



United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

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The Honorable Paul Gosar
Chairman
Subcommittee on Oversight and Investigations
Committee on Natural Resources
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Gosar:

Enclosed are responses to questions for the record submitted to the Department of the Interior's witness, Darryl LaCounte, former Director of the Bureau of Indian Affairs, following his appearance before your Subcommittee at an oversight hearing on June 4, 2024. These responses were prepared by the Bureau of Indian Affairs.

Thank you for the opportunity to respond to you on these matters.

Sincerely,

Pamela Barkin
Legislative Counsel
Office of Congressional and
Legislative Affairs

Enclosure

cc: The Honorable Melanie Stansbury
Ranking Member

Questions for the Record
House Committee on Natural Resources
Subcommittee on Oversight and Investigations
Oversight Hearing on Drug Trafficking in Indian Country
June 4, 2024

Questions from Chairman Gosar

Question 1: Tribes have expressed the lack of trust between tribes and federal law enforcement. How has the BIA been working to address this, and what more can be done to improve working relationships?

Response: The Bureau of Indian Affairs (BIA) and Tribal law enforcement are committed to keeping communities safe and healthy, while building trust. Building this trust starts from recruitment, is included in training, and is implemented while working in the community.

BIA's central office of human resources is utilizing in-person recruiting and educational events within Tribal communities to recruit potential applicants. The office also conducts outreach to community veterans' service organizations, students, and recent graduates. Hiring from the community to work within their community builds familiarity and trust.

Additionally, the BIA Indian Police Academy (IPA) basic training includes a 16-hour block of training labeled "Blue Courage." Blue Courage is an initiative designed to educate officers on the principles and practices of human effectiveness, purpose-driven work, resilience, positive attitude, and sound judgment. This model fosters a culture of recognition, respect, and trust between law enforcement and the community.

Question 2: In the last hearing, the tribal leaders expressed disappointment with the apparent lack of interest in their needs and concerns by their federal partners, even a desire to learn about the tribes they were assigned to support. Do you think that a program to recruit tribal members into Federal Law Enforcement would improve the relationship between Federal agencies and the tribes?

Response: Yes, BIA's central office of human resources is utilizing in-person recruiting and educational events within Tribal communities to recruit potential applicants. The office also conducts outreach to community veterans' service organizations, students, and recent graduates. This targeted approach helps break barriers to hiring and retaining Tribal law enforcement personnel.

Question 3: During our April 10, 2024, hearing, President Jeffrey Stiffarm of Fort Belknap Indian Community stated that "what little officers we do have, they have been trying to be proactive without any help from the BIA, without any help from the FBI, without any help from the Border Patrol or the DEA." Are you satisfied with the current level of federal law enforcement activity across Indian country? Please explain.

Response: As reflected in BIA's 2025 President's Budget request, the Biden Administration supports additional needed law enforcement officers in Indian Country. Additionally, the 2021

Questions for the Record
House Committee on Natural Resources
Subcommittee on Oversight and Investigations
Oversight Hearing on Drug Trafficking in Indian Country
June 4, 2024

Tribal Law and Order Act (TLOA) report¹ estimated the total public safety and justice staffing need for Indian Country is 29,436 full time equivalent (FTE) personnel (over 25 thousand more FTE than are currently funded). These numbers demonstrate the continued need for additional investment to improve the ability of Tribal public safety systems to fully serve their communities.

Question 4: During that same hearing Councilman Bryce Kirk of Fort Peck Tribes, that BIA has repeatedly failed to meet their federal trust responsibility to provide sufficient funding for law enforcement for Fort Peck Tribes. How is BIA working to meet the trust responsibilities with Tribes across the nation, so they have the necessary law enforcement resources to push back against the cartels?

Response: The United States has a trust relationship with each of the 574 federally recognized Tribes. As part of that relationship, the BIA has a trust obligation to protect the continued existence of Indian Tribes, and the physical safety of their citizens. The BIA Office of Justice Services (OJS) plays a crucial role in meeting this obligation.

OJS has a specialized division of drug enforcement, the Division of Drug Enforcement (DDE), that tracks and investigates the distribution of illegal narcotics in Indian Country. The DDE investigates the distribution of illegal narcotics in Indian Country with a focus on disrupting drug distribution networks and providing analytical support to track drug cases that directly impact Indian Country. The DDE also offers drug related training and technical assistance to law enforcement programs that operate in Indian Country.

As reflected in BIA's 2025 President's Budget request, the Biden Administration supports stronger law enforcement efforts in Indian Country. For example, the budget requests \$319.7 million for Criminal Investigations and Police Services, which is \$45.5 million above the 2024 Enacted level. It is estimated that this increase will fund an additional 74 Federal FTE and 148 Tribal law enforcement positions in Indian Country.

