

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Crim. No. 25-113 JB

DINEH BENALLY et al.,

Defendants.

UNITED STATES' MOTION TO DETAIN

I. BACKGROUND

Over the last five years, Defendants have perfected a business model that violates tribal and state sovereignty and federal law. This brazen criminal enterprise has preyed upon and exploited foreign nationals with slave wages and conditions. Its operations involve diverting waterways, trafficking marijuana, and implementing a criminal scheme that runs counter to the wishes and interests of the Navajo Nation, the State of New Mexico, and federal law. This multi-headed pestilence has wrought disorder throughout New Mexico and across the United States for far too long. No release conditions can be fashioned to prevent what courts and law enforcement have previously failed to stop during the last five years. Neither tribal prosecutions, nor regulatory fines, nor enforcement actions have been able to stem the flood of criminal activity committed by Defendants. The United States will now address the problem. And that begins with detention of all Defendants.

A. The Relevant Conduct¹

1. Marijuana Law in the United States and on the Navajo Nation

In 2000, the Navajo Nation Council, the governing authority of the Navajo Nation, amended Title 17 of the Navajo Nation Criminal Code to define “marijuana” as “those cannabis plants that contain an amount equal to or more than 1.4 percent of [tetrahydrocannabinol (“THC”).” On February 7, 2014, Congress enacted the Agricultural Act of 2014 (the “Farm Bill”), Public Law 13-79, to lower the amount of allowable THC from 1.4 percent to 0.3 percent. In December of 2018, the 2018 Farm Bill was signed into law. It removed hemp, defined as cannabis (*Cannabis sativa* L.) and derivatives of cannabis with extremely low concentrations of the psychoactive compound delta-9-tetrahydrocannabinol (THC) (no more than 0.3 percent THC on a dry weight basis), from the definition of marijuana in the Controlled Substances Act (CSA). The 2018 Farm Bill explicitly preserved FDA’s authorities over hemp products. Therefore, hemp products must meet any applicable FDA requirements and standards, just like any other FDA-regulated product.

In 2018, the Navajo Nation Council followed suit and enacted the Controlled Substance Definition Act of 2018, Navajo Resolution No. CO-75-18, to amend Title 17 of the Navajo Nation Criminal Code to define “marijuana” as “the plant *Cannabis sativa* L. and any part of such plant, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of more than three tenths percent (0.3%) on a dry weight basis.” Navajo Resolution No. CO-75-18 also states that “[t]he enactment of this resolution does not authorize the cultivation, growth, possession, development or propagation of industrial hemp until the Navajo Nation creates a regulatory system for industrial hemp and obtains the necessary and applicable permits for industrial hemp.”

¹ The United States also incorporates by reference the manner and means section from the Indictment.

On June 5, 2019, the Navajo Nation Council passed Navajo Resolution No. CJN-24-19 to authorize a hemp pilot research project between the Navajo Agricultural Products Industry (NAPI) and New Mexico State University (NMSU) under the 2014 Farm Bill. Except for the hemp pilot research project authorized under Navajo Resolution No. CJN-24-19, the “cultivation, growth, possession, development or propagation of industrial hemp continue[d] to be prohibited on the Navajo Nation, as established by Council Resolution Nos. CO-75-18 and CJY-54-00, and until such time as the Navajo Nation creates a regulatory system and obtains the necessary and applicable permits for industrial hemp cultivation and production.” The Navajo Nation has never created a regulatory system nor obtained the necessary and applicable permits for industrial hemp cultivation and production, as required by Navajo Resolution Nos. CO-75-18, CJY-54-00, and CJN-24-19.

