



U.S. Department of Justice

Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

July 13, 2022

MEMORANDUM FOR DIRECTOR, BUREAU OF ALCOHOL, TOBACCO, FIREARMS  
& EXPLOSIVES  
ADMINISTRATOR, DRUG ENFORCEMENT  
ADMINISTRATION  
DIRECTOR, FEDERAL BUREAU OF INVESTIGATION  
DIRECTOR, UNITED STATES MARSHALS SERVICE  
DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES  
ATTORNEYS  
UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL *Cera Munn*

SUBJECT: PROMOTING PUBLIC SAFETY IN INDIAN COUNTRY

It is a priority of the Department of Justice to address the disproportionately high rates of violence experienced by American Indians and Alaska Natives (AI/AN), and relatedly, the high rates of indigenous persons reported missing. In November 2021, the Department established a Steering Committee dedicated to marshalling the Department's resources and personnel to address these issues. The Steering Committee undertook a review—in close consultation with Tribal leaders and stakeholders—of the Department's relevant guidance, policies, and practices to improve the law enforcement response in Indian country.

This memorandum directs each U.S. Attorney with Indian country jurisdiction—along with their law enforcement partners at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), and the United States Marshals Service (USMS)—to update and develop new plans for promoting public safety in Indian country.

### Background

Tribes know best how to make their communities safer, and Tribal engagement has thus been the cornerstone of the Department's review of its policies and procedures. The Steering Committee has discussed public safety needs through a series of consultations with Tribal leaders and engaged directly with survivors and their families, victim advocates, and urban Indian organizations. Department leadership has also engaged extensively with Tribal leaders across the country, including through the White House's Tribal Nations Summit, the White House Council on Native American Affairs, and DOJ's Tribal Nations Leadership Council, which is composed of Tribal leaders elected by their peers to represent geographic regions across the country.

Throughout those meetings, the message from Tribal communities was clear: the Department plays a critical role in promoting public safety in Tribal communities, and it must prioritize working with Tribal partners to reduce crime in Indian country, including addressing crimes that underlie reports of missing indigenous persons. While there is no one-size-fits-all solution across Tribal communities, Tribal leaders uniformly stressed the need for the Department's consistent engagement, commitment, and collaboration directly with Tribal partners.

In 2010, then-Deputy Attorney General David Ogden issued a memorandum to U.S. Attorney's Offices (USAOs), requiring each U.S. Attorney with Indian country jurisdiction to establish a structure and plan for addressing public safety in Indian country. The 2010 memorandum was an important step to better support our Tribal partners, but our recent consultations made clear that an updated set of directives is needed. Today's memorandum sets forth needed updates, to account for significant legal and legislative developments in the intervening period, including the Tribal Law and Order Act of 2010 (TLOA), Savanna's Act, the Not Invisible Act of 2019, and the 2013 and 2022 reauthorizations of the Violence Against Women Act (VAWA). This memorandum also recognizes that the Department's law enforcement components are essential to investigating crimes in Indian country, and it is important that their guidelines, policies, and protocols not only address the unique public safety challenges in Indian country but also complement the U.S. Attorneys' plans.

### **Consultations and District-Level Plans**

Since 2010, the Department has required every USAO with Indian country in its district to develop an Operational Plan for addressing public safety in Indian country and to consult annually with Tribes in its district. Further, the Department has required each newly confirmed U.S. Attorney in such a district to conduct a consultation with the district's Tribes and update the district's Operational Plan within eight months of assuming office.

Beyond these existing requirements, the Department must take additional, proactive steps to address changes in law and emerging public safety issues in Indian country. I am therefore directing each USAO with Indian country in its district to review and revise its Operational Plan within 120 days, to incorporate the requirements laid out in this memorandum.<sup>1</sup> Likewise, I am directing ATF, DEA, FBI, and USMS to engage with USAOs in developing those Operational Plans and to modify their own guidelines, policies, and protocols as necessary to incorporate those plans. These updated Operational Plans—as well as the corresponding law enforcement guidelines, policies, and protocols—must address the following areas:

#### *1. Coordinating with Federal, Tribal, State, and Local Law Enforcement*

The investigation and prosecution of crimes in Indian country often involve multiple law enforcement agencies from across governments. To successfully resolve these cases, the Department's law enforcement components and USAOs must cooperate with Tribal, state, local, and other federal partners, including by establishing clear protocols for how they will work with other relevant agencies to respond to crime in Indian country.

