
CONGRESSIONAL TESTIMONY

Biden's Border Crisis: Examining the Impacts of International Cartels Targeting Indian Country

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Introduction

My name is Zack Smith, and I appreciate the opportunity to provide written testimony to the subcommittee.¹ The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

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Introduction

The Biden Border Crisis has been an unmitigated disaster. If someone tried to design an ideal scenario to allow human trafficking, drug trafficking, and other criminal activities to flourish, they would have a hard time improving on the current situation at our Southern Border. Rather than enforcing the law, the Biden Administration has instead abdicated its duty to do so with sad and foreseeable consequences following.

As the title of the subcommittee’s hearing makes clear, the consequences of this border crisis aren’t confined only to the border but have spread throughout the country from the biggest urban cities to even the most rural Indian reservations. And in fact, it is often these latter locations that suffer the most from the Biden Border Crisis because of the lack of qualified law enforcement personnel to serve these communities and the jurisdictional morass that entangles those who do serve and who seek to arrest and prosecute offenders.²

Ever the savvy operators, organized crime—particularly many of the Mexican cartels—have sought to capitalize on this sad situation. Undoubtedly, the uncertainty surrounding who can be arrested by whom for what crimes that will then be prosecuted by which authorities, who may or may not have the power to do so, proves to be part of the attraction for the cartels.

While drug use and organized crime have long been problems on reservations, these problems today have been exacerbated by the introduction of new, powerful, and even more deadly drugs such as fentanyl and by efforts to reform and revise tribal jurisdiction over certain issues, individuals, and cases in the wake of several recent U.S. Supreme Court rulings.

The Scourge of Fentanyl

As my Heritage colleague, Paul Larkin, has made clear, “the mass production of illicitly produced and distributed fentanyl” is “killing thousands of Americans today.”³ It’s 50-100 times more powerful than morphine, and as Larkin notes, “[f]or perspective, heroin is [only] five times as powerful as morphine.”⁴ It’s also easier and cheaper to produce and ship because it’s a synthetic opioid rather than a plant-based one like cocaine. Receiving the necessary precursor chemicals from China, “[t]wo of the nine

² Zack Smith, After the Supreme Court’s Oklahoma Decision, the Rights of Accused on Tribal Land Are Up in the Air. Congress Should Make Things Clearer, Not Less So, The Daily Signal (Aug. 5, 2020), <https://www.dailysignal.com/2020/08/05/after-the-supreme-courts-oklahoma-decision-the-rights-of-accused-on-tribal-land-are-up-in-the-air-congress-should-make-things-clearer-not-less-so/>.

³ Paul J. Larkin, Twenty-First Century Illicit Drugs and Their Discontents: The Scourge of Illicit Fentanyl, Leg. Mem. No. 313, The Heritage Foundation (Nov. 1, 2022), <https://www.heritage.org/crime-and-justice/report/twenty-first-century-illicit-drugs-and-their-discontents-the-scourge>.

⁴ *Id.*

Mexican drug cartels—the Sinaloa Cartel and the Jalisco New Generation Cartel (CJNG)—are principally responsible for manufacturing the finished product” and smuggling it into the United States.⁵ From there, it spreads death and destruction wherever it goes.

As one Biden-appointed U.S. Attorney recently noted in her testimony before a Senate committee, “Fentanyl overdoses are the leading cause of opioid-related deaths throughout the United States, including Indian country.”⁶ She added that the Justice Department “recognizes that the widespread availability and abuse of drugs in Indian country, coupled with drug trafficking groups operating in Indian country, contribute to the high rates of crimes on reservations, including violent crime.”⁷ To help combat these problems, President Biden issued an executive order stating that the “safety and well-being of all Native Americans is a top priority for my Administration,”⁸ where he noted that criminal “jurisdiction complexities and resource constraints have left many injustices unaddressed.”⁹

