U.S. Department of Justice

United States Attorney
District of Arizona

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40 North Central Avenue, Suite 1200
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November 24, 2010

Dear Tribal Leader:

In August, this Office sent you a copy of our first-ever Operations Plan for Public Safety in Indian Country, which was the product of many ideas and concerns that came from you. As that document made clear, we believe frequent communication on a government-to-government basis is a cornerstone of our plan to improve public safety in Indian Country. To that end, in addition to visits to your communities by me and other USAO personnel, we plan to write to you on a regular basis to provide updates on USAO matters and programs of interest to you and to offer resources for training and discussion on public safety issues. Last month I wrote to you to offer detailed analyses of the newly enacted Tribal Law and Order Act, presented by senior members of our management team at your courts, Council chambers or offices.[1] Today I write with additional news I think will be of interest to all of you.

Tribal SAUSA Program

First, our Indian Country Team has completed its development of the tribal SAUSA (Special Assistant United States Attorney) Program, which we previewed at the District's Tribal Leadership Consultation earlier this year at the Heard Museum. Under that program, tribal governments may nominate qualified tribal prosecutors for appointment as Special Assistant United States Attorneys, who will work with AUSAs on the federal prosecution of domestic violence and other matters originating in, and of importance to, their tribal communities. I have enclosed a copy of our model Letter of Agreement setting forth the structure of the program, including the SAUSA selection process, the training provided, the supervisory and mentoring structure, the case assignment regimen and other features. We have structured this program so that, other than an initial training period, tribal prosecutors carrying the SAUSA designation will be able to work from their own offices on tribal court matters, only coming to the United States Attorney's Office for case-related meetings, occasional training required of all federal prosecutors, and to prepare for and attend hearings on their matter in federal court. To discuss the possible appointment of one of your tribal prosecutors as a SAUSA, and any special areas of prosecution emphasis on which you would like us to consider focusing their efforts, please contact Tribal Liaison John Tuchi at (602) 514-7543 or Deputy Tribal Liaison Marnie Hodahkwen at (602) 514-7568.

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[1] Several of you have taken me up on that offer and I renew the invitation to all of you. If you are interested in an approximately 75-minute live presentation either in Phoenix or at your government facility, please contact Tribal Liaison John Tuchi at (602) 514-7543 or Deputy Tribal Liaison Marnie Hodahkwen at (602) 514-7568.

USAO Tribal Affairs WebPage

The Office has added a page on its internet website dedicated to Tribal Affairs in the District of Arizona. The page is designed for your reference use, and will contain links to items of current interest, such as the full text and digests of the Tribal Law and Order Act, new federal court decisions affecting public safety in Indian Country, a calendar of events involving tribal and federal leadership, and contact information for our Indian Country Team. We also will post links on the webpage to past letters from me to tribal leadership and other U.S. Attorney's Office communications of interest to the tribal public safety community. You can find our webpage at http://www.justice.gov/usao/az/indiancountry.html. We welcome your suggestions on what else would be helpful to you.

Transfer of Juveniles to Adult Status: Tribal Opt-In Required in Some Circumstances

Whenever our Indian Country Team identifies a feature of, or new development in, federal law of which we believe tribal governments may want to consider taking advantage, we plan to call it to your attention and apprise you of your options so you may make an informed decision. One such feature is the "opt-in" provision in Title 18, United States Code, Section 5032, the federal Juvenile Delinquency statute. Section 5032 provides, among other things, that upon a finding of substantial federal interest in a crime, the United States Attorney's Office may move the federal district court to transfer a juvenile aged fifteen years or older to adult status, and prosecute the juvenile as an adult for certain enumerated drug, firearm and violent offenses. The United States Attorney's Office consults with law enforcement in such cases and may move to prosecute the juvenile as an adult, where the juvenile allegedly committed the enumerated offense on or after their fifteenth birthday. However, Section 5032 also provides that the federal government may move to transfer a juvenile alleged to have committed murder, attempted murder, aggravated rape or a few other serious violent crimes, where the juvenile allegedly committed the offense in Indian Country on or after their thirteenth birthday, but only if the juvenile's Tribal Council has "opted in" by adopting a resolution electing to allow transfer of younger offenders. We take no position on this option, recognizing that it is, and is intended by Congress to be, a decision solely for your government to make. We simply wish to make you aware that the option is available. Should you have any questions, please contact Tribal Liaison John Tuchi at the above number. A copy of the full text of Section 5032 is enclosed for your reference.

I hope you find the information in this letter useful. Please call me or any member of our Indian Country Team whenever we can be of help.

