



# United States Attorney's Office District of South Dakota

Randolph J. Seiler, U.S. Attorney



## 2016 Annual Report





## Message from U.S. Attorney Randolph J. Seiler

It is an honor to serve as the United States Attorney for the District of South Dakota, where it is our mission to improve the quality of life for our citizens, provide public safety, and collect money on behalf of the American taxpayer.

In 2016, I was excited to create a Civil Rights Section in the U.S. Attorney's Office. Assistant U.S. Attorney Alison Ramsdell was selected to head the newly created Civil Rights Section, and she serves as the contact person on all civil rights matters for the District. The Civil Rights Section enforces federal civil rights statutes prohibiting discrimination on the basis of race, color, sex, disability, religion, familial status and national origin. Among those statutes are the Americans with Disabilities Act, Title VII of the Civil Rights Act, the Voting Rights Act, and the Fair Housing Act. AUSA Ramsdell also works closely with the Criminal Division to prosecute criminal civil rights cases, such as those involving police misconduct, hate crimes, and human trafficking.



The Civil Rights Section also strives to educate community members about their rights under federal law by engaging in outreach programs throughout the District. With societal changes and threats to the fundamental rights of certain segments of our society, it has become increasingly necessary to have a dedicated attorney to handle civil rights matters in South Dakota. The protection of every citizen's civil rights has historically been a priority of the U.S. Attorney's Office. The creation of a Civil Rights Section represents our office's increased and unceasing, unending, enduring, and abiding commitment to that priority.

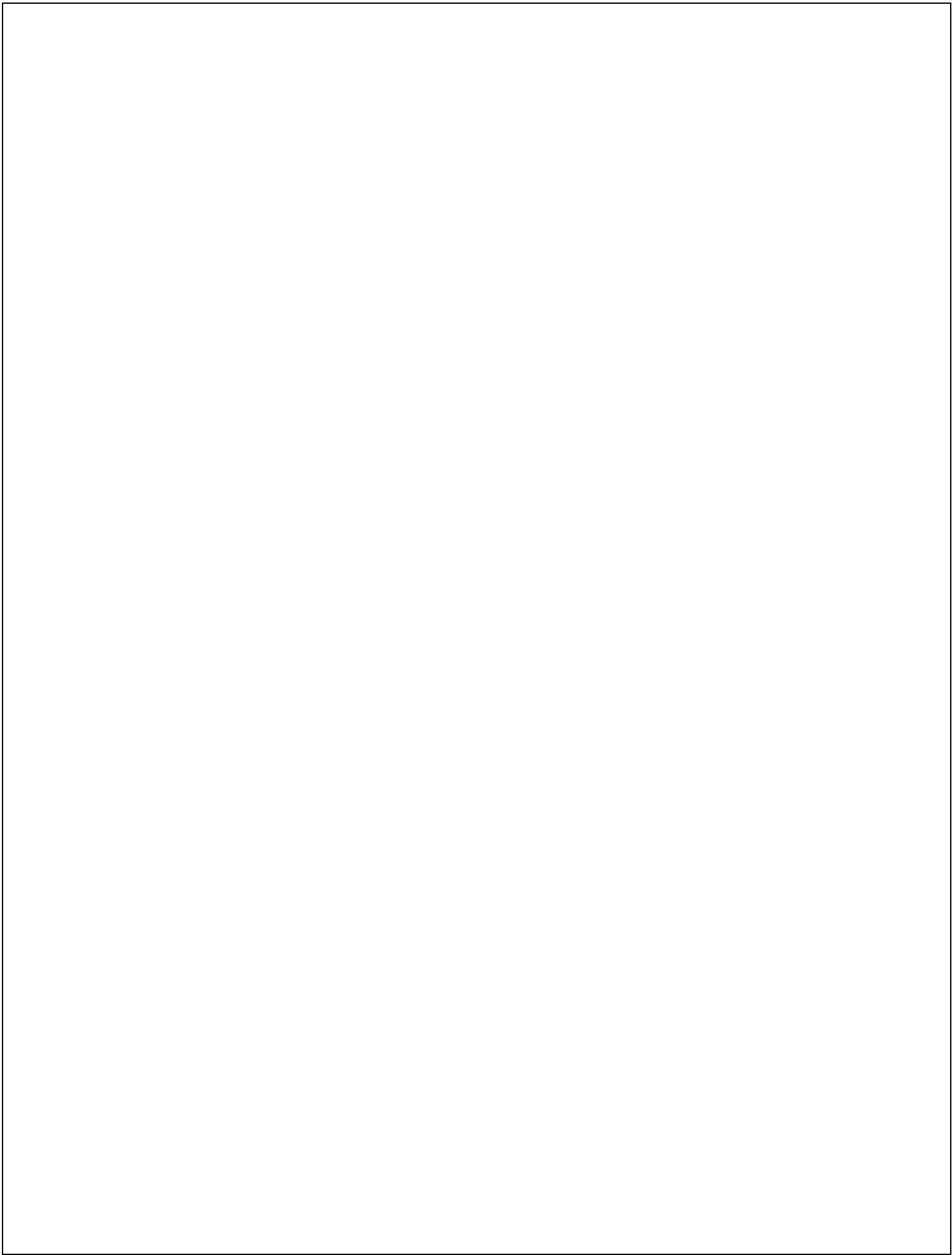
Our District continues to do extraordinary work in Indian country. With the elevation of homicides and methamphetamine related crimes on the reservations, doing our part to make tribal communities a safer place remains a top priority. Troy Morley, the District's Tribal Liaison, serves as the conduit in matters between the USAO and the nine tribes of South Dakota, and he has successfully built productive relationships and helped to empower the tribes in the judicial arena.

The case summaries and accomplishments highlighted in this year's report reflect the dedication and commitment of the staff at the United States Attorney's Office, and all of our partner agencies. As the United States Attorney for the District of South Dakota, I am fully committed to the priorities established in the District and look forward to building on those areas in the year ahead.



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# INTRODUCTION



In 1789, the U.S. Congress passed the Judiciary Act which, among other things, directed the President to appoint an attorney in each federal judicial district to represent the interests of the United States. In fact, U.S. Attorneys were independent of the Attorney General and did not come under the Attorney General's supervision and authority until 1870 when the U.S. Department of Justice was created.

South Dakota has had 42 U.S. Attorneys dating back to 1861 when William Gleason served as the first U.S. Attorney for Dakota Territory. U.S. Attorneys began serving solely for the District of South Dakota in 1889 when Dakota Territory was divided into individual states and the District was created.

U.S. Attorneys are nominated by the President and must be confirmed by the U.S. Senate. Following confirmation, U.S. Attorneys serve at the will of the President for a term of four years, which may be renewed.

U.S. Attorneys are the chief federal law enforcement officers in each federal district. They ensure the fair and impartial enforcement of federal criminal laws and also represent the U.S. government in civil claims brought by and against the government. In 1935, Supreme Court Justice George Sutherland described the role of the U.S. Attorney in the following terms:

The U.S. Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all, and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that Justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. He may prosecute with earnestness and vigor -- indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones. It is as much his duty to refrain from improper methods calculated to produce a wrongful conviction as it is to use every legitimate means to bring about a just one.

Berger v. United States, 295 US 78, 88 (1935).

## YEAR IN REVIEW

**Child Sexual Abuse Conference:** A Child Sexual Abuse Conference was held on August 18 and August 19, at the Sioux Falls Convention Center. The event was sponsored by Avera, the U.S. Attorney's Office of South Dakota, and the Children's Home Society. This was the third annual conference sponsored by Avera and the U.S. Attorney's Office, along with other community sponsors, to explore issues of justice, well-being and safety in our state and region. Past topics have included human trafficking and living with disabilities.

Throughout the two-day event, the goal was to open up a larger conversation between people from all walks of life in South Dakota regarding child sexual abuse. Keynote speakers included Matthew Sandusky, Founder and Executive Director of Peaceful Hearts Foundation, and a victim of childhood sexual abuse at the hands of his adopted father, Jerry Sandusky.



<sup>1</sup> CHILD SEXUAL ABUSE CONFERENCE

**Tri-State Sioux Land Conference:** In June, the U.S. Attorneys for the Northern District of Iowa, and the Districts of Nebraska and South

Dakota met in Sioux City, Iowa, with approximately 80 federal, state, and local law enforcement partners. The goal was to strengthen relationships among the offices and to develop a greater awareness of the dynamics and challenges facing the tri-state region now and in the future. This was a first-of-its-kind executive meeting joining the three offices with fellow law enforcement partners. The meeting was held at the 185<sup>th</sup> Air Refueling Wing located at the Sioux Gateway Airport.



<sup>2</sup> KEVIN TECHAU, DEB GILG, AND RANDOLPH SEILER

The daylong meeting included a round table discussion on drug trafficking, guns and violent crimes, cybercrime/national security, and human trafficking. Representatives from the Drug Enforcement Administration, Federal Bureau of Investigation, and Homeland Security Investigations were joined during the roundtable by state and local task force members. Criminal trending was discussed and jurisdictional issues were clarified. The day ended with a presentation by the Executive Director of the High Intensity Drug Trafficking Area located in Kansas City on global narcoterrorism and the threat to the United States.



**Chasing the Dragon Events:** In recognition of Prescription Opioid and Heroin Epidemic Awareness Week on September 18-24, the U.S. Attorney's Office hosted events across South Dakota. The community forums were designed to highlight a unique, realistic perspective on the impact of prescription drug and opioid abuse. Each event featured a screening of "Chasing the Dragon: The Life of an Opiate Addict" – a documentary film collaboratively produced by the Federal Bureau of Investigation and the Drug Enforcement Administration in response to increasing prescription painkiller and opioid drug abuse across the nation.

Following each movie screening, an interactive panel discussion was held. AUSA Jennifer Mammenga conducted the Sioux Falls event, AUSA Kathryn Rich presented in Rapid City, and AUSA SaraBeth Donovan led the Pierre event.



<sup>3</sup> AUSA JENNIFER MAMMENG



<sup>4</sup> AUSA KATHRYN RICH

**Law Enforcement Coordinating Committee (LECC) Annual Conference:**

The annual conference was held in Sioux Falls in November. The LECC is co-chaired by the U.S. Attorney and the South Dakota Attorney General. The LECC sponsors a state-wide conference each year for the purpose of training and information sharing, and it is held in conjunction with the South Dakota Annual Law Enforcement Appreciation Dinner and Children's Charity Fundraiser.

The 2016 conference featured speakers on the topics of financial and darknet investigations, mental health and dealing with people at their worst, reducing recidivism, and the bullet proof mind – bringing together current trends in violence from terrorists to aggravated assaults. In addition, the conference included subcommittee meetings of the Health Care Fraud Task Force and Victim Witness Services.

### **National Crime Victims' Rights Week**

**Honorees:** Four individuals were awarded Department of Justice Certificates of Appreciation as part of National Crime Victims' Rights Week 2016. The U.S. Attorney's Office presented the honorees with their awards and provided brief remarks in recognition of their outstanding dedication, service, and contributions on behalf of crime victims.



5 AUSA GREGG PETERMAN, CHERYL BOURQUE, AND AUSA MEGAN POPPEN

The first ceremony was held in Pine Ridge on April 15, 2016. The individual honored at this event was Cheryl Renee Bourque. Ms. Bourque is an enrolled citizen of the Muscogee (Creek) Nation of Oklahoma. She is a Supervisory Victim Specialist with the Bureau of Indian Affairs, Office of Justice Services. The second ceremony was held in Eagle Butte on April 28, 2016. The two award recipients were Cheyenne River Sioux Tribe Detective Russell Leaf and Federal Bureau of Investigation Special Agent James Asher. The fourth recipient, Cynthia Johanson, a Probation Officer with the Flandreau Santee Sioux Tribal Court, was honored at a ceremony in Flandreau on May 5, 2016.



6 JAMES ASHER AND AUSA JAY MILLER



7 AUSA JAY MILLER AND RUSSELL LEAF



**National Reentry Week Event in Mobile, Alabama:** AUSA/Tribal Liaison Troy Morley and LEC Dan Mosteller attended this event, which included remarks by former U.S. Attorney General Loretta Lynch. National Reentry Week is an effort to draw attention to the many challenges facing the 600,000 people nationwide who return home from federal and state prisons each year.

Regarding reentry efforts and services in the District of South Dakota, a Memorandum of Agreement between the Standing Rock Sioux Tribe and the Multijurisdictional Reentry Services Team was previously signed at a ceremony at the Standing Rock Sioux Tribal Council Chambers in Fort Yates, North Dakota.



<sup>9</sup> U.S. ATTORNEY GENERAL LORETTA LYNCH

**Cyberbullying:** The United States Attorney's office for the District of South Dakota hosts one of the Department of Justice's Community Prosecution Programs. As part of this program, the United States Attorney's Office hosted a one-day community outreach

program in the Pierre/Fort Pierre schools on the subject of cyberbullying.



<sup>8</sup> TROY MORLEY ADDRESSING THE AUDIENCE

The program allowed students, staff, and service providers to learn to recognize bullying and address the victimization that bullying causes. The training was coordinated in response to reports of bullying in the schools and requests for training on how to recognize and respond in an age-appropriate manner. Highlighting the program was Justin W. Patchin, Ph.D., a professor of criminal justice at the University of Wisconsin-Eau Claire. He also co-founded and co-directs the Cyberbullying Research Center.



<sup>10</sup> AUSA TROY MORLEY, DR. JUSTIN PATCHIN, AND MARLYS BIG EAGLE



**Outstanding Prosecutor of the Year:** AUSA Jennifer Mammenga was honored as the Midwest High Intensity Drug Trafficking Areas (HIDTA) Outstanding Prosecutor of the Year. Midwest HIDTA officials made the presentation of the prestigious regional award to AUSA Mammenga in the District of South Dakota Sioux Falls office. She was selected among attorneys in six states and eight judicial districts.



11 PROSECUTOR OF THE YEAR

**MacArthur Foundation:** The Pennington County Sheriff's Office was chosen as one of 20 sites nationwide to receive grant money from the MacArthur Foundation Safety and Justice Challenge. The goal was to find ways to minimize incarceration and more effectively address recidivism. The U.S. Attorney's Office attended several meetings with members from state, tribal, and federal entities to support this effort.



**The 7<sup>th</sup> Fire:** In the spring of 2016, AUSA/Tribal Liaison Troy Morley had the opportunity to attend a White House screening of a documentary on gangs and meth use in Indian country. A young man named Rob, who was also a member of the Gangster Disciples, was featured over a two-year period. The gang aspect did not play a real part in the story. What did is his continued addiction to meth. Another younger male, Kevin, was also followed and his struggles with addiction were chronicled. Over the course of the movie, both young men are seen smoking and snorting meth at various times, and many times in the presence of children. Rob eventually goes to prison and has a revelation. Kevin is last seen selling drugs at a pow-wow and avoiding an addiction counselor who is trying to get him into a treatment program.



12 AUSA TROY MORLEY PARTICIPATING ON THE PANEL

After viewing the documentary, AUSA Morley was on a panel to discuss the movie and the issues it portrayed. Also present on the panel were Karen Diver, Senior Policy Advisor for Native American Issues; the film's producers and director; and Rob and Kevin. While the documentary was well made, the story line portrayed is a familiar one in the District.

**Money Matters Event:** In April, Civil AUSA Cheryl Schrempp DuPris participated in the

annual AARP/Active Generations Money Matters Event in Sioux Falls. There were almost 300 participants in attendance. AUSA DuPris' presentation, "Preventing Financial Exploitation," drew a crowd of approximately 40-50 people and produced a lot of good dialogue. She also participated in other sessions throughout the day, including the South Dakota Attorney General's Consumer Protection seminar, the box lunch table, the Identity Theft panel of experts, BBB's cyber fraud, and the AARP's Weapons of Fraud.

**Training on Native American Culture To Students in Norway:** Victim Witness Coordinator Marlys Big Eagle and AUSA Alison Ramsdell provided training at the Harrisburg School on Native American culture. Students at the Harrisburg School had been communicating with students from Norway, and it provided an opportunity for the U.S. Attorney's staff to also talk to the students in Norway, via VTC, about Native American culture and answer several of their questions about the reservations, stereotypes, media coverage, and racism.



<sup>13</sup> MARLYS BIG EAGLE AND AUSA ALISON RAMSDELL

**Special Assistant U.S. Attorneys:** Capt. Riley A. Graber and Capt. Jeffrey L. Hoffman

were sworn in as Special Assistant U.S. Attorneys. They are both officers at the Ellsworth Air Force Base, and their SAUSA job duties will include presenting misdemeanor cases that occur at the hands of civilians within the exclusively federal jurisdiction areas of the Ellsworth Air Force Base.



<sup>14</sup> CAPT. RILEY A. GRABER AND JUDGE JEFFREY VIKEN



<sup>15</sup> CAPT. JEFFREY L. HOFFMAN AND JUDGE JEFFREY VIKEN

Tamara Nash was sworn in as a Special Assistant U.S. Attorney in the Sioux Falls office.



16 JUDGE KAREN SCHREIER, TAMARA NASH, AND RANDOLPH SEILER

**Monthly Training for Rosebud Sioux Tribe Law Enforcement Services:** Pierre AUSAs Carrie Sanderson and Kirk Albertson provided monthly training for RSTLES. They coordinated this training with the RSTLES investigators and law enforcement management. Topics included Domestic Violence, VOWA and TOLA; testifying in court; elements of federal crimes; and report writing. RST prosecutors are invited to attend and present as well. The goal was for the training to count toward required continuing education for the officers' law enforcement certifications.



17 ROSEBUD SIOUX TRIBE LAW ENFORCEMENT

**Criminal Jurisdiction in Indian Country (CJIC) Training:** AUSAs from the Pierre

office conducted a three-day CJIC training on the Cheyenne River Sioux Tribe Reservation on October 26 to 28, 2016. CJIC training is essential training for tribal officers to get their Special Law Enforcement Cards, which enables them to be federal officers for the purpose of protection under federal laws for assaults against them, and also, under the Federal Tort Claims Act. There were 29 officers, mostly from the Cheyenne River Sioux Tribe, but also two from the Rosebud Sioux Tribe, six from the Three Affiliated Tribes in North Dakota, and two from the Muscogee Creek Nation in Okmulgee, Oklahoma. The training concluded with a 40 question test. This training is provided on a need-be basis.

**Staff Retreat:** The three USAO district offices gathered at the Ellsworth Air Force Base in August for a staff retreat. The bulk of the 2.5 day retreat was spent on the Pine Ridge Indian Reservation meeting with tribal officials, a tour and history of Wounded Knee, visiting a school/student presentation, and participating in a variety of community service projects. An educational highlight of the retreat was a cultural presentation at the Journey Museum in Rapid City.





## CIVIL RIGHTS

In July, U.S. Attorney Randy Seiler established a Civil Rights Section within the U.S. Attorney's Office. The Section is dedicated to the enforcement of our nation's civil rights statutes and educating South Dakotans about their rights under federal law.

**Disability Rights.** The U.S. Attorney's Office does extensive work in the area of disability rights. This year, in partnership with South Dakota Advocacy, attorneys in the office participated in a disability rights legal clinic, which provided individuals with disabilities in the Sioux Falls area an opportunity to receive free legal advice on issues important to them. The Civil Rights Section also joined with a local non-profit organization to educate voters about their right to an accessible polling place, and we traveled to polling places in western South Dakota during this year's primary to assess compliance with Title II of the Americans with Disabilities Act. In addition to these outreach efforts, the Civil Rights Section joined with the Department of Justice's Civil Rights Division to open several investigations into public accommodations and government entities after receiving citizen complaints of noncompliance. These investigations are ongoing.

**Housing Rights.** In United States v. Calvin Salem, et al., we filed a lawsuit against a Sioux Falls property owner alleging he violated the Fair Housing Act by refusing to rent an apartment to a former tenant who began using a wheelchair. The property owner subsequently provided the tenant a reference that negatively affected the tenant's ability to secure rental housing. As a result, the tenant became homeless. The complaint alleges the property owner denied housing due to the property owner's concern that the tenant's wheelchair would destroy the carpet in the apartment.

In United States v. Amie Kelly, we filed a lawsuit against a Rapid City property owner alleging she violated the Fair Housing Act by failing to rent an available space to a single female and her teenage daughter. The complaint alleges that the property owner explicitly noted her preference for renting to bachelors.



**Veterans Rights.** In Amber Ishmael v. BioFusion Health Products, Inc., we filed a lawsuit against a Rapid City business alleging it violated the Uniformed Services Employment and Reemployment Rights Act. The case began when the defendant refused to reemploy South Dakota Air National Guard Staff Sergeant Amber Ishmael following an extended period of military leave.

**Outreach.** In partnership with the Minneapolis Division of the FBI, the Civil Rights Section established the Community Engagement Initiative ("CEI") in Sioux Falls, SD. The CEI is a collaboration between the Department of Justice, non-profit community organizations, and faith-based leaders, which provides a venue for community members and law enforcement to engage in conversation about community safety-related issues, learn from one another, and transfer that knowledge into policy changes that will benefit the greater community. Participants meet on a quarterly basis and have thus far discussed a range of topics, including civil rights enforcement in South Dakota, officer-involved shootings, community policing, and implicit bias. In addition to engaging the community through the CEI, the Civil Rights Section participated in significant community events in 2016, such as Sioux Falls Pride, Take Back the Night, and meetings with school and community leaders.

## **CRIMINAL DIVISION**

The primary responsibility of the Criminal Division for the U.S. Attorney's Office is the prosecution of federal crimes in the District. Many of the offenses prosecuted by the Criminal Division arise on the District's Indian reservations and other Indian lands which constitute Indian country under federal law. By Act of Congress, the most serious offenses involving Native Americans which take place in Indian country must be prosecuted in federal court under the Major Crimes Act, the Assimilative Crimes Act, or other federal statutes. Our office works closely with tribal prosecutors to coordinate the prosecution of offenses arising in Indian country

The other crimes prosecuted by Assistant U.S. Attorneys assigned to the Criminal Division cover a wide range of criminal activities, including drug trafficking, firearms violations, corporate and financial institution fraud, bankruptcy fraud, mail fraud, healthcare fraud, computer fraud, agricultural program fraud, public corruption, terrorism, child pornography, environmental crimes, civil rights violations, federal wildlife violations, and any of the more than 900 federal offenses that have been created by Congress.



