



U.S. Department of Justice

United States Attorney
District of Arizona

Two Renaissance Square
40 North Central Avenue, Suite 1200
Phoenix, Arizona 85004-4408

Main: (602) 514-7500
MAIN FAX: (602) 514-7450

May 2, 2011

The Honorable Robert S. Mueller III
Director, Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue N.W.
Washington, D.C. 20535-0001

Re: Tribal Compliance with Sex Offender Registration and Notification Act
(SORNA) Requirements

Dear Director Mueller:

I write to seek your help on a law enforcement matter of some urgency to leadership of the 22 tribal governments in Arizona, and to the 196 federally recognized tribes nationwide who have "opted in" to become sex offender registration jurisdictions under the Sex Offender Registration and Notification Act ("SORNA"). SORNA, which is part of the Adam Walsh Child Protection Act of 2006, requires that all tribes having opted in (rather than surrender registration duties to the State) must demonstrate substantial compliance with all program requirements by July of this year. Those requirements include the development and implementation of systems and procedures approved by the Department of Justice for 1) the collection of personal information, DNA material and biometric identifiers for all convicted sex offenders living, working or attending school within the Tribal jurisdiction; 2) the transmittal of that information to FBI's National Crime Information Center (NCIC) databases for sharing with law enforcement nationwide; and 3) the input of certain of that information into publicly available websites including the Tribal and Territory Sex Offender Registry System (TTSORS) and the National Sex Offender Registry (NSOR).

Based on this office's participation in several tribal law enforcement conferences and workshops over the past two years, we believe that most of the tribal governments in Arizona are and have been working diligently to meet these requirements, as they well understand the public safety benefits of SORNA compliance and of a functional sex offender registration system. However, there are some significant impediments to Tribal compliance – both technical and policy-based. Their removal would appear to be uniquely within the control of the Bureau.

Policy-Based Impediments to Tribal Compliance with SORNA

A significant aspect of SORNA's requirements, as set forth in Section 121(b)(1), is that tribal registration jurisdictions provide their registrants' information to the Federal Bureau of Investigation for inclusion either in the National Sex Offender Registry (NSOR) or other appropriate databases it maintains within NCIC.¹ 42 U.S.C. §16921(b)(1). This has presented difficulties for Arizona tribes in particular, and perhaps other tribes as well, who are unable to access NCIC databases to input the sex offender information due to current CJIS policy. The policy affords non-federal law enforcement agencies access to the NCIC files through only one entity in each state or territory. In Arizona, that access point is granted to the Arizona Department of Public Safety (DPS)—our state police. In turn, CJIS policy allows that state point of contact to permit secure, remote access to other non-federal law enforcement agencies. In Arizona, DPS permits county sheriffs the access to NCIC files, and to have secure terminals on their respective premises to perform data input and querying operations. However, DPS interprets Arizona State law as prohibiting direct access to other law enforcement entities, including tribal police departments. This limitation has frustrated the efforts of the many Arizona tribes who earnestly wish to comply with SORNA.

Several tribes have gone to great lengths to explore a workaround that would require their police officers to create paper copies of their registrants' required information and provide them to DPS for NCIC input, but this has not worked well for several reasons. First, the State of Arizona has not come into compliance with SORNA, and it is an open question whether they plan to do so. In addition to the contradiction created by a SORNA-compliant tribal jurisdiction being forced to rely on a non-compliant state jurisdiction for its data input, there is no guarantee that the DPS will have or make available the manpower to accommodate the tribes' NCIC data input requests. Second, SORNA requires all registration jurisdictions to create and maintain registration records in electronic format, for reasons of efficiency, security, rapid information transfer and waste prevention. Requiring tribes to take the extra step of printing out records so another entity can then manually enter them into NSORS/NCIC defeats the intent of the Act in large measure. Finally, and importantly, even if such a low-tech workaround were feasible, the denial of direct NCIC access to tribal governments—and only tribal governments—is rightly perceived as disrespectful, especially when those governments have been mandated to comply with SORNA, they have taken that obligation seriously, and federal law guarantees them NCIC access.²

¹ FBI's Criminal Justice Information Services (CJIS) Division maintains NSOR and the other NCIC databases, and is responsible for the policies governing access to the database files by tribal law enforcement.