Sincerely,

Dennis Burke

DENNIS K. BURKE
United States Attorney
District of Arizona

enclosures

U.S. Department of Justice

United States Attorney
District of Arizona

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November 24, 2010

Hon. [name]
Chairman [or Chief Prosecutor]
[tribe name] Nation/Community/Tribe
[address]

Letter Agreement re: Appointment of [tribe name] Tribal Prosecutors as Special Assistant United States Attorneys for the District of Arizona - "Tribal SAUSA Program"

Dear Chairman [name]:

This Letter Agreement sets forth the terms of agreement between the [tribe name] Nation/Community/Tribe and the United States Attorney's Office (USAO) for the District of Arizona for the appointment of one or more tribal prosecutors as Special Assistant United States Attorneys, pursuant to the USAO's Operations Plan for Public Safety in Indian Country. The United States Attorney for the District of Arizona has principal authority and responsibility for the prosecution of felony offenses occurring in Indian Country, as well as sole authority for the prosecution of misdemeanors committed in Indian Country by non-Indians against Indian victims, including domestic violence offenses. Tribal prosecutors of the [tribe name] Nation/Community/Tribe possess a unique familiarity with and insight to the communities which they serve, which knowledge the USAO recognizes as very valuable to a targeted law enforcement approach. The USAO and the [tribe name] Nation/Community/Tribe share the goal of improving public safety in Indian Country by ensuring that every criminal offense for which sufficient evidence is available is prosecuted, with a particular emphasis on violent crimes against women and children. To that end, we agree to participate together in a District of Arizona Tribal SAUSA Program, according to the following terms:

1. **Nomination and Selection** - the Chief Prosecutor may nominate a member of her/his staff for appointment as a SAUSA. Nominees shall be attorneys admitted to practice before the United States District Court for the District of Arizona, or meeting all qualifications to practice before that court and committing to gain admission to it by the date they begin their appointment as SAUSA Nominees also shall have at least three years' overall practice experience as an attorney. USAO management will conduct an interview of the nominee to ensure that they can meet the requirements of practice before the District Court. If a nominee meets each of these qualifications, the USAO will provide them with a security clearance background questionnaire,

which the nominee will be required to promptly and fully complete so that the United States Department of Justice, Office of Personnel Management, may perform a provisional background clearance. Clearances typically take from eight to twelve weeks from the time a complete questionnaire is submitted, if the review does not reveal any issues. Upon a successful background adjudication, the United States Attorney will issue a SAUSA appointment and administer the oath of office to the nominee.

2. **Supervision of SAUSAs** - each tribal SAUSA will be a member of the Indian Country Violent Crime Section of the USAO, in either the Phoenix or Tucson Division as appropriate. All actions they take in their capacity as a SAUSA will be under the supervision of the Violent Crime Section Chief in Phoenix or Tucson or the Branch Chief in Flagstaff. Where appropriate, the Section/Branch Chief may delegate supervisory or mentoring responsibilities to another experienced Violent Crime prosecutor. The Section/Branch chief or their designee will make all case assignment decisions relating to the SAUSA; will issue all direction to the SAUSA on the handling of any matter; will be responsible for ensuring that the SAUSA receives adequate training on all aspects of representing the United States in a proceeding or matter before the SAUSA is so tasked; and will be available for questions, consultation, guidance and supervision of the SAUSA. The SAUSA will consult with their Section/Branch Chief or their designee on all case decisions until the supervisor is satisfied that the SAUSA is competent and comfortable handling the specific task. The SAUSA will have an AUSA–often but not always the Section/Branch Chief–as co-counsel on all matters they are assigned. The goal of this program of supervision, mentoring and co-counseling is to develop the SAUSA's skills in evaluating viable cases under the federal statutory scheme; in directing tribal or federal agents' actions in a federal investigation; in providing competent and reliable legal advice to agents in the course of their investigations; in practicing readily under the federal rules of procedure and evidence; and in advocating effectively and with professionalism before the exacting federal bench.

3. **Tribal SAUSA Training** - While the tribal SAUSA program is structured so that the SAUSA need not come to the USAO except when the work of a specific matter requires it, we will require the SAUSA, soon after appointment, to spend a week at the appropriate USAO office to receive initial training on federal law and procedure; to learn all applicable Department of Justice and USAO policy and procedure; to meet court personnel and Violent Crime Section colleagues; to shadow senior attorneys at agent meetings and hearings; and to receive direction on other appropriate topics. Additionally, when the USAO administers training required of all AUSAs, or of all Violent Crime Section AUSAs, SAUSAs will be required to attend and participate in that training, as the courts and the Department will hold the SAUSA to the same

standards of performance as regular AUSAs. The SAUSA will receive an AUSA mentor who will be available for questions. Just as in the case of AUSAs, the SAUSA will be required to obtain written supervisory approval for each charging decision and each plea offer.

