



OPERATIONS PLAN

Public Safety in Indian Country Last Updated: 2018

The United States Attorney’s Office for the District of New Mexico (“USAO-NM”) recognizes its good fortune to represent a district that is home to a substantial Native American presence. The tribal communities that call the state home bring a rich cultural heritage to the community and contribute to the diversity that makes New Mexico a unique district. The United States Attorney’s office also appreciates the solemn trust responsibility that the federal government holds with respect to these communities. Pursuant to the Tribal Law and Order Act of 2008, the USAO-NM is proud to adopt this Operations Plan for Public Safety in Indian Country (“Operations Plan”), which is designed to reflect, in a clear and concise manner, how the USAO-NM intends to discharge its responsibility to tribal communities in the district.

In furtherance of those goals, this Operations Plan emphasizes:

- continued respect for tribal sovereignty, which is the cornerstone of interaction between the federal government and Indian tribal governments;
- the practice of active communication with tribal officials regarding the progress of criminal cases which have been filed and other matters affecting public safety and law enforcement concerns in the District;
- the appropriate sharing of information regarding pending cases with tribal officials, particularly where the tribe is a victim of a crime;
- ongoing consultation between state, tribal, and federal prosecutors to maximize the protection of tribal communities through the coordination of investigation and prosecution of crime occurring in Indian country;
- information sharing and consultation with Assistant United States Attorneys (AUSAs), victim witness personnel, and supervisory personnel regarding public safety initiatives, grant availability, training opportunities, and collaborative efforts to improve the delivery of justice to those located within Indian country;
- continued reliance upon and development of investigative protocols and Memoranda of Understanding for enhanced investigation, prosecution and prevention of child abuse, domestic violence, and other crimes in Indian Country;
- prioritization and encouragement of the development of cross-deputization agreements in areas where Indian country lands are located, with increased Special Law Enforcement Commission (SLEC) issuance to tribal, state, and local police officers;

- the delivery of specialized training by AUSAs and federal agents to BIA and tribal law enforcement on law, procedure, federal practice, evidence gathering, and investigative techniques; and

- a continuous review of the investigation and prosecution of crime arising from Indian country to identify inefficiencies, practices that limit effectiveness, or areas that need additional development and improvement.

I. Indian Country in New Mexico

The District of New Mexico is contiguous with the State of New Mexico. New Mexico is home to 22 Native American communities- nineteen pueblos: Acoma, Cochiti, Isleta, Jemez, Kewa, Laguna, Nambe, Ohkay Owingeh, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, Santa Ana, Santa Clara, Taos, Tesuque, Zuni and Zia; two Apache tribes: Jicarilla and Mescalero; and the Navajo Nation. Crimes committed in Indian Country¹ falling within the General Crimes Act- 18 U.S.C. § 1152, the Major Crimes Act- 18 U.S.C. § 1153, as well as federal crimes of general applicability are the responsibility of the United States Attorney’s Office to prosecute.

A. The Native American governments located within the District of New Mexico are:

Pueblo of Acoma

www.puebloofacoma.org
P.O. Box 309
Acoma, NM 87034
Phone: (505) 552-6604
Police: (505) 552-6601/6602

Pueblo of Cochiti

P.O. Box 70
Cochiti Pueblo, NM 87072
Phone: (505) 465-2244
Fax: (505) 465-1135

Pueblo of Isleta

www.isletapueblo.com
P.O. Box 1270
Isleta Pueblo, NM 87022
Phone: (505) 869-3111
Fax: (505) 869-7596
Police: (505) 869-9704

Pueblo of Jemez

www.jemezpueblo.com
P.O. Box 100
Jemez Pueblo, NM 87024
Phone: (575) 834-7359
Fax: (575) 834-7331
Police: (575) 834-0468

Pueblo of Kewa

www.santodomingotribe.org
P.O. Box 99
Santo Domingo Pueblo, NM 87052
Phone: (505) 465-2214
Fax: (505) 465-2688/2215

Pueblo of Laguna

www.lagunapueblo-nsn.gov
P.O. Box 194
Laguna Pueblo, NM 87026
Phone: (505) 552-6654
Fax: (505) 552-6941
Police: (505) 552-6666

1. 18 U.S.C. § 1151 defines “Indian country” as (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Pueblo of Nambe

www.nambepueblo.org
Route 1, Box 117-BB
Santa Fe, NM 87506
Phone: (505) 455-2036
Fax: (505) 455-2038

Pueblo of Picuris

www.picurispueblo.org
P.O. Box 127
Penasco, NM 87553
Phone: (575) 587-2519
Fax: (575) 587-1071

Pueblo of San Felipe

P.O. Box 4339
San Felipe Pueblo, NM 87001
Phone: (505) 867-3381
Fax: (505) 867-3383

Pueblo of Sandia

www.sandiapueblo.nsn.us
481 Sandia Loop
Bernalillo, NM 87004
Phone: (505) 867-3317
Fax: (505) 867-9235
Police: (505) 891-7226

Pueblo of Santa Clara

P.O. Box 580
Española, NM 87532
Phone: (505) 753-7330
Fax: (505) 753-8988

Pueblo of Tesuque

Route 42, Box 360-T
Santa Fe, NM 87506
Phone: (505) 983-2667
Fax: (505) 982-2331

Ohkay Owingeh

P.O. Box 1099
San Juan Pueblo, NM 87566
Phone: (505) 852-4400
Fax: (505) 852-4820
Police: (505) 852-2757

Pueblo of Pojoaque

www.pojoaque.org
78 Cities of Gold Road
Santa Fe, NM 87506
Phone: (505) 455-4500
Fax: (505) 455-0174
Police: (505) 455-2295

Pueblo of San Ildefonso

www.sanipueblo.org
02 Tunyo Po
Santa Fe, NM 87506
Phone: (505) 455-2273
Fax: (505) 455-7351

Pueblo of Santa Ana

www.santaana.org
2 Dove Road
Santa Ana Pueblo, NM 87004
Phone: (505) 867-3301
Fax: (505) 867-3395
Police: (505) 771-6730