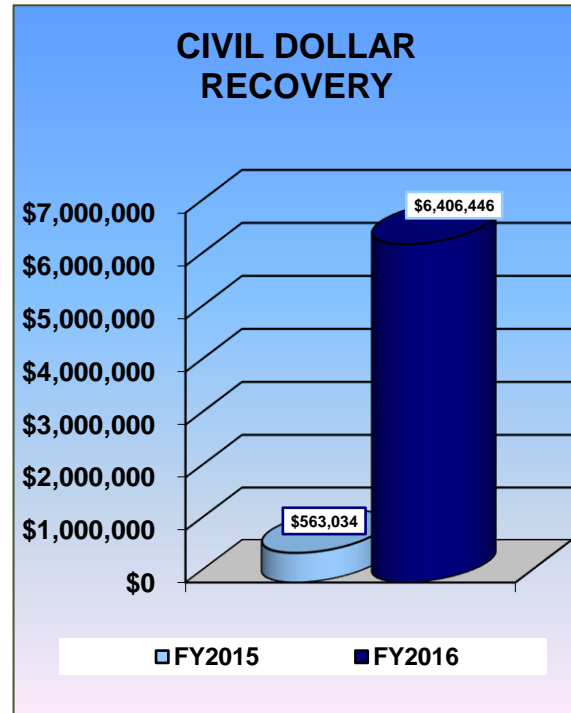
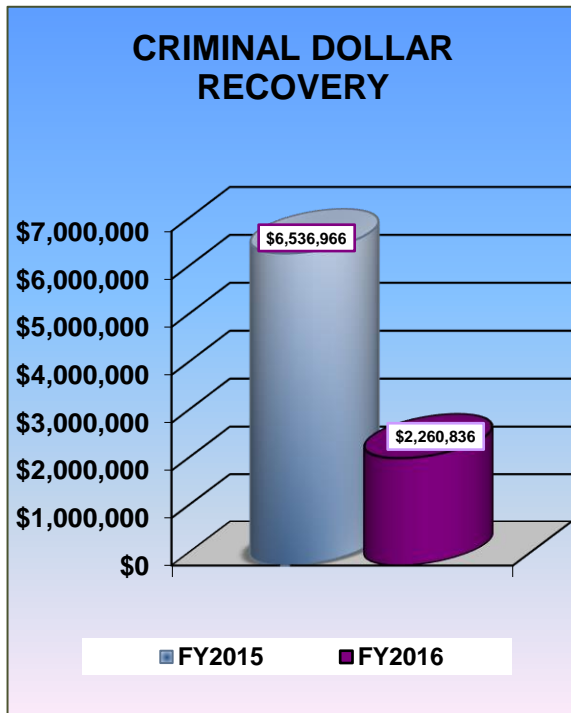
18 COURTROOM IN SIOUX FALLS, SOUTH DAKOTA

Twenty-one attorneys are assigned to the Criminal Division. This includes two office supervisors and the Criminal Chief, Dennis Holmes. Within the Division, one attorney is assigned to the Organized Crime Drug Enforcement Task Force to handle major drug trafficking prosecutions. One attorney in the Division serves as the District's anti-terrorism coordinator. One attorney and one auditor are assigned to healthcare fraud investigations. The District's asset forfeiture and financial litigation attorneys are also assigned to the Criminal Division.



# Financial Litigation Unit

The Financial Litigation Unit (FLU) is responsible for activities related to the collection of civil debts owed to federal agencies, as well as the collection of restitution, fines, penalties, assessments, and court costs imposed by the court in criminal judgments.



The goal of the U.S. Attorney's Office is to fairly achieve the maximum amount of recovery with the least amount of cost for each affirmative claim or debt. This office strives to collect debts due to the United States and victims of crimes in a timely, aggressive, efficient, and cost-effective manner.

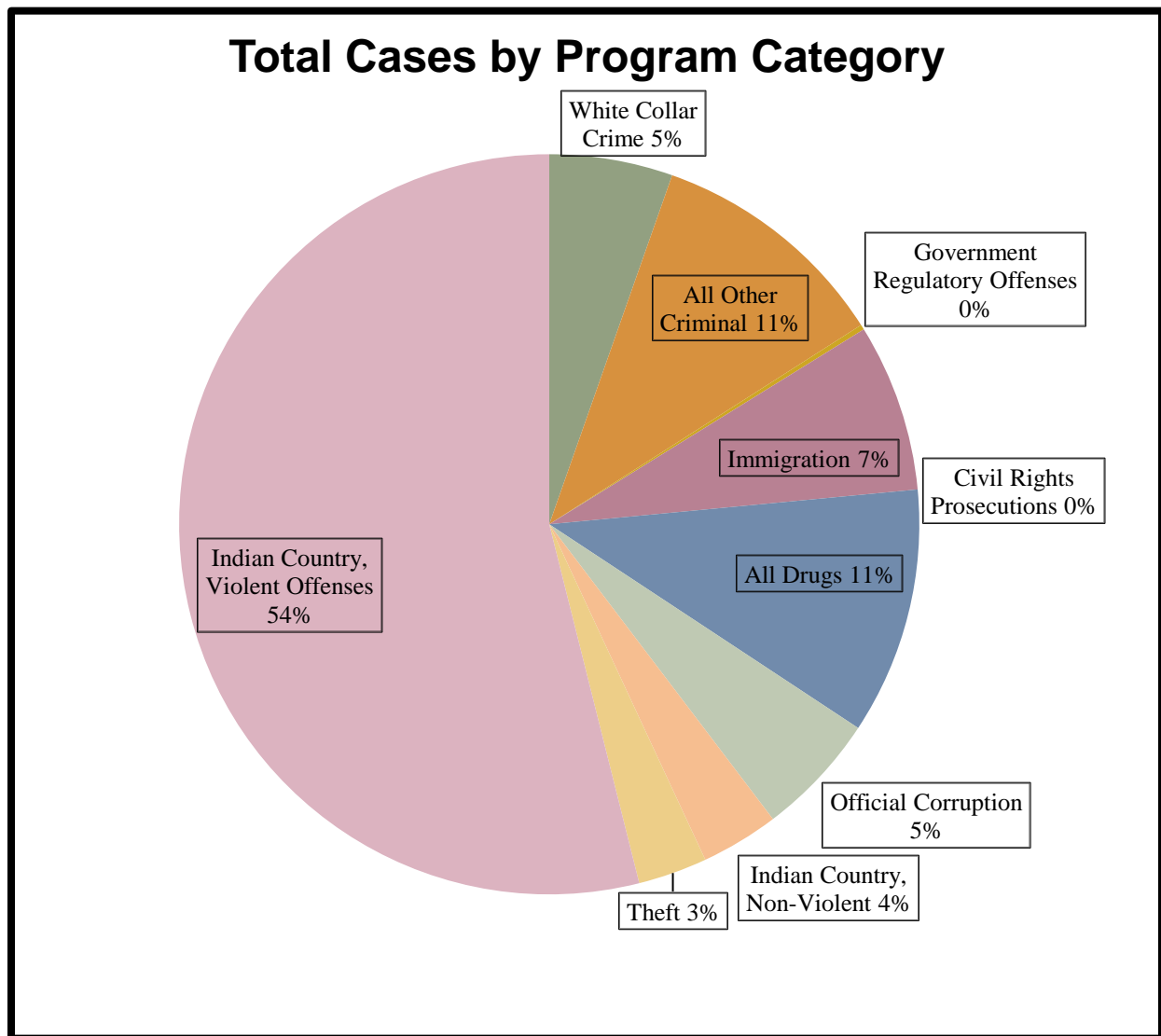
## Collection Efforts

FLU collected \$8.7 million in civil judgments and criminal payments in fiscal year 2016. Although all recoveries are vitally important, the recovery of restitution in an effort to make victims whole is a high priority of this office. In 2016, of the \$2,260,836 recovered from criminal judgments, \$2,054,448 was returned to victims of crime. The rest of the money was deposited into the Crime Victims Fund to fund programs that assist crime victims.

# STATISTICAL HIGHLIGHTS

## Criminal Caseload Statistics

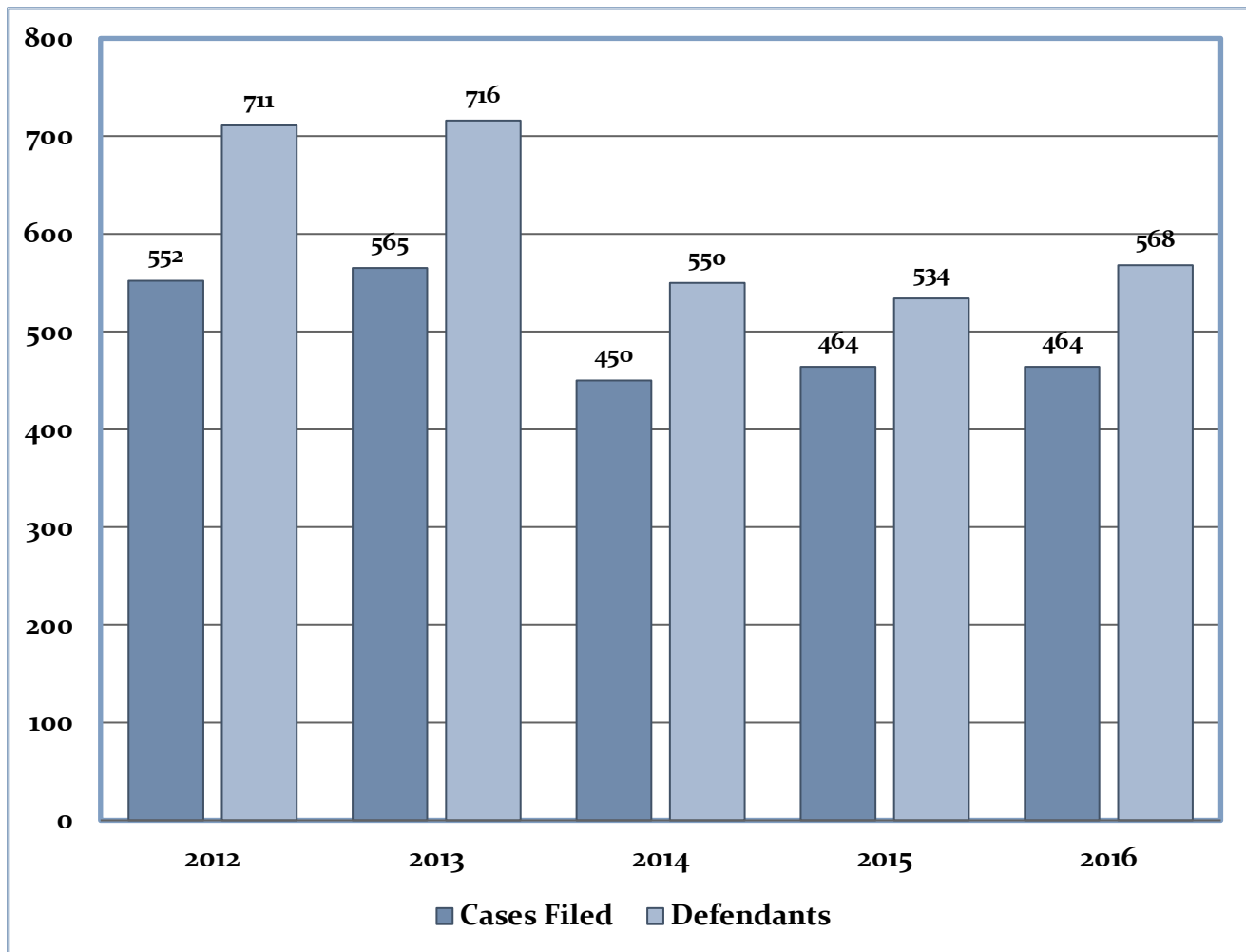
### Total Cases Filed<sup>1</sup>



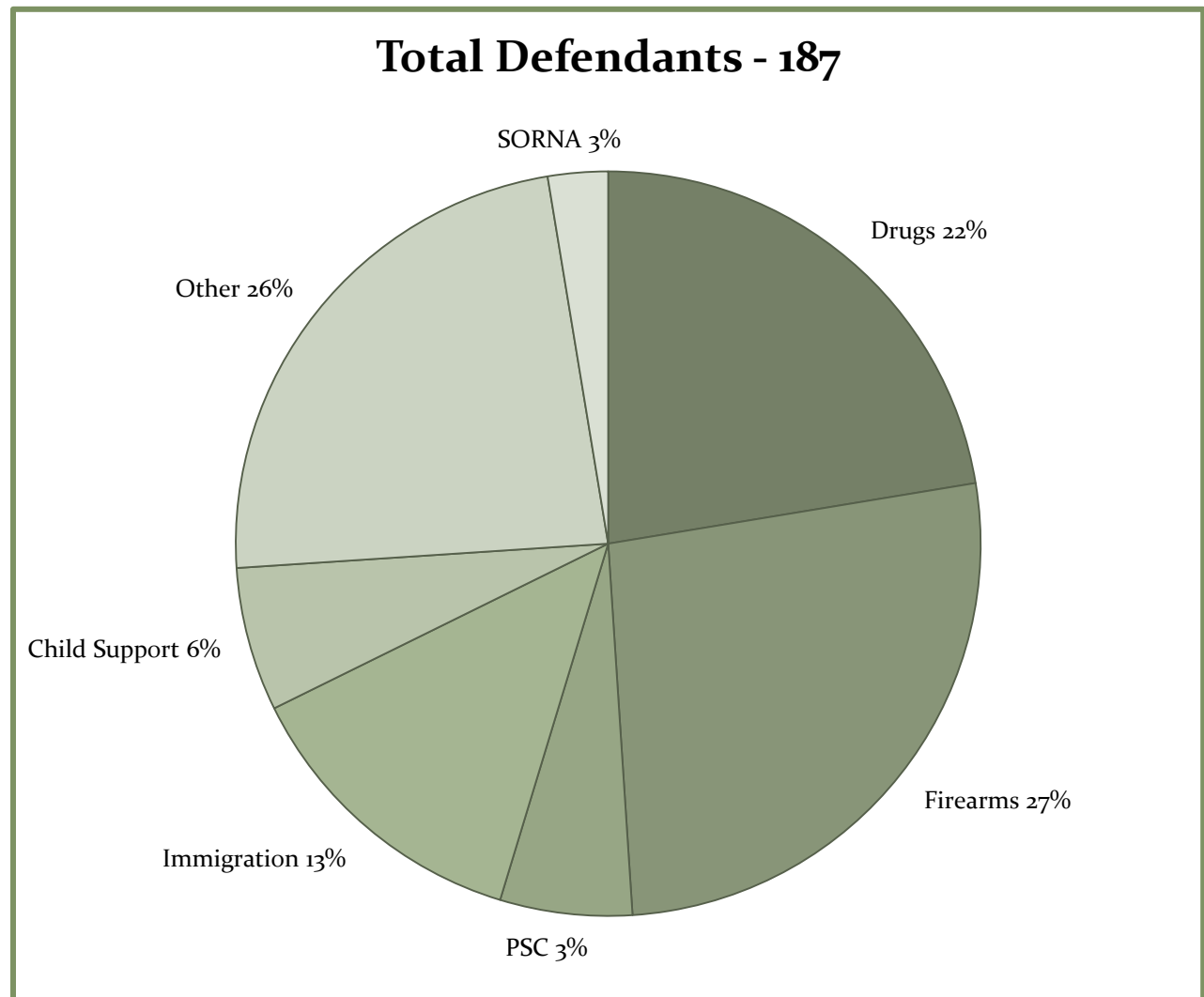
<sup>1</sup> Total cases filed FY 2016

# Cases & Defendants Filed

## FY 2012 - 2016



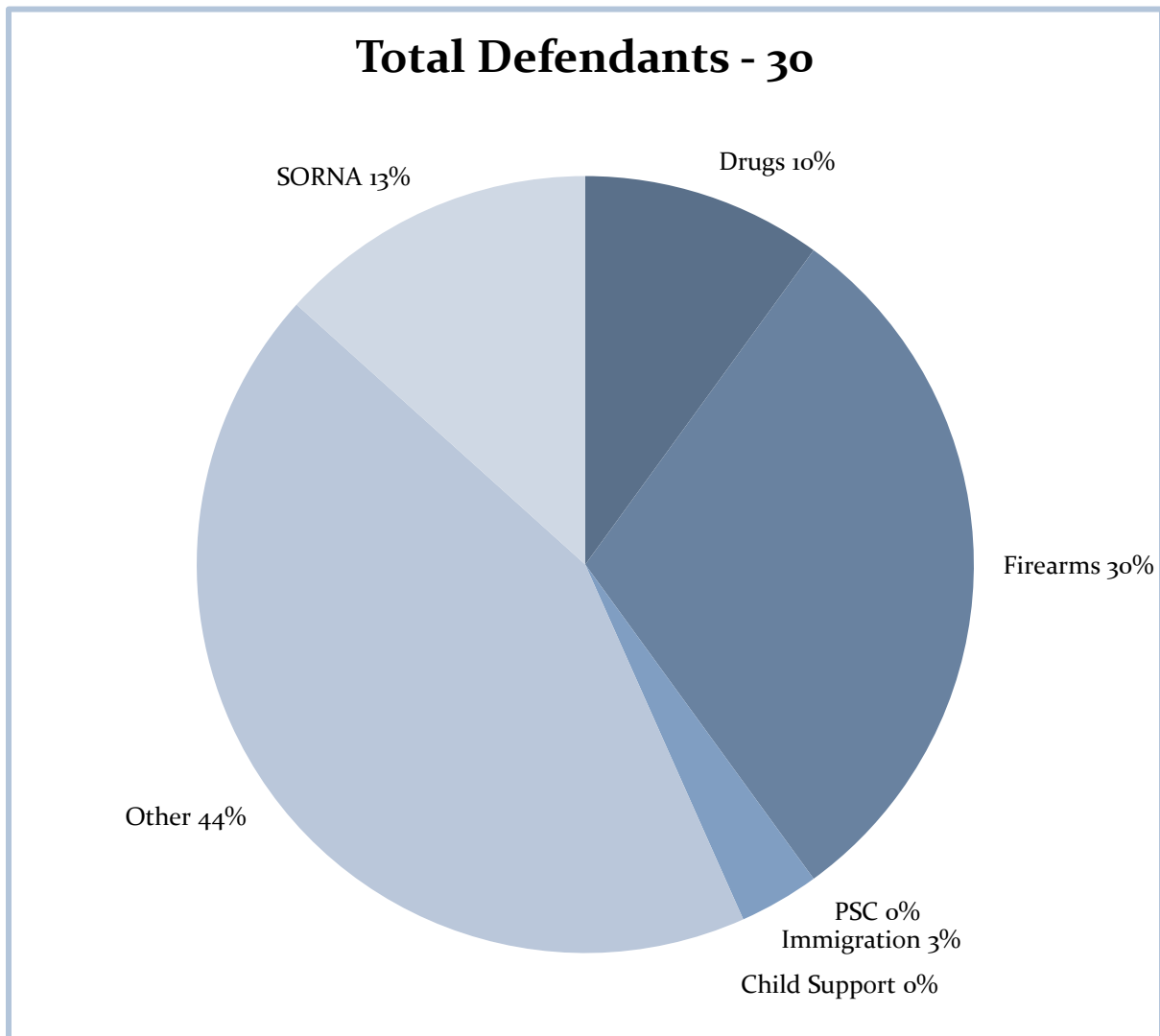
# Non-Indian Country Defendants by Program Category Per Division<sup>2</sup> Southern Division



PSC (Project Safe Childhood) includes all cases concerning child pornography, sex trafficking, human trafficking, etc.