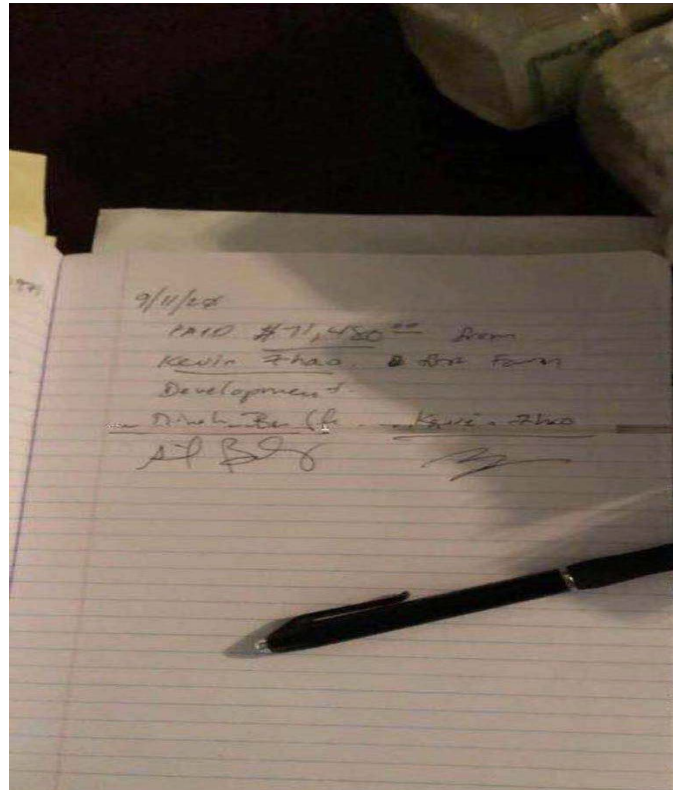
On May 15, 2020, the Navajo Nation Council voted to pass Resolution No. CMY-43-20 to expand the hemp pilot project by five acres and to extend it by one year for the 2020 crop season. On May 30, 2020, the Navajo Nation President signed Resolution No. CMY-43-20 into law, but made clear in a public letter to Speaker Seth Damon of the Navajo Nation Council that the “Navajo people must keep in mind that the growth, cultivation and marketing of industrial hemp is still unauthorized and can place Navajo farm permits in jeopardy when grown outside of this pilot research project.” Resolution No. CMY-43-20 also states that “[t]he Navajo Nation has not adopted a regulatory system for industrial hemp and has not authorized the growth, possession, development or propagation of industrial hemp on the Navajo Nation,” and warns that “[f]armers on the Navajo Nation should be aware that industrial hemp was and still is unauthorized on the Navajo Nation and forewarned that the planting of hemp could place their farm permits in jeopardy for growing a banned or unauthorized crop[.]”

On October 5, 2020, the Navajo Nation adopted Resolution No. CS-76-20 to expand the definition of “marijuana” to include “all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, sale, derivative, mixture, or preparation of such plant, its seeds or resin, containing any amount of delta-9 tetrahydrocannabinol.” Under Resolution No. CS-76-20, the term “marijuana” does not include “any part of the plant *Cannabis sativa* L., whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent on a dry weight basis produced or delivered in accordance with an industrial hemp regulatory system approved by the Navajo Nation Council or pursuant to the pilot project created by CJN-24-19 and any extensions.” Consequently, except under one very specific exception created by the Navajo Nation Council exclusively for NAPI and in compliance with the 2014 Farm Bill, all hemp and marijuana in any form is prohibited on the Navajo Reservation.

2. The Investigation Begins

In June 2019 the FBI began investigating Defendants for growing marijuana on twenty-five farms in and around Shiprock, New Mexico, at areas located within the exterior boundaries of the Navajo Nation. All twenty-five marijuana grow sites were leased, either formally or informally, by Defendant Dineh Benally and operated in concert with his father, Defendant Donald Benally, as well as by Chinese nationals, including [REDACTED]. Defendant Dineh Benally used more than 400 acres of farmland along the San Juan River to grow the marijuana. To fund the operation, Defendant Dinah Benally received large monetary investments from Chinese investors, some of whom are from California and Nevada, and some of whom were from locales outside the United States.

To solicit investors, Defendants employed an illegitimate scheme, where Defendant Dineh Benally would issue “Cannabis Cultivation Licenses” as an “entrance” fee, even though he had no authority to do so as marijuana was and is illegal on the Navajo Nation. Defendants would then tack on “kickbacks” and other fees to fuel the ever-growing marijuana operation.