Pueblo of Taos

www.taospueblo.com
P.O. Box 1846
Taos, NM 87571
Phone: (575) 758-9593
Fax: (575) 758-4604
Police: (575) 758-8645

Pueblo of Zia

135 Capitol Square Dr.
Zia Pueblo, NM 87053
Phone: (505) 867-3304
Fax: (505) 867-3308
Police: (505) 867-3304

Pueblo of Zuni

www.ashiwi.org
P.O. Box 339
Zuni, NM 87327
Phone: (505) 782-7000
Fax: (505) 782-7202
Police: (505) 782-7061/7057

Navajo Nation

www.navajo-nsn.gov/index
P.O. Box 7440
Window Rock, AZ 86515
Phone: (928) 871-7000
Fax: (928) 871-4025
Police: (928) 871-6113/6114
Criminal Investigators: (928) 871-6390/6152

Jicarilla Apache Nation

P.O. Box 507
Dulce, NM 87528
Phone: (575) 759-3242
Fax: (575) 759-3005
Police: (575) 759-3222

Mescalero Apache Tribe

www.mescaleroapachetribe.com
P.O. Box 227
Mescalero, NM 88340
Phone: (575) 464-4494
Fax: (575) 464-9191
Police: (575) 464-4451 BIA
Police: (575) 464-9323

B. Law enforcement partners working in Indian Country, in addition to tribal law enforcement, include:

Bureau of Indian Affairs
Office of Justice Services

www.bia.gov/bia/ojs/contact-us
District IV Office
1001 Indian School Rd., NW
Albuquerque, NM 87104
Phone: (505) 563-3882

Federal Bureau of Investigation

www.fbi.gov/contact-us/field-offices/albuquerque
Albuquerque Field Office
4200 Luecking Parke Avenue, NE
Albuquerque, NM 87107
Phone: (505) 889-1300

United States Fish and Wildlife Service

Office of Law Enforcement

www.fws.gov/southwest/lawenforcement/statecontacts
P.O. Box 329
Albuquerque, NM 87103
Phone: (505) 248-7889

Drug Enforcement Administration

www.dea.gov/divisions/elp/elp
Albuquerque District Office
2660 Fritts Crossing, SE
Albuquerque, NM 87106
Phone: (505) 452-4500

Bureau of Alcohol, Tobacco, Firearms and
Explosives

www.atf.gov/phoenix-field-division/new-mexico-field-offices
Albuquerque Field Office
201 3rd Street, Suite 1550
Albuquerque, NM 87102
Phone: (602) 777-6510

Homeland Security Investigations

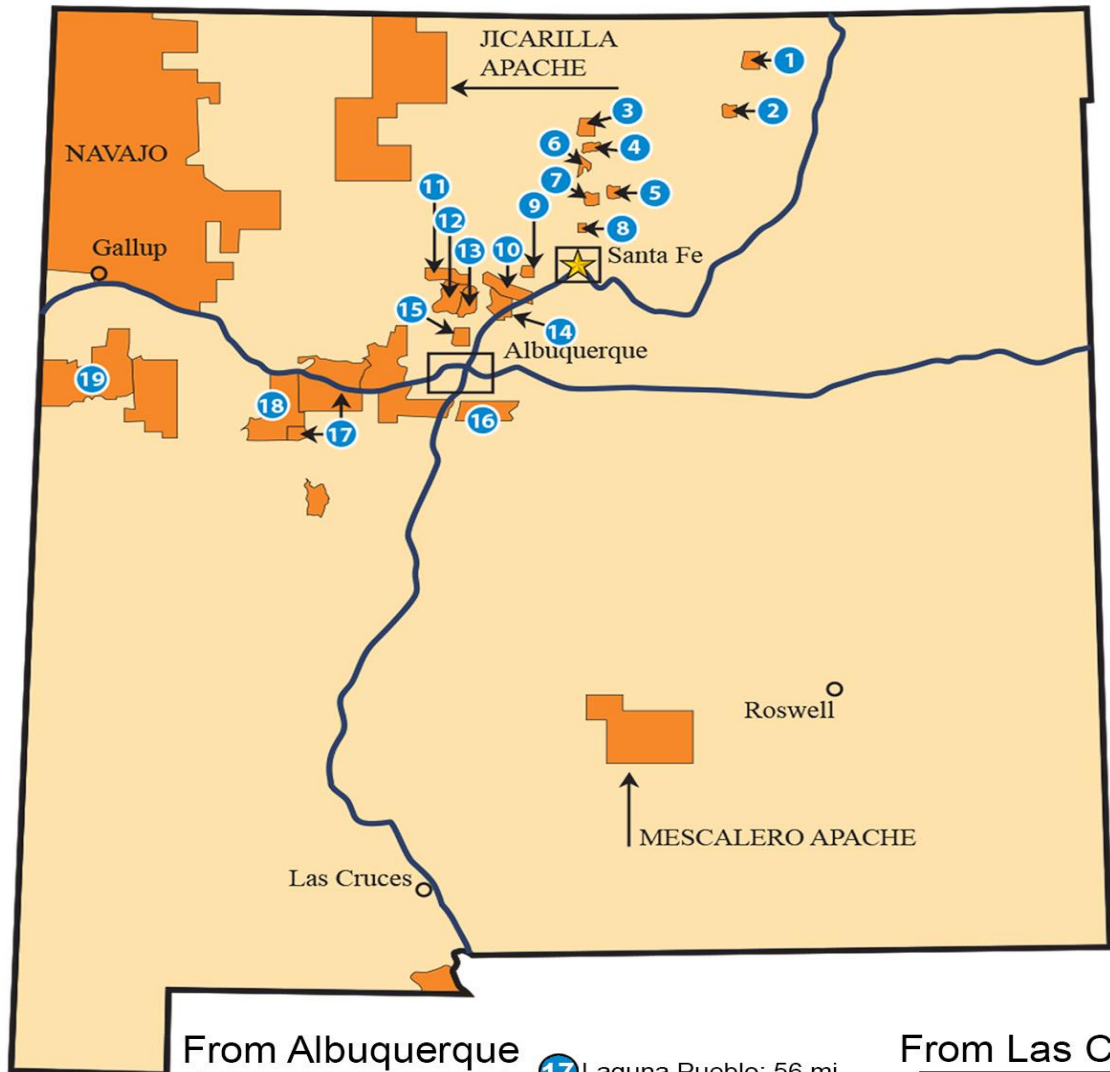
www.ice.gov/contact/hsi
1720 Randolph Road, SE
Albuquerque, NM 87106
Phone: (505) 346-7912

New Mexico State Police

www.sp.nm.gov
4491 Cerrillos Rd.
Santa Fe, NM 87507
Phone: (505) 827-9000

C. New Mexico is the fifth largest state in the nation by land area. It is also the fifth least-densely populated state. Tribal communities in Indian Country are found throughout the state.