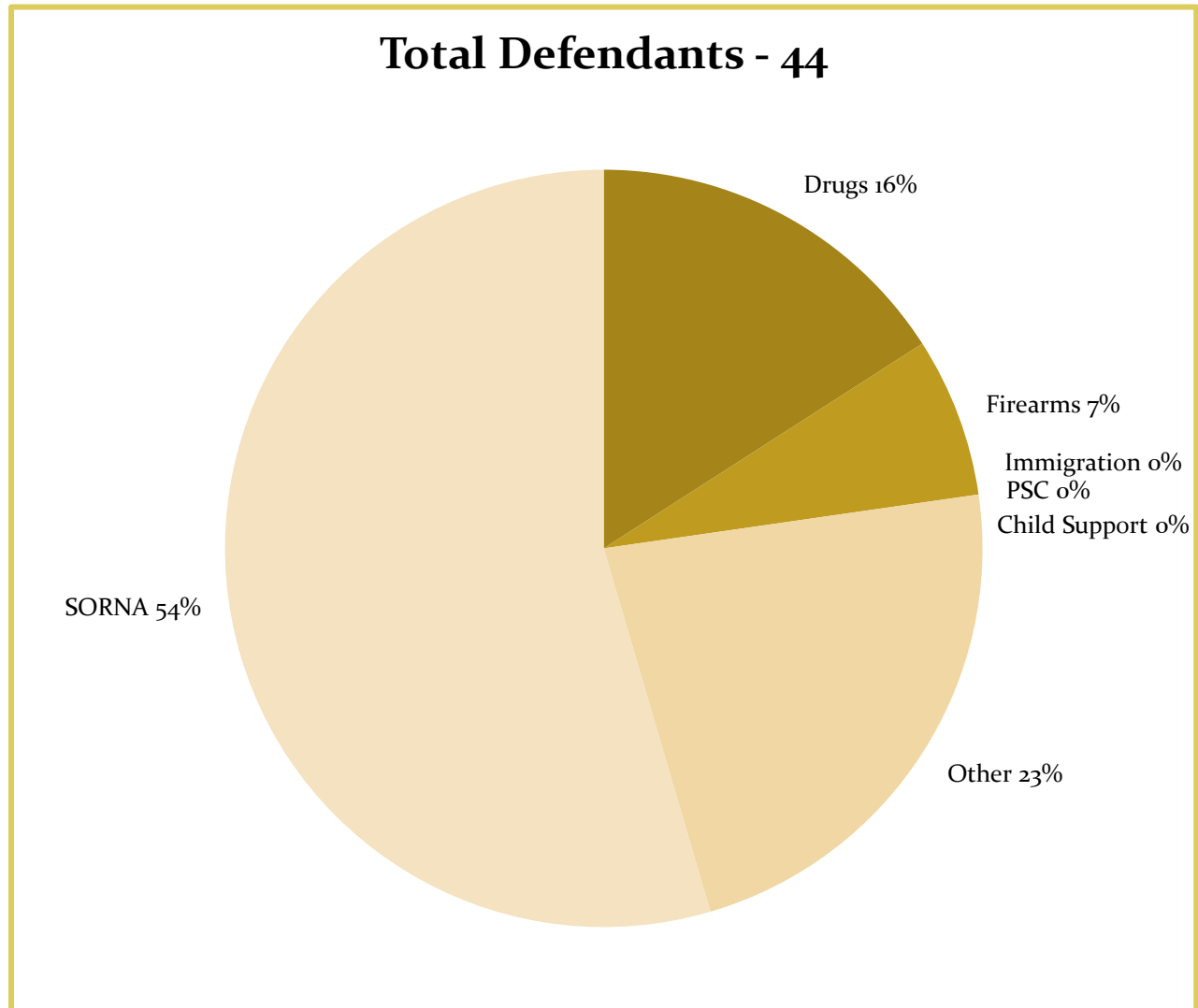
<sup>2</sup> Total cases filed in calendar year 2016

# Northern Division



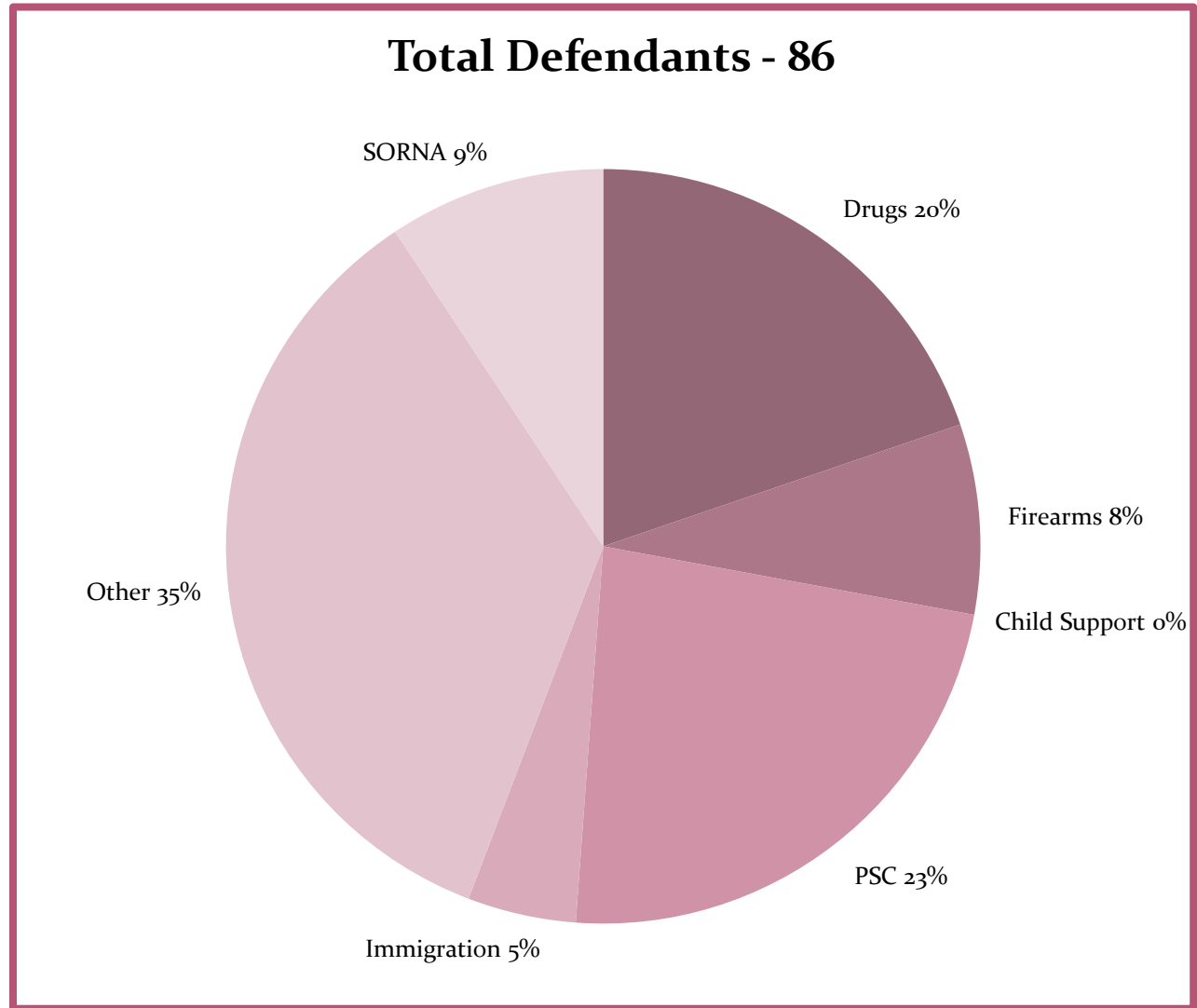
PSC (Project Safe Childhood) includes all cases concerning child pornography, sex trafficking, human trafficking, etc.

# Central Division



PSC (Project Safe Childhood) includes all cases concerning child pornography, sex trafficking, human trafficking, etc.

# Western Division



PSC (Project Safe Childhood) includes all cases concerning child pornography, sex trafficking, human trafficking, etc.

# NON-INDIAN COUNTRY

## Significant Cases

### Drug Cases

#### United States v. Wilver Tolentino Valdez—Drugs

On August 1, 2015, Wilver Tolentino-Valdez was traveling on Interstate 90 near Spearfish, South Dakota. South Dakota Highway Patrol stopped his vehicle for a traffic violation. The defendant had in his possession approximately 2.9 kilograms of heroin concealed in a hidden compartment in his vehicle. The defendant knew the substance was heroin. The defendant admitted to law enforcement that he intended to distribute the heroin to others. Heroin is a Schedule I controlled substance. He pled guilty to possession with intent to distribute and, on August 12, 2016, was sentenced to 30 months custody.

#### United States v. Trevor Ray and Chris Gabbard and Darrick Bessman—Conspiracy to Distribute a Controlled Substance

Trevor Ray was convicted at trial of Conspiracy to Distribute a Controlled Substance, Distribution of a Controlled Substance, and Possession with Intent to Distribute a Controlled Substance. On September 12, 2016, he was sentenced to 180 months custody. Chris Gabbard pled guilty to Conspiracy to Distribute a Controlled Substance and was sentenced on December 15, 2016, to 132 months custody. Darrick Bessman pled guilty to Conspiracy to Distribute a Controlled Substance and was sentenced on July 6, 2016, to 120 months custody.

### Fraud/Identify Theft/False Statements

#### United States v. Ken Hunsucker—Fraud

A 49 year-old small business owner from Canton pled guilty to money laundering and was sentenced to 24 months in prison. The defendant opened the “Canton PC Repair” shop in 2013, but he used the business to purchase stolen goods from local thieves and shoplifters. The defendant paid cash in exchange for undamaged items that were stolen from local retail stores. Many of the items were electronic devices and tools. The defendant sold the stolen merchandise on eBay® under his business name. Hunsucker mailed the items to unsuspecting buyers all over the country and collected the purchase money in a number of PayPal® accounts he set up as part of the scheme. Overall, he made over a thousand sales and received over \$100,000.

#### United States v. Theodore Nelson, Jr., et al.—Conspiracy to Defraud the United States; Failure to File Income Tax Returns; Impeding the Internal Revenue Service

Theodore (“Ted”) Nelson, Jr. and his son, Steven Nelson, inherited and operated a family farm and business in Sanborn County, South Dakota. They planted and sold grain, raised cattle, performed custom work for neighbors, ran hunting/lodging businesses, and leased out their land. The Nelsons conspired to evade the assessment and payment of their tax liabilities by agreeing not to file their tax returns, forming numerous sham trusts, opening bank accounts in the



names of these trusts and other nominee names, and hiding their income and assets from the IRS. Ted Nelson became a member of a sovereign citizens group called the “Republic of South Dakota.” The Nelsons each sent frivolous documents to the IRS, including documents purporting to be income tax returns. On May 12, 2015, following a six-day jury trial, the defendants were convicted on all counts. Their sentencing hearing was held on April 4, 2016. Ted Nelson was sentenced to a total of 70 months of imprisonment to be followed by a 3-year term of supervised release, and Steven Nelson was sentenced to a total of 12 months and one day of imprisonment to be followed by a 3-year term of supervised release. Both defendants were ordered to pay restitution, jointly and severally, to the IRS in the amount of \$1,842,102.14.

**United States v. Mark Sullivan—**  
***Wire Fraud***

Mark Sullivan operated a scheme in which he advertised tractors and other farm equipment for sale online, required the buyer to pay the full purchase price upfront, and then failed to deliver the particular equipment purchased. An individual in South Dakota saw one of the advertisements and eventually agreed to purchase a particular tractor and loader from Sullivan. The individual sent two wire transfers for the full purchase price to Sullivan, but Sullivan never delivered the tractor and loader the individual purchased, nor did Sullivan refund the money. On May 9, 2016, Sullivan pled guilty to one count of wire fraud. On July 18, 2016, Sullivan was sentenced to 41 months of imprisonment to be followed by a 3-year term of supervised release. Sullivan was also ordered to pay \$104,464.44 in restitution. Sullivan’s appeal

to the Eighth Circuit Court of Appeals is pending.

**United States v. Michele Palm—**  
***Wire Fraud***

Michele Palm was appointed to be the guardian and conservator for an adult who suffered from Pick’s Disease. In that capacity, Palm stole money from the protected person by writing checks to herself and her then-husband, as well as taking out several large ATM withdrawals, and using the funds for her own purposes. On January 6, 2017, Palm pled guilty to one count of wire fraud. Palm’s sentencing hearing is scheduled for May 4, 2017.

## **White Collar**

**United States v. Kenneth Potter—**  
***Falsification of Financial Records***

Kenneth Potter was an employee of the South Dakota Education Association (SDEA) and was a member of the National Staff organization, South Dakota Staff Organization (SDSO). Both of these entities have collective bargaining agreements with the U.S. Department of Labor. Between July 1, 2013, and September 30, 2014, Potter was the Treasurer of the SDSO. As treasurer, Potter’s duties included making true and accurate entries in the union’s records, and filing reports with the U.S. Department of Labor. While in his role as Treasurer, Potter issued 13 unauthorized checks, and made 3 unauthorized cash withdrawals, for a total of \$4,130 for his own personal use. These unauthorized expenses created a loss in the SDSO accounts, which were reported to the National Staff Organization. The SDSO had an audit performed of the books, which confirmed the theft by Potter. Potter was

sentenced to one year of probation and repaid the SDSO the misused funds.

**United States v. Tim Sherwood—**  
***Conversion***

The U.S. Department of Agriculture (USDA), Commodity Credit Corporation provides government funded loans to farmers. The program is administered by the Farm Service Agency (FSA), a sub-agency of the USDA. Loans are made to family farmers in a manner similar to conventional banks. Borrowers must fill out and sign various documents including a Promissory Note and Security Agreement. The borrower must have FSA approval prior to selling, exchanging, consumption or disposal of any collateral in which FSA has an interest. On August 9, 2011, an Operating Loan, for \$76,000 was provided to Timothy Sherwood by the FSA office in Mellette County to purchase sheep and cover related expenses. Sherwood completed and signed all of the necessary paperwork. Between December 12, 2011, and September 30, 2012, Sherwood made three different sales of sheep without FSA approval. He then deposited the money into his personal banking account rather than the FSA monitored banking account as required by the loan agreement. Following these sales, Sherwood did not buy any more lambs and did not remit the proceeds to the FSA to repay his loan balance as required. A review of Sherwood's bank accounts revealed that instead of buying more lambs as required, he spent large amounts of money on personal, non-ranch items. Sherwood was sentenced on May 16, 2016, to 3 years of probation and must pay \$65,095.43 in restitution to the FSA.

## Environmental

**United States v. Theodore Nelson—**  
***Unlawful Taking of Bald Eagle and***  
***Unlawful Use of Pesticide***

Between January 1, 2015, and May 12, 2015, Nelson, a landowner in Sanborn County, knowingly and with wanton disregard for the consequences of his actions, injected a poison, Carbofuran, also known as Furadan 4F, into the carcasses of cows in order to kill predators, including coyotes. Carbofuran is a restricted-use

pesticide that is extremely toxic to wildlife, including birds. Use of this pesticide for



baiting purposes is strictly prohibited, as stated on the Carbofuran container label. As a result of Nelson's actions, area animals, including coyotes and an adult Bald eagle, died of Carbofuran poisoning. Laboratory results from the National Fish & Wildlife Forensic Laboratory in Ashland, Oregon, confirmed that the eagle died of Carbofuran poisoning, after eating coyote carcasses that were poisoned with Carbofuran poisoning. Following a two-day jury trial, Nelson was convicted of both counts. He was sentenced to 8 months in custody for the Unlawful Taking of a Bald Eagle charge, with 6 months to run concurrent with a prior federal tax evasion sentence and 2 months to run consecutive, and a 1-year term of supervised release, with a condition that Nelson must pay \$2,500 in restitution. Nelson was also sentenced to 30 days in custody on the Unlawful Use of Pesticide charge, to run concurrent with the sentence imposed on the other count.

## **Project Safe Childhood/Trafficking**

### **United States v. Richard Melanson— Child Pornography**

Richard Melanson was sentenced on January 11, 2016, to 30 years imprisonment for his repeated trips to Guatemala, during which he sexually and physically abused multiple young boys. He videoed some of his abuse, thereby producing child pornography. Two of the victims traveled up from Guatemala for the sentencing and testified before the Court regarding the facts and impact of the abuse they suffered at Melanson's hands. The case began as a regular peer-to-peer child pornography case with state investigators and developed into a successful federal prosecution due to the diligent efforts of South Dakota Division of Criminal Investigations Special Agent Brent Gromer, Homeland Security Investigations Special Agent Michael Diaz, and numerous Guatemalan law enforcement agents.

### **United States v. Daniel Roy Lewis— Child Pornography**

On January 28, 2016, Daniel Roy Lewis, 46, was sentenced to serve 8 years incarceration in the SD Penitentiary for the state charge of possession of child pornography. However, the State Circuit Court gave Lewis two weeks to report to prison. Within that two-week window of time, Lewis downloaded and shared more child pornography. On February 10, 2016, a DCI Special Agent with the Internet Crimes Against Children Task Force was conducting online investigations. He soon discovered that Lewis was sharing child pornography on the internet using a BitTorrent network. The agent quickly

obtained a warrant to search the residence, but Lewis had already left the state. He was tracked to Minnesota and arrested within 24 hours. Lewis was sentenced to 180 months in custody.

### **United States v. Thomas Richard— Transportation of a Minor**

In October, 2016, Thomas Richard was sentenced to 24+ years in prison and lifetime supervised release for unlawful transportation of a minor. He had three prior sex offenses, and in this case traveled from California to Minnesota where he picked up his 16-year-old victim and sexually abused her. On their way through South Dakota, they stopped at the 1880 Town where she sought help from a stranger to help her get away from the defendant. Prior to the defendant picking her up, they had a year-long, online "relationship."

### **United States v. Wallace Beane— Child Pornography**

Wallace Beane sexually exploited and manufactured child pornography of multiple child victims in a local Rapid City Hotel. He was sentenced on July 29, 2016, to 30 years imprisonment. During his exploitation, he would buy the victims material goods to induce their participation. The victims were highly vulnerable, had limited financial resources, and many had troubled home environments. Other times, he provided the victims with alcohol or Benadryl® to assist in his exploitation.

### **United States v. Joseph Raleigh— Commercial Sex Trafficking**

On October 16, 2015, the defendant, a Baptist minister and a resident of Miller, responded to an advertisement posted on Craigslist for a minor available for sexual activities in

exchange for money. Through email conversations with undercover agents from the Internet Crimes Against Children (ICAC) Task Force, the defendant negotiated a price and arranged to have a sexual encounter with a 15-year-old girl in Blunt. The defendant then met with an undercover agent, who was posing as someone who could provide the girl for sex. The defendant was arrested and had money to pay the negotiated price in his possession at the time of his arrest. The defendant was indicted by a federal grand jury on October 20, 2015, for Attempted Commercial Sex Trafficking of Children and Attempted Enticement of a Minor Using the Internet. He pled guilty to Attempted Trafficking with Respect to Involuntary Servitude and Forced Labor in July 2016. In September 2016, he was sentenced to 46 months in prison, followed by a 3-year term of supervised release. As a result of his conviction, the defendant is required to register as a sex offender.

#### **Michael Dickey and Eric Sims— Sex Trafficking**

Two men were sentenced in 2016 for their involvement in prostitution in Sioux Falls. Michael Dickey, 33, originally from Milwaukee, WI, brought a woman to South Dakota from Minnesota in 2015 for the purpose of having her engage in prostitution. Dickey posted advertisements on Backpage.com and received some of the proceeds from the commercial sex acts the woman engaged in for money. Eric Sims, 47, of Sioux Falls, aided and abetted Dickey's activities by providing a place to stay while Dickey pursued prostitution. Dickey was sentenced to 30 months in prison, while Sims, who was under federal supervision for

previous drug convictions, received a 21-month sentence.

#### **2016 Sturgis Operation**

This operation is designed to catch online child predators, and it resulted in ten arrests and prosecutions. Most of the cases are still pending trial.

## **Firearms**

#### **United States v. Darren Kyle Stepp-Zafft— Guns (jury trial)**

A 30 year-old Sioux Falls man was convicted of illegal possession of unregistered firearms, silencers, and explosive devices. On December 10, 2015, law enforcement officers searched Stepp-Zafft's Sioux Falls residence looking for evidence of a firearm that discharged into an adjoining neighbor's apartment. During the search, officers not only found evidence that the defendant had discharged a small caliber handgun through his wall, they also found the defendant to be in possession of two illegal firearm silencers, five illegal short rifles, and nine illegal destructive devices that could be readily assembled into grenades. Officers also found over a hundred firearms in Stepp-Zafft's possession. The defendant went to trial and the jury convicted him of all counts. Stepp-Zafft was sentenced to 37 months in custody.