Question 5: During the Committee's FY25 Budget Hearing for BIA, Assistant Secretary Newland briefly described the 'jurisdictional maze' that exists between the different levels of law enforcement. Can you provide some examples of when this 'jurisdictional maze' has hindered law enforcement efforts on Indian lands?

Response: The jurisdictional maze referenced by the Assistant Secretary is the complex jurisdictional framework between Indian Tribes, the Federal government, and States. Under this framework, several factors, including the location of a crime and who committed the crime, determines who exercises jurisdiction. Several different jurisdictions may have authority over the person who committed the crime. For example, if an enrolled Indian person commits a crime

¹ https://www.bia.gov/sites/default/files/media_document/2021_tloa_report_final_508_compliant.pdf

Questions for the Record
House Committee on Natural Resources
Subcommittee on Oversight and Investigations
Oversight Hearing on Drug Trafficking in Indian Country
June 4, 2024

on trust land on an Indian reservation against another Indian person, usually the Tribe and Federal government have authority and jurisdiction over the Indian that committed the crime. But if a *non*-Indian commits the *same* crime against an Indian person on the same Indian reservation, depending on the crime, the State and possibly the Federal government have authority and jurisdiction over the non-Indian that committed the crime. As another example, if an enrolled Indian person commits a crime within the reservation boundaries against a non-Indian person, the State, Tribe, and the Federal government may have jurisdiction over the person who committed the crime depending on whether P.L. 83-280 or similar statutes apply.

Further adding to this jurisdictional maze, Tribes have misdemeanor jurisdiction over enrolled Indians (and can exercise felony jurisdiction in certain circumstances). However, Tribes who exercise Special Tribal Criminal Jurisdiction under the Violence Against Women Act (25 U.S.C. § 1304) have jurisdiction over non-Indians for certain covered crimes in Indian Country. To add further jurisdictional complications, because each Tribe has a unique history and jurisdiction can be the basis for litigation, court decisions often create additional complexities, a recent example being the *McGirt* decision. States have both misdemeanor and felony jurisdiction over non-Indian individuals, except for Tribes that were affected by the *McGirt* decision. The *McGirt* decision reaffirmed the Tribes' ability to exercise criminal jurisdiction over enrolled Indians anywhere within reservation boundaries. Law enforcement officers must be knowledgeable of these jurisdictional complexities and apply the law correctly to ensure justice will be served in Native communities.

Question 6: What suggestions does BIA have for resolving longstanding jurisdictional issues to bolster the authority of tribal law enforcement agencies to address the cartel activity on their lands?

Response: Congress has commissioned many reports to investigate the public safety concerns of Native communities, and each report reaches the same conclusion: we need to address big structural challenges, such as jurisdiction, to guarantee safety in Tribal communities.

Several reports, such as the Not Invisible Act Commission Report², provide recommendations on how to address the jurisdictional complexities within Indian Country. These recommendations include amending P.L. 83-280 to allow Tribes to opt out of state jurisdiction; and restoring jurisdiction to Tribes to be able to prosecute all crimes that occur on Tribal lands.

In their joint response to the Not Invisible Act Commission's report, both DOI and the Department of Justice stated both Departments will be responsive to any Congressional action on jurisdictional issues within Indian Country.³ Time and time again, Tribes have demonstrated that they can best meet the public welfare and safety needs of communities on their lands. As shown

² https://www.justice.gov/d9/2023-11/34%20NIAC%20Final%20Report_version%2011.1.23_FINAL.pdf

³ <https://www.doi.gov/media/document/section-4c2c-response-departments-justice-and-interior-not-one-more-findings-and>

Questions for the Record
House Committee on Natural Resources
Subcommittee on Oversight and Investigations
Oversight Hearing on Drug Trafficking in Indian Country
June 4, 2024

in the 2025 President's Budget, the Department supports energized investment in Tribal justice systems to address the structural challenges many Tribes face.

Question 7: As you know, Special Law Enforcement Commission (SLEC) agreements from BIA are required for tribal or local law enforcement officers to enforce federal criminal laws in Indian country. However, the long process of obtaining and renewing an SLEC agreement is reportedly a barrier for Tribes to gaining this tool. Does the burdensome process for obtaining and renewing an SLEC agreement hamper tribal law enforcement's ability to address the cartels' invasion onto tribal lands?

Response: SLECs are a valuable tool to address illegal trafficking of substances and associated crime in Indian Country, however as highlighted in the Department's testimony and other responses for the record, what does hamper a Tribal law enforcement agency's ability to address unwanted non-Indians on their reservation are resource constraints and jurisdictional limitations. Often Tribal law enforcement agencies must rely on other state and federal law enforcement partners for arrest and prosecution.

