UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

OGLALA SIOUX TRIBE, a federally recognized Indian tribe,

Plaintiff,

v.

UNITED STATES OF AMERICA;

DEB HAALAND, in her official capacity as SECRETARY OF THE UNITED STATES DEPARTMENT OF INTERIOR, 1849 C Street, N.W. Washington DC 20240;

UNITED STATES BUREAU OF INDIAN AFFAIRS;

GLEN MELVILLE, in his official capacity as DIRECTOR OFFICE OF JUSTICE SERVICES OF THE UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF INDIAN AFFAIRS;

JOHN BURGE, in his official capacity as SPECIAL AGENT IN CHARGE OF DISTRICT 1 OF THE UNITED STATES OFFICE OF JUSTICE SERVICES OF THE UNITED STATES DEPARTMENT OF THE INTERIOR;

TINO LOPEZ, in his official capacity as ACTING APPROVING OFFICIAL FOR THE OFFICE OF JUSTICE SERVICES OF THE UNITED STATES DEPARTMENT OF THE INTERIOR;

DARRYL LACOUNTE, in his official capacity as COMMISSIONER, BUREAU OF INDIAN AFFAIRS, UNITED STATES DEPARTMENT OF THE INTERIOR;

And

GINA DOUVILLE, in her official capacity as SUPERINTENDENT OF INDIAN AFFAIRS OF THE UNITED STATES. BUREAU OF INDIAN AFFAIRS, OF THE UNITED STATES DEPARTMENT OF THE INTERIOR,

Defendants.

Civil Action No. 22-cv-05066-KES

FIRST AMENDED COMPLAINT

Comes now Plaintiff, OGLALA SIOUX TRIBE (the "Tribe"), a federally recognized Indian tribe, by and through its undersigned counsel, and complains of the Defendants, and each of them, as follows:

JURISDICTION AND VENUE

1. The action arises out of the United States' failure to adhere to its treaty and trust responsibility to provide and adequately equip a sufficient number of law enforcement officers on the Pine Ridge Indian Reservation to reasonably ensure that the Defendants are providing for competent, timely, and diligent investigation of all violations of federal and tribal law, and for the arrest and punishment of offenders, and for violations of the Indian Self Determination and Education Assistance Act of 1975 ("ISDEAA"), 25 U.S.C. §§ 5301 *et. seq.*, as stated herein.

2. This Court has jurisdiction over the subject matter of this action pursuant to: (a) 28 U.S.C. § 1331 (federal question action), in that this is a civil action arising under the Constitution, laws or treaties of the United States; (b) 28 U.S.C. § 1362 (federal question action brought by an Indian tribe), in that this is a civil action brought by an Indian tribe with a governing body duly recognized by the Secretary of the Interior ("Secretary") and the matter in controversy arises under the Constitution, laws or treaties of the United States; (c) 25 U.S.C. § 5331(a) (action under Indian Self-Determination Act), in that this is a civil action against the Secretary of the Interior arising under the ISDEAA; and (d) 28 U.S.C. § 1361 (mandamus against federal official), in that this is an action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the Plaintiff.

3. This action arises under the Constitution, laws and treaties of the United States, as

hereinafter more fully appears, including but not limited to: the Commerce Clause, U.S. Const. Art. 1, § 8, cl. 3; the Treaty with the Sioune and Oglalla Tribes, July 5, 1825, 7 Stat. 252 ("1825 Treaty"); the Treaty of Fort Laramie with the Sioux Etc., Sept. 17, 1851, 11 Stat. 749 ("1851 Treaty"); the Treaty with the Sioux—Brulé, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee—and Arapaho, Apr. 29, 1868, 15 Stat. 635 ("1868 Treaty"); the Act of Feb. 28, 1877, c. 72, 19 Stat. 254 ("1877 Act"); the Snyder Act of 1921, 25 U.S.C. § 13 ("Snyder Act"); the Indian Self-Determination and Education Assistance Act of 1975 ("ISDEAA"), 25 U.S.C. §§ 5301 *et. seq.*; the Indian Law Enforcement Reform Act of 1990 ("ILERA"), 25 U.S.C. § 2801 *et. seq.*; the Tribal Law and Order Act of 2010 ("TLOA"), Pub. L. No. 111-211, Title II, 124 Stat. 2258 (2010); the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 551 *et seq.* and §§ 701-706; the Declaratory Judgments Act, 28 U.S.C. §§ 2201-2202; and the federal common law.