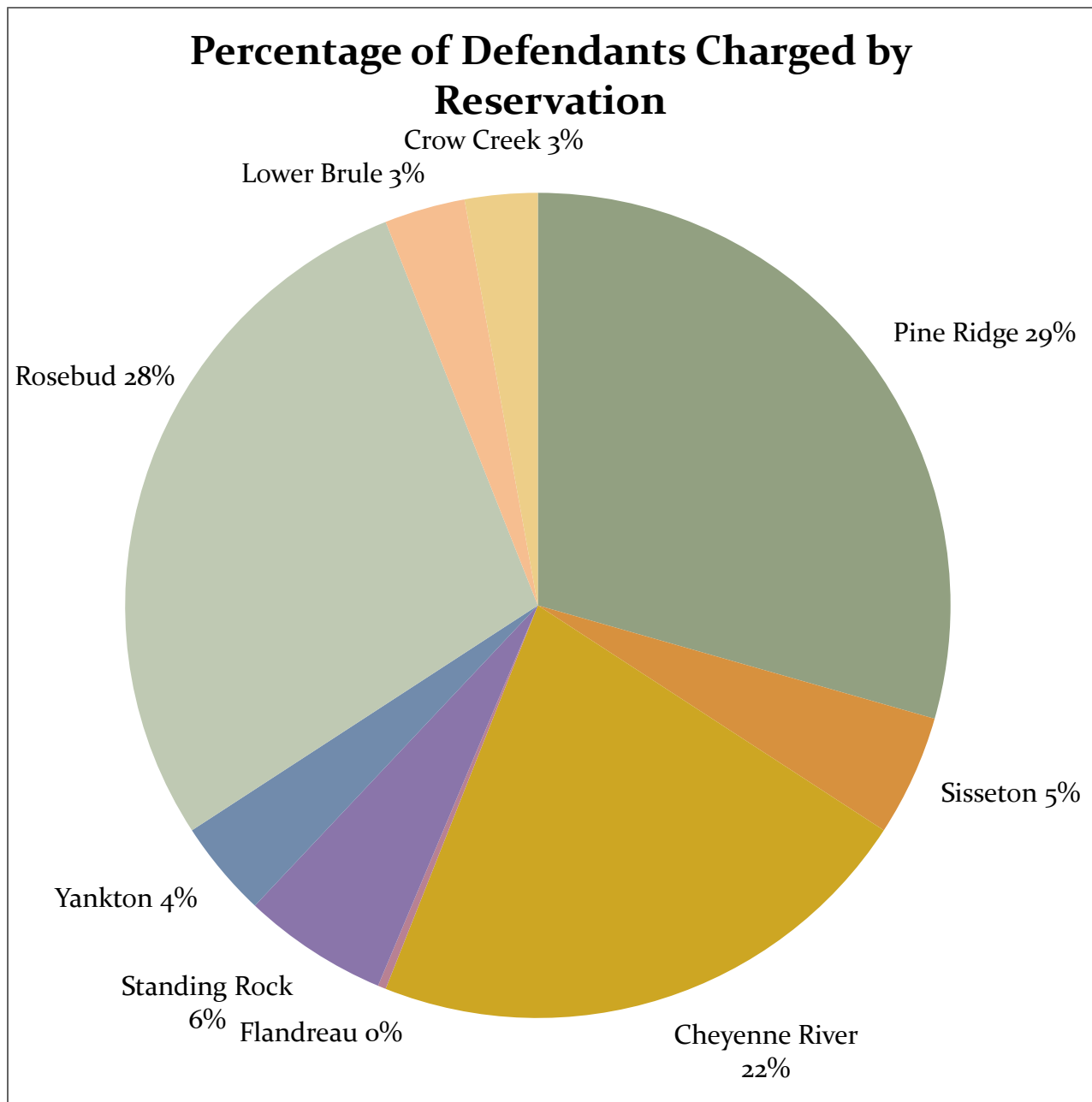


19 FIREARM WITH SILENCER

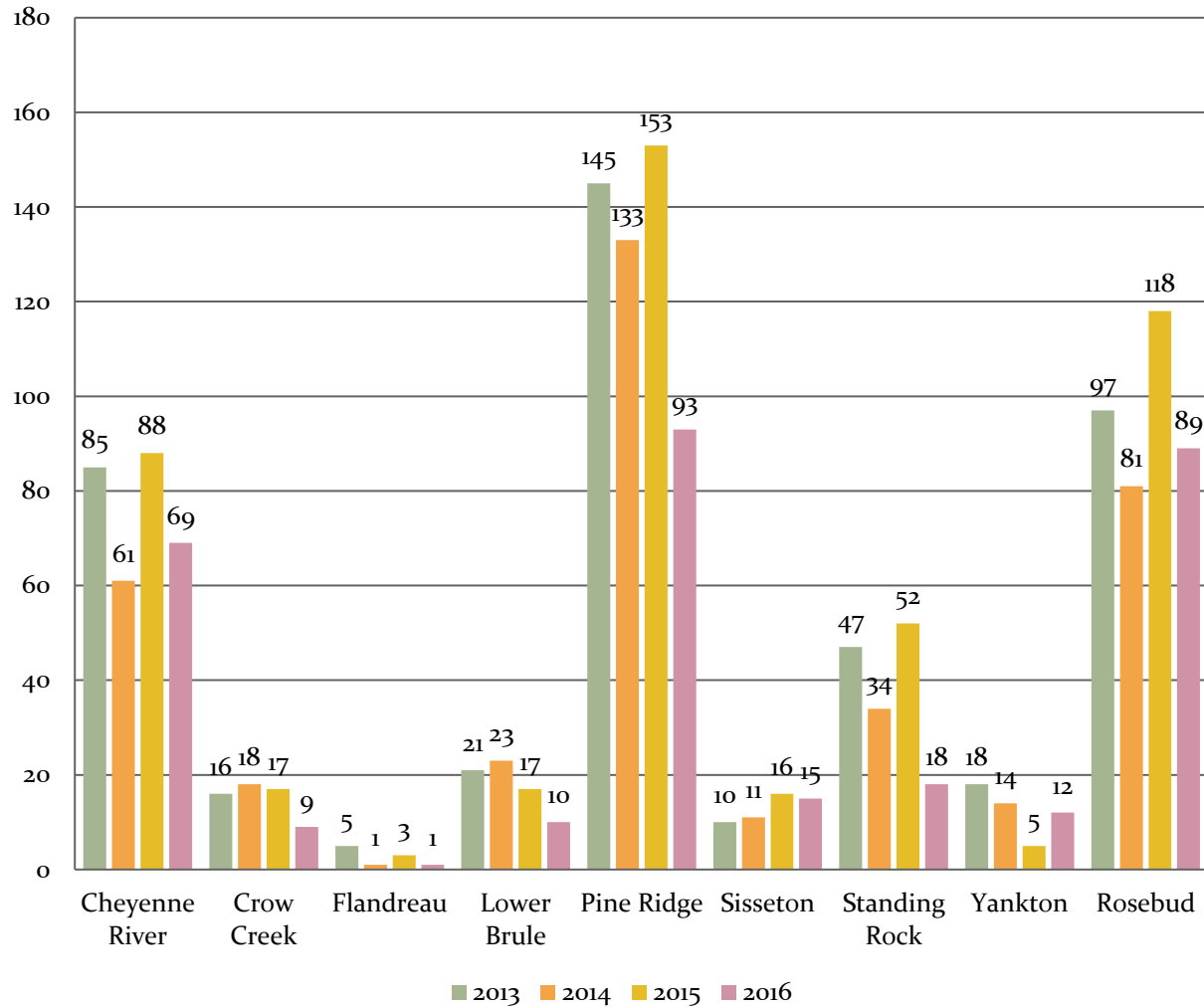
# STATISTICAL HIGHLIGHTS

## INDIAN COUNTRY

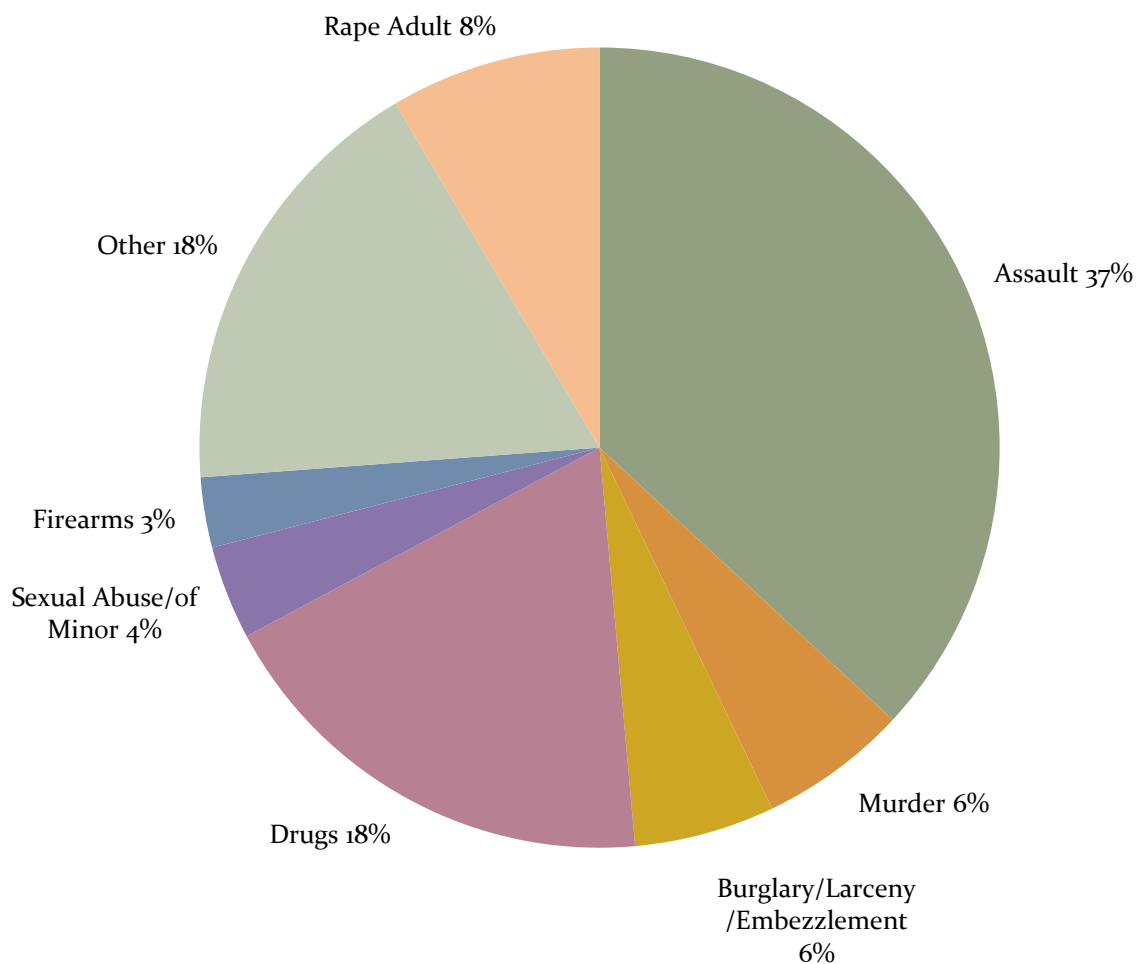
Calendar Year 2016



## Defendants Charged by Reservation 2013 - 2016



## Defendants by Actual Charge



# DEFENDANTS CHARGED BY PROGRAM CATEGORY

Reservation	Assault	Burglary/ Larceny/ Embezzlement	Drugs	Firearms	Manslaughter/ Murder
Cheyenne River	24	3	22	2	2
Crow Creek	3	2	1	1	1
Flandreau	0	1	0	0	0
Lower Brule	4	1	1	2	0
Pine Ridge	29	4	17	0	13
Rosebud	44	6	13	3	2
Sisseton	2	1	0	0	0
Standing Rock	8	0	1	0	0
Yankton	3	0	4	1	1
Totals	117	18	59	9	19



Reservation	Other	Sexual Abuse of Minor	Rape Adult	Total
Cheyenne River	14	1	1	69
Crow Creek	1	1	0	10
Flandreau	0	0	0	1
Lower Brule	1	0	1	10
Pine Ridge	16	2	12	93
Rosebud	9	5	7	89
Sisseton	10	1	1	15
Standing Rock	5	0	4	18
Yankton	0	2	1	12
Totals	56	12	27	317

# SOUTH DAKOTA RESERVATIONS

## Significant Cases

### Cheyenne River Sioux Reservation



#### United States v. Sydney Garreau— Assault Resulting in Substantial Bodily Injury to Domestic Partner

On September 20, 2014, Garreau picked up his girlfriend, the victim, to take her to meet a friend of his from Crow Creek. While they were at his friend's house, Garreau began to look through the victim's cell phone, became upset, and began to yell at her. He then shoved the victim to the ground, grabbed her by the hair, pulled her into the bathroom and shut the door. Once inside the bathroom, Garreau began to physically assault the victim, hitting her in the face and body with a closed fist multiple times. The other people at the home attempted to get inside the bathroom to help the victim. She was able to get out of the bathroom and fled the residence. Garreau ran after her and tackled her to the ground and threatened her additional harm if she reported the incident. The victim did not report the assault for several days. As a result of the assault, the victim suffered substantial bodily injury,

including both of her eyes were swollen shut for several days. She also suffered broken blood vessels in both eyes and bruising to her face and body. Garreau was sentenced to 60 months in custody, followed by a 3-year term of supervised release, and \$100 special assessment.

#### United States v. Lisa Lone Eagle and Kendra Belt a/k/a Kendra Counting—

#### Assault With a Dangerous Weapon and Assault Resulting in Serious Bodily Injury

The two defendants are half-sisters. One of them had lived at the victim's residence for approximately a year and a half. On the evening of September 5, 2015, the victim was drinking with the defendant who lived at his home. She left for a short time and returned with her half-sister. Other people were also at the residence. After she returned, the female housemate became angry with the victim. She pulled down shelves in the living room, and then punched the victim at least eight times. Her half-sister joined her in hitting the victim. As a result of the assault, the victim ended up on the floor of the living room. The victim's female housemate was wearing cowboy boots and kicked and stomped the victim in the head, face, neck and upper torso multiple times. She also hit the victim with the head of a sledgehammer. Her half-sister also kicked the victim while he was down on the floor, and attempted to strangle him. At some point, the victim lost consciousness, and the two women thought the victim was dead. They attempted to hide the victim's body in the crawlspace of the residence, but were unable to do so. At that

point, they put a blanket over the victim, poured kerosene on the blanket, and attempted to light the blanket on fire, but were unsuccessful. The victim regained consciousness, got up, and went and laid down. His female housemate went to where the victim was lying, and hit him five or six more times. The victim was eventually able to get up and escape the residence. He collapsed nearby where he was discovered by a neighbor. Both women pled guilty for their role in the assault. The female housemate was sentenced to 63 months in custody, while her half-sister was sentenced to 37 months in custody. Both women will be on supervised release for a period of 3 years following their release from custody. Both were ordered to pay a special assessment of \$100.00 to the Federal Crime Victims Fund.

**United States v. Leonard Rondeau—  
Sexual Contact by Force of a Child**

The defendant was babysitting a child who was between the ages of 4 and 5 and whose mother was at work. While taking care of the child, the defendant knowingly engaged in sexual contact with the child through the use of force. The defendant used his hand to touch the child's genitalia, groin, inner thigh, and breast. During the sexual contact, the child attempted to resist by pushing the defendant away and telling him "no." The sexual abuse occurred more than once, all at times when the child's mother was away from the home. The defendant instructed the child not to tell her mother of the abuse. On February 2, 2016, the defendant pled guilty to Sexual Contact by Force of a Child. He was sentenced on April 25, 2016, to 15 years in custody to be followed by three years of supervised release, and a special assessment of \$100.00 to the Federal Crime Victims Fund.

**United States v. Richelle Bowker—  
Voluntary Manslaughter**

The defendant and victim had been in a relationship for approximately eight years. On June 9, 2015, the two of them got into a verbal argument. At some point, the victim took the defendant's flip phone and broke it in half. The defendant went into the kitchen, grabbed a steak knife from a knife block on the kitchen counter, and stabbed the victim with it for a total of six times. The victim was stabbed three times in his chest, twice in his right shoulder and back, and once in his left hand. He died as a result of the multiple stab wounds. The defendant pled guilty on March 8, 2016, to Voluntary Manslaughter. On June 14, 2016, she was sentenced to 126 months in custody, followed by a 3-year term of supervised release, \$9,464.76 in restitution, and a special assessment of \$100.00 to the Federal Crime Victims Fund.

**United States v. Cody Yellow, Ake Kyle  
Eagle Hunter, and Robert Grindstone—  
Arson**

St. Basil's Church, a/k/a Mossman Church, was built in 1917. It is located on Highway 212 near Ridgeview, South Dakota. Locals have maintained the church throughout the years. Mass was held there every Memorial Day weekend, and occasionally weddings and funerals were held there as well. On July 19, 2015, the three defendants drove from Eagle Butte to the Mossman Church to visit a friend's grave at the cemetery near the church. After visiting the grave site, Yellow kicked open the door to the church. The three men then vandalized the church. Grindstone found a can with liquid inside it in a room next to the altar and one of the others suggested burning the church down. Grindstone opened the can and intentionally

dropped the metal container, letting the contents spill out. One of the other two men lit the liquid accelerant on fire. The church burned to the ground; it was a total loss. All three defendants pled guilty for their roles in burning down the 98-year old church. One defendant was sentenced to 41 months in custody, another was sentenced to 37 months in custody, and the final defendant was sentenced to 35 months in custody. All three were ordered to pay restitution on a joint and several basis in the amount of \$85,326.81 for the destruction of the church and an additional \$3,776.92 for the cost of the fire-fighting efforts. After they are released from custody, all three of the defendants will be on supervised release for a period of two years. Each of the three defendants was also ordered to pay a \$100.00 special assessment to the Federal Crime Victims Fund.

**United States v. Ryker Talbot and Dominic Houston—Robbery**

On July 2, 2016, the two defendants discussed committing a robbery. Ultimately, the decision was made to rob the Eagle Stop Convenience Store and Gas Station in Eagle Butte. Shortly before 1:00 a.m., the two men traveled to the vicinity of the Eagle Stop. One of them stayed outside the store and served as a lookout, while the other entered the Eagle Stop, carrying a Maverick 12-gauge shotgun. He pointed the shotgun at the clerk and demanded money. That defendant then racked the shotgun and repeated his demand to be given money. The clerk gave him money from the cash registers in the store. He then demanded the clerk to give him two cartons of cigarettes. He then exited the store with the cash and cartons of cigarettes and the two men fled the scene. They later split up the proceeds acquired in the robbery. Both men

pled guilty to the robbery charge. The defendant who entered the Eagle Stop with the shotgun was sentenced to 84 months in custody. The other defendant was sentenced to 46 months in custody. Both were ordered to pay \$1,743.20 in restitution to the Eagle Stop Convenience Store and Gas Station in Eagle Butte on a joint and several basis. They were also both ordered to pay a special assessment to the Federal Crime Victims Fund in the amount of \$100.00. Following their release from custody, both men will be on supervised release (one of them for 2 years and the other for 3 years).

**United States v. Kristina Lofton, et al.—Conspiracy to Distribute a Controlled Substance**

On April 13, 2016, Kristina Lofton, Robert Lofton, Stephanie Lofton, Tyler Peterson, and Ashley Peterson were indicted for Conspiracy to Distribute Methamphetamine between March 1, 2014 and April of 2016. Robert Lofton was also charged with Possession of a Firearm by a Prohibited Person, stemming from an incident in October of 2014, in which he was arrested with a firearm and drug paraphernalia. During the execution of a search warrant on the Lofton residence on April 21, 2016, 20 grams of methamphetamine were found, as well as another firearm. Law enforcement had been investigating the defendants for some time and had obtained overwhelming evidence of their methamphetamine distribution activities.

On July 19, 2016, a superseding indictment was filed charging Kristina Lofton with Conspiracy to Distribute 500 or more grams of methamphetamine, which carries a 10-year mandatory minimum sentence. All of the defendants eventually pled guilty to

Conspiracy to Distribute Methamphetamine, admitted that they received distributable quantities of methamphetamine from individuals who knew that they intended to engage in further distribution of methamphetamine, and that they provided methamphetamine to others in South Dakota knowing that those individuals intended to engage in further distribution of the methamphetamine.

Defendant Kristina Lofton pled guilty on November 8, 2016, stipulating that she was a leader in the conspiracy and that her relevant conduct involved between 1.5 and 5 kilograms of methamphetamine. The defendant was sentenced on January 30, 2017, to 156 months in custody and a 5-year term of supervised release. The remaining defendants stipulated that their relevant conduct was the distribution of 350 to 500 grams of methamphetamine. Defendant Robert Lofton pled guilty on September 27, 2016, and was sentenced on December 19, 2016, to 78 months in custody, a 5-year term of supervised release, and forfeiture of two firearms and \$250 in U.S. currency seized by law enforcement. Defendant Tyler Peterson pled guilty on November 7, 2016, and was sentenced on January 30, 2017, to 70 months in custody and a 3-year term of supervised release. Defendant Stephanie Lofton pled guilty on November 14, 2016, and was sentenced on January 31, 2017, to 68 months in custody and a 4-year term of supervised release. Defendant Ashley Peterson pled guilty on October 24, 2016, and was sentenced on January 23, 2017, to 38 months in custody and a 2-year term of supervised release. All of the defendants were fined \$1,000 and ordered to pay the mandatory \$100 special assessment.

#### **Fourteen (14) Indictments in 2016 for Distribution of a Controlled Substance on the Cheyenne River Sioux Tribe Reservation**

In 2016, the Cheyenne River Sioux Tribe (CRST) prioritized narcotics enforcement and the combatting of methamphetamine distribution, allocating additional resources to tribal law enforcement and developing a Narcotics Division within the tribal police department. In addition to assisting the Northern Plains Safe Trails Drug Enforcement Task Force with investigating and developing conspiracy cases, the Narcotics Division conducted numerous controlled buys throughout the year. As a result, in 2016, fourteen individuals were indicted for Distribution of a Controlled Substance (methamphetamine), one which pled guilty during 2016 (U.S. v. Ptan Clown), and ten others of whom had pled guilty through February of 2017 (U.S. v. Jordan Cass, U.S. v. Jorie Cavanaugh, U.S. v. Ebony Cook, U.S. Marla Cook, U.S. v. Skyla Dupris, U.S. v. Duciana Eagle Chasing, U.S. v. Ree Eagle Staff, U.S. v. Tyson LeCompte, U.S. v. Merlina Marrowbone, and U.S. v. Whitney Marrowbone).

## **Crow Creek Sioux Reservation**



### **United States v. Phillip His Law— Abusive Sexual Contact by Force**

Following a good touch/bad touch class taught by a Clinical Social Worker at school, the then eight-year old victim came home from school and told her mother that His Law had touched her butt. The victim recalled that in August 2014, His Law was going to watch and care for the victim while her mom was out of town. Once inside the house, the victim found His Law lying on his bed watching a movie. His Law made the victim come into the room and lay with him on the bed. As they were watching the movie, His Law forcibly put his hand down the backside of her leggings and touched her anus with his hand and fingers skin to skin. The victim recalled that his finger went inside her anus and that it hurt. The victim began to cry and asked to go home. His Law would not allow her to leave. He told her not to tell her mother. His Law has a prior state sex conviction. He was sentenced to 96 months of custody, followed by a 5-year term of supervised release. He must register as a sex offender.

### **United States v. Tyrone Steven Andrews— Abusive Sexual Contact**

On February 25, 2013, the defendant groped a 15-year-old girl who was at a sleepover at a home in Rosebud. The defendant entered the bedroom where the girl was sleeping and touched her breasts under her clothes while she was asleep. The girl awoke, realized what was happening, and tried to get the attention of her friend who was sleeping next to her in the bed. The defendant then began to rub the girl's inner thigh and kissed her neck. At that point, the girl was able to awaken her friend and the defendant ran out of the room. The defendant was indicted by a federal grand jury on October 14, 2015. The case proceeded to trial in July 2016, and the defendant was convicted of Abusive Sexual Contact. In September 2016, the defendant was sentenced to 30 months in prison, followed by a 5-year term of supervised release. As a result of his conviction, the defendant is required to register as a sex offender.

### **United States v. Adam Bordeaux— Domestic Assault - Habitual Offender**

On November 17, 2015, the defendant assaulted his girlfriend at their home in Rosebud. They had been arguing in their bedroom, when the defendant pushed the victim onto the bed. He then got on top of her, pulled her hair, pushed her face into the blanket, and tried to bite her on the back of her head. The victim was eventually able to push the defendant off of her and she fled the house. She called the police from a nearby convenience store. The defendant was subsequently questioned by a Rosebud Sioux Tribe Law Enforcement Officer and claimed the victim attacked him and bit him on his forearm while he was defending himself. The bite mark the defendant showed the officer



was inconsistent with his description of the incident, however, and the defendant was arrested. At the time of this incident, the defendant had three prior convictions in Rosebud Sioux Tribal Court for Domestic Abuse. He also had a prior conviction in federal court for Domestic Assault by a Habitual Offender, and was on federal supervised release when he committed the assault on November 17, 2015. The defendant was indicted by a federal grand jury on December 8, 2015. The case proceeded to trial in July 2016, and the defendant was convicted of Simple Assault and Domestic Assault by an Habitual Offender. In September 2016, the defendant was sentenced to 33 months in prison, followed by a 3-year term of supervised release, and a \$100 special assessment.

**United States v. Donovan Dale Wright—  
Involuntary Manslaughter**

In the early morning hours of January 30, 2016, the defendant was driving northbound on BIA Route 1 near Rosebud on his way home to Mission when he struck a pedestrian who was walking along the highway. The pedestrian died as a result of the collision. The defendant immediately drove to the Rosebud Police Department, reported what had happened, and assisted a police officer in locating the victim's body. The defendant had been consuming alcohol that evening, and at the time of the collision, his blood-alcohol content was at least 0.150%. The legal limit is 0.08%. The defendant was indicted by a federal grand jury on February 17, 2016. In August 2016, the defendant pled guilty to Involuntary Manslaughter. In November 2016, the defendant was sentenced to 30 months in prison, followed by a 3-year term of

supervised release, and a \$100 special assessment.

**United States v. Tate Luta Red Feather—  
Child Abuse**

On June 3, 2015, the defendant was drinking and using marijuana with another adult and a teenager. At one point, the group took the defendant's vehicle and drove to the store to buy more alcohol, taking the defendant's four-year-old son with them. They continued to consume alcohol as they drove around. At approximately 6:20 p.m., the group was traveling on BIA Route 1, south of St. Francis, in an area where the posted speed limit is 25 miles per hour. The teenager was driving, the adult was in the passenger seat, and the defendant was in the back seat with his 4-year old son. The vehicle was traveling at approximately 57 miles per hour when the driver came upon a curve, failed to negotiate the curve, overcorrected, and the vehicle left the roadway before rolling multiple times. The defendant, the child, and the adult passenger were not wearing seat belts and were ejected from the vehicle. As a result of the wreck, the child suffered fractures to his skull and one closed rib fracture, and the defendant suffered injuries to his head, neck, and left shoulder. The adult passenger died as a result of his injuries. Blood tests subsequently indicated both the defendant's and the teenager's blood alcohol level to be above 0.10%. The legal limit is 0.08%. The defendant's blood test also indicated he had used marijuana. The defendant was indicted by a federal grand jury on October 14, 2015. In March 2016, the defendant pled guilty to Child Abuse. In June 2016, the defendant was sentenced to 18 months in prison, followed by a 2-year term of supervised release.