4. **Standards of Performance** - for the duration of the appointment, while acting in the capacity of tribal SAUSA, the appointee will be subject to the United States Department of Justice's and the USAO's standards of conduct, policies and procedures, including Standards of Ethical Conduct for Employees of the Executive Branch of federal government (5 C.F.R. §§ 2635 *et seq.*), the federal conflict of interest laws (18 U.S.C. §§ 207-09), and laws restricting the disclosure of confidential information (18 U.S.C. § 1905).

5. **Case Assignments** - The USAO intends its Tribal SAUSA program to be responsive to the needs and law enforcement priorities of the tribe; accordingly it will try to assign the SAUSA cases of a type that are of such priority, and for which the tribal SAUSA has demonstrated the experience and skills to handle in the federal system. Initially the SAUSA will focus on one of the following areas, as agreed by the USAO and the tribe: domestic violence misdemeanors and simple assaults involving a non-Indian defendant and a tribal member victim, either in Central Violations Bureau (CVB) Court or in Criminal Court; narcotics misdemeanors; bootlegging offenses; or thefts from the tribe. After demonstrating competence in and comfort with matters in their initial area of assignment, and upon supervisory approval, SAUSAs may handle more and more of the other federal matters listed above that arise from their tribal communities, with concurrence of the tribe, possibly including federal felony prosecutions as the SAUSAs progress. SAUSAs always will have an AUSA assigned to actively co-chair all matters. Case assignments also are intended to draw on the strengths the SAUSAs bring to the federal system as a result of their familiarity with their communities, including knowledge of frequent offenders, their circumstances and their effect on the community. The SAUSA's supervisor will control the volume of assignments to be consistent with whatever limits the chief tribal prosecutor may place on overall workload of the SAUSA.

6. **Duty Station; Provision of Necessary Workspace and Equipment** - The USAO contemplates that, other than attending AUSA training, case preparation meetings and appearances in court, the tribal SAUSA need not be present in USAO workspace and will attend to their tribal prosecutor/SAUSA duties from their office in the tribal community. When it is necessary for the SAUSA to work or meet in USAO facilities, the USAO will provide the necessary workspace, equipment and supplies to complete their case work, and will bear all expenses for same. Transportation to and from USAO workspace, including incidentals like parking fees, will be the responsibility of the SAUSA or their employer, the [tribe name] Tribal

Prosecutor's Office. Responsibility for the salary and all expenses for the tribal SAUSA remains with the [tribe name] Tribal Prosecutor's Office.

7. **Duration of Appointment; Consultation** - The duration of the tribal SAUSA appointment will be eighteen months from the date of entry on duty. Expiring appointments may be renewed upon the agreement of both the USAO and the Chief Tribal Prosecutor's office. The USAO maintains the right to terminate a SAUSA appointment at any time, after providing to the Chief Prosecutor notice of its intent to terminate that appointment. Supervisory personnel at the USAO will consult with the Chief Prosecutor semi-annually on the performance and progress of the tribal SAUSA, and on the program in general.

This Letter Agreement will govern the assignment of tribal the SAUSAs and no other conditions will affect this arrangement unless it is modified in writing through an amendment signed by the USAO and the tribal government.

Sincerely,

DENNIS K. BURKE
United States Attorney
District of Arizona

I acknowledge and agree to the foregoing terms

_____

Honorable [name]
Chair [or Chief Prosecutor]

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§ 5032. Delinquency proceedings in district courts; transfer for criminal prosecution

A juvenile alleged to have committed an act of juvenile delinquency, other than a violation of law committed within the special maritime and territorial jurisdiction of the United States for which the maximum authorized term of imprisonment does not exceed six months, shall not be proceeded against in any court of the United States unless the Attorney General, after investigation, certifies to the appropriate district court of the United States that

(1) the juvenile court or other appropriate court of a State does not have jurisdiction or refuses to assume jurisdiction over said juvenile with respect to such alleged act of juvenile delinquency,

(2) the State does not have available programs and services adequate for the needs of juveniles, or

(3) the offense charged is a crime of violence that is a felony or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1003, 1005, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952 (a), 953, 955, 959, 960 (b)(1), (2), (3)), section 922 (x) or section 924 (b), (g), or (h) of this title, and that there is a substantial Federal interest in the case or the offense to warrant the exercise of Federal jurisdiction.

If the Attorney General does not so certify, such juvenile shall be surrendered to the appropriate legal authorities of such State. For purposes of this section, the term "State" includes a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

If an alleged juvenile delinquent is not surrendered to the authorities of a State pursuant to this section, any proceedings against him shall be in an appropriate district court of the United States. For such purposes, the court may be convened at any time and place within the district, in chambers or otherwise. The Attorney General shall proceed by information or as authorized under section 3401 (g) of this title, and no criminal prosecution shall be instituted for the alleged act of juvenile delinquency except as provided below.