4. The United States has waived its sovereign immunity from suit in this action under 25 U.S.C. §§ 5321(b)(3), 5331(a) and (d) (incorporating the Contract Disputes Act, 41 U.S.C. § 7104) for civil actions against the Secretary of the Interior arising under the ISDEAA for relief including money damages, injunctive relief, or mandamus.

5. The United States has waived its sovereign immunity from suit in this action under section 702 of the APA, 5 U.S.C. § 702. Section 702 waives sovereign immunity for all claims for relief other than monetary damages, including all forms of equitable relief, involving a federal official's action or failure to act.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(1) and (b)(2), because the Tribe and the Pine Ridge Indian Reservation are located within the District of South

Dakota, Defendants John Burge, Tino Lopez, and Gina Douville's offices are located within this judicial district, the Department of the Interior is an agency of the United States, and a substantial part of the events or omissions giving rise to the claims herein occurred and are still occurring within this judicial district.

PARTIES

7. Plaintiff OGLALA SIOUX TRIBE ("Tribe") is a federally recognized Indian tribe, recognized to have the immunities and privileges available to federally recognized Indian Tribes by virtue of their Government-to-Government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such Indian Tribes. *See Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 87 Fed. Reg. 4636, 4638 (Jan. 28, 2022). The Tribe's governmental headquarters is located at 107 West Main Street, P.O. Box 2070, Pine Ridge, South Dakota 57770. The Tribe is organized under a Constitution pursuant to section 16 of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. § 5123 (formerly 25 U.S.C. § 476), with a governing body known as the Tribal Council.

8. The Tribe is one of the bands of the Lakota and is both a part of and a successor in interest of the "Sioux Nation." *See*, *Sioux Tribe of Indians v. United States*, 14 Cl. Ct. 94, 95 n. 1 (1987), *aff'd*, 862 F.2d 275 (Fed. Cir. 1988). The Oglala band is both a signatory of and a party to the 1825, 1851, and 1868 Treaties, and the Tribe and its members are beneficiaries of the covenants contained therein. The Tribe brings this action in its governmental capacity to protect its sovereign interests. The Tribe, as beneficiary of the United States' duties under the 1825, 1851 and 1868 Treaties, the 1877 Act, the federal law enforcement statutes detailed herein, and as recipient and

beneficiary of the federal law enforcement services and funding provided by Defendants and in dispute in this action, suffers its own injury from Defendants' actions complained of herein. The threat to the health and safety of all tribal members caused by Defendants' actions and failures to act complained of herein is a specific component of the Tribe's sovereign governmental interest. The Tribe also brings this action as *parens patriae* on behalf of all of its Tribal members and raises claims that affect each of those members. The Tribe has a quasi-sovereign interest in the disputes herein, apart from the interests of its Tribal members, and there is an injury to a substantial segment of the Tribe's population.

9. Defendant the UNITED STATES OF AMERICA is a party to the 1825, 1851, and 1868 Treaties and is responsible for fulfilling the requirements of the statutes detailed herein. It acts through and is responsible for the actions of its authorized agencies, officials, employees and agents, the other defendant parties described below.

10. Defendant DEB HAALAND is the Secretary of the Interior ("Secretary"). The Secretary is responsible, *inter alia*, "for providing, or for assisting in the provision of law enforcement services in Indian county." 25 U.S.C. § 2802(a). She is sued herein in her official capacity.

11. Defendant UNITED STATES BUREAU OF INDIAN AFFAIRS ("Bureau of Indian Affairs" or "BIA") is the federal agency through which the Secretary acts in fulfilling her Indian law enforcement responsibilities in Indian country and the federal agency which contracts with the Oglala Sioux Tribe under the ISDEAA.

12. Defendant GLEN MELVILLE is the Director of the Office of Justice Services within the Bureau of Indian Affairs. He is sued herein in his official capacity. The Office of Justice

Services ("Office of Justice Services" or "OJS") is an office within the BIA "that, under the supervision of the Secretary, or an individual designated by the Secretary," is responsible for, *inter alia*, "carrying out the law enforcement functions of the Secretary in Indian country and implementing" related specified responsibilities under the ILERA. 25 U.S.C. § 2802(b)-(e). *See also*, Dept. of Interior Manual, 130 DM 4.1 (2015).