**United States v. Jonathan Jones, et al.—**  
***Third Degree Burglary***

On May 17, 2016, five individuals were indicted by a federal grand jury for Third Degree Burglary, based on their involvement in burglaries of the DaVita Dialysis Center in Rosebud, in January 2016. The defendants broke into the DaVita Dialysis Center and stole multiple items that had been donated and were displayed inside the building. These items included star quilts and dream catchers. The defendants subsequently sold several star quilts to unwitting third parties. They then used the proceeds of those sales to purchase methamphetamine and marijuana, which they shared amongst themselves.

- Seryl Leroy Pomani, Jr., of Rosebud, pled guilty to Third Degree Burglary in July 2016. He was sentenced on September 6, 2016, to 5 months in custody (in addition to the 4 months he spent in tribal custody prior to his initial appearance in federal court) to be followed by a 2-year term of supervised release.
- Michelle Iron Cloud, of Mission, pled guilty to Third Degree Burglary in September 2016. She was sentenced on December 6, 2016, to time served equal to approximately 3 months in custody (in addition to the approximately three months she spent in tribal custody prior to her initial appearance in federal court) followed by 18 months of supervised release.
- Jonathan Anthony Jones, of Rosebud, pled guilty to Third Degree Burglary in September 2016. He was sentenced on December 12, 2016, to 3 months in custody, followed by 3 months of home confinement or placement in a residential reentry center, followed by a 2-year term of supervised release.

- Robert Pomani, of Rosebud, pled guilty to Larceny in September 2016. He was sentenced on December 19, 2016, to 4 months in custody, followed by a 3-year term of supervised release. At the time of the offense, Robert Pomani was on federal supervised release and was sentenced to an additional 4 months in custody for violating the terms of his supervised release.
- Alicia Good Shield, of Rosebud, pled guilty in October 2016 to Receiving Stolen Property. On December 20, 2016, she was placed on probation for a period of 18 months.

Additionally, the defendants were ordered to pay restitution of \$5,615.66, jointly and severally, for damage caused and the items stolen.

**United States v. Dustin Paul Bear Heels—**  
***Assault of a Federal Officer***

On February 2, 2016, Rosebud Sioux Tribe Police Officers responded to a report that the defendant was drunk and disorderly at a residence in St. Francis. The defendant had an active tribal arrest warrant at the time. The officers located the defendant and placed him under arrest for the warrant, in addition to trespass and disorderly conduct. While enroute to the Rosebud Adult Correctional Facility, the transporting officer observed that the defendant was trying to get his hands in front of him. The officer pulled to the side of the road and advised the defendant to leave his hands behind him. The officer got out of the car and opened the driver's side rear door. The defendant started shouting obscenities and began to kick the door. The officer advised him to stop. The officer shut the door, but the defendant continued kicking the door and window. A second officer arrived and they attempted to restrain the



defendant from kicking the window. While one of the officers was trying to secure the defendant's leg shackle, the defendant kicked him in the chest. The defendant then curled up both legs and kicked the officer in the face, causing him to fall backwards. The other officer then pepper sprayed the defendant and secured him. The defendant was indicted by a federal grand jury on February 17, 2016. In March 2016, the defendant pled guilty to Assaulting, Resisting and Impeding a Federal Officer. In July 2016, the defendant was sentenced to 33 months in prison, followed by a 2-year term of supervised release.

**United States v. Stuart Dion—**  
***Assaulting a Federal Officer/Failure to Register as a Sex Offender***

Dion had a prior federal conviction for Sexual Assault, which requires him to register as a sex offender. Between October 2015 and April 2016, Dion did not register as required and a federal warrant was issued for his arrest. On April 16, 2016, an officer with the Bureau of Indian Affairs was dispatched to the Community Building in Fort Thompson, about Dion being drunk and trying to fight. Dion was riding a horse and causing a disturbance during a sobriety walk. The officer responded to the call and attempted to approach Dion, who resisted arrest and began to struggle with the officer. During his arrest, Dion kicked the officer in the stomach and threatened harm to the officer. Following a plea agreement, Dion was sentenced to 30 months custody on each offense to run concurrently, followed by a 5-year term of supervised release. This is Dion's second failure to register as a sex offender conviction.

**United States v. Kyle Marks—**  
***Failure to Register as a Sex Offender***

In 2004 Marks was convicted of Abusive Sexual Contact with a Child. This conviction requires him to register as a sex offender. In the fall of 2016, Marks knowingly failed to register as a sex offender as required for several months. His whereabouts were unknown. Marks was sentenced to 30 months of custody, followed by a 5-year term of supervised release. This is Mark's third conviction for failure to register as a sex offender.

**Flandreau Santee**  
**Sioux Reservation**



**United States v. Latia Roubideaux—**  
***Theft of Casino Employee***

A Flandreau woman was charged with Theft by Casino Employee. Latia Roubideaux was an employee at the Royal River Casino in Flandreau. Between approximately March 12, 2016, and April 4, 2016, while the defendant was working as a blackjack and roulette dealer, she removed casino chips valued at between \$100 and \$500 each from her table, concealed them on her person, and passed them to another individual, who redeemed the chips for cash at the casino. The defendant's total theft between these dates was \$3,300. Roubideaux pled guilty to the charge on July 28, 2016. She was sentenced on

October 17, 2016, to two years probation, and \$3,300 in restitution.



20 CASINO CHIPS

## **Lower Brule Sioux Reservation**



### **United States v. Lucas Evans, a/k/a Lucas Harrison, a/k/a Abdul Evans—Conspiracy to Distribute a Controlled Substance**

On April 19, 2016, the defendant was indicted for Conspiracy to Distribute Methamphetamine between December 1, 2013, and April of 2016. The defendant admitted to law enforcement to bringing methamphetamine into South Dakota from Colorado and Utah, and distributing it in and around the Crow Creek Sioux Indian Reservation and the Lower Brule Sioux Indian Reservation. The defendant further estimated that he profited around \$2,800 from selling an ounce of methamphetamine, identified at least six people who sold for him, and admitted that it was reasonably foreseeable

that more than 500 grams of methamphetamine would be distributed over the course of the conspiracy. Other individuals confirmed to law enforcement that the defendant brought methamphetamine from out of state, and sold it in South Dakota. The defendant pled guilty on July 19, 2016, and was sentenced on October 3, 2016, to 94 months in custody, a 4-year term of supervised release, a fine of \$1,000, and payment of the mandatory special assessment of \$100.

### **United States v. David George Flute, III—Failure to Register as a Sex Offender**

Flute was previously convicted of a sex offense that requires him to register as a sex offender. Flute registered an address in Sioux Falls, South Dakota, but never actually lived at that address. From December 2015 until May of 2016, Flute's actual whereabouts were unknown. Flute was sentenced to 33 months of custody, followed by a 5-year term of supervised release. This is Flute's third conviction for failure to register as a sex offender.

### **United States v. James Boswell—Conspiracy to Distribute a Controlled Substance**

On May 9, 2016, the defendant was in a vehicle stopped by law enforcement in Lower Brule, South Dakota, for a traffic violation. Officers determined that the Colorado license plates on the vehicle were for a vehicle owned by the defendant, who had an active warrant out of Colorado for attempted murder. Inside the vehicle, officers found two firearms, ammunition, 160 grams of what turned out to be methamphetamine and a cutting agent, heroin, drug paraphernalia, and \$1,408.85 in U.S. currency. The investigation revealed that

the defendant had been distributing methamphetamine on the Crow Creek and Lower Brule Sioux Indian Reservations from April 1, 2016, through May of 2016. The defendant pled guilty on November 22, 2016, and admitted that he received distributable quantities of methamphetamine from other individuals who knew that he intended to engage in further distribution of methamphetamine, and that he provided methamphetamine to others in South Dakota knowing that they intended to engage in further distribution of methamphetamine. The defendant was sentenced on February 13, 2017, to 48 months in custody, a 3-year term of supervised release, a fine of \$1,000, forfeiture of the firearms, ammunition and U.S. currency, and payment of the mandatory special assessment of \$100.

## **Pine Ridge** **Reservation**



### **United States v. Jesse Miller—** **Sexual Assault/Kidnapping**

The defendant went to the victim's home and told her he had run out of gas. The victim offered to give the defendant a ride home, which he refused. The defendant forced his way inside the home and said he wanted to spend the night. He eventually followed her to the bathroom and began to rub against her,

and when she refused his advances, he grabbed her by the throat, punched her, and slapped her on the head. He threatened to rape and kill her, dragging her around the house by her throat. The victim ultimately escaped the home and fled when the defendant passed out. The defendant was charged with Aggravated Sexual Abuse and kidnapping. He pled guilty to kidnapping and was sentenced to 360 months' custody, followed by a 5-year term of supervised release.

### **United States v. Nile Waters and Stanna Piper—Second Degree Murder and Misprision of a Felony**

On July 6, 2015, Nile Paul Waters and his girlfriend Stanna Piper were in Pine Ridge, South Dakota. They met Theodore Red Cloud, the victim, at Red Cloud's residence. Waters, Piper, and Red Cloud went to a trailer in the Old Sundance Grounds area. They began drinking alcohol. Another person (juvenile) joined the group inside the trailer. There was a verbal altercation between the Waters and the victim, which led to a physical struggle inside the trailer. The victim then left the trailer. The others followed the victim outside. Waters and the victim each had a club-like weapon and they got into another physical altercation. Waters hit the victim at least four times on his body with the club-like weapon. The juvenile male then assaulted Red Cloud's head with a cinder block. Red Cloud died as a result of his injuries from the assault. Waters pled guilty to Second Degree Murder and was sentenced to 210 months custody. Piper pled guilty to Misprision of a Felony and was sentenced to a 1-year term of supervised release.

**United States v. Jerome Warrior, Calmer Cottier, William Bluebird, Albert Cottier, and Josann Winters—**

***Second Degree Murder***

On July 12, 2015, the victim was murdered in his mother's back yard in Pine Ridge, South Dakota. He was sleeping in a tent when four individuals woke him up by throwing wood and rocks on the tent. He was violently beaten with a stick, cinder block, shod feet, and a machete, and was left to die by his attackers. His cause of death was multiple blunt force traumas to his head.

In December 2015, the United States charged four individuals with Aiding and Abetting Second Degree Murder. Based on additional statements that were gathered after the original four defendants were charged, the Federal Bureau of Investigation was able to gather additional information that led to the United States charging a total of 6 male defendants with Second Degree Murder and Conspiracy to Commit an Assault.

Of the six males indicted, Calmer Cottier, the male that solicited the others to fight, was charged with Solicitation to Commit a Crime of Violence. One female was charged with False Statement.

Steven Steele was apprehended near the crime scene shortly after his arrest. The FBI collected his clothing and submitted it for testing. The results of the forensic analysis on his clothing showed the victim's blood was on his pants. This contradicted Steele's original story that he was only a "look out" and did not murder the victim. In August 2016, Steele was sentenced to the top end of the guideline range sentence, 17.5 years.

Terry Goings III was sentenced in October 2016 to 17.5 years as well. Jerome Warrior

received 14 years for playing a lesser role in the crime. Calmer Cottier is the defendant charged with Second Degree Murder, Conspiracy to Commit an Assault and Solicitation to Commit a Crime of Violence. He has pled not guilty and is awaiting trial. Billy Bluebird and Albert Cottier provided full debriefs and cooperated with the investigation. Through a final evaluation of evidence, the United States offered them charges of Misprision of a Felony. Josann Winters provided a debrief with law enforcement and is currently on pretrial diversion.

**United States v. Charles Colhoff and Jeremy Crow—Robbery/Kidnapping**

The defendants were well-known criminal figures on the Pine Ridge Indian Reservation. One night, while driving in Pine Ridge, the defendants forced a vehicle to stop,



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approached the vehicle, and robbed the vehicle's driver and passenger at gunpoint. The

defendants then proceeded to drive around Pine Ridge, eventually kidnapping another individual by demanding he get in their vehicle. The defendants led police on a high speed chase that ended in Rushville, Nebraska, when spike strips were deployed to stop their vehicle. The defendants were charged with Robbery, Kidnapping, and Use of a Firearm During a Crime of Violence. One defendant pled guilty to Robbery and the firearm charge and was sentenced to 7 years custody and a 3-year term of supervised release. The other defendant pled guilty to kidnapping and the

firearm charge, and was sentenced to 7 years custody, followed by 3 years of supervised release.

**United States v. Nolan White Butterfly—  
Assault of an Intimate Partner by  
Strangulation**

The defendant and victim began a romantic relationship in August 2015. On November 12, 2015, the victim went to a house near Manderson, to see Nolan White Butterfly, a/k/a Nolan Angel. On November 12, 2015, she went to speak to White Butterfly. The defendant met her outside and they began talking. The defendant became upset, and took the car keys and her phone. He threw her keys into the bushes. He physically assaulted her outside the house when she tried to leave. During the assault, the defendant dragged the victim on the ground by her hair. As a result of the assault, her stomach hurt and it was painful to walk. Eventually she agreed to come inside. That night, the defendant had sexual intercourse with her several times. During at least one of the sexual intercourse events, the defendant strangled the victim with his hands around her neck, impeding the flow of her breath. This action was done against her will and caused her pain. White Butterfly pled guilty to Assault of an Intimate Partner by Strangulation. On November 21, 2016, he was sentenced to 57 months custody.

**United States v. Michael Lone Hill—  
Assault of a Federal Officer**

An Oglala Sioux Tribe Department of Public Safety officer attempted to make a traffic stop of the defendant's vehicle for driving under the influence. The defendant did not stop and a chase ensued into the Evergreen Housing area on the Pine Ridge Indian

Reservation. After driving at high speeds through the housing area, the defendant stopped briefly, and a small child got out of his vehicle. As the officer approached the vehicle, the defendant took off again. The officer was able to cut off the defendant's vehicle and a head-on collision occurred. As the officer again approached the defendant's vehicle, the defendant backed away from the crash, changed gears, turned the wheel in the officer's direction, and accelerated toward the officer. The vehicle struck the officer and threw him into the air, causing numerous injuries. The defendant was charged with Assaulting a Federal Officer. He pled guilty, and was sentenced to 60 months' custody, followed by a 3-year term of supervised release.

**United States v. Timothy White Plume—  
Child Abuse and Neglect and Assault  
Resulting in Serious Bodily Injury**

In December of 2012, White Plume attacked and assaulted his 3 month-old step grandson causing permanent and life-long injuries including blindness, deafness, microcephaly (his head will not grow), he will never walk, he will never play, and ultimately, he will die because of his profound injuries. White Plume refused to take responsibility and took the case to trial in the summer of 2015, and the jury convicted him of both charges. He was sentenced in January of 2016 to 96 months' imprisonment, and a \$100 special assessment.



## **Rosebud Sioux Reservation**



### **United States v. Benton Leo Brave Hawk— Abusive Sexual Contact and Assault Resulting in Substantial Bodily Injury**

The defendant watched two children overnight at their home in Rosebud, South Dakota. The defendant was the only adult present. At some point in the night, the defendant went to the bed where the two children were sleeping and climbed on top of the female child, age 7. The defendant held his hand over the female child's mouth and proceeded to have vaginal intercourse with the child. The male child, age 11, awoke to the female child's crying and grabbing onto the male child's arm. The defendant finished the sexual act, put money on the bed, and told the female child not to tell anyone. The abuse was discovered when the male child told family members about the defendant's actions. While at the same home, the defendant hit the male child across his back and buttock with a belt. The belt had a metal buckle and the metal buckle made contact with the child's skin and left bruises on the male child. The defendant was sentenced to 15 years in custody, to be followed by a 5-year term of supervised release, and a \$100 special assessment.

### **United States v. Rodney Roubideaux— Assault with a Dangerous Weapon and Assault Resulting in Serious Bodily Injury**

The defendant was drinking alcohol at a home in Ring Thunder, South Dakota, along with several other adults. The defendant became agitated and complained that an individual shook his hand too hard. The defendant and the individual argued over the handshake. Everyone continued to socialize in the kitchen and the defendant stood by himself in the corner of the kitchen. Without provocation, the defendant turned quickly toward the individual he had argued with and stabbed him in the back with a kitchen knife. The defendant then came at another individual, who was able to knock the knife out of the defendant's hand. That individual sustained a cut on his left arm from the knife when he struggled with the defendant. The defendant pled guilty to Assault with a Dangerous Weapon and Assault Resulting in Serious Bodily Injury. He was sentenced to 18 months in custody, a 2-year term of supervised release, and a \$100 special assessment.

### **United States v. Michael Lee Long, Jr.— Assault with a Dangerous Weapon; Discharging a Firearm During and in Relation to Crime of Violence; Prohibited Person in Possession of a Firearm**

On May 17, 2015, the defendant accosted three people in a parked vehicle at a convenience store in Rosebud. As the defendant stood next to the open front passenger door pointing a handgun at the victim in the passenger seat, the driver put the vehicle in reverse in an effort to get away. The defendant was knocked down by the open vehicle door and fired at the vehicle before it departed the parking lot. The driver of the

vehicle was the daughter of the front-seat passenger. The daughter's boyfriend was also in the vehicle, seated in the back. They were not injured. The defendant had previously been convicted of Domestic Abuse in Rosebud Sioux Tribal Court, making it illegal for him to possess a firearm. The defendant was indicted by federal grand jury on October 14, 2015. The case proceeded to trial in May 2016, and the defendant was convicted of Assault With a Dangerous Weapon, Simple Assault, Discharging a Firearm During and in Relation to a Crime of Violence, and Prohibited Person in Possession of a Firearm. In August 2016, the defendant was sentenced to 150 months in prison, followed by a 2-year term of supervised release, and ordered to forfeit ownership of the handgun used in the assault.

**United States v. Graham Brody Good Shield—Abusive Sexual Contact**

The defendant, age 20, was drinking alcohol at a home in Rosebud, South Dakota. The victim, an 11-year-old female, came to the home and tried to spend time with the defendant. The defendant took the victim into a bedroom, undressed the victim, and digitally penetrated her vagina. The defendant then had sexual intercourse with the victim, and spent the night with the victim in the bedroom. The victim was prepubescent; however, when the victim returned home the next day, her family discovered she was bleeding from her vagina. Law enforcement was contacted and the defendant admitted to the sexual activity. The defendant pled guilty to Abusive Sexual Contact and was sentenced to 9 years in custody, followed by a 5-year term of supervised release, and a \$100 special assessment.

**United States v. Rueben One Star—Assault with a Dangerous Weapon**

The defendant was on federal supervised release for an unrelated conviction and had a one-day pass to visit family in Mission, South Dakota. The defendant drank alcohol and became intoxicated. He went to the home of his uncle and, after having an altercation with a female at the house, became aggressive toward the house guests. The defendant left, but came back to the home with a crowbar. The defendant entered the home and hit his uncle, the victim, across the face with a crowbar. The victim was knocked unconscious. The victim had a broken nose, a fractured upper jaw, and substantial facial lacerations. The victim required reconstructive surgery for the injuries to his nose. There was also a contusion in the shape of a crow bar on the victim's abdomen. The defendant pled guilty to Assault with a Dangerous Weapon and violations of his conditions of release. The defendant was sentenced to 46 months in custody, followed by a 3-year term of supervised release, and a \$100 special assessment.

**United States v. Jeremy Schroeder and Kirby Kartak—Criminal Trespass**

The defendants Schroeder and Kartak, non-Indians, drove heavy equipment into the Oyate Whacanku Spirit Camp located near Rosebud, South Dakota, and removed approximately 30 large hay bales, which were being utilized to form a windbreak at the camp. Schroeder claimed to have an ownership interest in the hay, which was harvested on a separate tract of land owned by the tribe. Schroeder had previously leased the land on which the hay was harvested. The Spirit Camp was established on land owned in trust by the Rosebud Sioux Tribe. The Spirit

Camp was designed as a cultural and spiritual camp for activities associated with tribal opposition to the construction of the TransCanada Keystone XL Pipeline. Several tipis and a sweat lodge were erected at the camp and the camp was blessed by tribal spiritual leaders. Both defendants were sentenced to pay the Rosebud Sioux Tribe \$600 in restitution and pay a \$300 fine. Both men were also required to write letters of apology to the Rosebud Sioux Tribe.

**United States v. Anthony Farmer—**

***Felon in Possession of a Firearm and Failure to Register as a Sex Offender***

On March 16, 2010, the Defendant was convicted of Abusive Sexual Contact with a Child and received a 48 months custody sentence, to be followed by a 5-year term of supervised release. On August 2, 2013, the defendant began his term of supervised release. The defendant was subsequently arrested for sex offender registration violations and was in possession of a .22 caliber rifle at the time of his arrest. The defendant was sentenced to 27 months in custody, followed by a 3-year term of supervised release, and a \$100 special assessment.

**United States v. Lonnie Erickson—**

***Conspiracy to Distribute a Controlled Substance***

On July 6, 2015, the defendant was found injured in a vehicle near Okreek, South Dakota, with open wounds to his forehead and legs. A rifle and ammunition were found in the trunk of the vehicle and Erickson, having previously been convicted of a drug felony, was indicted in August of 2015 for Possession of a Firearm by a Prohibited Person. When law enforcement arrested the

defendant in Winner, South Dakota, in October of 2015, Erickson was found with another firearm, methamphetamine and marijuana, as well as drug paraphernalia. The indictment was superseded to include an additional firearms charge. After additional evidence was obtained regarding the defendant's methamphetamine distribution activities, a second superseding indictment was returned against the defendant in May of 2016, charging him with Conspiracy to Distribute more than 500 grams of methamphetamine since March 1, 2015. The defendant pled guilty on November 8, 2016, to Conspiracy to Distribute Methamphetamine. On January 30, 2017, the defendant was sentenced to 132 months of custody, 5-year term of supervised release, forfeiture of the firearms and \$866 in U.S. currency seized by law enforcement, a \$1,000 fine, and the mandatory \$100 special assessment.