But funding was only half the problem for these drug trafficking Defendants. This large-scale, illegal operation required labor. Defendants chose to answer that call with countless Chinese workers, akin to slave labor, whom they imported through connections with the Chinese investors, and then housed those workers in substandard living conditions, all while paying them little to nothing. As Defendant Dineh Benally put it, even “tip[ping] people . . . undermines [his] authority.” That authority eventually earned Defendants Dineh Benally and [REDACTED] a civil lawsuit. *See* Ex. 1. Therein, fifteen Chinese workers sued Defendants Dinah Benally and [REDACTED] for human trafficking, wage and hour violations, unjust enrichment, intentional infliction of

emotional distress, and false imprisonment, among other things, or as the United States would call it, the manner and means of the charged drug conspiracy as well as relevant *res gestae*.

Putting that aside, Defendants also used the Chinese workers as drug mules. As put by Defendant [REDACTED], who brazenly interviewed with “Searchlight New Mexico” in an article titled “Fields of green,” the marijuana grown in New Mexico was intended for sale out of state, aimed at a network of distributors who supply a so-called “grey market.” Ex. 2. Defendant [REDACTED]’s description proved accurate. Among the many pieces of evidence in this case are reports chronicling numerous occasions when the Navajo Nation seized large quantities of marijuana from Chinese workers during routine traffic stops as they left the farms. The Chinese workers, who were driving vehicles with California license plates, would then notify the Navajo Nation officers that Defendant Dineh Benally was their “boss.” Even Defendant [REDACTED] himself gave Defendant Dineh Benally’s business card to law enforcement when he was stopped on the Navajo Nation while attempting to transport marijuana.

But foreign cash, foreign workers, and drug mules were still not enough. Defendant needed to irrigate the twenty-five farms. For this, Defendants drilled unauthorized wells and tapped the San Juan River. For the farms closer to the San Juan River, between February 29, 2020, and May 2020, a channel of the San Juan River dam adjacent to the M.B. farm was filled in:



Around the same time, Defendant Dineh Benally installed a sandbag dam at a separate portion of the San Juan River:



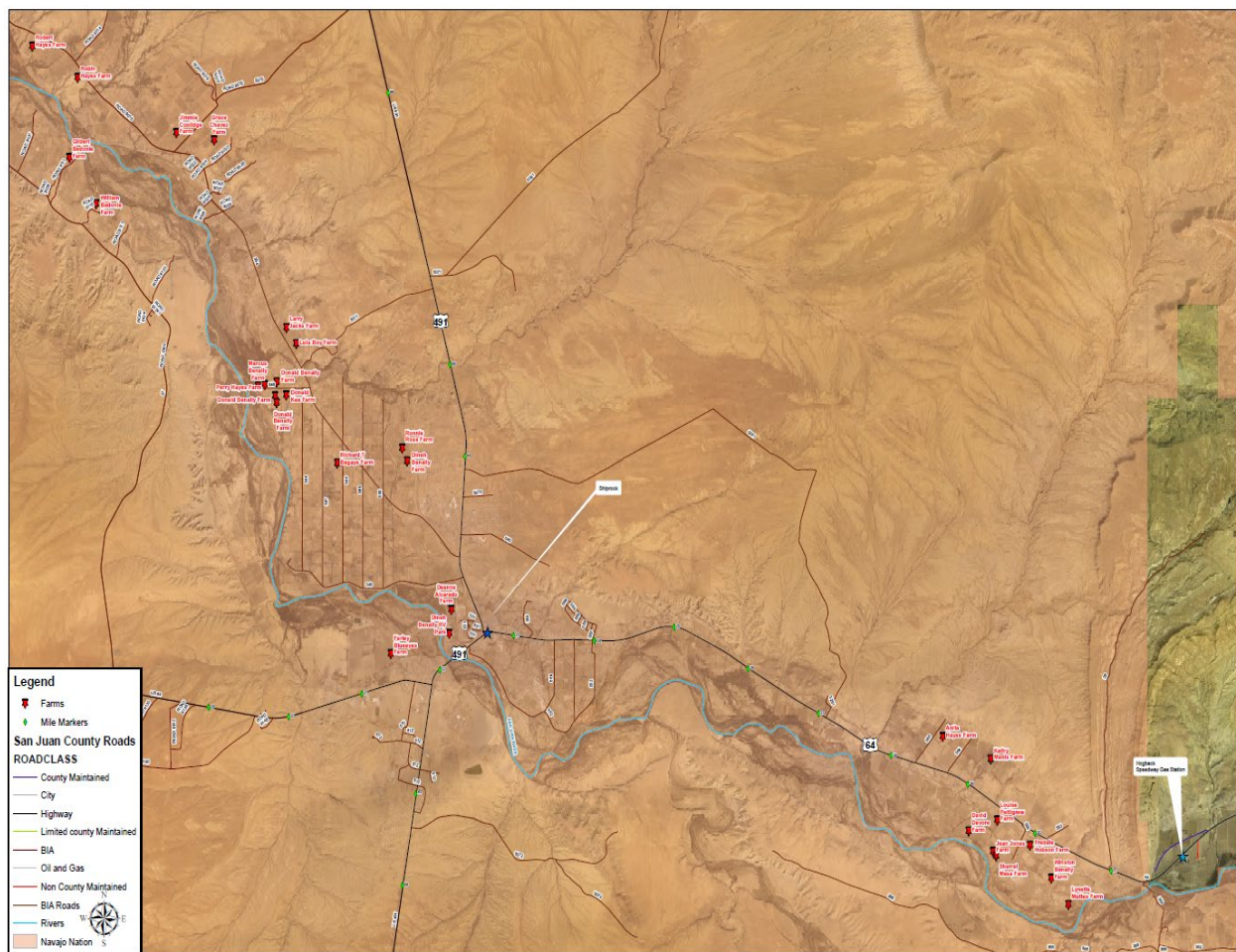
This sandbag dam was installed so that water would pool at a separate location to be used to irrigate the marijuana crops.



Eventually, with all of this going on, the Navajo Nation attempted to stop the lawlessness. For its part, on September 18, 2020, the Navajo Nation issued a temporary restraining order and preliminary injunction to stop Defendants from growing or cultivating hemp on the reservation.

The injunction became permanent on September 23, 2020, but Defendants kept growing marijuana.

That is when the United States stepped in. From November 9, 2020, to November 11, 2020, the FBI led hundreds of officers in a large-scale, multi-agency law enforcement marijuana operation to execute search warrants on twenty-five farm locations within the Navajo Nation near Shiprock, New Mexico. The below map depicts the scale of the operation.



Law enforcement confirmed the presence of marijuana in 1,107 grow houses on the twenty-five farms. During the operation, agents eradicated approximately 260,000 live plants and processed an estimated 60,000 pounds of packaged marijuana. Additionally, agents found 19 trash bags filled with fully processed suspected marijuana (approximately 1,000 pounds) in baggies,

ready for distribution, hidden under a tarp in a grow house. Law enforcement also found several rifles and pistols at most, if not all, the farms in and around the growing operation.

The below photographs are just a sample of the thousands of pictures that document the plants, pruning stations, drying racks, packaging stations, living facilities, and weapons found on Defendants' farms.