Distance - Tribal Communities to USAO-NM



From Albuquerque

- | | | |
|-------------------------------|-----------------------------|---|
| 1 Taos Pueblo: 135 mi | 9 Cochiti Pueblo: 50 mi | 17 Laguna Pueblo: 56 mi |
| 2 Picuris Pueblo: 113 mi | 10 Kewa Pueblo: 61 mi | 18 Acoma Pueblo: 75 mi |
| 3 Ohkay Owingeh: 90 mi | 11 Jemez Pueblo: 48 mi | 19 Zuni Pueblo: 169 mi |
| 4 Santa Clara Pueblo: 88 mi | 12 Zia Pueblo: 36 mi | Alamo, NM: 133 mi (Navajo Nation) |
| 5 Nambe Pueblo: 80 mi | 13 Santa Ana Pueblo: 21 mi | Shiprock, NM: 212 mi (Navajo Nation) |
| 6 San Ildefonso Pueblo: 85 mi | 14 San Felipe Pueblo: 32 mi | Crownpoint, NM: 131 mi (Navajo Nation) |
| 7 Pojoaque Pueblo: 80 mi | 15 Sandia Pueblo: 16 mi | Gallup, NM: 139 mi (Navajo Nation) |
| 8 Tesuque Pueblo: 68 mi | 16 Isleta Pueblo: 14 mi | Ramah, NM: 130 mi (Navajo Nation) |
| | | Dulce, NM: 170 mi (Jicarilla Apache Nation) |

From Las Cruces

- Mescalero, NM: 97 mi (Mescalero Apache Reservation)

II. USAO-NM Indian Country components

The prosecution of Indian Country crimes may involve any component of the USAO-NM and all sections of the Office regularly support prosecutions and law enforcement efforts in Indian Country. Of particular note, because many prosecutions result in restitution ordered by the Court pursuant to the Mandatory Victim's Restitution Act, 18 U.S.C. § 3663A, or pursuant to the Victim Witness Protection Act, 18 U.S.C. § 3663, the Financial Litigation Unit (FLU) seeks garnishment of wages and otherwise works to obtain restitution on behalf of crime victims. Additionally, the Organized Crime Drug Enforcement Task Force (OCDETF) section lends its expertise for the purpose of obtaining wire taps and pursuing more complex narcotics investigations with a nexus to Indian Country. The White Collar section regularly supports and engages in prosecutions of Indian Country crimes involving more complex fraud cases as well prosecutions for violations of the Indian Arts and Crafts Act, 18 U.S.C. § 1159. The Civil section also engages in litigation on behalf of tribal entities and is currently handling a trespass case against a northern New Mexico municipality that has failed to compensate an adjoining Pueblo for road and utility rights of way. In addition to the foregoing, several components of the office have dedicated responsibilities to Indian Country.

A. Indian Country Crimes Section

In 2010, the USAO-NM created an Indian Country Crimes Section (ICCS). That Section currently consists of a Supervisory AUSA, AUSAs assigned to handle Indian Country prosecutions, paralegal specialists, and administrative assistant/paralegals. The majority of the AUSAs assigned to the ICCS have substantial experience prosecuting felony violent crimes. The ICCS relies upon extensive support from other USAO-NM components, including Victim/Witness Advocates, the Law Enforcement Coordination Manager, and the Reentry and Communication Outreach Coordinator. In addition, an AUSA located in the Las Cruces, NM branch office handles cases arising from the Mescalero Apache Reservation in South-Central New Mexico and liaises with that community. The significant resources assigned to and supporting the ICCS reflect the USAO-NM's commitment to supporting law enforcement efforts and reducing violent crime in Indian Country.

B. Tribal Liaison

The Tribal Liaison is responsible for developing working relationships and maintaining communication with tribal leaders and tribal law enforcement for each of the 22 pueblos and tribes in New Mexico. The Tribal Liaison should strive to make in-person contact with tribal officials, whether a tribal governor, president, chief of police, prosecutor or counsel, for each tribe at least twice a year. One of those meetings may include the annual consultation sponsored by the USAO-NM. In conjunction with tribal law enforcement officials the Tribal Liaison will coordinate, plan, and provide additional training for tribal law enforcement as requested and needed. In addition, the Tribal Liaison serves as the point of contact for inquiries when questions arise about cases in the office.

C. Victim/Witness Advocates

The USAO-NM has a robust Victim/Witness Advocate program. The USAO-NM Victim/Witness program has dedicated half of its staff to assist victims of crime from each of the 22 pueblos and tribes in New Mexico. Many of our advocates are from the tribal communities we serve. This means that our advocates are not only familiar with the communities but are sensitive to cultural norms and differences which they can pass along to federal agents and AUSAs who

may not be familiar with these cultures when they first start working in Indian Country. The Indian Country Victim/Witness advocates provide direct victim assistance and services such as notifying victims concerning their rights in court, coordinating and accompanying victims to pre-trial conferences, and ensuring victims are aware of case events and status. Additionally, they assist AUSAs, provide supportive services to crime victims, refer victims to appropriate service agencies, and provide emergency victim assistance, including crisis intervention, emergency transportation to court, temporary housing, and criminal justice support. The Victim/Witness advocates also consult with victims regarding prosecution issues, assist them in gathering information to prepare victim-impact statements, and serve on Multi-Disciplinary Teams and Child Protection Teams. This group is a critical component to the USAO-NM's successful program in Indian Country.