**United States v. Shaun Espino, et al.—**

***Conspiracy to Distribute a Controlled Substance***

On January 15, 2016, a search warrant was executed by Rosebud Sioux Tribal Law Enforcement Services Officers at the residence of Shaun Espino in Todd County. Found at the residence was Espino, 73 grams of methamphetamine, two firearms, ammunition, and over \$7,600 in U.S. currency. Espino tested positive for methamphetamine later that day. An investigation ensued, and on March 15, 2016, an indictment was returned charging Espino, Rogelio (Roy) Guel, Jr., Sarah Roblez, and Chelsey Little Long Crow with Conspiracy to Distribute Methamphetamine between January 1, 2015 and March of 2016. Espino was also charged with Possession of a Firearm by a Prohibited Person.



Defendants Guel, Little, and Roblez, all pled guilty in September of 2016, to Conspiracy to Distribute Methamphetamine, stipulating that their conduct involved the distribution of between 350 and 500 grams of methamphetamine. Espino pled guilty in February of 2017 to the Conspiracy to Distribute Methamphetamine, stipulating that his conduct involved the distribution of between 500 grams and 1.5 kilograms of methamphetamine. All of the defendants admitted that they received distributable quantities of methamphetamine from individuals who knew that they intended to engage in further distribution of methamphetamine, and that they provided methamphetamine to others in South Dakota knowing that they intended to engage in further distribution of methamphetamine. The defendants further admitted that it was reasonably foreseeable to them that at least 350 grams of methamphetamine would be distributed during the course of the conspiracy.

Defendant Guel was sentenced on November 28, 2016, to 63 months in custody and a 3-year term of supervised release. Defendant Little was sentenced on December 12, 2016, to 51 months in custody and a 3-year term of supervised release. Defendant Roblez was sentenced on December 19, 2016, to 46 months in custody and a 3-year term of supervised release. All Defendants were fined \$1,000 and ordered to pay the mandatory \$100 special assessment. Defendant Espino's sentencing is set for April 24, 2017.

## **Significant Sentencings in 2016—**

### ***Conspiracy to Distribute***

#### ***Methamphetamine:***

- Helen Clifford (Rosebud) – August 4, 2016 – 42 months of custody, 3 years of supervised release, and a \$1,000 fine.
- Ty Clifford (Rosebud) - August 29, 2016 – 33 months of custody, 3 years of supervised release, and a \$1,000 fine.
- Leon Farmer (Rosebud) – April 4, 2016 - 120 months of custody, 5 years of supervised release, and a \$1,000 fine.
- Henry Gorisek (Rosebud) – July 6, 2016 - 51 months of custody, 3 years of supervised release, forfeiture of U.S. currency and firearms, and a \$1,000 fine.
- Stephen Paul Jordan (Rosebud) – March 21, 2016 - 60 months of custody, 4 years of supervised release.
- Julie Little Thunder (Rosebud) – February 16, 2016 - 87 months of custody, 4 years of supervised release, forfeiture of U.S. currency and a firearm.
- Jason Menard (Rosebud) – April 18, 2016 - 126 months of custody, 5 years of supervised release, \$1,000 fine.
- Danielle Provancial (Rosebud) – April 5, 2016 - 60 months of custody, and 4 years of supervised release.
- Norman Ritter (Rosebud) – December 20, 2016 - 108 months of custody, 4 years of supervised release, forfeiture of U.S. currency and firearms, and a \$1,000 fine.
- William Paul Whiting (Rosebud) – February 16, 2016 - 120 months of custody, 5 years of supervised release.
- Suni Wooden Knife (Rosebud) – August 4, 2016 - 37 months of custody, 3 years of supervised release, and a \$1,000 fine.

## **Sisseton-Wahpeton Sioux Reservation**



### **United States v. Daniel Donald Lovato— Sexual Abuse of a Minor**

Daniel Lovato sexually abused a minor female family member repeatedly over the course of approximately eight-and-a-half years. On May 9, 2016, Lovato pled guilty to one count of sexual abuse of a minor. On September 12, 2016, Lovato was sentenced to 180 months of imprisonment—the statutory maximum—to be followed by a 15-year term of supervised release. Lovato’s appeal to the Eighth Circuit Court of Appeals is pending.

### **United States v Harvey Renville— Abusive Sexual Contact**

An Agency Village, South Dakota, man was convicted of Abusive Sexual Contact with a Person Incapable of Consent. The conviction stemmed from incidents beginning in May of 2012, and continuing through December 31, 2012. The victim became acquainted with the defendant when her family’s horses began to be cared for by him. Consequently, the victim started spending considerable time at his residence. It was during this time period that the abusive sexual contact occurred. The defendant admitted that during one of the times the victim was at his residence, he had

direct contact with the victim’s genitalia with his finger and his hand. At the time of the sexual contact, the victim was unable to consent to the contact. The Defendant had been previously convicted of a sex offense which required him to register as a sex offender. The Defendant was sentenced to 72 months of custody, followed by a 10-year term of supervised release.

## **Standing Rock Sioux Reservation**



### **United States v. Denny Johnson— Aggravated Sexual Abuse, Aggravated Assault, and Habitual Domestic Violence**

The defendant was convicted in May of 2016 following a three-day jury trial of two counts of Aggravated Sexual Abuse by Force, Assault with a Dangerous Weapon, Domestic Assault by an Habitual Offender, Simple Assault and Assault Resulting in Serious Bodily Injury in Aberdeen, South Dakota. The convictions stemmed from incidents between December 29, 2013, and January 10, 2014, when the defendant, who had been in a tumultuous and violent relationship since early 2000 with the victim, began to physically and emotionally abuse her. The defendant was yelling at the victim because he had been watching her at work and became jealous when he saw her interacting with a co-worker. The victim began to gather her belongings so she could leave and headed out of the house. As she

opened the door to leave, the defendant suddenly slammed the door shut, grabbed her by her jacket collar, jerked her to the floor, and began assaulting her. The victim was able to get up and attempted to escape. The defendant again grabbed her by the jacket, cut it off of her with a large army knife he had grabbed, and chased her into his bedroom. He also began throwing household items at her, striking her on the forehead. The defendant then retrieved her suitcase, opened it, and cut her clothing up with his knife. The victim tried to escape out of a window, but she was so nervous, she could not unlock the window. The defendant began walking towards her and he used the knife to cut the clothes she was wearing off of her body. Thereafter, he threw the knife at her, sticking it in the floor beside her, and he told her to kill herself because he could not do it. The victim refused, stating she had her children to live for so she would not kill herself. The defendant retrieved the knife and kicked her as she tried to crawl from him. When she cried out, he told her to be quiet or he would kill her. The defendant then urinated on the victim, told her that she stunk and ordered her to get into the shower. He turned on the cold water only and forced her to stay under the water as he poured shampoo, soap, liquid hand soap, dish soap, a bottle of Mr. Clean, Clorox, and dirty mop water on her head and face. The defendant then ordered her out of the shower and told her to go to a bedroom, where he followed and ultimately raped the victim multiple times. During the sexual abuse, he hit her in the face, held a knife to her throat, and forced her to perform oral sex on him. In August of 2016, the defendant was sentenced to 360 months of custody. An appeal is currently pending.

#### **United States v. Jason Martinez—**

##### ***Domestic Assault by a Habitual Offender***

In December of 2015, the defendant was staying with family in McLaughlin, South Dakota, with his girlfriend. The couple got into an argument, which escalated into a physical altercation. The victim made a decision to leave the defendant and went to the basement to gather her belongings. As she was in the basement, the victim heard a noise behind her and when she turned and looked, she saw the defendant standing there. He made a disparaging remark to the victim and he started to hit her repeatedly about her head, face, and legs. In addition, the defendant threw her down to the ground and struck her repeatedly on her back. The victim tried to remain curled up in a ball in the corner to avoid further injury. The defendant grabbed her, tearing a portion of the victim's clothes, continuing to strike her about the head. As a result, there was so much blood coming down her face that she was having a hard time seeing. The victim sustained multiple deep lacerations, cuts, bruises, scrapes, and abrasions. The lacerations to her scalp were so deep that her skull was visible through the wound site. The defendant was sentenced to 120 months of custody, followed by a 3-year term of supervised release, and a \$100 special assessment.



22 PRISON CELLS FOR INCARCERATED INDIVIDUALS

**United States v. Makayla Kills in Water—  
Assault Resulting in Serious Bodily Injury  
to a Child**

A McLaughlin, South Dakota, woman was convicted of Assault Resulting in Serious Bodily Injury to a Child. The conviction stemmed from an incident involving the defendant's two-year-old stepdaughter. The young victim was brought to the Mobridge Regional Hospital by ambulance and was drifting in and out of consciousness and was unable to breathe on her own.

Due to the severity of her injuries, the victim was airlifted to Sioux Falls, South Dakota. Upon arrival in Sioux Falls, the medical staff was apprised of the defendant's initial version of how the injury was sustained, namely that the victim had fallen out of a vehicle which led to her current injuries and medical condition. However, the victim's treating physician stated that the injuries sustained were inconsistent with a simple fall from a vehicle. It was noted that the victim had bilateral hemorrhages of the retina and both retinas were also detached. The treating physician also advised this type of injury is almost 100% specific to "shaken baby" injuries. The force of the act had to be significant enough to cause the victim's brain to shift, resulting in the brain tissue shearing and/or tearing, thus causing extensive bleeding. A "brain bolt" was placed in the victim's skull to relieve the pressure in her head.

The defendant admitted to violently shaking the victim against a wall, causing the injuries. As a result of the assault, the victim remains partially paralyzed on the left side of her body, which necessitates the use of a wheel chair, with severe visual and speech deficits. It is unknown if the victim will ever fully recover from the injuries she sustained. The defendant

was sentenced to 120 months of custody, followed by a 3-year term of supervised release.

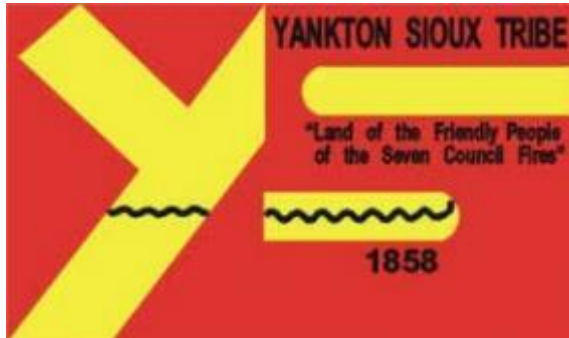
**United States v. Kelly Moore—  
Conspiracy to Distribute a Controlled  
Substance and Prohibited Person in  
Possession of a Firearm**

A Kenel, South Dakota, man was convicted of Conspiracy to Distribute a Controlled Substance and being a Prohibited Person in Possession of a Firearm. The convictions stemmed from a search warrant that was executed on the defendant's residence by the Bureau of Indian Affairs (BIA) police. Found during the search of the residence were two firearms, ammunition, prescription pills, drug packaging material, scales, and drug paraphernalia. In addition, the defendant had five small baggies in his pocket, four of which contained methamphetamine. The defendant was placed under arrest and subsequently admitted to being involved in a conspiracy to distribute methamphetamine across the Standing Rock Indian Reservation. As part of the conspiracy, he admitted to selling approximately 350 grams of methamphetamine. The defendant was sentenced to 92 months of custody, followed by a 3-year term of supervised release, and a \$100 special assessment.

23 SENTENCING HEARING



## Yankton Sioux Reservation



### United States v. Brent Allen Silk, Jr.— Abusive Sexual Contact

On the night of May 12, 2015, the defendant and others were drinking at a home just east of Lake Andes, on the Yankton Sioux Reservation. Later in the night, Silk was in a van and had sexual contact with an intoxicated female adult who was incapable of appraising the nature of the conduct. Silk pled guilty to a Superseding Information for Abusive Sexual Contact on October 24, 2016. He was sentenced to 36 months in custody, followed by a 5-year term of supervised release, and a \$100 special assessment.

### South Dakota's Indian Reservations





## DEPARTMENT OF JUSTICE GRANTS

The Department of Justice offers funding opportunities to support law enforcement activities in state and local jurisdictions, to provide training and technical assistance and to implement programs that improve the Criminal Justice System. Listed below are some of the grants that were awarded in 2016. For more information on grant availability, please go to the Office of Justice Programs website at [www.ojp.gov](http://www.ojp.gov).

Award Title	Awardee	Amount	Program Office	Solicitation Title
South Dakota Prescription Drug Monitoring Program	<a href="#">South Dakota Department of Health dba SD Board of Pharmacy</a>	\$400,000	BJA	<a href="#">BJA FY 16 Harold Rogers Prescription Drug Monitoring Program: PDMP Implementation and Enhancement Grants</a>
FY 16 South Dakota JRJ Program	<a href="#">Office of the Attorney General</a>	\$31,508	BJA	<a href="#">John R. Justice Program</a>
FY2016 DNA Capacity Enhancement and Backlog Reduction (CEBR) Program	<a href="#">Office of The Attorney General</a>	\$277,888	NIJ	<a href="#">DNA Capacity Enhancement and Backlog Reduction Program</a>
South Dakota FY2016 National Criminal History Improvement Program (NCHIP)	<a href="#">South Dakota Office of Attorney General</a>	\$252,511	BJS	<a href="#">FY 2016 National Criminal History Improvement Program (NCHIP)</a>
OVC FY 16 VOCA Victim Compensation Formula	<a href="#">South Dakota Department of Social Services</a>	\$30,000	OVC	<a href="#">OVC FY 16 VOCA Victim Compensation</a>
Comprehensive services to victims of Crime.	<a href="#">Wiconi Wawokiya Inc.</a>	\$450,000	OVC	<a href="#">OVC FY 16 CTAS Purpose Area 7: Comprehensive Tribal Victim Assistance Program</a>
OVC FY 16 VOCA Victim Assistance Formula	<a href="#">South Dakota Department of Social Services</a>	\$6,285,230	OVC	<a href="#">OVC FY 16 VOCA Victim Assistance</a>
South Dakota Application for Funding to Support the FY2016 ICAC Task Force	<a href="#">Office of the Attorney General</a>	\$239,290	OJJDP	<a href="#">OJJDP FY 16 Internet Crimes Against Children Task Force Invited</a>
2016 Edward Byrne Memorial Justice Assistance Grant (JAG) Project	<a href="#">City of Sioux Falls</a>	\$70,362	BJA	<a href="#">Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation</a>
Rapid City Police Department & Pennington County Sheriff Forensic Computer and Ballistic Helmets	<a href="#">Rapid City Police Department</a>	\$43,920	BJA	<a href="#">Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation</a>
Intermediate Correctional Intervention Program	<a href="#">State of South Dakota</a>	\$1,750,000	BJA	<a href="#">BJA FY 16 Justice Reinvestment Initiative</a>

Award Title	Awardee	Amount	Program Office	Solicitation Title
The State of South Dakota will utilize FY2016 Title II Formula Grant funds consist with federal requirements.	<a href="#">South Dakota Department of Corrections</a>	\$400,336	OJJDP	<a href="#">OJJDP FY 16 Title II Formula Grants Program</a>
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation SORNA	<a href="#">Sisseton-Wahpeton Oyate of the Lake Traverse Reservation</a>	\$336,000	SMART	<a href="#">Support for Adam Walsh Act Implementation Grant Program</a>
Sisseton Wahpeton Oyate Tribal Treatment Court	<a href="#">Sisseton Wahpeton Oyate</a>	\$310,589	BJA	<a href="#">BJA FY 16 CTAS Purpose Area 3: Justice Systems, and Alcohol and Substance Abuse Program</a>
FY16 Paul Coverdell Forensic Science Improvement Grants Program	<a href="#">Office of The Attorney General</a>	\$71,530	NIJ	<a href="#">Paul Coverdell Forensic Science Improvement Grants Program</a>
RST SORNA	<a href="#">Rosebud Sioux Tribe</a>	\$315,568	SMART	<a href="#">Support for Adam Walsh Act Implementation Grant Program</a>
SD FY2016 State Application for Edward Byrne Memorial Justice Assistance Grant (JAG) Program	<a href="#">Office of The Governor</a>	\$525,487	BJA	<a href="#">Fiscal Year 2016 JAG</a>
Emergency Planning for Juvenile Justice Detention Alternatives	<a href="#">Lutheran Social Services of South Dakota</a>	\$150,000	OJJDP	<a href="#">OJJDP FY 2016 Juvenile Justice Emergency Planning Demonstration Program</a>
Wellness Program for Detained Youth & JDC Staff- Physical Education Program	<a href="#">Rosebud Sioux Tribe</a>	\$41,705	BJA	<a href="#">Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation</a>
Rosebud Sioux Tribe Wellness Initiative	<a href="#">Rosebud Sioux Tribe</a>	\$252,750	OJJDP	<a href="#">OJJDP FY16 CTAS Purpose Area 8: Tribal Juvenile Healing to Wellness Courts</a>
FY16 Application for Prison Rape Elimination Act (PREA) Reallocation Funds	<a href="#">Office of The Governor</a>	\$15,587	BJA	<a href="#">BJA FY 16 Solicited - PREA</a>
SMART FY16 Support for Adam Walsh Act Implementation Grant Program	<a href="#">South Dakota Office of Attorney General</a>	\$121,984	SMART	<a href="#">Support for Adam Walsh Act Implementation Grant Program</a>
Yankton Sioux Tribal SORNA Program	<a href="#">YANKTON SIOUX TRIBE</a>	\$141,178	SMART	<a href="#">Support for Adam Walsh Act Implementation Grant Program</a>
Development and Properties of Kernel-Based Methods for the Interpretation and Presentation of Forensic Evidence	<a href="#">South Dakota State University</a>	\$41,047	NIJ	<a href="#">Office of Investigative and Forensic Sciences Continuations</a>

## ADMINISTRATIVE DIVISION

The Administrative Division of the United States Attorney's Office for the District of South Dakota provides consistent and effective administrative services and support to the employees and programs of the United States Attorney's Office.

The Division provides guidance concerning Department of Justice policies and procedures as well as central services support in all areas of Administration, including: Human Resources, Budget and Finance, Information Technology, Facilities Management, Records Management, Purchasing, Property Management, and Security. The Division is responsible for planning and executing a comprehensive range of administrative services that support the mission of the USAO. The Division is managed by the Administrative Officer, who is the principal advisor to the United States Attorney and the District on administrative matters. The Administrative Officer provides guidance on the management and use of the District's financial, manpower, and physical resources, and on administrative policies, procedures, and practices.

Employment opportunities include varied legal and administrative jobs. Currently, the District of South Dakota has 60 positions in support of three offices in Sioux Falls, Rapid City and Pierre. In the Criminal, Civil, and Appellate Divisions, these positions consist of Assistant United States Attorneys, Paralegal Specialists, Legal Assistants, Victim Witness Coordinators, and Debt Collection Agents. In the Administrative Division, these positions consist of an Administrative Officer, Administrative Support Services Specialist,

Human Resource Specialist, Contracting Officer, Budget Analyst, and Information Technology Specialists focusing on litigation support and computer network management.

In addition, the Administrative Division follows internal control practices that ensure proper use and reporting of taxpayer funded assets. At the direction of the United States Attorney, the Administrative Division manages an annual operating plan budget of approximately \$5 million dollars. The Division also manages equipment and facilities in three locations valued at approximately \$2 million. The Administrative Division is also responsible for the coordination, development and maintenance of office policies and procedures related to the mission of the USAO. In this regard, the Administrative Division works closely with the United States Attorney, Assistant United States Attorneys and support staff to ensure compliance with a strong internal controls program.



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The Administrative Division is led by Jeff Traill, Administrative Officer, who supervises a number of subject matter experts, including an Administrative Support Services Specialist, a Budget Analyst, two Information Technology Specialists, a Human Resources Specialist, a Contracting Officer, and general Administrative students focusing on litigation support and computer network management.



## **CIVIL DIVISION**

The Civil Division represents the interests of the United States in litigation involving the federal government in the District of South Dakota. The mission of the Civil Division is to promote the fiscal integrity of the federal government by conducting meaningful community outreach to educate citizens about fraud prevention and by filing affirmative lawsuits against individuals and companies who misuse or falsely claim entitlement to federal money. The Civil Division defends the interests of the United States in cases where the government or a government employee is sued for acts related to official business. Our defensive work includes supporting Final Agency Decisions in regulatory and employment determinations. We also defend the United States in personal injury or medical malpractice litigation brought pursuant to the Federal Tort Claims Act. Currently, five Assistant U.S. Attorneys are assigned to the Civil Division and are supervised by Diana Ryan, Civil Chief.

### **DEFENSIVE TORT LITIGATION**

#### **Lisa Becenti v. United States**

Lisa Becenti claimed she contracted a methicillin-resistant staphylococcus aureus (MRSA) infection during her incarceration in the Oglala Sioux Tribal Detention Center in Pine Ridge, South Dakota. She claimed that another inmate gave her MRSA. Becenti failed to prove her allegations and the U.S. District Judge dismissed her case.

#### **Doran A. Schmitt, as Special Administrator of the Estate of Daniel Eric Schmitt v. United States**

A Bureau of Land Management (BLM) law enforcement officer arrested Daniel Schmitt after a domestic altercation in a campground at the Orman Dam. The officer secured Schmitt's seatbelt in a BLM vehicle and locked the car door. However, enroute to the jail, an intoxicated Schmitt jumped out of the moving vehicle. Schmitt died as a result of his injuries. His estate filed a lawsuit, claiming that the BLM officers were negligent in their decision to arrest and in the way they transported Schmitt to jail. Upon motion of the United States, this case was dismissed on grounds that the United States does not waived its sovereign immunity to be sued for the performance of a discretionary act. The court found there is no specific mandate which require the BLM officer to inspect if the child safety locks were engaged and in working order, or to maintain constant visual supervision of the prisoner during transport. The court declined to engage in judicial second-guessing of law enforcements on the spot handling of an emergency situation.

#### **Kevin Wright, acting Chairman, Lower Brule Sioux Tribe, Council Members Sonny Ziegler and Desiree Laroche, Lower Brule Sioux Tribe Co v. Orville (Red) Langdeau, John McCauley, Sr., Sally Jewell, Secretary of the United States Department of the Interior, James Two Bulls, Bureau of Indian Affairs Lower Brule Agency Superintendent, in his official capacity, and Tim LaPointe, Aberdeen Area BIA Director, in his official capacity**

Kevin Wright was the Acting Chairman of the Lower Brule Sioux Tribe. He and Tribal

Council Members Sonny Ziegler and Desiree Laroche sued other Tribal Council Members Orville Langdeau and John McCauley, Sr., as well as the Secretary of the Interior, Bureau of Indian Affairs, over an internal tribal dispute involving the whereabouts of roughly \$24 million in federal funding that had been provided to the Lower Brule Sioux Tribe. The plaintiffs demanded an accounting from the tribal defendants and from the BIA. The claims against the BIA were for negligent oversight in failing to prevent the mismanagement of federal funds. The U.S. District court noted this was an internal tribal governmental dispute and granted the Secretary of the Interior, Bureau of Indian Affairs' motion to dismiss. The case against the tribal council members was also dismissed for failure to exhaust tribal court remedies, including tribal appellate review.