1. Location 1





Grow 1

2. Location 2



Grow 2

3. Location 3





Grow 3

4. Location 4





Grow 4

5. Location 5





Grow 5

6. Location 6



7. *Location 7*



8. *Location 8*





Grow 8

9. Location 9



10. Location 10



11. Location 11



12. Location 12



13. Location 13



14. Location 14



15. Location 15



16. Location 16



17. Location 17



18. Location 18



19. Location 19



20. Location 20



21. Location 21



22. Location 22



23. Location 23



24. Location 24



25. Location 25



B. The Charges

On January 22, 2025, the United States charged Defendants for the above conduct in a six-count indictment with: (1) Conspiracy in violation of 21 U.S.C. § 846, (2) Manufacture of 1,000 Kilograms and More of Marijuana and 1,000 and More Marijuana Plants in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(vii), (3) Possession with Intent to Distribute 1,000 Kilograms and More of Marijuana and 1,000 and More of Marijuana Plants in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(vii), (4) Maintaining Drug-Involved Premises in violation of 21 U.S.C. § 856(a), (5) Knowing Discharge of a Pollutant from a Point Source into a Water of the United States without a Permit in violation of 33 U.S.C. §§ 1311(a) and 1319(c)(2)(A), and (6) Knowing Discharge of a Pollutant from a Point Source into a Water of the United States without a Permit in violation of 33 U.S.C. §§ 1311(a) and 1319(c)(2)(A).²

² Defendants also are charged in Count 2-6 with aiding and abetting in violation of 18 U.S.C. § 2.

II. ARGUMENT

A. The Government is Entitled to a Detention Hearing

The Bail Reform Act “establishes a two-step process for detaining an individual before trial.” *United States v. Ailon-Ailon*, 875 F.3d 1334, 1336 (10th Cir. 2017) (*per curiam*). At step one, the court must decide the threshold question of whether 18 U.S.C. § 3142(f) authorizes detention. Here, the United States is entitled to a detention hearing since Defendants are charged with felony offenses for which the maximum sentence is life. *See* § 3142(f)(1)(B); *See* 21 U.S.C. §§ 841(a)(1) and (b)(1)(A)(vii) (10 years to life); § 846 (same penalties as prescribed for the § 841 offense). The Government is likewise entitled to a detention hearing since Defendants are charged with an offense for which a maximum term of imprisonment of ten years or more is prescribed by the Controlled Substances Act. *See* 18 U.S.C. § 3142(f)(1)(C).³

B. There is a Presumption of Detention

Turning to the detention statute, given the A-level charges, there is rebuttable presumption that no condition or combination of conditions will reasonably ensure the appearance of Defendants as required nor reasonably ensure the safety of any other person and the community if Defendants are released. *See* 18 U.S.C. § 3142(e)(3)(A).

C. The Factors Favor Detention

But even if Defendants can overcome the presumption by proffering ties to New Mexico, albeit while destroying the countryside, victimizing workers, and flooding the marketplace with illegal marijuana, the factors still favor detention. In determining whether conditions of release can be fashioned, the court must consider the following factors: (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence or involves a minor

³ As explained more below, the Government is also entitled to a detention hearing as to Defendant Dineh Benally since he has a history of flight. *See* § 3142(f)(2)(A).

victim, (2) the weight of the evidence against the defendant, (3) the defendant's history and characteristics, including ties to the community, employment, financial resources, criminal history, history of alcohol or substance abuse, and record concerning appearance at court proceedings, and (4) the nature and seriousness of the danger to any person or the community that would be posed by the defendant's release. § 3142(g)(1) – (4). The factors weigh in favor of detaining Defendants for the reasons that follow.

1) The Nature and Circumstances of the offense

Turning to the nature and circumstances in this matter, Defendants desecrated tribal land and sovereignty by operating one of the largest illegal marijuana grows in history. In doing so, Defendants used Chinese nationals as laborers and drug mules, who were housed in substandard conditions, to manufacture marijuana intended for interstate transport on the so-called “grey market.” But Defendants did not stop there. Defendant Dineh Benally filled in a channel along a navigable water of the United States and diverted a portion of that river into a manmade dam to irrigate the illegal operation. This conduct demonstrates a brazen disregard for the rule of law, human welfare, and tribal sovereignty. To adequately capture what occurred on those farms, one must use absolutes: unacceptable and dangerous to society.

This factor weighs in favor of detention.