13. Defendant JOHN BURGE is the Special Agent in Charge of District 1 of the Office of Justice Services. His position makes him responsible for overseeing all BIA-funded law enforcement services provided in the Great Plains Region of the United States, including law enforcement services on the Pine Ridge Indian Reservation. He is sued herein in his official capacity.

14. Defendant TINO LOPEZ is the Acting Approving Official for the Office of Justice Services. In that capacity, he issued both of the agency's January 28, 2022, letters to the Tribe as well as the agency's March 30, 2022, partial denial of contract letters which are the subject of this Complaint. He is sued herein in his official capacity.

15. Defendant DARRYL LACOUNTE is the Director of the Bureau of Indian Affairs. In this capacity, he administers all laws governing the non-education portions of Indian Affairs and provides leadership and direction for the Bureau of Indian Affairs. Dept. of Interior Manual, 130 DM 3.1. He is responsible for the overall management of Defendant Bureau of Indian Affairs and its activities, functions, programs, and services. He is sued herein in his official capacity.

16. Defendant GINA DOUVILLE is the Superintendent of the Pine Ridge Agency of the Bureau of Indian Affairs. She currently serves as the United States' Indian Agent at the Pine Ridge Agency. She is sued herein in her official capacity.

INTRODUCTION

17. Plaintiff seeks to enforce the Defendants' obligation to provide the Tribe with competent and effective law enforcement pursuant to treaties, federal statutory and common law, and the United States' trust responsibilities to the Tribe.

18. This is a duty the United States undertook when it entered into and ratified the 1825, 1851, and 1868 Treaties with the Tribe, and has acknowledged in relevant federal statutes, including the 1877 Act, the Snyder Act, the ILERA, the TLOA and the ISDEAA.

19. This obligation requires the United States government to provide sufficient resources to ensure the competent reporting and investigation of all crimes, and the arrest and punishment of all offenders who violate federal law and (pursuant to federal statute) tribal law, or otherwise threaten or harm the Tribe or its property, or the person or property of any Tribal member. Such obligation to the Tribe specifically includes providing, or providing sufficient funding, for a sufficient number of law enforcement officers and criminal investigators within the boundaries of the Tribe's territory, the Pine Ridge Indian Reservation ("Pine Ridge Reservation" or "Reservation"), to assure that the level and overall competence of those services is in compliance with its treaty and trust responsibilities.

20. These law enforcement activities are not a discretionary federal program which the Defendants can chose to operate or not operate, or chose to operate at a minimal level. They are instead a treaty and trust obligation, the primary responsibility for which has been assigned to the Secretary of the Interior.

21. Defendants are failing to meet this obligation, not because the Congress has failed to enact the requisite statutes for them to do so, but because Defendants fail to treat law enforcement

as a treaty and trust obligation, rather than a discretionary function or program that they can chose to perform or not perform. As a result, there is a complete lack of competent and effective law enforcement within the Tribe's Reservation, and the impacts have been and continue to be catastrophic.

22. The Tribe seeks declaratory and injunctive relief that requires Defendants to provide competent law enforcement resources that comply with the obligations to the Tribe that the United States undertook in the Treaties and charged Defendant officials with the duty to perform in relevant federal statutes.

GENERAL ALLEGATIONS

I. The Law Enforcement Obligations Undertaken by the United States to the Tribe in the 1825 Treaty and the Fort Laramie Treaties of 1851 and 1868

23. Since its earliest days, the United States Supreme Court has consistently recognized the special duty the federal government assumed in treaties with federally recognized Indian Tribes.

24. Seeking to secure peace with the tribes and to ensure safe federally controlled trade in the area, on July 5, 1825, the United States, pursuant to its constitutional authority, entered into the 1825 Treaty with the Sioune and Ogallala bands. Treaty with the Sioune and Oglala Tribes, July 5, 1825 ("1825 Treaty"), 7 Stat. 252 (1825).

25. Pursuant to that 1825 Treaty, the Sioune and Ogallala bands formally acknowledged "that they reside within the territorial limits of the United States and acknowledged their [United States] supremacy and claim their protection," and the United States agreed to receive them "into their friendship, and under their protection." *Id.*, arts. 1, 2, and 4.

