference at United Tribes Technical College in Bismarck, North Dakota. During the conference, Attorney General Holder also met with a group of American Indian teenage boys to discuss their experiences and interactions with the criminal justice system.
- In April 2012, Deputy Attorney General James M. Cole attended the District of North Dakota U.S. Attorney's Tribal Consultation Conference in Bismarck, and visited with high school students, tribal leaders and criminal justice personnel at the Standing Rock Reservation.
- In June 2012, Deputy Attorney General James M. Cole addressed the Sovereignty Symposium in Oklahoma City, Oklahoma.
- In June 2012, Acting Associate Attorney General Tony West visited the Crow Nation and Northern Cheyenne Tribe in Montana, where he met with tribal leaders and discussed public safety issues.

- In August 2012, Acting Associate Attorney General Tony West addressed the Four Corners Indian Country Conference in Santa Fe, New Mexico. Other speakers included U.S. Attorneys John Walsh, David Barlow and Kenneth Gonzales.
- Also in August 2012, Acting Associate Attorney General Tony West visited the Ute Mountain Ute Tribe and the Southern Ute Tribe in Colorado, and the Pueblos of Acoma and Laguna in New Mexico, meeting with tribal leaders at each location.
- The Department has engaged in dozens of consultations with tribes on issues important to public safety, justice and law enforcement, including violence against American Indian and Alaska Native women, implementation of the Sex Offender Registration and Notification Act, the Prevent All Cigarette Trafficking Act, enforcement of federal bird protection laws in a manner sensitive to tribal concerns, and the TLOA.
- The Department through the Community Relations Service (CRS) has engaged with tribal communities to assist in reducing tension and improving area communications and partnerships. For example, in November 2013, CRS, at the request of the Oneida Nation of Wisconsin, assisted in addressing racial tensions and law enforcement concerns stemming from increased acts of violence in and around the reservation following a series of shootings involving American Indian, Latino and African American youth. In another instance, in 2014, CRS services were requested by the Muhu Tasen practicing American Indian groups around tensions over civil penalties imposed on non-reservation land around the use of temporary structures, water containment, sweat lodges and food service related to the groups' cultural practices. CRS held multiple mediation sessions with Muhu Tasen leaders and officials of Ventura County, California, which resulted in an agreement between the parties respecting long standing American Indian tradition and cultural practices in line with existing county code regulations.
- The Department has also engaged in significant outreach on environmental and natural resource issues. In particular, the Environment and Natural Resources Division (ENRD) has teamed up with U.S. Attorneys' Offices in Wisconsin, New Mexico, Montana, and North Dakota to conduct listening sessions and follow-up meetings on critical issues relating to protection of the environment and tribal resources. In conjunction with the Environmental Protection Agency, the National Oceanic and Atmospheric Administration, and the Natural Resources Conservation Service, ENRD has also conducted outreach meetings with consortia of Puget Sound tribes related to protection of treaty fishing rights. In order to further enhance its tribal outreach and consultation efforts, ENRD has designated a new position, Senior Counsel for Indian Affairs, in its front office.

Tribal Nations Leadership Council

- The Department established a Tribal Nations Leadership Council (TNLC), composed of tribal leaders selected by the tribes themselves and charged with advising the Attorney

General on issues critical to tribal governments and communities. The TNLC has met biannually since late 2010 with Attorney General Holder, most recently in February 2013.

National Indian Nations Conference

- The DOJ Office for Victims of Crime continues to support the National Indian Nations Conference, held every two years. Conferences were held in December 2010 and December 2012, each drawing more than 1,000 participants, including tribal leaders, victim advocates, victims, victim service providers, community volunteers, prosecutors, judicial and law enforcement personnel, family violence and sexual assault specialists, medical providers, social services and mental health personnel, probation/corrections, criminal justice and juvenile justice personnel, as well as federal and state agency representatives. The purpose of the Indian Nations Conferences is to share knowledge, experiences and ideas for developing programs that serve the unique needs of crime victims in Indian country. The 14th National Indian Nations Conference will be held on December 11-13, 2014 at the reservation of the Aqua Caliente Band of Cahuilla Indians. This year's theme, Generational Voices Uniting for Safety, Justice, and Healing, underscores the intergenerational impact that violence and victimization have on American Indian and Alaska Native communities. For additional information on this conference and prior conferences, please visit the conference website at www.ovcinc.org.

