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GENERAL MEMORANDUM 10-008

Department of Justice Directive on Tribal Consultation and Planning at the U.S. Attorneys' Offices Level

On January 11, 2010, U.S. Attorney General Eric Holder issued a strong directive to all U.S. Attorneys serving in districts containing "Indian Country" regarding an additional component of the Department of Justice's Indian Country Law Enforcement Initiative. The directive (also referred to as a memorandum in Department of Justice materials) provides guidance regarding tribal consultation, prioritizes the investigation and prosecution of violence against women and children in tribal communities, and requires the development of district-level operational plans designed to improve public safety.

Of the 93 U.S. Attorneys' Offices, 44 are in districts that contain Indian Country. The Department of Justice identifies the districts with Indian Country as follows:

District of Alaska; Southern District of Alabama; District of Arizona; Central District of California; Eastern District of California; Northern District of California; Southern District of California; District of Colorado; District of Connecticut; Southern District of Florida; District of Idaho; Northern District of Iowa; District of Kansas; Western District of Louisiana; District of Maine; District of Massachusetts; Eastern District of Michigan; Western District of Michigan; District of Minnesota; Southern District of Mississippi; District of Montana; District of Nebraska; District of Nevada; District of New Mexico; Eastern District of New York (anticipating federal recognition of the Shinnecock Nation); Northern District of New York; Western District of New York; Western District of North Carolina; District of North Dakota; Eastern District of Oklahoma; Northern District of Oklahoma; Western District of Oklahoma; District of Oregon; District of Rhode Island; District of South Carolina; District of South Dakota; Eastern District of Texas; Western District of Texas; District of Utah; Eastern District of Washington; Western District of Washington; Eastern District of Wisconsin; Western District of Wisconsin; and the District of Wyoming.

The purpose of the directive, which was signed by Deputy Attorney General David Ogden, is to set forth the Department's policy for U.S. Attorneys' Offices (USAOs) with Indian Country jurisdiction, and, as noted above, identifies combating violence against women and children in tribal communities as a priority. As noted in the attached memorandum:

"...in much of Indian Country, the Justice Department alone has the authority to seek a conviction that carries an appropriate potential sentence

when a serious crime has been committed. Our role as the primary prosecutor of serious crimes makes our responsibility to citizens in Indian Country unique and mandatory. Accordingly, public safety in tribal communities is a top priority for the Department of Justice."

The changes being implemented are based on recommendations that rose out of the various meetings and consultations the Department engaged in with tribes last year, i.e., listening sessions, the annual tribal consultation on violence against women, and the White House Tribal Nations Conference.

The memorandum stresses that the public safety needs in Indian Country vary by tribe and by district (including whether a tribe is subject to PL 280, partial-PL 280, or non-PL 280 jurisdictional status), thus requiring USAOs to work with tribes, law enforcement and others in their district to identify and develop approaches appropriate to each district's needs. Specifically, the USAOs are to take the following steps:

- Establish a structure and plan for the leadership and focus for the district.
- Along with law enforcement partners in the district, conduct annual meeting and consultation with tribes in their district.
- Develop district-level operational plans to address public safety in Indian Country. The Executive Office for United States Attorneys (EOUSA) will provide model approaches to district tribal consultation and operational planning which USAOs may use as guidance in their efforts. A summary of each district's plan is to be provided to the Office of the Deputy Attorney General and to tribes in that district.
- Include crimes of violence against women in tribal communities in the district operation plan, and work with law enforcement to make addressing these crimes a priority.

In addition, \$6 million in new FY 2010 funding will be used to augment the Department's Indian Country prosecution efforts through the hiring of an additional 35 Assistant U.S. Attorneys and 12 FBI victim specialists. A "Community Prosecution Pilot Project" is also being developed by the EOUSA.

Please let us know if we may provide additional information regarding the matters in this Memorandum.

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JUSTICE NEWS

**MEMORANDUM FOR UNITED STATES ATTORNEYS WITH
DISTRICTS CONTAINING INDIAN COUNTRY***

Monday, January 11, 2010

FROM: David W. Ogden
Deputy Attorney General

SUBJECT: Indian Country Law Enforcement Initiative

This memorandum implements a critical component of the Attorney General's initiative to improve public safety in tribal communities by setting forth new policy for U.S. Attorneys' Offices (USAOs) with Indian Country jurisdiction, and by identifying as a Justice Department priority the goal of combating violence against women and children in tribal communities.

The Department of Justice recognizes the unique legal relationship that the United States has with federally recognized tribes. As one aspect of this relationship, in much of Indian Country, the Justice Department alone has the authority to seek a conviction that carries an appropriate potential sentence when a serious crime has been committed. Our role as the primary prosecutor of serious crimes makes our responsibility to citizens in Indian Country unique and mandatory. Accordingly, public safety in tribal communities is a top priority for the Department of Justice.