D. Law Enforcement Coordinator

The Law Enforcement Coordinator (LEC) serves as the District's lead liaison with federal, state, local and tribal law enforcement agencies. The LEC and Tribal Liaison work collaboratively to build and maintain strong relationships with the tribal communities within the district.

The LEC assists the Tribal Liaison to coordinate the following events and activities:

- 1) The Criminal Justice in Indian Country Training with the Bureau of Indian Affairs (BIA). This semi-annual three-day training is a requirement for officers working in Indian Country to receive their Special Law Enforcement Commissions (SLEC).
- 2) Hosting the annual Tribal Consultation with each tribe in the district. The USAO-NM meets annually with tribal leadership to discuss issues and concerns. The LEC works closely with the Tribal Liaison and senior management staff to secure a date, a venue and to develop a theme and agenda.
- 3) Disseminating information on open grant solicitations and funding opportunities to tribes in the district.

E. Reentry and Community Outreach Coordinator

The Reentry and Community Outreach Coordinator works with the Tribal Liaison to research and develop community outreach opportunities in tribal communities. Using the information gathered from the Tribal Liaison and meetings with tribal groups, outreach initiatives are developed to best benefit each community's needs in the areas of crime prevention, youth substance abuse prevention and education, and reentry efforts. The Reentry and Community Outreach Coordinator works with other federal law enforcement agencies to bring information to tribal communities through health fairs, and other public information events, to promote the work and partnerships of the USAO and federal agencies in Indian Country. This position continues to be developed and will continue to expand outreach efforts in new directions as informed by the needs of tribal communities.

III. Purpose

The Operations Plan is premised upon respect for tribal sovereignty and recognition of the government-to-government relationship between the United States and the tribes and pueblos within the

District of New Mexico. The Operations Plan is intended to facilitate communication between this office and our federal and tribal partners and to provide the outline of a consistent process for the intake, prosecution, and follow-up in response to crimes in Indian Country. The Operations Plan also outlines a strategy particularly aimed at prioritizing violent crime and crimes against women and children.

A. Significant Crime Categories

The USAO-NM has noted an increase in Hobbs Act robberies occurring in Indian Country and involving tribal businesses in 2017. In 2017 and 2018 the USAO-NM met with tribal leaders as well as tribal and federal law enforcement to identify particular areas of concern with respect to crime. Additional commentary and input on this subject was provided during the 2018 USAO-NM Annual Consultation, which was held on May 16, 2018. Illegal narcotics use and distribution and property crimes flowing from narcotics addiction were two of the primary areas of concern identified by leaders and law enforcement. Methamphetamine and opioids were noted as the prevalent illegal narcotics. In addition, domestic violence and assault were cited as significant and pervasive problems, particularly offenses by non-Indians against tribal members. Another particular area of concern to tribal authorities is trespass by non-Indians on tribal lands. Violent crime, particularly crimes against women and children, are a primary focus of the USAO-NM and those cases receive priority from the ICCS.

IV. Investigations

A. Case Intake/Assignment/Prosecution

All crimes referred from Indian Country are submitted to the ICCS Supervisory AUSA as first point of contact. The Supervisory AUSA, in consultation with the case agent, will determine whether to submit a criminal complaint and seek a warrant for the immediate arrest of the suspect or whether to refer the matter to an ICCS AUSA for review and indictment or other disposition. The pendency of tribal charges and whether a suspect is in tribal custody may influence the decision whether to proceed by complaint or by indictment. In addition, the ICCS Supervisory AUSA is the point of contact for law enforcement agents seeking review and approval of search warrants. The ICCS Supervisory AUSA will designate an ICCS AUSA as the point of contact for incoming cases and warrants at those times when the Supervisory AUSA is not in the office.

Once a case is assigned to an AUSA, that attorney reviews the law enforcement reports and other available evidence to determine whether federal prosecution is possible at that time, or whether further investigation is required. If further investigation is required to prove the case beyond a reasonable doubt or to determine whether such proof is available, the assigned AUSA will contact the case agent and explain what is required. In cases involving violent crimes, the assigned AUSA will, if possible, join with a Victim/Witness Advocate and the case agent to meet with the victim or survivors in their home community and discuss potential criminal charges, the legal process of a federal criminal case, and possible outcomes prior to seeking an indictment. The USAO-NM places a high priority on these pre-prosecution meetings. Once an indictment is filed, the assigned AUSA will maintain contact with the victims or survivors and will obtain their position on any plea resolutions to the matter. In addition, consistent with the Crime Victims' Rights Act of 2004, 18 U.S.C. § 3771, the assigned AUSA, Victim/Witness Advocate, and USAO staff will work to ensure that victims are informed of their rights under the Act and kept abreast of the state of the prosecution.

Consistent with the Attorney General's May 10, 2017 Memorandum regarding Charging

and Sentencing Policy, AUSAs charge and pursue the most serious, readily provable offense unless good reasons justify an exception.

B. Roles of Respective Law Enforcement Partners

The Federal Bureau of Investigation (FBI) and Bureau of Indian Affairs (BIA) are the two primary federal law enforcement agencies in Indian Country in New Mexico, and the USAO-NM enjoys good working relationships with both agencies. The same good working relationships exist with tribal police departments, and the tribal police departments frequently collaborate with the FBI and BIA on investigations. SLEC certified Criminal Investigators and tribal police officers directly submit some cases to the USAO-NM. In addition, BATFE, DEA, and HSI lend support and specific expertise for Indian Country cases when requested to do so or relevant investigations are brought to their attention. An additional significant category of Indian Country cases in New Mexico are those investigated by U.S. Fish and Wildlife Service and BIA involving the Native American Graves Repatriation Act and the Indian Arts and Crafts Act.

Historically, FBI and BIA have entered MOUs dividing responsibility for investigations on specific reservations based on the nature of the case. Most of those MOUs have been abrogated or become outdated over time. However, it is generally the position of the USAO-NM that hard and fast divisions of case responsibility between FBI and BIA should be avoided, and that such divisions are unnecessary given the history of cooperation between the two agencies in this District, and their mutual recognition of each other's expertise in different areas.