But put in the larger context of his other policies, Biden’s statements ring hollow. The recruitment and retention issues plaguing police departments around the country are also plaguing police departments charged with patrolling and enforcing the laws in Indian country. And it’s no wonder. In addition to being responsible for covering vast swaths of territory, these offices would also likely be subjected to the onerous requirements of President Biden’s problematic executive order on policing, along with facing the long-hours and low pay other officers face too.¹⁰

Jurisdictional Morass in Indian Country

On top of that, imagine being on patrol, pulling over a car or truck late at night on a deserted reservation highway, and seeing illegal contraband—like drugs and guns—in plain view. Can the tribal police officer search and detain the suspect if he’s not a

⁵ *Id.*

⁶ *Oversight Hearing, “Fentanyl in Native Communities: Federal Perspectives on Addressing the Growing Crisis” Before the S. Comm. On Indian Affairs, 118th Cong. (Dec. 6, 2023) (testimony of Vanessa R. Waldref, United States Attorney for the Eastern District of Washington), <https://www.indian.senate.gov/wp-content/uploads/2023-12-06-HRG-Testimony-Waldref.pdf> ; see also 18 U.S.C. § 1151 (defining Indian country).*

⁷ *Id.*

⁸ Exec. Order No. 14,053, Executive Order on Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People (Nov. 15, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/15/executive-order-on-improving-public-safety-and-criminal-justice-for-native-americans-and-addressing-the-crisis-of-missing-or-murdered-indigenous-people/>.

⁹ *Id.*

¹⁰ Zack Smith, Biden’s Executive Order on Policing Misses Mark, *The Daily Signal* (May 27, 2022), <https://www.dailysignal.com/2022/05/27/bidens-executive-order-on-policing-misses-mark/>.

tribal member? He can, but that wasn't clear until the Supreme Court definitively answered the question in a 2021 decision.¹¹ Jurisdictional questions like this—with real world practical consequences—often plague those who patrol Indian country.

Now that the U.S. Supreme Court has perplexingly declared half of Oklahoma to be Indian Country—with the logic of this decision potentially extending to other territories too—the morass is more confusing than ever before.¹² Take, for instance, the situation in Tulsa, Oklahoma. On July 8, 2020, the citizens of Tulsa went to bed with their entire city firmly within the state of Oklahoma and subject to its laws. The following day, the Supreme Court issued its decision in *McGirt v. Oklahoma*, and many citizens of Tulsa went to bed with their homes now on reservation land—subject to some mixture of state, federal, and tribal law depending on who they are and where they are located.¹³ While the Supreme Court has slightly softened the impacts of this problematic precedent,¹⁴ local police still struggle to enforce even basic laws based on the jurisdictional mess that's been created and left unresolved.¹⁵

If local and tribal police struggle to enforce basic public safety laws because of the jumbled jurisdictional provisions, it doesn't take much imagination to see how these provisions give cover to the cartels and hamper legitimate law enforcement investigations into cartel-driven organized crime efforts like human and drug trafficking operations.¹⁶ The urgency of the matter is hammered home when one considers that Tulsa's police chief has made clear that the “fentanyl crisis is huge for us. We can do interdiction and remove kilos of this stuff [where even 2 milligrams can prove to be a fatal dose¹⁷], but it doesn't stop. It just continues to plague the community.”¹⁸

¹¹ *United States v. Cooley*, 593 U.S. ____ (2021).

¹² Zack Smith, Supreme Court Decides Half of Oklahoma Has Been an Indian Reservation for Past 113 Years, *The Daily Signal* (Jul. 10, 2020), <https://www.dailysignal.com/2020/07/10/supreme-court-decides-half-of-oklahoma-has-been-an-indian-reservation-the-past-113-years/>.

¹³ *McGirt v. Oklahoma*, 591 U.S. ____ (2020).

¹⁴ *Oklahoma v. Castro-Huerta*, 597 U.S. ____ (2022).