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<sup>1</sup> As recognized in Deputy Attorney General Ogden's 2010 directive, the subject matter of each Operational Plan will depend on the legal status of the Tribes in that district (*e.g.*, whether the jurisdiction is Public Law 280, non-Public Law 280, or partial-Public Law 280).

Investigating cases in Indian country often requires close partnerships on a national, regional, and local level, with the Department of the Interior's Bureau of Indian Affairs, Office of Justice Services (BIA-OJS) and Tribal law enforcement. Those partnerships should include timely sharing of investigative tools, subject-matter expertise, and information, where not prohibited by court rule or statute.

USAOs must also develop intergovernmental relationships with federally recognized Tribes within their districts that honor the unique conditions and challenges faced by each individual Tribe. In addition to annual consultations, Operational Plans should set forth procedures for regular communication with Tribal officials. Each USAO should use designated Tribal Liaisons, Assistant U.S. Attorneys (AUSAs), and Law Enforcement Coordinators to develop consistent and collaborative communication plans with Tribal law enforcement partners. USAOs should support Tribes interested in creating a Tribal Community Response Plan (TCRP)—a protocol or guideline document developed by a Tribe to assist its response to emergent missing persons cases that is tailored to its community's needs, resources, and culture.

Even in those instances where the federal government cannot bring criminal charges, the Department's responsibility to promote public safety in Indian country does not end.<sup>2</sup> Consistent with the TLOA, if the USAO declines to prosecute, or terminates the prosecution of, an alleged violation of federal criminal law in Indian country, the USAO must promptly inform Tribal law enforcement and prosecutors of that decision and coordinate with those officials on the use of evidence relevant to the case.<sup>3</sup> The same requirements extend to ATF, DEA, FBI, and USMS if they decide against referring an investigation for prosecution.<sup>4</sup>

## 2. *Supporting Victims, Survivors, and Families*

Every victim, survivor, and family who interacts with the Department deserves to be treated in a victim-centered, trauma-informed, and culturally responsive manner. The [Attorney General Guidelines for Victim and Witness Assistance](#) (AG Guidelines) provide guidance to DOJ personnel on how to fulfill their obligations to victims and witnesses to crime under statutory and other authorities. Last fall, the Department directed the Crime Victims Working Group to review the AG Guidelines and propose recommended revisions. Once updated, those provisions will contain important revisions as to how USAOs and federal law enforcement agencies should communicate with and support AI/AN victims, their families, and witnesses. Once issued, USAOs and law enforcement agencies must adapt their Operational Plans and/or other relevant protocols to account for these new guidelines, and they should also clearly publicize and explain these changes to Tribal partners.

To further meet the needs of victims, survivors, and families, on May 5, 2022, the Department [announced](#) the creation of a National Native American Outreach Services Liaison (the "Liaison") to address criminal cases involving AI/AN persons where the federal government has jurisdiction. The Liaison will help ensure that victims and their families have a voice as they navigate the criminal justice system, including by developing Department protocols for effective, consistent, and culturally and linguistically appropriate communications with victims, families of

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<sup>2</sup> See Memorandum from the Deputy Attorney General, *Ensuring Appropriate Coordination with State, Local, and Tribal Law Enforcement Authorities* (October 1, 2021).

<sup>3</sup> 25 U.S.C. § 2809(a)(3).

<sup>4</sup> 25 U.S.C. § 2809(a)(1).

victims, and advocates for victims in criminal cases in Indian country. Operational Plans—and corresponding guidelines, policies, and protocols in law enforcement agencies—must incorporate such communication protocols once they are established.

*3. Addressing Missing or Murdered Indigenous Persons, Including Unresolved Cases*

The Department is committed to improving the federal response to missing or murdered indigenous people (MMIP), including through its implementation of Savanna's Act.<sup>5</sup> Earlier this year, and consistent with that law, the Department directed each USAO with Indian country jurisdiction to develop law-enforcement-sensitive guidelines to respond to cases of missing or murdered AI/AN persons.<sup>6</sup> Likewise, it directed USAOs without Indian country jurisdiction to create a list of key contacts, law enforcement agencies, and available resources to support a missing person case in the event that an AI/AN person goes missing or is located in a district without Indian country. U.S. Attorneys shall include these guidelines and resources in appendices to their Operational Plans. Moreover, consistent with Savanna's Act, federal law enforcement agencies must incorporate these guidelines and lists into their own policies and protocols as appropriate. Moving forward, these guidelines and lists must be reviewed annually, and revised as necessary, to meet the evolving needs of Tribal communities within the district.