The availability of criminal investigative resources on each of New Mexico's 22 Native communities varies widely. As a result, it is important to coordinate coverage of investigations to provide an effective law enforcement response to each community. For example, the Navajo Nation Department of Public Safety (NNDPS) nominally staffs the New Mexico side of the Navajo Nation with approximately 50 patrol officers and 12 criminal investigators, and the FBI maintains Resident Agent Offices in Gallup and Farmington staffed with five agents and six agents, respectively. The Navajo Nation has no BIA investigative presence and, because of its vast geographic span, FBI Agents who investigate major crimes on the Navajo Nation are frequently a half-day of travel away from the crime scene. For that reason, the USAO relies heavily on NNDPS investigators and officers as first responders to many major crime scenes on the Navajo Nation.

The BIA provides primary investigative resources for the remaining 21 pueblos and tribes through: (i) the Northern Pueblos Agency, which serves the Pueblos of Nambe, Picuris, Pojoaque, San Ildefonso, Ohkay Owingeh, Santa Clara, Taos and Tesuque; (ii) the Southern Pueblos Agency, which serves the Pueblos of Acoma, Cochiti, Isleta, Jemez, San Felipe, Sandia, Santa Ana, Kewa and Zia; (iii) the Jicarilla Agency, which serves the Jicarilla Apache Nation; (iv) the Laguna Agency, which serves the Pueblo of Laguna; the Mescalero Agency, which serves the Mescalero Apache Tribe; and (v) the Ramah Navajo Agency, which serves the Ramah Navajo Chapter; and the Zuni Agency, which serves the Pueblo of Zuni. The BIA receives support from the FBI and tribal police departments.

C. Task Forces Operating in Indian Country

New Mexico Safe Trails Task Force (Gallup, NM). On March 3, 1994, the FBI initiated "Operation Safe Trails" with the Navajo Department of Law Enforcement in Flagstaff, Arizona. The purpose of the operation, which would later evolve into the Safe Trails Task Force (STTF) Program, was to unite the FBI with other federal, state, local, and tribal law enforcement agencies

in a collaborative effort to combat the growth of crime in Indian Country. STTFs allow participating agencies to combine limited resources and increase investigative coordination in Indian Country to target violent crime, drugs, gangs, and gaming violations.

D. Multi-Disciplinary Teams (MDTs) and Child Protection Teams (CPTs)

The following MDTs are currently operating in the District:

- 1) Crownpoint MDT. Members of this MDT include: USAO-NM, FBI, Indian Health Services medical, mental and field healthcare providers, Navajo Nation Social Services, school counselors, and the Farmington Sexual Assault Program.
- 2) Northern Pueblos MDT. Members of this MDT include: USAO, FBI, BIA, Indian Health Service medical and mental healthcare providers, and social services representatives from the northern pueblos.
- 3) Gallup MDT. Members of this MDT include: USAO, FBI, Indian Health Services medical, mental and field healthcare providers, Navajo Nation Social Services, school counselors, and the Farmington Sexual Assault Program.
- 4) Mescalero Apache Nation MDT. Members of this MDT include: USAO, FBI, BIA, Indian Health Services, and tribal prosecutors.

D. Central Violations Bureau (“CVB”)

In 2018, in response to issues raised by numerous tribal communities, the USAO-NM has sought approval of the Chief Judge to implement a CVB docket for Indian Country crimes. This development would allow SLEC commissioned officers to issue citations to non-Indians for violations occurring on tribal land. We expect that this authority would provide tribes with a valuable tool to hold accountable non-Indians for misconduct occurring on tribal lands. If that request is approved, as part of this process, the USAO-NM will provide training to tribal law enforcement agencies and the BIA-OJS regarding the CVB process prior to implementation. In addition, a rotation of at least two AUSAs from the ICC Section will be assigned to this docket at any one time.

V. Communication

A. Declinations

The USAO-NM recognizes that it is the only prosecutor’s office that has jurisdiction to prosecute felony offenses involving tribal members on New Mexico’s 22 Native American communities. Given that important role, we do not take the declination of any felony case lightly. We always seek to move forward on any felony case submitted for prosecution to our office and work closely with law enforcement investigators to obtain all relevant evidence to any given case. Before declining a case, AUSAs must carefully consider all the facts and evidence provided in the case file. In addition to seeking approval to decline from ICCS supervisor, the AUSA must obtain the position on the decision to decline from the agent assigned to the case and from the alleged victim(s) affected by the criminal conduct. Ultimately, the ICCS Supervisor decides whether a case is to be declined. DOJ policy requires that an AUSA should commence or recommend federal

prosecution if he/she believes that the person's conduct constitutes a federal offense and that the admissible evidence will probably be sufficient to obtain and sustain a conviction, unless (1) the prosecution would serve no substantial federal interest; (2) the person is subject to effective prosecution in another jurisdiction; or (3) there exists an adequate non-criminal alternative to prosecution. The USAO-NM directs that in instances where a case is not readily provable, the AUSA will seek to remedy any deficiencies in the evidence presented in the case file. If further investigation does not result in a prosecutable case or the factors identified above weigh sufficiently against prosecution, then the matter will be declined. Other reasons for declinations may be a victim or witness who is uncooperative or the existence of certain defenses to otherwise criminal conduct, such as self-defense or defense of others. When a case is declined, notice is given to the lead case agent and to a relevant point of contact for the tribe with potential jurisdiction. The lead case agent is responsible for passing along the information to other interested parties such as the tribal prosecutor or other law enforcement agents involved with the case investigation. The declination letter is only to serve notice to the agent and does not discuss the details of the facts or a detailed discussion of why it was declined, rather the letter indicates a reason from a list of possible reasons for declination such as "insufficient evidence, lack of victim/witness cooperation, or the statute of limitations has run prior to the case being submitted to the USAO-NM." The USAO-NM constantly reviews declinations and declination policy in an effort to reduce our declination rate.