26. In exchange for its right to license and regulate traders in the region, the United States further pledged that "the friendship, which is now established between the United States

and the Sioune and Ogallala bands should not be interrupted by the misconduct of individuals..." *Id.*

27. More specifically, in exchange for the Tribe's voluntary relinquishment of its sovereign right to seek retribution again non-members who violated the law, and the promise of the federal protection the Tribe was to receive, the parties reached the following agreement:

> it is hereby agreed that for injuries done by individuals, no private revenge or retaliation shall take place, but instead thereof, **complaints shall be made, by the injured party, to the superintendent or agent of Indian affairs**, or other person appointed by the President; and it shall be the duty of the Chiefs, upon complaint being made as aforesaid, **to deliver up the person or persons**, against whom the complaint is made, to the end that he or they may be **punished agreeably to the laws of the United States**. And, in like manner, if any robbery, violence or murder, shall be committed on any Indian or Indians belonging to the said bands, **the person or persons so offending shall be tried, and if found guilty shall be punished** in like manner as if the injury had been done to a white man. ...

Id., art. 5 (*emphasis added*).

28. That 1825 Treaty was one of the earliest federal commitments to impose U.S. criminal law in Oglala territory, and to provide basic federal law enforcement services in Oglala territory.

29. Following the signing of the 1825 Treaty, more non-Indians moved into the area. Kerry R. Oman, *The Beginning of the End; The Indian Peace Commission of 1867-1868*, 22 (Great Plains Quarterly) 35 (2002).

30. Later in the 1851, the Oglala voluntarily agreed, in a new 1851 Treaty, to allow the U.S. the right to establish roads, and military and other outposts in certain locations in their aboriginal territory. Treaty of Fort Laramie with Sioux, Etc., September 17, 1851, 11 Stat. 749 ("1851 Treaty") at art. 2. They did this in exchange for, among other things, the United

States binding itself to protect them from "the commission of all depredations by the people of the United States." *Id.* at art. 3

31. This was the second promise of federal law enforcement protections that the Oglala received.

32. By the 1860's, in part because the federal troops who were supposed to be policing the Tribe's territory had been called away to fight in the Civil War, a series of major confrontations had arisen between the Tribes, including Oglala, and non-Indians, which federal studies later concluded were largely due to the "aggression of lawless white men" and insufficient federal enforcement. Oman, *supra*, at 36.

33. One of the major federal concerns at the time centered around the aggressive Sioux attacks on non-Indians who were traveling along the Bozeman Trail. The U.S. and Sioux military actions that followed those attacks are commonly referred to by historians as the Powder River War.

34. Given federal government's western expansion goals, by 1867 Congress had concluded that it was more cost effective to enter into additional treaties with certain tribes, including the Oglala band, than it was to continue to attempt to control them by military force. *Id.* Thus, when the United States asked the Oglala to come to Fort Laramie in the spring of 1868, it had very specific goals: (1) to bring an end to the Powder River War; (2) to stop violent Sioux retaliation against persons who threatened their people or property or otherwise committed criminal acts; (3) to set the boundaries of what is now commonly known as the "Great Sioux Reservation" and encourage the Sioux to move there; and (4) to promote peace between the parties. Mark Ellis, *Reservation Akicitas: The Pine Ridge Indian Police, 1879-1885*, 185, 187-189 (South Dakota Hist. Soc'y, 1999).

As a result, the 1868 Treaty that the United States proposed and later ratified not only renewed the promises the United States had made in the 1825 and 1851 Treaties, but it also expanded the federal government's commitments to provide the Oglala with some very specific law enforcement protections. Treaty with the Brule, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee and Arapaho ("1868 Treaty"), April 29, 1868, 15 Stat. 635 (1868).

35. Article I of that 1868 Treaty includes two provisions commonly referred to as the "bad men" clauses. The "bad men" clauses are key to understanding the origin of the federal government's duty to provide effective law enforcement to the Tribe, thus they are set out at length as follows:

> If bad men among the whites, or among other people subject to the authority of the United States, shall commit any wrong upon the person or property of the Indians, the United States will, upon proof made to the agent and forwarded to the Commissioner of Indian Affairs at Washington City, proceed at once **to cause the offender to be arrested and punished according to the laws of the United States**, and also reimburse the injured person for the loss sustained.[1]

And,

> If bad men among the Indians shall commit a wrong or depredation upon the person or property of any one, white, black, or Indian, subject to the authority of the United States, and at peace therewith, the Indians named solemnly agree that they will, upon proof made to their agent and notice by him, deliver the wrong-doer to the United States, **to be tried and punished according to its laws**; and in case they willfully refuse so to do, the person injured shall be reimbursed for his loss from annuities or other moneys due or to become due to them under this or other treaties made with the United States. And the President, on advising with the Commissioner of Indian Affairs, shall prescribe such rules and regulations for ascertaining damages under the provisions of this article as in his judgment may be proper. But no one sustaining loss while violating the provisions of this treaty or the laws of the United States shall be reimbursed therefor.