The BIA OJS has a clear and established protocol for the issuance of SLECs, as demonstrated by the overall number of agreements and SLECs issued nationwide. Each District Office has a special agent in charge (SAC) who serves as the liaison to enter into the SLEC agreement with the Tribe. Each SAC follows the same BIA OJS policy to determine if a Tribe is eligible for the SLEC. The Tribes who wish to enter into deputization agreements must demonstrate the need for the deputization and the SAC will determine if OJS will enter into the agreement. This process has been the standard for many years and requires the same content by the requestors.

As there is always room for improvement, the BIA will continue to work with Tribes to process SLECs as part of an all of the above approach to improve overall public safety in Indian Country.

Question 8: What steps do you believe are necessary for the SLEC process to be improved?

Response: The BIA OJS has an established protocol for issuing SLECs. However, when issues do arise, it is often because (1) a Tribe's application is missing required items or (2) the lengthy background investigation process for federal law enforcement employees delays the issuance or renewal of a SLEC. With respect to the former, BIA OJS is working to better communicate the SLEC application steps and requirements to Tribes so that the process runs more smoothly. Regarding the latter, currently, background checks for federal law enforcement employees must be processed through the Office of Personnel Management (OPM). If the BIA OJS were able to directly conduct the background investigations for federal law enforcement employees, BIA OJS believes that the processing time would be significantly reduced, and BIA OJS could issue or renew SLECs in a timelier manner. The Department has testified in support of S. 465, the BADGES Act, which would authorize BIA OJS to process background investigations for federal law enforcement officers.

Questions for the Record
House Committee on Natural Resources
Subcommittee on Oversight and Investigations
Oversight Hearing on Drug Trafficking in Indian Country
June 4, 2024

Questions from Representative Carl

Question 1: Could you provide an update for the Committee on BIA's pay parity initiative, that intends to bring BIA law enforcement pay levels in line with other federal law enforcement agencies? And how else is BIA working to address the recruitment and retention issue?

Response: The foremost strategy is a pay parity initiative which brings the Bureau of Indian Affairs (BIA) law enforcement pay levels in line with other federal law enforcement. This change results in up to an additional \$30,000 for BIA direct service law enforcement officers, as well as more robust career advancement opportunities. We have completed the process of converting current staff to the new pay levels and openings for new vacancies are being advertised at this higher pay rate. We are also employing recruitment and retention pay incentives, which is another reason the requested increases in BIA's FY 2025 Budget request are necessary. These pay incentives can make a difference.

Our team is also meeting on a weekly basis to ensure the hiring process and background checks move as quickly as possible. Thanks to pay parity, the BIA Office of Justice Services (OJS) is seeing law enforcement officers return to OJS to work for Indian Country. Currently, we have retained about four more people than last year. We hope the numbers will gradually accumulate.

Question 2: How has the recruitment and retention of federal law enforcement, not just BIA but across all agencies, impacting the ability of Tribes to address the cartel's presence and the fentanyl crisis on Indian lands?

Response: Improving public safety in Indian Country is a top priority for the Biden Administration and the Department of the Interior (Department), and recruitment and retention of federal law enforcement is crucial to this effort. On May 25, 2022, President Biden issued Executive Order 141074, "Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety," to ensure agencies across the Federal government work together to improve the recruitment, retention, and mental well-being of public safety officers. In addition to these recruitment and retention efforts, interagency coordination is critical to eradicate illegal drug trafficking in Indian Country. As such, the BIA works with other Federal agencies, such as the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), Department of Homeland Security, Border Patrol, and the High Intensity Drug Trafficking Areas Program, managed by the Office of National Drug Control Policy, towards this goal.

Within the BIA OJS, the specialized Division of Drug Enforcement (DDE) tracks and investigates the distribution of illegal narcotics in Indian Country. The DDE operates the largest nationwide network of drug enforcement agents dedicated solely to Indian Country. Through

Questions for the Record
House Committee on Natural Resources
Subcommittee on Oversight and Investigations
Oversight Hearing on Drug Trafficking in Indian Country
June 4, 2024

these efforts, the DDE has successfully seized illegal drugs, including illicit fentanyl, in Indian Country.

Within the Department, other Bureaus' recruitment and retention of law enforcement has further aided the effort to eradicate illegal drug trafficking in Indian Country. For example, the U.S. Fish and Wildlife Service (FWS) prides itself on maintaining a highly skilled and diverse cadre of criminal investigators and wildlife inspectors tasked to protect wildlife and plant resources through the effective enforcement of federal laws. FWS takes a collaborative approach to wildlife law enforcement, often working with partners, including Tribal law enforcement, to combat wildlife trafficking and protect natural resources while respecting Tribal sovereignty. Wildlife trafficking and related violations often intersect with additional criminal activities, such as drug and human trafficking, money laundering, smuggling, and other serious offenses. The ability for the FWS to recruit, hire, and retain criminal investigators directly impacts the FWS's capacity to address these cross-cutting issues and organizations involved in wildlife crime.