Declinations are a matter of substantial concern to tribal communities, as expressed in numerous meetings and at the Annual Consultation. The USAO-NM recognizes the concerns of tribal leadership and officials and continue to make best efforts to address the points raised. Criminal investigations frequently result in the gathering of highly personal information from the accused as well as victims and witnesses. Accountability to and protection of crime victims is extremely important, as expressed in the Crime Victim's Rights Act, 18 U.S.C. § 3771 and the Child Victims' and Child Witnesses' Rights Act, 18 U.S.C. § 3509. The USAO-NM will continue to review and address this matter in an attempt to balance the need for accountability and communication to concerned government officials with the presumption of innocence due all accused persons, necessary respect for the privacy of crime victims and witnesses to crimes, and the need to preserve confidential law enforcement information.

B. Case Information

It is USAO-NM policy to issue press releases at guilty plea, trial verdict, and sentencing. In certain cases, press releases are also done at the time of indictment. The name of involved law enforcement agencies, including tribal law enforcement agencies, are included in the press release. The AUSA assigned to the case, the ICCS Supervisory AUSA, as well as the lead law enforcement agency consult with USAO-NM Public Information Officer on the content of the press releases. Copies of all press releases are posted on the USAO-NM web site and sent to USDOJ Office of Public Affairs and EOUSA officials designated to receive press releases on tribal matters. In addition, copies of press releases about cases arising in Indian Country are sent to the chief tribal law enforcement officer for the involved tribe as well as over 700 tribal officials, law enforcement officers, prosecutors, advocates, and press in the relevant regions. In addition, the AUSA assigned to the case will forward press releases regarding guilty pleas, trial verdicts, and sentencings to the lead case agent.

C. Availability

The ICCS Supervisory AUSA is available by phone to law enforcement and tribal officials

at all times. When out of the District or otherwise unavailable, the Supervisory AUSA designates another ICCS AUSA to be available and forwards inquiries to that AUSA. AUSAs assigned to a particular case are available to the case agent, involved law enforcement agencies, victims, and relevant tribal officials by desk phone, cell phone, and email.

VI. Training

A. SLEC

The USAO-NM is committed to the BIA-OJS SLEC program and the force-multiplying effect these deputizations have in Indian Country. The USAO-NM commits to offer, at least twice a year, the Criminal Justice in Indian Country course that candidates must take in order to obtain their SLEC from the BIA. When this course is offered, as many as eight AUSAs will teach various portions of this 2.5 day course. Officers have reported they enjoy the variety as opposed to having one person teach the course. As many as 60 officers may take the course and in New Mexico, the classes are routinely filled by tribal law enforcement officers and criminal investigators, New Mexico State Police Officers, County Sheriff Deputies and law enforcement from other states. Upon request the USAO-NM will travel and provide this course at remote locations.

B. On-Site Trainings

Upon the request of tribal law enforcement or tribal officials, the USAO-NM provides training on specific topics related to federal law or prosecution. The Tribal Liaison and the ICCS Supervisory AUSA are the primary points of contact for tribes to request this training, however it is often the case that AUSAs within the section with particular areas of expertise provide the training.

The USAO-NM considers training of our law enforcement partners to be a critical part of its mission in Indian Country. Many of our tribal police officers and investigators come from tribal governments with limited means, and as a result those officers do not have the opportunity to travel overnight or for several days to get the additional training that they need to keep up with modern caselaw and law enforcement methods and technologies. The USAO-NM offers to our tribal police departments and criminal investigators on-site training where AUSAs travel to the reservation to provide day-long training on a variety of subjects including Indian Country jurisdiction, search and seizure, investigation of domestic violence and strangulation and report writing. Each tribe has different needs and wants, so we tailor our training depending on what is requested from the tribal agency. In addition, while we focus on our tribal partners, we have also received requests from our federal partners such as the BIA. We also accommodate those requests for legal updates, narcotics investigations or technology training. An on-site training will usually be offered within four to six weeks of the request being made.

VII. Outreach

The USAO-NM recognizes that prosecution alone is not the answer to addressing crime in Indian Country, and that an effective solution also involves prevention, training, and other grassroots intervention efforts. Accordingly, the U.S. Attorney, his senior management staff, the LEC, the Victim Witness Unit, and the AUSAs in the ICCS are actively engaged in identifying and developing worthwhile outreach efforts that strengthen the ability of tribal communities and their governments, including tribal police departments, to reduce and avoid criminal behavior.

The USAO-NM has developed a youth-oriented presentation focused on health and legal consequences of substance use and abuse (“Roll the Dice” presentation). This interactive presentation appeals to youth through the use of storytelling based on real scenarios and experiences, and the use of local statistics. Youth are invited to follow a Native American character through substance use/abuse choices in his life, and interactively roll a die to determine his choices based on local tribal youth, state, or national statistics. The presentation highlights the importance of autonomous decisions that youth can make regarding the health and legal consequences of substance abuse, and stresses the protective factors of having close ties to support and a goal-oriented focus. This presentation has been well received across central and northern New Mexico, and we are working on expanding this program into southern New Mexico, as well.

In addition, the USAO-NM Public Information Officer maintains social media accounts on Facebook and Twitter and provides information on cases, events, and initiatives to the public through these alternative communication platforms.

VIII. Victim Advocacy

The USAO-NM views victim advocacy as one of the most important aspects of maintaining the testimonial evidence of any given case. Victims must get the attention and care that they need and deserve in order to endure the federal judicial process, which, in many cases, is a multi-year ordeal for victims.

A. Victim/Witness Advocates

Many of USAO-NM’s Victim/Witness advocates are from tribal communities in New Mexico and reside within those communities. Their familiarity with tribal communities, cultural norms and even the language spoken allows them to build rapport quickly, which make victims feel they can trust the office and its employees. Our Victim/Witness advocates will not only refer victims to appropriate counselors, financial assistance for funerals and other assistance as is necessary, but also will simply listen. Our Victim/Witness advocates, many of which are former tribal social workers, know how to listen and ask the right questions in order to make our victims feel cared for. Access to victim assistance is a critical need for victims of crimes to provide essential support, services, and resources in the aftermath of any crime and to usher the victim through the criminal justice system.