In addition to its forward-looking efforts to promote public safety, the Department also has an obligation to bring perpetrators to justice and provide answers in unresolved cases involving AI/AN persons, including those involving missing or murdered indigenous people. BIA-OJS and Tribal law enforcement officers are crucial partners in that effort, and the FBI should offer assistance in those efforts at the national, district, and regional levels, including by providing investigative and analytic assistance upon request, as resources permit. In revising its guidelines, policies, and protocols, the FBI should develop within 120 days of this directive a formal process for BIA-OJS and Tribal law enforcement agencies to submit requests for assistance on unresolved cases. Once that process is finalized, the FBI should promptly communicate that process to federal and/or Tribal law enforcement handling investigations in Indian country.

**Priority Public Safety Issues**

During consultations, each USAO with Indian country jurisdiction, working with appropriate DOJ law enforcement agencies, shall identify emerging public safety issues with Tribes in their respective district, and identify a strategy to address these issues in their Operational Plans. Public safety challenges in Indian country are not uniform, and Operational Plans should address issues unique to individual Tribes within the district. They should also address priorities that the Department has repeatedly heard cut across Tribal communities, including combatting violence against women, youth, and children and addressing the devastating consequences of drug trafficking and substance use disorder in Indian country.

*1. Violence Against Women, Youth, and Children in Tribal Communities*

In updating its Operational Plan, each USAO should pay particular attention to violence against women, youth, and children and work closely with law enforcement to make these crimes a priority. The Department, through its USAOs, has a duty to prosecute serious crimes in Indian

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<sup>5</sup> 25 U.S.C. §§ 5701 *et seq.*

<sup>6</sup> Memorandum from the Director of the Executive Office for U.S. Attorneys, *Implementation of Savanna's Act* (January 20, 2022).

country, including domestic violence and sexual assault, as well as federal offenses outside of Indian country that affect AI/AN persons, including human trafficking and interjurisdictional domestic violence and stalking offenses. Reports of these offenses in Indian country should be investigated wherever credible evidence of a violation of federal law exists, and offenses should be prosecuted when the Department's *Principles of Federal Prosecution* are met.

The Department also has an obligation to work with Tribal and other relevant law enforcement partners on these cases. In many cases, Tribes exercise criminal jurisdiction over certain offenses committed by non-Indians pursuant to VAWA,<sup>7</sup> as well as enhanced sentencing authority pursuant to the TLOA. It is critical that USAOs work closely with Tribal partners to support the exercise of this authority, including through the Special Tribal Criminal Jurisdiction recognized in the 2022 reauthorization of VAWA, which becomes effective on October 1, 2022. I also encourage USAOs, whenever possible, to integrate Tribal Special Assistant U.S. Attorneys (SAUSAs) into their regular operations to increase the likelihood that every viable violent offense is prosecuted in either federal or Tribal court. In addition, federal prosecutors should exercise due care to recognize ongoing risks to victims in high-risk cases, such as those involving sexual assault and domestic violence, and to make charging decisions expeditiously to eliminate or minimize those risks, bearing in mind the often shorter statutes of limitations for Tribal prosecutions. Operational Plans should therefore set forth procedures for regular communication with Tribal officials and relevant law enforcement partners regarding the use of Tribal SAUSAs and which prosecutorial forum is best suited to each case.

Successful multijurisdictional investigations and prosecutions also require collaborative working relationships among the affected jurisdictions. Tribal Liaisons and AUSAs assigned to cases of child abuse in Indian country currently use the multidisciplinary team (MDT) model set forth in 18 U.S.C. § 3509(g). USAOs are encouraged to consider using this team approach in other types of cases, including those involving adult sexual assault and domestic violence. Federal members of MDTs should all be trained in working with Tribes and handling domestic violence and sexual assault cases, including through participation in applicable National Indian Country Training Initiative (NICTI) courses.