[1] This role of the Commissioner of Indian Affairs is now delegated by statute to the OJS and the United States Attorney. 25 U.S.C. § 2802.

Id., art. I (e*mphasis added*).

36. Article V of the 1868 Treaty states as follows:

> The United States agrees that the agent for said Indians shall in the future make his home at the agency building; that he shall reside among them, and keep an office open at all times for the purpose of **prompt and diligent inquiry** into such matters of complaint by and against the Indians **as may be presented for investigation under the provisions of their treaty stipulations**, as also for the faithful discharge of other duties enjoined on him by law. In all cases of depredation on person or property he shall cause the evidence to be taken in writing and forwarded, together with his findings, to the Commissioner of Indian Affairs, whose decision, subject to the revision of the Secretary of the Interior, shall be binding on the parties to this treaty.

Id., art. V.

37. These provisions were of the upmost importance to the Tribe, and it is only logical to believe that the still militarily powerful Oglala Sioux Tribe would not have again agreed to give up its right to police its own territory unless it felt comfortable that its people, its property, and its territory were now going to be competently policed by the United States. (Young Decl. ¶ 39, Doc. No. 3).

38. This treaty language was understood by the Tribe as requiring that "bad men" would be "arrested . . . tried and punished," and that "prompt and diligent inquiry [would be made] into such matters of complaint by and against the Indians as may be presented for investigation…" *Id.*, arts. I and V. *See also Cheyenne River Sioux Tribe v. Jewell*, 205 F. Supp. 3d 1052, 1063 (D.S.D. 2016) ("treaties must be construed, not in accordance with the technical meaning of its words to learned lawyers, but in the sense in which they would naturally be understood by the Indians.") There was no language in the Treaty, and no language in the Treaty negotiations, that suggested that the federal government was going to be allowed to decide when and if it wanted to engage in these activities, or to limit these

responsibilities based upon its unilateral decision as to how it wanted to spend its federal dollars.

39. Unlike education or health care, which can be procured from other private sources, these were law enforcement activities had to be performed as a governmental function, by a governmental entity with actual jurisdiction.

40. The 1868 Treaty was advised for ratification by Congress on February 16, 1869, and ratified and proclaimed by President Andrew Johnson on February 24, 1869. 15 Stat. 635 (*available at* 1869 WL 10665).

II. Congressional Reaffirmation and Implementation of the United States' Law Enforcement Treaty Obligations in 1877 and in Subsequent Appropriations

41. Through the treaties listed above, the federal government has undertaken an exclusive and specific trust responsibility to ensure effective public safety to Indians. *See*, Cohen's Handbook of Federal Indian Law § 20.07[1][a], Nell Jessep Newton ed. (2017). Through legislation, the federal government has recognized and reinforced this duty.

42. On February 28, 1877, the Forty-Fourth Congress unilaterally enacted a statute to reaffirm the "agreement . . . with different bands of the Sioux Nation of Indians." *See*, Act of February 28, 1877, c. 72, 19 Stat. 254 ("1877 Act"). The purpose of the 1877 Act, in part, was to reaffirm the provisions made in the 1868 Treaty, including the Article I "bad men" clauses and the Article V provision providing a federal agent responsible for investigating complaints by and against tribal members. Thus, through the passage of the 1877 Act, the federal government reaffirmed its obligation to provide effective law enforcement services to the Tribe on the Reservation.

43. Along with confirming promises already made, Congress also unilaterally added additional commitments by inserting the following language:

> The provisions of said treaty of 1868 … shall continue in full force, and, with provisions of this agreement, shall apply to any country which may hereafter be occupied by the said Indians as a home; and **Congress shall, by appropriate legislation, secure to them … an orderly government; they shall be subject to the laws of the United States, and each individual shall be protected in his rights of property, person, and life**.

1877 Act, art. 8 (*emphasis added*).

44. To begin to fulfill these commitments, in 1878, Congress began appropriating specific federal funds for federal Indian Law Enforcement in the Western tribal areas of the United States, including at the Pine Ridge Reservation. Act of May 27, 1878, c. 142, 20 Stat. 63. Within the next few years, Congress began regularly appropriating such funds. *See* Act of May 11, 1880, c. 85, 21 Stat. 114. This appropriation of funds displays the federal government's recognition of, and intent to uphold their duties under the 1825, 1851, and 1868 Treaties.