2) The Weight of the Evidence

The weight of the evidence is overwhelming, or in this instance, incredibly heavy: Law enforcement seized approximately 260,000 marijuana plants and approximately 60,000 pounds of processed marijuana. The evidence continues: (1) law enforcement can attribute all twenty-five marijuana farms to Defendants and establish that each was under their authority and control, (2) law enforcement identified approximately 1,106 greenhouses full of marijuana on those farms, (3)

law enforcement identified countless makeshift shelters, most of which lacked running water and electricity, (4) law enforcement identified numerous Chinese workers at the farms, some, if not all, who were in the United States without authorization, (5) law enforcement obtained cellular evidence that contains discussions relating to Chinese investors and payment to the Chinese workers, (6) law enforcement obtained invoices from local businesses, which range from portable restrooms to heavy farm equipment, (7) law enforcement seized large quantities of marijuana as it was being transported off the farms, and (8) law enforcement confirmed through investigation and admissions that Defendant Dineh Benally filled in a channel along the San Juan River and installed a sandbag dam.

This factor favors detention.

3) History and Characteristics

Disregarding the laws of the Navajo Nation and the United States was not enough for Defendants, especially Defendants Dineh Benally and [REDACTED]. Defendant [REDACTED] continued his passion for illegal marijuana grows in Waterflow, New Mexico:



This operation was raided by the State of New Mexico, who levied the following charges against Defendant [REDACTED]: (1) Personal Production of Cannabis, (2) Trafficking Cannabis Products, and (3) Unlawful Possession of Cannabis. Additionally, Defendant [REDACTED] has the following criminal history:

YEAR	CRIME*	DISPOSITION
2023 (Arrested on March 3, 2023)	Count 1: Dealing Marijuana/ Hashish (at least 10 pounds), contrary to IN Code § 35-48-4- 10(a)(1) Felony Level 5. Count 2: Possession Marijuana /Hashish, contrary to IN Code § 35- 48-4-11 (a)(1) Misdemeanor B	Count 1: Sentenced: 1,095 days/46 days jail time credit – Sentence suspended except for term of 61 days to be served at Morgan Co. Jail. Probation of 1, 035 days. Count 2 dismissed.

Defendant Dineh Benally's disregard for the rule of law and society has likewise continued with yet another massive, illegal marijuana growing operation that spans two farms in Estancia, New Mexico:





Although this operation may have initially been authorized by the State of New Mexico, or at least one farm was so authorized, Defendant quickly exploded the grow beyond the bounds of reason – and the law. According to the State of New Mexico’s Cannabis Control Division, who revoked Defendant’s license and levied a \$1,000,000 fine against him, the Estancia grow demonstrated a “blatant disregard for public health and safety, and for the rule of law.” Ex. 3. But neither the revocation nor the fine curbed Defendant Dineh Benally. He kept growing illegal marijuana, while breaking other laws to further the operation. For example, Defendant Dineh Benally is currently facing felony charges in New Mexico’s 7th Judicial District for stealing electricity to power his Estancia operation. *See* Ex. 4. The case has been bound over and is pending in state district court.

If at this point you are asking yourself how these Defendants could violate the public trust so easily, Defendant Dineh Benally provides you with that answer. In an interview with Searchlight New Mexico, Defendant Dineh Benally alludes to a sovereign right to grow cannabis, which he says is a religious sacrament for Native people. Ex. 5. “This is an ancestral plant,” Defendant Dineh Benally said. *Id.* “This plant belongs to us as Native people. We as Native

Americans, when we're born, we're entitled to this land . . . Anything that grows, that belongs to the Native American." *Id.* Yet the Navajo Nation, who has authority over him as an enrolled member, has already spoken on marijuana. And so has the United States.

As for the violations, Defendant Dineh Benally stated: "We have our rights, we have our religion, we have our sacraments." He protested being treated "like I'm violating people's rights and I'm violating a law — a law that is man-made, a law that is corrupt and a law that is discriminating."

Putting aside what he espouses the tribal population believes, *i.e.*, that marijuana is and should be legal (and it bears repeating that the Navajo Nation's ruling body clearly does not believe this), the United States wonders whether this alleged sovereign right allowed his father, Defendant Donald Benally, to bribe a police chief. Whether this sovereign right allowed Defendants to traffic Chinese workers to run the marijuana farms. Whether this sovereign right allowed Defendants to install a dam in the San Juan River and to fill in a channel. Whether this sovereign right allowed Defendants to dump illegal pesticides. Whether this sovereign right allowed Defendants to drill unauthorized wells. Whether this sovereign right allowed Defendants to transport illegal substances across state lines. Whether this sovereign right authorized Defendants to steal electricity.