#### **Troy John Stanga v. United States Postal Service**

In November 2012, Stanga was stopped in a row of traffic at a stop sign on the Tea-Ellis Road in Sioux Falls. He glanced in his rearview mirror and saw headlights coming from behind him at a rapid rate. He was rear-ended by a United States Postal Service vehicle, and his car was pushed into the vehicle in front of him. There was a dispute as to the extent of damages because Stanga had also been involved in a similar rear-end car accident three weeks earlier, for which medical treatment was required. Following the second accident, Stanga underwent a successful surgery for a herniated disc. This case was resolved through court mediation.

#### **Obswaldo Amador v. United States**

Obswaldo Amador brought a FTCA action against the United States alleging that the

Postal Service was negligent in maintaining a commercial garage door at the loading dock of its mail-sorting facility located in Sioux Falls. Amador was a contractor delivering mail to the facility and was injured when he was unloading his truck in the loading bay and the garage door fell on him. Amador also alleged the Postal Service failed to warn him of a potentially dangerous condition. The case was resolved at mediation conducted by the U.S. Magistrate Judge.

#### **Inez Two Elk White and Lavonne Reynolds White v. United States**

Lavonne Reynolds was traveling with her mother, Inez White, in Lavonne's car on a rural highway at night when they struck a cow in the road. Their car left the road and went into a ravine. Another driver also ran into cows in the same area and called the police to report that accident. The police arrived and cleaned up the scene and created a report, but no one found the Whites or their car in the ravine. They were eventually discovered by a neighbor out walking the following day and were taken to the hospital and treated for their injuries. The Whites sued the Oglala Sioux Department of Public Safety for negligence and claimed that the police officer should have found them when he appeared on scene to investigate. Although the court agreed with them, the Court found that the Whites failed to provide any evidence that the delay in their discovery and medical treatment caused any exacerbation of their injuries, which were not originally caused by the government. Accordingly, their lawsuit was dismissed.

#### **Kenneth Harlan v. United States**

Kenneth Harlan was incarcerated at the Federal Prison Camp located in Yankton, South Dakota. Harlan brought a FTCA cause

of action against the prison claiming that the prison improperly delayed his dental treatment pertaining to a decayed and eventually infected tooth, improperly defined what constituted a dental emergency, and caused him extreme pain and suffering. The prison responded by stating that his dental treatment met the standard of care, and that its staff had followed all Bureau of Prison rules and regulations in responding to his complaints and providing him with treatment. Eventually, the government moved to dismiss or for summary judgment on all claims stating that Harlan failed to prove medical malpractice because he did not have an expert that stated his treatment failed to meet the standard of care, that his Eighth Amendment claim could not survive when he had only sued the prison rather than individual actors, and that prison staffing decisions were barred from review by the discretionary function exception to the FTCA. After the government filed this motion, Harlan moved to amend his complaint to add individual actors. The Court denied Harlan's request to amend his complaint, finding it was too late in the litigation process to allow amendment when the individuals and the government would be prejudiced. The Court also granted the motion for summary judgment, and the case was dismissed.

#### **Anne White Hat v. United States**

Anne White Hat brought a dental malpractice action against the United States alleging that a dentist employed by the Sioux San Hospital negligently performed a tooth extraction, thereby leaving behind a root remnant that later caused irreparable nerve damage. The matter was resolved at mediation conducted by the U.S. Magistrate Judge.

#### **Greg Pond v. United States**

Greg Pond brought a medical malpractice action against the United States alleging that employees at the Pine Ridge Indian Health Services acted negligently in their performance of a gallbladder surgery and in their provision of post-operative care. The government moved to dismiss Pond's action for failure to provide an expert opinion to support his claim. The District Court ordered Pond to respond to the government's dispositive motion, but Pond failed to comply. The Court therefore dismissed Pond's action for failure to actively litigate his case, failure to satisfy local rules, and failure to comply with the Court's order.

#### **Mark Cline v. United States, Samuel Lewis v. United States, Rosemary Sundhagen, Personal Representative of the Estate of Kristian Sateren v. United States, and Raphael Washington v. United States**

The above-named Plaintiffs brought individual lawsuits against the United States alleging that an employee of the Department of Veterans Affairs negligently operated a transport van, causing the van to collide with another vehicle while traveling down Interstate 90 near Sturgis. The van rolled several times, injuring Cline, Lewis, and Washington, and resulting in the death of Sateren. Following an extended mediation conducted by a U.S. Magistrate Judge, all four lawsuits were resolved.

#### **Christy Red Bird v. United States**

Christy Red Bird brought a medical malpractice action against the United States alleging that employees at the Rosebud Indian Health Services acted negligently in the performance of a laparoscopic gallbladder surgery during which she sustained an injury

to her small bowel. She also claimed that the post-operative care given to her was negligent. The matter was resolved at a mediation conducted by a U.S. Magistrate Judge.

#### **Paul Thomas v. United States**

#### **William and Judy Porch v. United States**

The above two Plaintiffs brought separate property damage cases arising out of the trespass of waterlines on their private property stemming from construction of the Oglala Sioux Rural Water Supply System construction. The Bureau of Reclamation contracted with the Oglala Sioux Tribe to install the water lines. In both cases, the plaintiffs alleged that the waterline was installed across their property without notice or permission. These cases were resolved through settlement negotiations.

#### **Cynthia Larmon v. United States**

Cynthia Larmon was a civilian worker at the Ellsworth Air Force Base. Upon leaving work one afternoon, she slipped and fell on an icy sidewalk and broke her ankle. She required surgery and rehabilitation. She sued the



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United States for her injury and after a court trial, the court found in her favor and awarded damages against the United States.

#### **American Family Ins. v. United States**

A postal contractor parked her vehicle on a hillside without properly setting the emergency brakes. The car rolled downhill, causing damage to other vehicles and mailboxes totaling over \$31,000. Her insurance company brought suit to recover

the damages. However, upon motion of the United States, the case was voluntarily dismissed because the postal worker was not a government employee, but was a contract employee.

## **AFFIRMATIVE LITIGATION**

The USAO works jointly with the State of South Dakota, the Department of Health and Human Services, the Bureau of Indian Affairs, the Department of Agriculture, and the Department of Defense to recover reimbursement for money fraudulently obtained through false statements made to federal agencies, and for services not rendered or not provided by qualified medical personnel. Highlights of our civil affirmative enforcement efforts in 2016 include the following:

#### **United States v. Sancom, Inc.**

In 2004, the USDA's Rural Utility Services ("RUS") entered into a \$20 million dollar loan with Sancom Communications in Mitchell, South Dakota, to construct a state of the art broadband fiber-optic network. Sancom stopped making payments on this loan in 2009, so RUS accelerated the debt and demanded payment. The matter was referred to our office for collection. Settlement negotiations revolving around foreclosure, bankruptcy, and business valuation began in 2012. After it became apparent Sancom did not have the ability to repay the entire debt, the USAO obtained an appraisal of remaining assets and negotiated an upfront cash payment to the United States of \$6.25 million involving the sale of Sancom's assets to a group of investors.

### **United States v. Karl Knutson**

Karl Knutson committed farm program fraud when he submitted false claims to the USDA through the Farm Service Agency's Livestock Indemnity Program stating he lost 129 cattle during the October 2013 winter storm Atlas. Knutson sought a disaster payment estimated at \$116,845. In support of his claim, he submitted an invoice from the PN Ranch in Broadus, Montana, purportedly showing he had purchased 103 head of cattle, many of which he claimed had died. Prior to paying Knutson, USDA determined that the PN Ranch did not exist and Knutson admitted he falsified his application for livestock indemnity payments because he was having financial troubles. Knutson was criminally prosecuted. Although no money was paid to Knutson as a result of his fraudulent scheme, a civil settlement was reached in the amount of \$15,000 for penalties as allowed under the False Claims Act laws.

### **United States of America v. 2035 Inc. a corporation and Robert L. Lytle, an individual d/b/a 2035 PMA and QLASERS PMA**

On behalf of the Food and Drug Administration ("FDA"), the United States sought and obtained a preliminary, and then a permanent injunction, against Robert L. "Larry" Lytle and his business entities and "private membership associations" or "PMAs" from violating federal laws concerning the marketing of unapproved medical devices in interstate commerce without FDA approval. Lytle and his companies were manufacturing and distributing low level light lasers, claiming these devices could treat "over 200 different diseases and disorders," including cancer, cardiac arrest, HIV/AIDS, diseases and disorders of the eye and ear, venereal

disease, and diabetes. Lytle claimed the FDA lacks regulatory jurisdiction over his marketing of laser devices because he distributes them in non-commercial transactions through PMAs. On appeal, the Eighth Circuit held that selling products through a PMA does not exempt it from FDA regulation and the district court's permanent injunction was affirmed.

### **United States on behalf of TRICARE v. Advanced Eye Care, P.C. and Dr. Jeffrey Browen, O.D.**

Dr. Jeffrey Browen, an optometrist practicing in Sioux Falls, SD, through his professional corporation Advanced Eye Care, submitted improper claims for scleral shells to TRICARE without receiving prior authorization which is required. Advanced Eye Care agreed to reimburse the United States for \$84,551.19.

### **United States v. Samone Milk, Heather (Brings Plenty) Garcia, Joe Garcia, Wayne Cortier and Robert Running Bear**

The USAO entered into settlement agreements to recover a total of \$84,000 in civil penalties pursuant to the False Claims Act following the criminal convictions of the above individuals who conspired to steal federal funds belonging to the Oglala Sioux Tribe's Low Income Home Energy Assistance Program. This civil recovery is in addition to the \$83,000 these individuals were required to pay as criminal restitution. The OST energy assistance program is funded by the U.S. Department of Health and Human Services. Samone Milk and Robert Running Bear were employed in the tribal program that is designed to pay expenses for home energy needs of low-income households. Heather Garcia was employed with the OST as an Accounts Payable Technician in the Treasurer's Office. Joe Garcia was Heather's



husband, and Wayne Cortier was the father of Milk's child. Joe Garcia and Wayne Cortier were listed on the numerous false invoices, quotes, vouchers and other documents billing for work on low income houses which was never performed by them or anyone else. The false documentation included fraudulent billings for elderly home repairs including replaced or repaired roofs, building ramps, and a variety of interior repair construction.

## **PROGRAM LITIGATION**

### **Curtis Temple v. Cleve Her Many Horses, Bureau of Indian Affairs, et al.**

Curtis Temple had livestock that was trespassing on certain grazing range units on the Pine Ridge Indian Reservation that are managed by the Bureau of Indian Affairs. Temple was the prior holder of the grazing permits for these units, but the Oglala Sioux Tribe allocated the units to another person in late 2012. Temple held over and continued to utilize those range units for his own livestock. After providing notice under BIA regulations, the BIA rounded up Temple's trespassing cattle and impounded them for eventual sale to pay for costs, fees, and penalties pertaining to trespass, the majority of which was to go to the Indian landowners who owned an interest in the land that made up those units. Temple filed a request for a temporary restraining order to stop the sale of these impounded cattle in August of 2015. The cattle were eventually tested and the herd was believed to be contaminated with a disease that resulted in their being placed under quarantine. The Court eventually denied Plaintiff's request for a temporary restraining order and the originally impounded cattle were sold. Litigation is ongoing on the remaining claims.

### **United States v. Mayfield Hutterian Brethren, Inc., a/k/a Mayfield Colony**

This case was an affirmative action brought on behalf of the U.S. Fish and Wildlife Service ("USFWS"). The USFWS is the governmental agency responsible for conserving, protecting and enhancing fish, wildlife, plants and their habitats for the continuing benefit of the American people. The United States purchased a perpetual wetland easement on rural land located near Willow Lake, South Dakota. The Mayfield Colony ultimately purchased this land and installed drain tile under four of five protected wetlands resulting in drainage of the wetlands. Negotiations to remove the drain tile were rebuffed until this lawsuit was filed seeking to restore prairie pothole wetlands. Ultimately, the Mayfield Colony agreed to enter into a consent judgment to restore the wetlands to their previous condition, and to be permanently enjoined from further draining of the wetlands. The Mayfield Colony removed the drain tiles in May 2016 in full compliance with the Consent Order.

### **Ralph Lee v. Mark Schultz v. United States and U.S. Fish & Wildlife Service**

Two neighboring landowners in Moody County were in a dispute regarding drainage occurring on their property line. Lee argued that Schultz failed to remove debris from his property that caused water to pool and back up onto Lee's property. Schultz argued he could not remove debris or otherwise clean up his property because it was encumbered by a U.S. Fish and Wildlife Service ("USFWS") conservation easement. Lee sued Schultz in state court for negligence and nuisance and requested declaratory relief. In Schultz's answer, he brought a third party claim against USFWS for indemnity and contribution and



also requested declaratory relief. The action was removed to federal court, and the USFWS moved to dismiss. Some claims were dismissed and others survived. The parties proceeded to discovery and took depositions. The United States asserted the area at issue was a protected wetland and could not be drained in any regard. Eventually, Schultz filed a motion for summary judgment on all claims arguing that he had no duty to take affirmative steps to improve Lee's drainage or that the federal easement trumped any state obligation requiring him to drain the area. The federal actors joined in that motion. Following oral argument with the Court on the motions, the case was set to proceed to trial when Lee and Schultz settled their dispute, and the claims against USFWS were dismissed.

**Timothy Lee Knudtson v. United States Department of Education and United States Department of the Treasury**

Timothy Knudtson was a lawyer who amassed a large amount of student loan debt when obtaining his education. Those student loans were in default, and the United States Department of Education sent the delinquent debt to the Department of the Treasury's Treasury Offset Program ("TOP"). When debt is referred to TOP, the program will offset or take any federal monies that are to be paid out (like tax refunds or other payments) to a debtor who owes money to a federal agency. In June of 2014, TOP offset on a payment made to Knudtson by the Administrative Office of the United States Courts for legal work Knudtson had done. Soon thereafter, Knudtson filed a claim against the federal agencies and claimed the TOP program was unconstitutional, that he did not receive due process because no notice was given of the

offset, and claiming his equal protection rights were violated. He also claimed the offset violated state garnishment laws. The Court found that Knudtson stated a claim, but that there was no genuine dispute of material fact that the Department of Education was statutorily required to refer the delinquent debt to Treasury for offset, that the offset was conducted correctly, that Knudtson owed the debt, and that he received notice both before and after the offset. Accordingly, the case was dismissed on the merits.

**Estate of Raymond Sauser, James Raymond Sauser v. United States; Salley Jewell as Secretary, United States Department of Interior; and Kevin Washburn as Assistant Secretary of Interior Bureau of Indian Affairs**

The Estate of Raymond Sauser appealed a final decision of the Interior Board of Indian Appeals with regard to an Indian probate decision, claiming the decision was contrary to the decedent's testamentary intent that all of his trust property be given to his son who was an enrolled tribal member. James Raymond Sauser, a non-tribal member, wished to disclaim, in favor of his brother, a one-half life estate interest in the trust property he inherited from his father through his Will. However, the request to disclaim was not timely made, and was contrary to the language of decedent's Will which divided assets equally among heirs. The U.S. District Court found that the IBIA's interpretation of the Will was reasonable, rejecting the Estate's argument that the IBIA acted arbitrarily and capriciously.

**David Scott Goldstein v. Center for Disease Control**

Petitioner David Scott Goldstein filed a petition for writ of habeas corpus alleging

that he was being unlawfully confined against his will by the Centers for Disease Control and Prevention (“CDC”) at Avera McKennan Hospital in Sioux Falls, South Dakota. The government argued that Goldstein had been properly served with an isolation order and placed under guard by the United States Marshals Service due to his history of absconding from public health authorities and leaving a hospital against medical advice. During the pendency of the petition, Goldstein was provided an administrative medical review hearing, which resulted in his transfer to a secure medical facility in Columbia, South Carolina. Prior to the Court issuing a determination in this matter, the CDC rescinded its isolation orders, thereby releasing Petitioner from custody and mooted Goldstein’s request for relief. The Court therefore dismissed the action as moot.

**United States v. Alexander “Alex” White Plume, Percy White Plume, their agents, servants, assigns, attorneys, and all others acting in concert with the named Defendants**

Alex White Plume filed a motion seeking relief from a permanent injunction entered against him on December 30, 2004 from manufacturing, planting, cultivating and growing industrial hemp on the Pine Ridge Indian Reservation without a valid Drug Enforcement Administration registration. The United States resisted the motion. The U.S. District Court noted the legalization of marijuana in Colorado and Washington State had prompted the Department of Justice to outline certain priority areas for the



enforcement of the Controlled Substances Act. In addition, the Agricultural Act of 2014 legalized the cultivation of industrial hemp under certain conditions. The court found there has been a significant shift in the legal landscape since 2004 which made the continued enforcement of the permanent injunction detrimental to the public interest. The permanent injunction was vacated.

## **EMPLOYMENT DISCRIMINATION**

**Ruth Gesinger v. U.S. Department of Health and Human Services**

Ruth Gesinger was a nurse at Indian Health Service in Eagle Butte, South Dakota. She suffered from bi-polar disorder, anxiety and depression. Outside of the workplace, she was involved in a domestic abuse incident. This caused her to miss work; because of the missed work, she was terminated. She challenged her termination by filing a disability discrimination claim, and was reinstated to her former position as a nurse with IHS. After reinstatement, Gesinger asked for leave and an adjusted work schedule, which IHS was unable to accommodate. She resigned her position and filed another lawsuit claiming disability discrimination and constructive discharge. The case was resolved through mediation conducted by the U.S. Magistrate Judge.

**Rebecca Watson-Miller v. Sloan D. Gibson Acting Secretary- Veterans Affairs**

Dr. Rebecca Watson-Miller was a psychologist at the Veterans Administration (“VA”) Medical Center in Sioux Falls. She filed a lawsuit claiming she was discriminated against at work due to her age and her disabilities. She also claimed that the Sioux

Falls VA created a hostile work environment and retaliated against her after she filed her discrimination complaint. Finally, she claimed that she was forced to resign and seek other employment. Her claimed disabilities consisted of degenerative joint disease, bilateral chondromalacia of the patella, interstitial markings in both lungs, pulmonary fibrosis, depression, anxiety, and diabetes. Dr. Watson-Miller claimed that the building she worked in caused her to experience symptoms of weakness, fatigue, sinus problems and respiratory infections. She claimed she was treated poorly after complaining about the building and her belief that it aggravated her disabilities. This matter was resolved through mediation conducted by the U.S. Magistrate Judge.

**Victor R. Ziegler v. Sally Jewell, Secretary Department of the Interior**

Victor R. Ziegler resigned from a chief of police position with the Bureau of Indian Affairs in March of 1999. His resignation was before he was eligible for retirement. He tried to rescind his resignation claiming he had been discriminated against on the basis of age and veteran status, hostile work environment and retaliation against him for filing a discrimination claim. His complaints led to over a dozen appeals and lawsuits before the EEOC, the OFO, the Federal Circuit, South Dakota District Court and the Eighth Circuit Court of Appeals, and the Merit Systems Protection Board. In 2008, Ziegler entered into a global settlement agreement whereby he received compensation for the final resolution of all pending claims. Years later, Ziegler filed another lawsuit, seeking to set aside the settlement agreement. A court trial was held regarding whether the Age Discrimination Employment Act waiver was

knowingly and voluntarily made by Ziegler. The district court ruled in favor of the United States that the waiver was knowingly made, and thus, the settlement agreement was valid. Ziegler filed an appeal. The Eighth Circuit agreed with the district court that Ziegler's waiver of his claims under the Age Discrimination in Employment Act was knowing and voluntary, and thus valid. Accordingly, the prior settlement agreement with Ziegler is final and he is entitled to no further relief from the Bureau of Indian Affairs.

**John N. Newell vs. John M. McHugh, Secretary of the Army; and the United States Army Corps of Engineers**

John Newell sued his employer, the U.S. Army Corps of Engineers and the Secretary of the Army alleging race discrimination, disparate treatment, retaliation and hostile work environment under Title VII. Newell is the only African American employee of the Corps in his place of work at the Corps' Oahe Project in Pierre, South Dakota. Newell alleged he was not interviewed or hired for a supervisory position or the assistant supervisory position.



The district court held that he failed to prove any genuine issue of material fact concerning the Army Corps hiring process, and those claims were dismissed. The court held that other claims that Newell was subjected to disparate treatment in daily reporting requirements, denial of training, receiving a successful performance rating, or a change in his workspace were not materially adverse actions sufficient to prove discrimination had occurred. Those claims were also dismissed. Finally, Newell's claims of hostile work

environment, challenging a seven-day suspension, and constructive discharge are still in litigation as the Army Corps of Engineers had not made a Final Agency Decision on those claims at the time partial summary judgment was granted.

## **BANKRUPTCY**

When a debtor files for bankruptcy and owes student loans to the Department of Education, owes taxes to the Internal Revenue Service (“IRS”), or when tax liens are filed by the IRS against a debtor, or other debt is owing to a governmental agency, the United States of America is often listed as a creditor. The majority of the bankruptcy cases opened in 2016 by the U.S. Attorney’s Office involved the IRS.

The clerk’s office at the South Dakota Bankruptcy Court called it a “statistical oddity.” In 2016 there were 1,095 bankruptcy cases filed in the District of South Dakota, the exact same number as were filed in 2015. Adding to that oddity was the fact that more Chapter 12 cases were filed in 2016 than in any year since 1999.

The 2016 case filing breakdown by chapter for the District of South Dakota is as follows:

Chapter 7:	973
Chapter 11:	2
Chapter 12:	8
Chapter 13:	112

According to figures recently released, 761,490 bankruptcy cases were filed in 2016. This was a six percent decrease from the 819,240 bankruptcy cases which were filed in 2015. The 2015 figures were also indicative of a 10% decrease from 2014. The states with the most per capita bankruptcy filings in 2016

were Tennessee, Alabama, Georgia, Illinois, Utah and Indiana. Alaska had the fewest per capita bankruptcy filings in 2016, followed by Vermont, North Dakota, Hawaii, and Maine.