² This past July, the Tribal Law and Order Act amended Title 28, United States Code, Section 534 to confirm that tribal law enforcement agencies are entitled to access to "federal criminal information databases," including NCIC.

Technical Impediments to Tribal Compliance with SORNA

Tribal leaders have also made my office aware of a technical impediment to providing all required information under SORNA. As part of the registration process, tribal police must take a digitized set of each registrant's fingerprints and transmit them to IAFIS; the agency also must obtain a digitized set of palm prints for transmission to FBI's Next Generation Identification Program. Both the IAFIS and Next Generation databases are administered within NCIC. Several tribes in Arizona have purchased expensive print scanning and digitizing systems that are advertised as compatible with Next Generation and IAFIS, and which work for state and federal law enforcement agencies, only to learn that they are unable to use the equipment to transmit prints for sex offenders with tribal convictions. This is because the NCIC database management software will not accept any digitized print set unless it is accompanied by a field containing a recognized criminal code citation that identifies the offense or offenses for which the registrant was convicted. Unless the code citation accompanying the prints matches a code section already in the system, the print set will not be accepted. The problem the tribes face is that the system only recognizes and accepts citations of federal and state codes; not sex offenses codified in the many tribal codes.

Just three weeks ago, the Inter-Tribal Council of Arizona hosted a meeting of officials tasked by each tribe with the implementation of SORNA. The purpose of the meeting was to share accounts of progress, identify problem areas and collaborate on possible solutions; representatives of this Office attended to listen and to offer assistance. Responsible officials from nearly every tribe in Arizona attended the meeting, and acknowledged the inability to enter prints for offenders with tribal convictions as a common problem.

Conclusion

As this letter points out, both the tribes and this office have actively sought to work through or around the impediments to SORNA compliance. In addition to the steps I discussed, the tribes have consulted with the Department's Office of Sex Offender Monitoring, Apprehending, Registering and Tracking (SMART Office), which they report has been responsive and very supportive, but these issues are beyond the purview of that office. They and we have sought to raise these issues to the CJIS Advisory Policy Board, on which the Chief of one Arizona tribe's Police Department sits, but that process is ongoing.

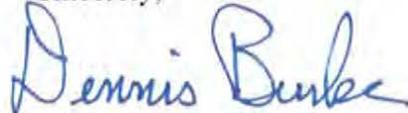
The tribes seek our assistance in achieving compliance with SORNA's requirements because the consequences of non-compliance are so undesirable. SORNA provides that if, at the July 2011 deadline, a tribe is deemed not to be in substantial compliance, and incapable of achieving that compliance in a reasonable amount of time, responsibility for its sex offender registration duties will be delegated to the State of Arizona. That result is not only disfavored by many of the tribal governments because it impinges on their sovereignty, especially where they have made good faith efforts at compliance; it is

unworkable because the State of Arizona has given no indication that it intends to comply with SORNA for itself.

For the reasons above, I seek your assistance in addressing both the policy-based and the technically-based impediments to Tribal implementation of the SORNA requirements. First, I recommend that CJIS develop a policy to allow tribal law enforcement a method of direct input access to NCIC/NSOR databases, either by granting them the same access directly as DPS, or by authorizing BIA Office of Justice Services to provide tribal police departments who meet security requirements with NCIC access through BIA's portal. Second, I ask for your assistance in requesting that CJIS personnel develop a mechanism for including and accepting tribal code violations in the Next Generation and other relevant NCIC systems, so tribes can be on equal footing with other registration jurisdictions participating in SORNA. These changes not only would make tribal participation in SORNA as efficient as originally contemplated; they also would afford tribal governments the respect they deserve as partners in our common fight to keep the public safe from sex offenders.

I and my office look forward to working with you on this important set of issues. Please contact me where we can be of assistance in your consideration of this matter.

Sincerely,



DENNIS K. BURKE
United States Attorney
District of Arizona