Indian Country Law Enforcement Initiative

The Attorney General has launched a Department-wide initiative on public safety in tribal communities. As part of this effort, Department of Justice leadership conducted a series of meetings across the country addressing violent crime in Indian Country. On October 28-29, 2009, the Justice Department convened a national tribal leaders listening session in St. Paul, Minnesota. Also in October, the Justice Department held its annual tribal consultation on violence against women, as required by the Violence Against Women Act of 2005. The Department again had the opportunity to engage with tribal leaders on public safety in tribal communities during the White House Tribal Nations Conference in November. In addition to these sessions with tribal leaders, Department leadership has conducted meetings with Indian Country experts on law enforcement and public safety efforts. I also have had the opportunity to meet with our own Justice Department specialists in the field – including U.S. Attorneys with significant Indian Country responsibility, Assistant U.S. Attorneys serving as Tribal Liaisons, and FBI Special Agents and Victim Witness personnel working in Indian Country – and have relied on their invaluable insights.

Tribal leaders have confirmed what our own experts working in Indian Country have reported: violent crime in Indian Country is at unacceptable levels and has a devastating impact on the basic quality of life there. Many tribes experience rates of violent crime far higher than most other Americans; indeed, some face murder rates against Native American women more than ten times the national average. Tribal law enforcement resources are typically scarce, a problem exacerbated by the geographic isolation and/or vast

size of many reservations. Federal and state resources devoted to Indian Country have also typically been insufficient to address law enforcement needs.

Despite these challenges, tribal governments have the ability to create and institute successful programs when provided with the resources to develop solutions that work best for their communities. And the tireless efforts of the dedicated women and men working for the Department of Justice in Indian Country to seek justice for victims of crime, hold offenders accountable, and safeguard tribal communities are commendable. Assistant U.S. Attorneys and federal prosecutors serving as Tribal Liaisons continue to contribute greatly to the success of those efforts; Safe Trails Task Forces, coordinated by the FBI, play a critical role in coordinating law enforcement in tribal communities; FBI agents work tirelessly to investigate Indian Country crimes; and FBI and USAO victim specialists working in Indian Country are often the sole providers of essential services for the victims of violent crime there.

There is no one-size-fits-all solution to the challenges confronting Indian Country. Indeed, each district and each tribe presents a different set of issues. It is clear, however, that our success depends on the leadership of our U.S. Attorneys, and the focus and commitment of our law enforcement personnel in the field. This memorandum therefore directs each U.S. Attorney with Indian Country jurisdiction to establish a structure and plan for that leadership and focus in his or her district.

In developing this directive, I have worked closely with the Attorney General's Advisory Committee through its Native American Issues Subcommittee (NAIS) and the Executive Office for United States Attorneys (EOUSA), and I am grateful to them for their leadership in this area. I have also asked the NAIS and EOUSA to identify next steps for implementing this directive at the NAIS's January meeting.

U.S. Attorney Consultations and District-Level Operational Plans

The United States has a government-to-government relationship with federally recognized Indian tribes. The success of any intergovernmental relationship is based on consistent and effective communication. Moreover, the public safety challenges in Indian Country are not uniform; they vary widely from district to district – and from tribe to tribe – based upon unique conditions, a complex set of legal jurisdictional issues, geographic challenges, differences in tribal cultures and the number of tribes and reservations within a particular district.

Accordingly, I direct every USAO with Indian Country in its district to engage annually, in coordination with our law enforcement partners, in consultation with the tribes in that district. In addition to tribal governmental and law enforcement leaders, consultation sessions should include other federal law enforcement partners, including FBI, BIA, USMS, DEA, and ATF, and, where appropriate, state and local law enforcement. In addition, it may be appropriate and helpful to include other federal agency representatives with Indian Country responsibility in your district, for example, the Department of Housing and Urban Development, the Department of Health and Human Services' Indian Health Service, and the Interior Department's Bureau of Indian Education.

Following such consultation, I direct all such USAOs to develop an operational plan addressing public safety in Indian Country.

In coordination with the law enforcement agencies and tribes in that district, every USAO with Indian

Country jurisdiction should review and, as necessary, revise its operational plan on an annual basis. Every newly confirmed U.S. Attorney in such districts, upon assuming office, should conduct a consultation with tribes in his or her district and develop or update the district's operational plan within eight months of assuming office, unless an extension of time is provided by EOUSA.

The subject matter of each district's plan will depend on the legal status of the tribes in that district (i.e., whether the jurisdiction is Public Law 280, non-Public Law 280, or partial-Public Law 280) as well as the unique characteristics and challenges confronting those tribal nations. Districts that include non-Public Law 280 or partial-Public Law 280 tribes should generally consider inclusion of the following elements in their operational plans: a plan to develop and foster an ongoing government-to-government relationship; a plan to improve communications with each tribe, including the timely transmittal of charging decisions to tribal law enforcement, where appropriate; a plan to initiate cross-deputization agreements, Special Law Enforcement Commission training and a tribal SAUSA program, where appropriate; and a plan to establish training for USAO staff and all relevant criminal justice personnel on issues related to Indian Country criminal jurisdiction and legal issues. Districts that include non-Public Law 280 or partial-Public Law 280 tribes are encouraged to meet individually with each of those tribes in the course of the planning process. Districts containing only Public Law 280 tribes may consult with EOUSA on an appropriate strategy to ensure regular engagement with tribes and an appropriate assessment of the Justice Department's responsibility with respect to those reservations.