¹⁵ See *City of Tulsa v. Hooper*, 600 U.S. ____ (2023) (statement of Kavanaugh, J., joined by Alito, J., respecting the denial of the application for stay).

¹⁶ Kirk Siegler, Human Trafficking Crisis in Indian Country ‘Like a Pandemic,’ NPR (Mar. 12, 2021) (noting that according to a South Dakota state representative “too many crimes are going unsolved and perpetrators are taking advantage of the gaps between multiple jurisdictions” and that sometimes “the dots aren't connected that this is a human trafficking issue”), <https://www.npr.org/2021/03/12/976053675/human-trafficking-crisis-in-indian-country-like-a-pandemic>.; see also Dan Harris, Brian Epstein, John Carlos Frey, Evan Simon, and Pete Madden, On Tribal Land Along US-Mexico Border, Drug and Human Smuggling Corrupts an Ancient Culture, ABC News (May 16, 2019), <https://abcnews.go.com/US/tribal-land-us-mexico-border-drug-human-smuggling/story?id=63064992>.

¹⁷ See Larkin, *supra* note 3.

¹⁸ Tim Landes, In Conversation with Wendell Franklin: Tulsa Police Chief on the Challenges He and His Officers are Facing, *Tulsa People* (updated Mar. 29, 2024), https://www.tulsapeople.com/city-desk/in-conversation-with-wendell-franklin-tulsa-police-chief-on-the-challenges-he-and-his-officers/article_0c164aee-eb8c-11ee-aba5-d7fe200012dc.html.

Seized Fentanyl Accounts for Only a Small Portion Being Smuggled Into Our Country

Of course it plagues Tulsa’s community—and many others too. Consider that ABC News reported “[t]rafficking of fentanyl appears largely to occur at the southwest border, where 90% of the drug seized by [U.S. Customs and Border Protection] is found. Over the past year [2023], the agency seized more than 850% fentanyl compared to 2019 and seized nearly as much fentanyl in fiscal year 2023 compared to the previous year,” according to DHS data.¹⁹ Consider too that this only accounts for fentanyl found and seized by CBP. At the end of December 2023, the Biden Administration encountered more than 12,000 people crossing the border each day.²⁰ To put this context, Obama-Administration DHS Secretary Jeh Johnson previously said that 1,000 border crossings in a single day made for a “bad day” that “overwhelms the system” and described 4,000 crossings in a single day as a “crisis.”²¹ During Fiscal Year 2023, which ended on Sept. 30th of that year, Department of Homeland Security Secretary Alejandro Mayorkas admitted that over “600,000 people illegally made their way into the States without being apprehended by border agents.”²² It’s no wonder that fentanyl and other harmful drugs continue to flow into our nation’s cities, towns, and tribal lands virtually unabated.

Conclusion

The sad reality is that this crisis was avoidable. If the Biden Administration had done its duty, secured our borders, and held offenders accountable for their actions, reservations and other localities wouldn’t be experiencing the fentanyl crisis they currently face, and cartels would not feel emboldened to prey on these communities. Until the administration begins enforcing the law, the crisis will continue.

¹⁹ Quinn Owen, Border Officials Seizing A lot of Fentanyl, but Say It’s a Complicated Problem to Solve, ABC News (Dec. 1, 2023), <https://abcnews.go.com/Politics/border-officials-seizing-lot-fentanyl-complicated-problem-solve/story?id=105255151>.

²⁰ @BillMelugin_, X (Dec. 6, 2023, 2:01 PM), https://twitter.com/BillMelugin_/status/1732475304411886028.

²¹ *Id.*

²² Alex Oliveira, Alejandro Mayorkas Admits 600,000 Illegal ‘Gotaways’ Crossed Border in 2023, Calls Immigration System ‘Broken,’ NY Post (Oct. 31, 2023), <https://nypost.com/2023/10/31/news/alejandro-mayorkas-admits-600000-illegal-gotaways-in-2023/>