Finally, USAOs, in close coordination with law enforcement partners, should place victims at the center of this work, including by updating policies and protocols to help ensure that victims receive competent medical forensic exams in both sexual assault and domestic violence cases and that evidence is processed effectively and efficiently. All USAOs and their law enforcement partners who may work with AI/AN victims need to be familiar with the culturally relevant advocacy, medical, and forensic services available to victims, both within and outside of Indian country.

## 2. *Addressing Drug Trafficking and Substance Use Disorder in Tribal Communities*

During consultations, the Department repeatedly heard concerns from Tribal leaders about drug-related activity in Indian country. As with many other issues in Indian country, each district and Tribal community faces unique challenges in addressing drug trafficking and substance use disorder, and the prevalent substances and available treatment options will vary from Tribe to Tribe. These differences call for thoughtful strategies and responses, which must

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<sup>7</sup> See 25 U.S.C. § 1304.

be tailored to the needs of individual Tribal communities and reviewed and revised on a regular basis.

Accordingly, in their Operational Plans and in consultation with relevant law enforcement agencies, USAOs should include a strategy to combat drug trafficking in Indian country. In developing these strategies, USAOs should engage in conversations with Tribes on substance use disorder and specific needs in Tribal communities within their districts, including through routine discussions as part of the yearly USAO-Tribal district consultations. These discussions should include assessing charging policies within Indian country, including whether and when targeted prosecutions could have a significant effect on public safety in the community.

DEA and FBI shall also incorporate USAO strategies into their operational work in Indian country, to ensure consistency with the USAOs. The FBI's Safe Trail Task Force (STTF) Program has historically been an effective model for establishing operational partnerships between the FBI and other federal, Tribal, state, and local law enforcement to combat crime in Indian country.

Because law enforcement alone cannot solve the substance abuse crisis, the Department partners with and supports Tribes in addressing these challenges through a wide range of resources and strategies. These include:

- The Bureau of Justice Assistance (BJA) supports Tribes through grant funding, training, and technical assistance for Tribal justice systems; overdose response and prevention, including through diversion and jail-based programs; and development of treatment courts, such as Tribal healing and wellness courts, as well as drug courts and veterans' treatment courts.
- The Department also supports the development of Tribal Action Plans, which provide a framework for how a Tribal community can proactively address alcohol and substance use disorder in culturally responsive ways that meet the needs of the particular community.
- The Office of Juvenile Justice and Delinquency Prevention provides grant funding and training and technical assistance to Tribes for the development and implementation of juvenile Tribal Healing to Wellness Courts and offers diversion, treatment, and recovery support for justice-involved youth with substance use disorders or co-occurring mental health disorders.

USAOs should be familiar with these programs and, as appropriate, address in their Operational Plans opportunities to partner with Tribal drug courts and other programs providing recovery support services.

### **Training**

Finally, it is critical that federal prosecutors and law enforcement officers in Indian country remain familiar with the history, culture, and unique needs of the Tribal communities they serve. I therefore ask that NICTI develop and provide, on at least an annual basis, cultural competency training regarding investigations and prosecutions in Indian country, which should include training on the new and revised provisions of the Attorney General Guidelines related to AI/AN victims once issued. This training will be mandatory for federal prosecutors and law enforcement officers who handle cases in Indian country.

### **Compliance**

No later than 120 days from the date of this directive, Operational Plans should be submitted to the Executive Office of U.S. Attorney's (EOUSA's) Native American Issues Coordinator, who will review the plans for compliance with this directive. On an annual basis thereafter, the plans shall be reviewed, revised as necessary, and submitted to the Native American Issues Coordinator. To promote consistency across districts, the Coordinator will work with districts to identify best practices and areas in need of improvement and share these findings on annual basis with the Office of the Deputy Attorney General. Further, Operational Plans, or a summary thereof, must also be shared with each Tribe in the district. Likewise, no later than 120 days from the date of this directive, EOUSA, ATF, DEA, FBI, and USMS should provide an update, through the co-chairs of the MMIP Steering Committee, on their progress in implementing this directive.

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The Department of Justice plays an integral role in partnering with Tribes to combat crime in Indian country. Although these criminal cases may be challenging, the Department must be undeterred in investigating and prosecuting cases that address the public safety needs of the Tribal communities. I am grateful for the dedicated people across the Department who work tirelessly every day to promote public safety in Tribal communities, and I appreciate your continued work to achieve these goals.