45. By the end of 1879, the federal Indian Agent at the Pine Ridge Agency had organized, deputized, and began equipping and paying a federal Oglala Sioux Tribal Police Force of over 50 men. Mark Ellis, *Akicitas: The Pine Ridge Indian Police, 1879-1885,* South Dakota Hist. Soc'y, 185 (1999). This further confirmed the federal government's commitment to provide adequate on-reservation law and order services to the Oglala Tribe on the Pine Ridge Reservation.

46. As noted above, federal law enforcement efforts expanded post treaty. By the fall of 1878, "all the problems encountered at other [federal] agencies seemed to be compounded… at the six federal agencies located within Sioux territories." William T. Hogan, *Indian Police and Judges* 83 (1980). "There were more Indians, more room for them to roam, more opposition to the civilian programs, and along the Nebraska line and at the landings on the Missouri River, more whites to interfere." *Id.*

47. This is reinforced in an 1879 report to the Commissioner of Indian Affairs, written by Federal Agent McGillycuddy, the federal Indian Agent at the Pine Ridge Agency. In that report, he justified the more than 50 federal Indian Police that he was employing at the Pine Ridge Agency in 1879 by noting that just over the Nebraska state line was a large settlement which he believed to be a "rendezvous for criminals and outlaws of all kinds" and he wanted "to keep the reservation free of such undesirable elements." *Id.* at 90-91.

48. In a related report, McGillycuddy also noted that he was further concerned about Indian versus Indian conflict, noting specifically his concerns about potential local trouble from Red Cloud, the principal chief at Rosebud. Red Cloud, who, along with his warriors, had successfully closed the Bozeman Trail in the 1860's and were resisting federal efforts on the Pine Ridge Reservation. *Id.* at 91. For those reasons, Professor Hagan concluded that "McGillycuddy fifty-man force [at Pine Ridge] was absolutely indispensable in administering the 4,000 square miles inhabited by 8,000 Indians." *Id.* at 91.

49. The federal government further expanded this federal authority in 1885 with the passage of the Major Crimes Act ("MCA"), 18 U.S.C. § 1153. The MCA expanded federal jurisdiction over Indians who commit crimes against other Indians within Indian Country. *Id.* In upholding the MCA, the United States Supreme Court recognized the federal government's "duty of protection" that arose from the treaties. *United States v. Kagama,* 118 U.S. 375, 384 (1886). The Court noted that the duty of protection "has always been recognized by the executive, and by congress, and by this court, whenever the question has arisen." *Id.*

50. After awarding re-occurring appropriations for federal law enforcement at the Pine Ridge Reservation for over 42 years, in the 1921 Snyder Act Congress provided the on-going

authorization of appropriations "which the Secretary shall direct, supervise and expend . . . for the benefit, care and assistance of the Indians." 25 U.S.C. § 13.

51. One of the purposes set expressly forth in the Snyder Act is to provide funds for the employment of "Indian police." *Id.* From the Snyder Act's enactment forward, Congress has directed the Secretary to use funding appropriated by Congress to pay for "Indian police." *Id.*

III. Congressional Reaffirmation and Implementation of Law Enforcement Treaty Obligations in the Modern Era through Enactment of the ILERA, the TLOA and the ISDEAA

A. The Indian Law Enforcement Reform Act of 1990

52. Following the Congressional "Indian police" directive in the 1921 Snyder Act, the Indian Law Enforcement Reform Act of 1990 ("ILERA"), Pub. L. No. 101-379, Aug. 18, 1990, 104 Stat. 473, *codified as amended* 25 U.S.C. § 2801 *et seq*., provided that the United States Secretary of the Interior, acting through the BIA, "shall be responsible for providing . . . law enforcement services in Indian country." 25 U.S.C. § 2802(a). This, along with the Oglala Treaties, distinguishes law enforcement from other federally created programs, and made competent law enforcement an obligation of the Secretary and the BIA.

53. The ILERA created a specific division within the Bureau of Indian Affairs called the Office of Justice Services ("OJS"), which it stated "shall be responsible for carrying out the law enforcement functions of the Secretary in Indian country." 25 U.S.C. § 2802(b)(1).