A juvenile who is alleged to have committed an act of juvenile delinquency and who is not surrendered to State authorities shall be proceeded against under this chapter unless he has requested in writing upon advice of counsel to be proceeded against as an adult, except that, with respect to a juvenile fifteen years and older alleged to have committed an act after his fifteenth birthday which if committed by an adult would be a felony that is a crime of violence or an offense described in section 401 of the Controlled Substances Act (21 U.S.C. 841), or section 1002(a), 1005, or 1009 of the Controlled Substances Import and Export Act (21 U.S.C. 952 (a), 955, 959), or section 922 (x) of this title, or in section 924 (b), (g), or (h) of this title, criminal prosecution on the basis of the alleged act may be begun by motion to transfer of the Attorney General in the appropriate district court of the United States, if such court finds, after hearing, such transfer would be in the interest of justice. In the application of the preceding sentence, if the crime of violence is an offense under section 113 (a), 113 (b), 113 (c), 1111, 1113, or, if the juvenile possessed a firearm during the offense, section 2111, 2113, 2241 (a), or 2241 (c), "thirteen" shall be substituted for "fifteen" and "thirteenth" shall be substituted for "fifteenth". Notwithstanding sections 1152 and 1153, no person subject to the criminal jurisdiction of an Indian tribal government shall be subject to the preceding sentence for any offense the Federal jurisdiction for which is predicated solely on Indian country (as defined in section 1151), and which has occurred within the boundaries of such Indian country, unless the governing body of the tribe has elected that the preceding sentence have effect over land and persons subject to its criminal jurisdiction. However, a juvenile who is alleged to have committed an act after his sixteenth birthday which if committed by an adult would be a felony offense that has as an element thereof the use, attempted use, or threatened use of physical force against the person of another, or that, by its very nature, involves a substantial risk that physical force against the person of another may be used in committing the offense, or would be an offense described in section 32, 81, 844 (d), (e), (f), (h), (i) or 2275 of this title, subsection (b)(1)(A), (B), or (C), (d), or (e) of section 401 of the Controlled Substances Act, or section 1002(a), 1003, 1009, or 1010(b)(1), (2), or (3) of the Controlled Substances Import and Export Act (21 U.S.C. 952 (a), 953, 959, 960 (b)(1), (2), (3)), and who has previously been found guilty of an act which if committed by an adult would have been one of the offenses set forth in this paragraph or an offense in violation of a State felony statute that would have been such an offense if a circumstance giving rise to Federal jurisdiction had existed, shall be transferred to the appropriate district court of the United States for criminal prosecution.

Evidence of the following factors shall be considered, and findings with regard to each factor shall be made in the record, in assessing whether a transfer would be in the interest of justice: the age and social background of the juvenile; the nature of the alleged offense; the extent and nature of the juvenile's prior delinquency record; the juvenile's present intellectual development and psychological maturity; the nature of past treatment efforts and the juvenile's response to such efforts; the availability of programs designed to treat the juvenile's behavioral problems. In considering the nature of the offense, as required by this paragraph, the court shall consider the extent to which the juvenile played a leadership role in an organization, or otherwise influenced other persons to take part in criminal activities, involving the use or distribution of controlled substances or firearms. Such a factor, if found to exist, shall weigh in favor of a transfer to adult status, but the absence of this factor shall not preclude such a transfer.

Reasonable notice of the transfer hearing shall be given to the juvenile, his parents, guardian, or custodian and to his counsel. The

juvenile shall be assisted by counsel during the transfer hearing, and at every other critical stage of the proceedings.

Once a juvenile has entered a plea of guilty or the proceeding has reached the stage that evidence has begun to be taken with respect to a crime or an alleged act of juvenile delinquency subsequent criminal prosecution or juvenile proceedings based upon such alleged act of delinquency shall be barred.

Statements made by a juvenile prior to or during a transfer hearing under this section shall not be admissible at subsequent criminal prosecutions.

Whenever a juvenile transferred to district court under this section is not convicted of the crime upon which the transfer was based or another crime which would have warranted transfer had the juvenile been initially charged with that crime, further proceedings concerning the juvenile shall be conducted pursuant to the provisions of this chapter.

A juvenile shall not be transferred to adult prosecution nor shall a hearing be held under section 5037 (disposition after a finding of juvenile delinquency) until any prior juvenile court records of such juvenile have been received by the court, or the clerk of the juvenile court has certified in writing that the juvenile has no prior record, or that the juvenile's record is unavailable and why it is unavailable.

Whenever a juvenile is adjudged delinquent pursuant to the provisions of this chapter, the specific acts which the juvenile has been found to have committed shall be described as part of the official record of the proceedings and part of the juvenile's official record.

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