National Intertribal Youth Summit

- Approximately 150 young men and women from tribes across the country attended week-long National Intertribal Youth Summits in Santa Fe, New Mexico (July 2011) and in Washington, D.C. (August 2012), featuring Administration officials from the White House and the Departments of Justice, the Interior, Health and Human Services, and Education. The Summit provided an opportunity for Administration officials to hear directly from youth in Indian Country on critical issues such as healthy relationships and lifestyles, education, substance and alcohol abuse, cultural preservation, community development, and protecting the environment.

National Intertribal Youth Leadership Development Initiative

- Beginning with a grant award in 2013, the department launched the National Intertribal Youth Leadership Development Initiative, known as Today's Native Leaders, which offers youth gatherings, opportunities, and services to develop leadership skills among cohorts of tribal youth. The initiative spans a project period of four years and supports eight regional trainings and two national gatherings of tribal youth and their adult advisors. During 2014, regional trainings were held in Portland, Oregon, and Fort Lauderdale, Florida. The initiative also offerings trainings via webinar for youth and adults seeking to start their own tribal youth council.

REPORT ON PRESCRIPTION DRUG MONITORING IN INDIAN COUNTRY

In October 2011, in accordance with the Indian Health Care Improvement Act, the Attorney General submitted a report on the issue of prescription drug monitoring to the Senate Committee on Indian Affairs and the House Committee on Natural Resources. The report describes the capacity of Federal and tribal agencies to carry out data collection and analysis and information exchanges as described in the Act; training conducted for Indian health care providers, tribal leaders, law enforcement officers, and school officials regarding awareness and prevention of prescription drug abuse and strategies for improving agency resources for addressing prescription drug abuse in Indian communities; infrastructure enhancements required to carry out the activities described in the Act; and statutory or administrative barriers to carrying out the activities required by the Act. Read the full report at www.justice.gov/tribal/publications.html

RESEARCH AND STATISTICS

National Institute of Justice's Tribal Crime and Justice Research & Evaluation Studies

NIJ's Program of Research Examining Violence Against American Indian (AI) and Alaska Native (AN) Women living in Indian Country and Alaska Native villages

The Violence Against Women Act of 2005 mandates that the National Institute of Justice (NIJ), in consultation with the Department of Justice's Office on Violence Against Women (OVW), conduct a national baseline study on violence against AI and AN women living in tribal communities. As a result, NIJ has developed a comprehensive research program consisting of multiple projects. The purpose of the research program is to: examine violence against AI and AN women -- including domestic violence, dating violence, sexual assault, stalking, trafficking, and murder -- and identify factors that place AI and AN women at risk for victimization; evaluate the effectiveness of federal, state, tribal, and local responses to violence against AI and AN women; and propose recommendations to improve effectiveness of these responses. Phase I methods pilot study was completed in 2012; Phase II (2013-2017) is expected to help quantify the magnitude of violence and victimization in tribal communities and understanding service needs for the first time, towards helping formulate public policies and prevention strategies to decrease the incidence of violent crimes against AI and AN women.

Federal Advisory Task Force on Research on Violence Against American Indian and Alaska Native Women living in Tribal Communities

In 2008, the Attorney General launched the Violence Against Women in Indian Country Task Force, which is comprised of representatives nominated by national tribal domestic violence and sexual assault nonprofit organizations, tribal governments, and national tribal organizations. The Task Force was created to assist NIJ and OVW in the development and implementation of a program of research that addresses violence against AI and AN women living in tribal communities. Task Force members assist NIJ in developing pertinent research questions to be addressed and provide feedback on the different components of the program of research and will

assist with recommendations resulting from study findings. The Task Force most recently met in March 7 & 8, 2013.

Lifetime prevalence of interpersonal and sexual violence of self-identified AI and AN men and women living in the U.S. (2012-2014)

This study comprises a nationally representative sample of self-identified AI and AN men and women using the Centers for Disease Control and Prevention's National Intimate Partner and Sexual Violence survey and offers the most comprehensive overview on the prevalence of violence and includes both lifetime and past year measures. This study will provide the best representation of self-identified AI and AN people living in the U.S. than is currently available.

NIJ Investigator-Initiated Tribal Research & Evaluation Solicitations

Every year since FY 2013 NIJ has released several solicitations seeking research proposals to conduct evaluations of promising programs that effectively respond to violence against Indian women living in tribal communities managed by state, local, or tribal governments. The purpose of these solicitations is to support NIJ tribal data collections, expand the body of policy-relevant research that uses these data, and enhance or inform NIJ's tribal crime and justice portfolio.