To assist in this process, I have asked EOUSA to develop and provide to the USAOs, by February 1, 2010, model approaches for district tribal consultations and operational planning. These models may be used as guidance to develop individual consultations and operational plans for each district. To help districts address training needs, EOUSA has also created a new position devoted to Indian Country prosecution and investigation training.

Upon adoption of its plan, or revision or update thereto, I request that each district provide the Office of the Deputy Attorney General, through EOUSA, a summary of its operational plan to improve public safety in Indian Country. I also direct that you make these summaries available to the tribes in your district.

The public safety challenges confronting Indian Country are great, and I realize that our efforts in Indian Country can be resource intensive. I am therefore pleased to be able to inform you that the Justice Department's FY 2010 appropriation includes an additional \$6,000,000 for Indian Country prosecution efforts. Overall, at least 35 additional Assistant U.S. Attorneys and 12 additional FBI victim specialists will be added in offices with an Indian Country caseload. These new resources will also enable the Justice Department to bring the federal justice system closer to Indian Country, including through a Community Prosecution Pilot Project that EOUSA is currently developing.

The Attorney General is depending upon you, as leaders of the Justice Department in your respective districts, to craft individual tribal assessments and action plans that respond to the unique challenges facing tribal communities in your district.

Violence against Women and Children in Tribal Communities

Addressing violence against women and children in Indian Country is a Department of Justice priority. The Department, through the USAOs, has a duty to investigate and prosecute serious crimes in Indian Country,

including crimes against women and children. In much of Indian Country, the federal government alone has authority to prosecute certain violent crimes against Native Americans where the offender is non-Indian and to obtain meaningful punishment for any serious offender. In those circumstances, only USAOs can pursue justice for the victim and the community.

Reports of sexual assault or domestic violence in Indian Country should be investigated wherever credible evidence of violations of federal law exists, and prosecuted when the Principles of Federal Prosecution are met. Although sexual assault offenses may often occur outside the presence of witnesses and may present other prosecutorial challenges, these factors should not deter law enforcement personnel from diligently and thoroughly investigating the crime or pursuing prosecution. Where federal jurisdiction exists, the responsibility to investigate and prosecute violence against women in Indian Country also extends to misdemeanor assaults committed by non-Indian offenders against Native American women on federally recognized reservations. Due care should be exercised to recognize ongoing risks to victims in sexual assault and domestic violence cases, and to expeditiously make charging decisions in high-risk cases to minimize or eliminate those risks.

In developing district-specific operational plans for public safety in tribal communities, I direct every U.S. Attorney to pay particular attention to violence against women, and to work closely with law enforcement to make these crimes a priority. This may include reevaluating, together with law enforcement partners including the FBI and the Department of Interior's BIA, existing memoranda of understandings addressing such crimes. Federal law provides for a number of felony level domestic violence offenses in addition to those crimes listed in the Major Crimes Act (18 U.S.C. §1153) and the General Crimes Act (18 U.S.C. §1152), and I have asked EOUSA, working closely with the NAIS, to develop guidance on these additional statutes.

Many sexual assault cases arising in Indian Country require a team investigative effort involving FBI, tribal police, and BIA. Successful multijurisdictional investigations and prosecutions also require a collaborative working relationship. Tribal Liaisons and Assistant U.S. Attorneys assigned to cases of child sexual abuse on the reservations currently use the multidisciplinary model provided in 18 USC §3509(g) with great success. USAOs are encouraged to consider also using this team approach in cases where adult women are the victims of sexual assault. EOUSA will provide further guidance on this issue in coming weeks.

Conclusion

The Department has a responsibility to build a successful and sustainable response to the scourge of violent crime on reservations. In partnership with tribes, our goal is to find and implement solutions to immediate and long-term public safety challenges confronting Indian Country. This directive creates a structure through which U.S. Attorneys will develop targeted plans to help make tribal communities in their districts safer, and to turn back the unacceptable tide of domestic and sexual violence there.

Attachment

cc: All United States Attorneys

B. Todd Jones
United States Attorney
District of Minnesota

Chair, Attorney General's Advisory Committee
Robert S. Mueller, III
Director
Federal Bureau of Investigation

Michele Leonhart
Acting Director
Drug Enforcement Administration

Kenneth E. Melson
Acting Director
Bureau of Alcohol, Tobacco, Firearms & Explosives

John F. Clark
Director
United States Marshals Service

H. Marshall Jarrett
Director
Executive Office for United States Attorneys

* A list of districts that contain Indian Country as of the date of this memorandum is attached hereto as Appendix A.