The United States contends that rather than exercising a so-called sovereign right, these Defendants are instead engaging in the actions of a major drug and human trafficking organization, whose members, here Defendants, deserve to be detained pending trial. These so-called man-made laws that Defendant Dineh Benally believes do not apply to him are the very laws that govern society, and these man-made laws will ensure that Defendants pay for what they have done.

The Indictment is only the first step in the United States' firm enforcement of the man-made laws against Defendants. But there will be more enforcement in this case. To further this point, on January 23, 2025, the United States and its agencies, with the assistance of state agencies from New Mexico, raided Defendant Dineh Benally's operation in Estancia, as well as his residence. That raid identified an additional 10 Chinese workers that Defendant Dineh Benally was using to work the two Estancia farms, approximately \$35,000 in cash, approximately 8,500 pounds of marijuana, suspected illegal pesticides, 43 grams of suspected methamphetamine (in Defendant Dineh Benally's residence), 2 firearms (in Defendant Dineh Benally's residence), and a ballistic vest, among many other things.

The bottom line is that Defendants are drug traffickers who operate in accordance with their own laws, so how can anything short of detention ensure the safety of the community or Defendants' appearance in this matter. This factor weighs in favor of detention.

4) Dangerousness and Risk of Flight

The overwhelming evidence clearly demonstrates that Defendants pose a specific risk to the Navajo Nation, Chinese immigrants, and the State of New Mexico. Defendants further represent a significant danger to the country at large. As already stated, Defendants preyed on Chinese laborers in their "sovereign" quest to build a marijuana empire. Defendants solicited and accepted money from Chinese investors to fund their operation. They used armed security to intimidate anyone who tried to question what was actually occurring on those 400 acres of tribal land. Defendants moved unauthorized and untested marijuana, grown with illegal chemicals, into the black market. These actions are nothing short of dangerous.

As for flight, the charges, which are supported by overwhelming evidence, speak for themselves: Defendants are facing a mandatory ten years in prison (and likely looking at several

more that carry the same penalty). But if any questions remain about Defendants' inability to stay within the District of New Mexico pending trial, more specifically Defendant Dineh Benally, his conduct after the November 2020 raid has answered them: "After the raid, Benally disappeared from the Navajo Nation, evading police efforts to serve him with papers. He resurfaced months later in South Dakota, where he tried to set up a cannabis venture on the Pine Ridge reservation, until the Oglala Sioux Tribal Council barred him from doing business in January 2021." *See* Ex. 5. Indeed, the former Navajo Nation Chief of Police and now current Chief of the Bloomfield Police Department believes that Defendant Dineh Benally fled Shiprock and was initially presumed to be in hiding. *See* Ex. 3. A man with claims to have close ties to the community and love for his tribe could no longer be found in the community after his Shiprock marijuana empire came crashing down.

This flight as an inference of guilt makes sense given that Defendant Dineh Benally recently attempted to obstruct justice, possibly with the assistance of another individual. That is, on January 23, 2025, during the above-mentioned raids, Defendant Dineh Benally's wife notified him that the FBI wanted to speak with him. Instead of doing what his wife asked of him, Defendant discarded his cell phone, presumably with the help of another individual, prior to the meeting. Further questionable conduct for which Defendant Dineh Benally will yet again answer for.

This factor weighs in favor of detention.

III. CONCLUSION

For the foregoing reasons, the United States respectfully requests that the Court order Defendants be detained pending trial.

Respectfully submitted,

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United States Attorney

/s/ Electronically filed on January 24, 2025

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I HEREBY CERTIFY that on January 24, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to opposing counsel of record on this date.

Electronically Filed 1/24/2025

MATTHEW J. MCGINLEY
Assistant United States Attorney