Throughout the investigation and prosecution of the case, the Victim/Witness advocates provide crime victim support, referrals, and resources such as:

- Crisis intervention in the aftermath of a crime;
- Individual support, information and referrals, and accompaniment;
- Guidance throughout the tribal justice system and/or federal criminal justice system;
- Support to the victim's friends and family;
- Ensuring the victim receives victim-centered, culturally relevant services;
- Assist victims with completing state victim compensation applications;
- Assist in obtaining emergency services, transportation, and housing assistance.

Additionally, the Victim/Witness advocates coordinate efforts with Indian Country victim or social services and/or law enforcement departments, accompany AUSAs during visits to victims residing on the Indian reservations to aid with cultural sensitivity, locate hard to find victims, and independently visit victims living on Indian reservations and pueblos to ensure

services are offered and/or provided. The Victim/Witness advocates also act as mentors to other victim-witness personnel who assist victims on Indian reservations and pueblos, provide training and instruction as requested, and speak to special interest groups located on Indian reservations and pueblos about specific issues directly related to Indian Country victimization. As such, they are called upon to help the development and improvement of programs for Indian reservation victims and efforts to promote interest and support on the Indian reservation.

B. AUSA involvement

A critical component of violent crime prosecution and, particularly, prosecution of domestic assaults, sexual assaults, and crimes against children is informed and active prosecutor involvement and engagement with victims, witnesses, and, in some instances, their families. ICCS AUSAs meet with the victims and bring them to court to familiarize victims with the courtroom and the legal process, as well simply take the time to build trust and rapport between the AUSA, the victim, and their family members. Pre-prosecution meetings with victims by the AUSA, accompanied by a Victim/Witness advocate and the cases agent is strongly encouraged by the USAO-NM. Because most victims have limited financial means and in order to make those meetings as productive as possible, AUSAs generally travel to such meetings rather than asking victims and their families to undertake that burden.

IX. Reduction of Violence Against Women and Children

One of the USAO-NM's highest priorities is the reduction of violence against women and children in Indian Country. Women and children on the reservations and pueblos are some of our most vulnerable residents in New Mexico. They often live in remote areas where police response times are much longer than similarly situated rural communities, where cell phone signals are non-existent or weak and where lack of employment and education exacerbate their vulnerable status. To try to stem the violence against these groups, the USAO-NM provides assistance to victims in many ways, including: assistance in temporary relocation if the abuser resides in the home and is not immediately arrested, strangulation and domestic violence training to our law enforcement partners so if there is a crime committed, it can be effectively prosecuted. Most of all the USAO-NM prioritizes cases against women and children that are submitted for prosecution.

The FBI takes the lead in all sexual assault investigations involving children under the age of 12 without regard to whether the case will be prosecuted in federal or tribal court, and the BIA takes the lead in all other sexual assault investigations. The BIA also assumes the lead in all domestic violence cases whenever it has been determined that a dangerous weapon was used, that the victim sustained serious bodily injuries, that the perpetrator crossed state or tribal boundaries with the requisite intent to commit the offense, or when the subject has a prior domestic violence conviction.

Domestic violence cases in Indian Country are a priority and will be treated accordingly. Further, it is recognized there are instances of misdemeanor level domestic violence in Indian Country committed by non-Indian offenders against Indian victims. In those cases, the BIA will assume the lead role in the investigation and the USAO will prosecute all such cases that meet its prosecution guidelines the same as it would for any felony level offense.

Child abuse cases from Indian Country receive similar priority. The USAO-NM prosecutes felony child abuse cases stemming from parents or guardians driving while intoxicated with children in the vehicle, utilizing standards from assimilated state law as well as federal case law in

addition to pursuing all other felony child abuse cases that meet the prosecution guidelines.

X. Accountability

A. Annual Consultation

The USAO-NM conducts an annual Tribal Consultation, usually in the spring of each year. Attendees are provided the opportunity to submit written and verbal comments to address general or specific areas of concern. All tribal leaders as well as inter-tribal organizations, federal and state law enforcement, and other groups are invited to participate and comment.

The 2018 Annual Consultation, held May 16, 2018, resulted in participation and comment by thirteen tribal governors or their representatives, in addition to comment by the Executive Director of the Eight Northern Indian Pueblos Council and other interested parties. In addition to tribal law enforcement, representative from the FBI, BIA, DEA, and US Fish and Wildlife Service attended. Areas of concern identified in comments centered around notification of tribal leaders regarding the status of cases from their community, the effect of illegal narcotics on their communities, and criminal and civil jurisdiction over non-Indians committing crimes or traffic violations. Four tribal leaders requested follow-up meetings regarding particular issues and two tribes submitted written comments.

B. Open Door Policy

In addition to the Annual Consultation, the USAO-NM regularly meets with tribal leaders and law enforcement officials, upon their request, to discuss particular cases, areas of concern, requests for training, or other matters. The United States Attorney, the Supervisory AUSA for the Indian Country Crimes Section, the Tribal Liaison, and other section Supervisory AUSAs have an “open door” policy to tribal officials, tribal law enforcement, and federal law enforcement seeking to inquire as to the status of a particular case, or USAO-NM policies in general. Further, section supervisors and the Tribal Liaison regularly provide cell phone and other contact information and follow up on any inquiries regarding particular cases or issues with the assigned AUSA.