## **FREEDOM OF INFORMATION ACT (“FOIA”)**

In 2016, The U.S. Attorney’s Office opened ten new cases relating to requests for information under the Freedom of Information Act (“FOIA”). FOIA defines when an individual or a third-party can receive records from a government agency. There are exemptions that require protection of records and there is also the Privacy Act which requires protection of records. At [www.foia.gov](http://www.foia.gov), there is information explaining what FOIA is, guidance on how to make a FOIA request, and directions as to where to make a FOIA request.

### **Food Stamp Redemption Disclosure Case**

The local Sioux Falls newspaper, the *Argus Leader*, sought yearly food stamp redemption amounts listed for all individual retailers across the United States from 2005 to 2010.

The *Argus Leader* sought the information by filing a Freedom of Information Act



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request with the United States Department of Agriculture, the agency who administers the food stamp program. The case is proceeding at this point on appeal to the Eighth Circuit Court of Appeals. The parties involved in the appeal, the *Argus Leader* and a trade association, continue to litigate whether the release of the redemption information for individual retailers will cause substantial commercial harm to some retail stores.

## **DEFENSIVE FORECLOSURES**

The USAO opened 93 defensive foreclosure files in 2016. This is compared to 73 defensive foreclosure cases in 2015, 55 cases in 2014, 82 cases in 2013, 84 cases in 2012, 86 cases in 2011, and 116 cases in 2010. In most foreclosures, banks or other lending institutions bring the action in state court. The USAO becomes involved in a defensive foreclosure when a government agency has a lien on the foreclosed property. The agencies most often involved in these types of cases are the Internal Revenue Service, Department of Housing and Urban Development, Farm Service Agency, and Rural Housing Service. The majority of the USAO's defensive foreclosure cases involve tax liens filed by the IRS.

## **PRISONER LITIGATION**

The USAO responds to habeas petitions filed by inmates incarcerated at the Yankton Federal Prison Camp. A habeas petition allows inmates to challenge their sentence or conviction on constitutional grounds.

### **Milton Haile v. Gregory A. Kizziah and Jill Sternhage**

Milton Haile at the Federal Prison Camp in Yankton, South Dakota ("FPC Yankton") filed a petition for writ of habeas corpus alleging that officials at FPC Yankton failed to grant him an individualized assessment in response to his request for a longer placement in a pre-release Residential Reentry Center ("RRC"). Petitioner requested an opportunity to present evidence to the Court that would support his eligibility for such placement and ultimately result in an earlier transfer from FPC to a RRC. Responding to the petition, the government argued that the Court lacked

jurisdiction to consider the matter, as 18 U.S.C. § 3625 precluded judicial review of any individualized "determination, decision, or order" made pursuant to §§ 3621-624. Alternatively, the government argued that Petitioner received the individualized determination to which he was entitled and that he was not otherwise entitled to a longer placement in a RRC. The District Court found that it did not have the authority to review determinations related to RRC placements, and thus, it denied the petition for writ of habeas corpus.

### **Arlen Lee Hatten v. United States**

Arlen Lee Hatten, an inmate at the Federal Correctional Institution in Victorville, California ("FCI Victorville Med II") filed a petition for writ of habeas corpus alleging that the Bureau of Prisons miscalculated his federal sentence by failing to account for the 66 months he served in state custody prior to being taken into exclusive federal custody. According to Petitioner, his federal sentence should have been calculated to run concurrently to his state sentence rather than consecutively. Petitioner therefore moved the Court to correct his federal sentence. The government argued that the Court lacked jurisdiction to consider the Petitioner's request since he was not being confined within the District of South Dakota and because he failed to exhaust his administrative remedies. Alternatively, the government argued that Petitioner's sentence was properly calculated. The District Court found that it lacked personal jurisdiction over the Petitioner's custodian, and therefore, granted the government's motion to dismiss.



### **Gene Jirak v. Warden J.A. Terris, et al**

Gene Jirak, an inmate at the Federal Prison Camp in Yankton, filed a complaint against the United States and several individuals from the Federal Correctional Institution in Milan, Michigan, alleging that those defendants previously violated his constitutional rights by subjecting him to acts of retaliation, cruel and unusual punishment, and unsafe working conditions. The government filed a motion to dismiss based on lack of subject matter jurisdiction, lack of personal jurisdiction, improper venue, failure to exhaust administrative remedies, and failure to state a claim upon which relief may be granted. The District Court dismissed the inmate's complaint for failure to exhaust administrative remedies. The inmate appealed the District Court's decision, and the Eighth Circuit Court of Appeals affirmed.

### **ASSET FORFEITURE REPORT**

In 2016, individuals involved in criminal activity in South Dakota forfeited a total of more than \$370,000 in cash and other assets to the United States. The funds and other property represented proceeds of illegal

activities and property involved in illegal activities.

The forfeited property included, among other things, firearms and ammunition possessed by prohibited persons, electronic devices including cellular telephones and computers utilized by individuals in sex trafficking and child pornography, and cash and bank accounts containing profits from illegal activity.

Notable cases for 2016 included:

1. Members of a conspiracy to distribute methamphetamine were convicted and forfeited assets, including approximately \$20,000 in cash, a vehicle, and multiple designer handbags and shoes, which represented the proceeds of the drug distribution.
2. Forfeiture of property related to an individual who was structuring deposits into bank accounts to evade reporting requirements. The individual forfeited 50 gold coins worth approximately \$65,000, and a vehicle to the United States.



# APPELLATE DIVISION

The Appellate Division supervises all appellate litigation involving criminal and civil cases in which the U.S. Attorney's Office represents the federal government. Handling appeals represents a distinct form of advocacy. Appellate courts do not take evidence or adjudicate facts like a trial court or a jury. Instead, appellate courts consider only discrete legal issues arising out of one party's challenge to an order or judgment of a trial court.

Appellate lawyers for the U.S. Attorney's Office carefully review the records of trial court proceedings, prepare detailed written briefs, and, in most cases, argue their appellate cases before the U.S. Court of Appeals for the Eighth Circuit which is based in St. Louis, Missouri. Eighth Circuit appellate decisions are generally precedential and govern the disposition of subsequent similar issues litigated in the trial courts of all seven states within the Eighth Circuit, not just South Dakota's federal district courts.

The Appellate Division's caseload involves a wide variety of legal issues and different types of substantive law. In many cases, it represents the government in appeals filed by criminal defendants who are seeking appellate review of their convictions or sentences. Roughly half of these cases involve violent crimes committed in Indian country. The remaining criminal appeals deal with other federal offenses such as large-scale drug conspiracies, immigration, firearms offenses, human trafficking, and child pornography cases.

The Appellate Division also handles civil appeals which result from civil claims brought by the government or against it. These appellate cases include defending against tort claims brought by individuals or representing federal agencies in challenges to their administrative actions. Civil appeals can also include cases in which the United States has brought an action to advance or enforce a federal right.



28 U.S. COURT OF APPEALS

## Significant Cases

**In United States v. Brave Bull**, the defendant was convicted of voluntary manslaughter and assault with a dangerous weapon. She was intoxicated and began arguing with a group of friends. She lunged toward one with a metal object and caused a deep cut to her head. She then continued fighting with another friend, followed her into a home, and pushed her down a flight of stairs. She and the others checked on the girl, found her to be crying but severely injured, then fled without calling the police. Two hours later, police found the girl dead at the bottom of the stairs with a broken neck and leg. Medical experts testified she would have survived if she had received medical care immediately. Brave Bull was sentenced to 162

months' imprisonment. On appeal, she challenged the length of her sentence, including the district court's imposition of an upward departure for heinous, cruel, brutal, or degrading conduct. The Eighth Circuit Court of Appeals affirmed the sentence, holding that the upward departures were warranted, and that the sentence was substantively reasonable.

**In United States v. Camberos-Villapuda**, the defendant was convicted of conspiracy to distribute methamphetamine. He was arrested when officers, acting on a tip, observed him behind a Colorado home working in the middle of the night beneath a vehicle, apparently creating a compartment to hide contraband. The vehicle was not registered to him, and it was also not his residence. On appeal, he challenged his arrest and the subsequent discovery of drugs, arguing that the officers did not have sufficient probable cause, and therefore, violated his Constitutional rights. The Eighth Circuit Court of Appeals affirmed the conviction, holding that he had abandoned any privacy interest in the vehicle or the residence when he disavowed any relationship to the car and the residence when questioned by officers.

**In United States v. Colhoff**, defendant was convicted of attempted witness tampering after she approached a witness who was subpoenaed to testify in a case related to hers and stated "[s]nitches get stitches" while also accusing the witness of "turning against [other Native Americans]." On plain error review, the Eighth Circuit Court of Appeals rejected her contention that her statements to the witness were merely a political rant protected by the First Amendment. The appellate court has held that a "true threat" is

a "statement that a reasonable recipient would have interpreted as a serious expression of an intent to harm or cause injury to another," and that "threats of violence are . . . unprotected speech." The conviction was upheld because the evidence was sufficient to show that, under these circumstances, defendant made a true threat that would place a reasonable person in fear of bodily harm.

**In United States v. Contreras**, a jury convicted the defendant of second degree murder and assault resulting in serious bodily injury, and he was sentenced to 360 months' imprisonment. One morning in January 2012, Contreras rushed his two-year old daughter to the hospital, saying that she was unresponsive after falling out of a chair. She never regained consciousness and died several days later. Autopsies showed the child died from multiple hemorrhages in multiple planes of her head, caused by blunt force trauma, consistent with her having been beaten. On appeal, Contreras challenged the sufficiency of the evidence, multiple evidentiary rulings, a ruling on his own competence, and that his sentence violated the Eighth Amendment as being cruel and unusual. The Eighth Circuit Court of Appeals affirmed in all respects.

**In United States v. Drapeau**, the defendant was convicted of domestic assault by a habitual offender after assaulting his then girlfriend. On appeal, he challenged the trial court's admission of testimony by his victim regarding facts surrounding his three prior tribal convictions for domestic abuse because those convictions were uncounseled. The Eighth Circuit Court of Appeals rejected his arguments, holding that use of his uncounseled prior tribal court convictions

did not violate his Sixth Amendment right to counsel.

**In United States v. End of Horn**, the defendant was convicted of multiple counts of sexual abuse of a minor and assault resulting in serious bodily injury. Defendant beat his wife by the side of a rural road after a night of drinking. His wife was severely injured, including multiple fractures to her face. Over the next 18 months, she had many treatments. She lapsed into a coma, and she died in June 2010. While she was hospitalized, defendant was entrusted to look after various children, and he sexually abused them. On appeal, he challenged several evidentiary rulings, the sufficiency of the evidence on the sexual abuse counts, and the length of the sentence (120 months on the assault and 293 months on the sexual abuse counts). The Eighth Circuit Court of Appeals affirmed, holding any trial errors were harmless in light of the overwhelming evidence of guilt and also that the sentence was warranted under the circumstances.

**In United States v. Fairchild**, the defendant was convicted by a jury for various tax offenses after she drastically under-reported income she received as an exotic dancer and for sex acts. On appeal, she challenged several jury instructions and whether she had the required knowledge for a conviction for subscribing false tax returns. The Eighth Circuit Court of Appeals upheld the convictions, holding that jury instructions are to be read in context, not in isolation. The appellate court also determined that her intent was proved, in part, by her consistent pattern of under-reporting her income.

**In Foster v. Vilsack**, the plaintiffs brought an action against the USDA, challenging its

determination that a portion of their farmland was a wetland within the meaning of pertinent federal statutes. The district court granted summary judgment against the plaintiffs, and they appealed. The Eighth Circuit Court of Appeals affirmed, finding that the USDA's determination followed the applicable rules, and that it was not arbitrary, capricious, or contrary to the law.

**In United States v. Guzman-Ortiz**, the defendant appealed a denial of a motion to vacate his sentence for conspiring to distribute 500+ grams of methamphetamine. He argued that his counsel at trial had failed to represent him adequately by failing to cross-examine a coconspirator and by making a deficient closing argument. The Eighth Circuit Court of Appeals affirmed the denial of the motion to vacate, holding that the defense attorney had engaged in reasonable trial strategy and gave a sufficient closing argument.

**In United States v. Golliher**, defendant was convicted of attempted commercial sex trafficking of a minor following a sting operation in which he attempted to solicit commercial sex with officers posing as a child. He argued on appeal that the district court erred in excluding a series of his emails which, defendant claimed, would have shown he was not generally interested in sex with underage girls. Golliher contended the emails were admissible under the residual exception to the hearsay rule. On appeal, the Eighth Circuit Court of Appeals affirmed the conviction, holding that Golliher failed to preserve the issue because he failed to offer the relevant emails into evidence.

**In United States v. Hairy Chin**, the defendant was convicted of child abuse after

seven unattended children under the age of 12 were found in her home one night, including a crying infant strapped into a car seat. Hairy Chin was found in the basement that night, unconscious and inebriated. She had a lengthy criminal history, including over 40 tribal convictions and several federal convictions, many of which related to child neglect. On appeal, she challenged the length of her sentence of 37 months' imprisonment. The Eighth Circuit Court of Appeals affirmed, holding that under the circumstances, the sentence at the high end of her guidelines range was reasonable.

**In United States v. High Wolf**, the defendant was convicted of being a felon in possession of a firearm and ammunition following a traffic stop that began because the light on his license plate was non-functioning. On appeal, he contested the validity of the traffic stop and, in particular, whether the officer's account was credible. The Eighth Circuit Court of Appeals affirmed the conviction, holding that the assessment of a witness's credibility is virtually unreviewable, and that the district court had adequately and appropriately assessed the officer's credibility.

**In United States v. House**, the defendant was convicted of being a felon in possession of a firearm after witnesses observed him point a firearm during an argument with another. House was arrested following a foot chase with officers. Eyewitnesses identified him after he was arrested, while he was in the officer's vehicle. Weeks later, investigating agents confirmed those identifications by presenting the witnesses with a photographic lineup, and those same witnesses identified House at trial as the one who pulled the gun. On appeal, House argued the photographic

identification was erroneous because he was the only person in the lineup with a ponytail. The Eighth Circuit Court of Appeals held that, especially given the multiple layers of identification in this case and the physical similarities between the men in the lineup, the photographic lineup was not unduly suggestive.

**In United States v. Lora-Andres**, the defendant was convicted of conspiracy to distribute methamphetamine and sentenced to 188 months in prison. On appeal, he argued that officers had improperly recorded telephone communications involving him and an informant without his consent, that the jury should have been told about the mandatory minimum sentence he was facing, and that he did not deserve a sentencing enhancement due to his role as a supervisor of the criminal enterprise. The Eighth Circuit Court of Appeals affirmed the conviction and sentence, holding the recording of the communications was authorized, that it would have been error to instruct a jury about a potential sentence, and that the sentencing enhancement was justified under the circumstances.

**In United States v. Melanson**, the defendant was convicted of intent to engage in illicit sexual contact after traveling to Guatemala to sexually abuse children there. He was sentenced to 30 years in prison. On appeal, he argued that the sentence was based on improper factors, such as the court's outrage, and to promote rehabilitation. The Eighth Circuit Court of Appeals affirmed the sentence, holding that the sentence was justified by the circumstances, which included severe violence, preying on

economically disadvantaged juveniles, and a defendant recording the abuse.

**In United States v. Nowak**, defendant was convicted of being a felon in possession of a firearm after officers found a firearm in a backpack he left in his friend's vehicle. Nowak was riding in the passenger seat of a friend's vehicle when they were pulled over for a traffic violation. Nowak ran from the vehicle, leaving behind his backpack. His friend gave officers permission to search the backpack. Nowak did not return during the traffic stop, but he claimed on appeal that officers violated his Fourth Amendment rights by searching the backpack without his permission. The Eighth Circuit Court of Appeals disagreed, holding the backpack had been abandoned. When a person abandons their property, they relinquish a reasonable expectation of privacy in the property and, therefore, any Fourth Amendment protections over it. The determination as to whether property has been abandoned is made on "objective facts available to the investigating officers, not on the basis of the owner's subjective intent." In this case, the court held that there was no evidence that defendant intended that the contents of his backpack should remain private when he ran from the vehicle and left the backpack behind.

**In United States v. Olivares**, the defendant was charged with various controlled substance and firearms violations following an investigation as to activities of selling methamphetamine, cocaine, and marijuana in the Rapid City area. He was convicted following a jury trial, and received several life sentences and additional consecutive terms of 10 and 5 years. In discovery, the government produced several incriminating

jail phone calls defendant made to codefendants. He also represented himself at various stages of trial. On appeal, the defendant claimed the government violated his right to a fair trial by failing to preserve all telephone calls involving the defendant. He also argued he should not have been found competent to represent himself. The Eighth Circuit Court of Appeals rejected the arguments, holding that, even if deleted jail phone calls or jail visit videos had exculpatory value, there is no evidence the government acted in bad faith in failing to preserve evidence. Under established Supreme Court precedent, the failure to preserve potentially useful evidence does not constitute denial of due process unless defendant shows law enforcement acted in bad faith. The appellate court also held that the district court committed no error in allowing Olivares to represent himself. Finally, it affirmed a sentencing enhancement that resulted in life sentences based on prior felony drug convictions.

**In United States v. Running Shield**, two defendants were charged with robbery and assault. A jury acquitted them of robbery but convicted them on the assault counts. After trial, the government dismissed a separate indictment charging them with assault and abusive sexual contact, but then moved for an upward departure at the sentencing based on the dismissed charges. The district court found the defendants committed the dismissed assaults and departed upward from defendants' guidelines ranges and sentenced them both to 180 months in prison. On appeal, the defendants challenged the sentences, claiming the court violated their Sixth Amendment rights by considering dismissed conduct that was not proved to a



jury beyond a reasonable doubt. The Eighth Circuit Court of Appeals disagreed, holding that a district court is entitled to determine sentences based upon judge-found facts and uncharged conduct, so long as the resulting sentence does not exceed the statutory maximum. In affirming the sentences, the Court found the Sixth Amendment was not implicated.

**In United States v. Schrader**, the defendant appealed his sentence upon revocation of supervised release following a sexual assault conviction. He argued on appeal that the district court abused its discretion in failing to redact information about an alleged sexual assault from his presentence investigation report. The Eighth Circuit Court of Appeals held that the district court complied with the applicable rules, which did not compel excluding the contested information.

**In United States v. Smith**, the defendant was convicted of being a felon in possession of a firearm. Police went to his home upon receiving information he was holding his girlfriend against her will. After gathering more information while at his residence, they arrested defendant on unrelated warrants when he walked outside his residence. Upon seeing a person at a window inside the residence, officers entered and found his girlfriend inside. She confirmed that he had been keeping her from leaving the home. On the way to find her, officers saw and seized an AK-47 within a bedroom of the house, which formed the basis for the federal firearms charge. On appeal, the defendant challenged the warrantless entry of the home, claiming the firearm should have been suppressed as having been obtained in violation of the Constitution. The Eighth Circuit Court of Appeals rejected the challenge, applying an

exception to the warrant requirement when officers engage in a community caretaking function. The Supreme Court has described the community caretaking functions of officers as activities that are “totally divorced from the investigation, or acquisition of evidence relating to the violation of a criminal statute.” The courts have recognized that the “community caretaker” classification may justify searches and seizures in certain limited circumstances, such as when officers are called to help someone in immediate danger. As applied here, the officers were justified in entering the residence, and once inside, the firearm was admissible under the plain view doctrine.

**In United States v. White Plume**, the defendant was convicted of assault resulting in serious bodily injury and child abuse. A jury convicted him after he severely assaulted an infant in his home during an argument with his wife regarding alleged infidelity. On appeal, he challenged the sufficiency of the evidence against him, the exclusion of evidence that his wife had previously abused a child, and limitations on the cross-examination of his wife. The Eighth Circuit Court of Appeals affirmed his convictions, holding that the evidence was sufficient to convict him and that there were no errors in the district court’s rulings on the various contested evidentiary issues.



## VICTIM RIGHTS AND ADVOCACY

The U.S. Attorney's Office Victim/Witness Assistance Program was developed to assure that victims of federal crimes are treated with fairness and respect as they journey through the federal criminal justice system. This program carries out the mandates of the *Federal Victim and Witness Protection Act of 1982*, the *Victims' Rights and Restitution Act of 1990*, the *Victims of Child Abuse Act of 1990*, the *Crime Victims' Rights Act of 2004* and other victim-related legislation. These victim/witness assistance and protection laws apply to all victims and witnesses of federal crime who have suffered physical, financial, or emotional trauma.

A variety of notification and assistance services are provided to victims and witnesses of federal crime by our Victim/Witness Assistance Program staff, Assistant U.S. Attorneys, and other United States Attorney's Office staff with the assistance of tribal and federal law enforcement. The United States Attorney's Office victim/witness staff work closely with victim specialists at the FBI and the Bureau of Indian Affairs, who assist victims of federal crime in the period between the reporting of a crime and charges being filed by our office. Our shared goal is to provide a seamless path to assist victims of federal crime.

Many victims of federal crime reside on South Dakota's Indian reservations or in rural areas. The United States Attorney's Office staff often travel to rural communities to meet with the victim in person. This provides an opportunity to assess their need for services, garner their input towards potential case status, and if necessary, prepare for

trial. In-person contact has proven to be much more effective in building a trust relationship than communication by telephone or written notifications. Direct contact allows the victim to consult with the Assistant United States Attorney assigned to prosecute the case pursuant to the Crime Victims' Rights Act and provide the victim with a voice in the criminal process. The victim witness staff accompany and assist with these meetings.

When a federal criminal case reaches the prosecution stage of the criminal justice process, the victim is notified of the status of the case. Victims are notified of all case events through the Department of Justice Victim Notification System ("VNS"). They may be notified by letter and/or by calling the VNS automated call center. Notifications that may be made include the release or detention status of an offender pending judicial proceedings; the filing of charges against a suspected offender; the scheduling, including scheduling changes and/or continuances of each court proceeding that the victim is either required to attend or entitled to attend; the acceptance of a plea of guilty or the rendering of a verdict after trial; the opportunity to present to the court in the presentence report a victim impact statement containing information concerning any harm, including financial, social, psychological and physical harm done to or loss suffered by the victim of the crime; the date set for sentencing if the offender is found guilty; and the sentence imposed and entry of the victim into the Bureau of Prisons' Victim and Witness Notification Program.

Our victim witness program staff also provides personal support and assistance to victims and witnesses during court appearances and/or testimony. Each of our offices has a toll-free number to allow victims and witnesses to easily contact our victim/witness staff. When needed, referrals

are provided to existing agencies for shelter, counseling, compensation, and other types of assistance services.

Each victim/witness advocate has been assigned to assist victims and witnesses from specific reservations.

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