C. Recent Indian Country Cases

In calendar year 2017 the USAO-NM opened and assigned to the nine attorneys working Indian Country Crimes 42 cases involving charges of child sexual abuse, 16 cases involving charges of felony child abuse, 97 cases involving charges of felony assault, and 28 cases involving homicide charges, among others. In total, the ICCS opened over 234 felony cases as well as 135 cases for violations of supervised release. Of these cases, 57 supervised release cases, 2 child sexual abuse cases, 25 felony assault cases, 1 homicide, and 1 adult sexual abuse case were opened in the Las Cruces Branch office. Although not opened in 2017, of note are:

- Operation Crystal Snow, a narcotics smuggling prosecution targeting a drug trafficking operation which was located in significant part on the Navajo Nation and resulted in sentences imposed in 2017. The investigation leading to the federal charges was initiated in response to an increase in methamphetamine trafficking on the Navajo Indian Reservation in the Shiprock area, and was designated as part of the Organized Crime Drug Enforcement Task Force (OCDETF) program. The cases were investigated by HSI’s Albuquerque office and the HIDTA Region II Narcotics Task Force with assistance from

the Farmington office of the FBI, U.S. Marshals Service, and BIA's Division of Drug Enforcement, Shiprock office of the Navajo Nation Division of Public Safety, New Mexico State Police, San Juan County Sheriff's Office, Farmington Police Department, and New Mexico National Guard.

- The 2017 conclusion of the prosecution of 34 individuals charged in December, 2015 with federal and tribal drug offenses as the result of an 18-month multi-agency investigation led by the DEA and BIA into methamphetamine trafficking on the Mescalero Apache Reservation. Eighteen defendants, including five members of the Mescalero Apache Tribe and 13 non-Natives were charged in six federal indictments and a federal criminal complaint. Sixteen other members of the Mescalero Apache Tribe were charged in tribal criminal complaints approved by the Mescalero Apache Tribal Court. The investigation leading to the federal and tribal charges was initiated in May 2014, in response to an increase in violent crime on the Mescalero Apache Reservation perpetrated by methamphetamine users. The investigation initially targeted a drug trafficking organization that was allegedly distributing methamphetamine within the Reservation, and later expanded to include two other drug trafficking organizations in southeastern New Mexico that allegedly served as sources of supply for the methamphetamine distributed within the Reservation. In Aug. 2014, the investigation was designated as part of the Justice Department's Organized Crime Drug Enforcement Task Force (OCDETF) program, which combines the resources and unique expertise of federal agencies, along with their local counterparts, in a coordinated effort to disrupt and dismantle major drug trafficking organizations. The investigation is one of the first OCDETF investigations to utilize electronic surveillance (wiretaps) in Indian Country. More than ten kilograms of methamphetamine were seized during the course of the investigation. The federal and tribal cases were investigated by the Las Cruces office of the DEA, District IV of the BIA's Office of Justice Services (Mescalero Agency), BIA's Division of Drug Enforcement, Mescalero Tribal Police Department, Hatch Police Department, FBI and Lea County Drug Task Force. The Las Cruces branch office of the USAO-NM handled this prosecution.
- The continuation of the significant prosecution undertaken by the White Collar section of the USAO-NM regarding violations of the Indian Arts and Crafts Act, 18 U.S.C. § 1159, wherein wholesale and retail jewelry sellers in New Mexico were selling jewelry made in the Philippines as Indian crafted work. The latest guilty plea in this prosecution was entered in 2017. The case was investigated by the Office of Law Enforcement for the Southwest Region of the U.S. Fish and Wildlife Service and the Albuquerque Division of the FBI with assistance from Homeland Security Investigations (HSI), U.S. Marshals Service, DEA and New Mexico Department of Game and Fish. The U.S. Fish and Wildlife Service's Office of Law Enforcement for Region Eight and California Department of Fish and Wildlife provided support in Calistoga, Calif., and HSI provided support in La Habra, Calif. The U.S. Fish and Wildlife Service Attaché for Southeast Asia and the Philippine National Bureau of Investigations provided support in Cebu City, Philippines.
- Additionally, the USAO-NM has, for the past two years, has been seeking the return of the "Acoma Shield", which is an item of cultural patrimony that is sacred to the people of the Acoma Pueblo. The shield was located in Paris, France and was being auctioned off by the Eve Auction House. Working with the Office of International Affairs, the USAO-NM, specifically the Civil Division and the ICCS, submitted a Mutual Legal Aid Treaty (MLAT) request for assistance from French authorities. Additionally, the USAO-NM filed

a Civil Forfeiture Action and has sought assistance from French Authorities in getting those papers served on the Eve Auction House. To date, the parties are in negotiations for the voluntary return of the Acoma Shield while the litigation continues.

D. Recent Outreach

In 2017, the USAO-NM provided a speaker, provided training, or attended a consultation with tribal officials over 27 times. Included in these:

- March, 2017-Acting United States Attorney James Tierney provided opening remarks and attended the annual Tribal Leadership Summit of the Coalition to Stop Violence Against Native Women at Isleta Pueblo.
- June, 2017- BIA bi-annual Chiefs of Police meeting, Isleta Pueblo.
- June, July, and November, 2017- “Roll the Dice” youth presentation at Camp Triumph youth program, Isleta Pueblo, at Pojoaque Pueblo Boys and Girls Club, and at To’hajiilee Community School, Navajo Nation.
- July, 2017-Law enforcement training: domestic violence and child abuse, Pojoaque Pueblo Tribal Council and Police Department at Pojoaque Pueblo.
- July, 2017- Law enforcement training: report writing; search and seizure, elements of drug offenses and problems in narcotics prosecutions at the BIA-OJS offices in Albuquerque to over 60 officers from agencies including the Pueblo of Isleta, Pueblo of Laguna, and the Pueblo of Acoma.
- August, 2017- Southern Pueblos Governor’s meeting, Jemez Pueblo.
- August, 2017- consultation by ICC Supervisory AUSA and Tribal Liaison with the Governor of Kewa Pueblo and other tribal officers and officials regarding multiple pending habeas petitions brought by prisoners serving sentences imposed by Kewa Tribal court who are being held in BIA custody; the Indian Civil Rights Act and the trial rights and relief encompassed by 25 U.S.C. §§ 1302-1303, Kewa Pueblo.
- September, 2017- 25th Annual Four Corner’s Indian Country Conference, Glendale, AZ.
- November, 2017- Acting U.S. Attorney James Tierney, ICC Supervisory AUSA, Tribal Liaison and BIA officials consulted with the Governor and tribal officials of Picuris Pueblo regarding particular cases from the Pueblo and issues with crimes by non-tribal members.

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