54. The ILERA also articulates in even more specific terms what competence means in the context of the federal government's prior existing law enforcement duties and responsibilities owed to the Tribe. For example, in ILERA, Congress authorized OJS to adopt a Bureau of Indian Affairs, Office of Justice Services' Law Enforcement Handbook

(hereinafter the "Handbook"). 25 U.S.C. § 2802(c)(9). The adopted Handbook establishes a comprehensive list of standards that all tribal law enforcement programs must meet, many of which are today unfunded mandates on the Pine Ridge Indian Reservation. It even states what items can and cannot be included in law enforcement agreements between the Tribe and local government units. *See* Bureau of Indian Affairs, Law Enforcement Handbook 3rd Edition (2015), available at BIA OJS Third Edition LE Handbook 2015 _ Approved Public Release(3).pdf (last visited Sept. 27, 2022). Adherence to the Handbook, or its minimum standards, is a condition for the Tribe's receipt of any federal law enforcement funding. 25 C.F.R. §§ 12.11 and 12.14.

55. Furthermore, the ILERA states that the OJS is responsible for:

A. the enforcement of Federal law **and, with the consent of the Indian tribe, tribal law**;

B. in cooperation with appropriate Federal and tribal law enforcement agencies, the investigation of offenses against criminal laws of the United States; and

C. the protection of life and property in Indian Country.

25 U.S.C. § 2802(c) (emphasis added).

B. The Tribal Law and Order Act of 2010

56. In 2010, Congress again reinforced the federal government's prior existing law enforcement duty owed to the Tribe when it enacted the Tribal Law and Order Act of 2010, Pub. L. No. 111-211, Title II, July 29, 2010, 124 Stat. 2258 ("TLOA"), *codified as amended* in various sections of 18 U.S.C., 21 U.S.C., 25 U.S.C., 28 U.S.C., and 42 U.S.C. In its "Findings ," Congress acknowledged that "The United States has distinct legal, treaty and trust obligations to provide for the public safety of Indian country." TLOA, § 202(a)(1),

25 U.S.C. § 2801 note.

57. Since 1990, the BIA has publicly explained its law enforcement actions and law enforcement budget requests as being "[i]n fulfillment of our treaty and trust responsibility." Opening statement of former OJS Director Jason O'Neil at BIA law enforcement consultation, May 2022.

58. In 2006, the BIA conducted a Gap Analysis, the purpose of which was to compare current law enforcement staffing "against a standard or benchmark, such as industry best practices, organizational strategic goals, or standards applied by federal regulation . . . ." Gap Analysis at p. 1 (April 18, 2006) (Attached hereto as Exhibit C). The Gap Analysis concludes that 3.3 officers per 1,000 inhabitants of rural areas under 10,000 is the minimum required to meet federal law enforcement obligations (Exhibit C at p. 3).

59. Congress also stated that three of the primary purposes of the TLOA Act were "to empower tribal government with the authority, resources, and information necessary to safely and effectively provide public safety in Indian country; . . . to reduce the prevalence of violent crime in Indian country and to combat sexual and domestic violence against American Indian and Alaska Native women; [and] to prevent drug trafficking and reduce rates of alcohol and drug addiction in Indian country." TLOA, § 202(b)(3), 25 U.S.C. § 2801 note.

60. TLOA also requires BIA to report annually to Congress on the unmet needs of law enforcement in Indian Country. TLOA § 211, 25 U.S.C. §2802(c)(16). This in turn requires the BIA to determine for itself what the minimum "need" is to provide "competent" law enforcement. In fact, the BIA's 2011-2019 TLOA-mandated reports to Congress actually each contain statements defining that "need" for a "'basic' program that would serve tribes with service populations ranging from 1,601 to 6,500" as 2.8 officers

per 1,000 people. "Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country," TLOA Reports at pp. 6 (FYs 2011-2013) and 4 (FYs 2014-2019) (dated August 16, 2016; September 12, 2017; May 2, 2018; March 2020; July 2020; and Oct 2021, respectively) ("OJS TLOA Reports") (attached hereto as Exhibits D1-D6). The number of officers required per 1,000 people increases proportionately as the service population increases over 6,500 people. *Id.* That 2.8-standard was based upon the BIA's adoption of the U.S. Department of Justice's Uniform Crime Data collected from comparable rural areas of 10,000 or less (which, unlike the Tribe, do not have excessive crime or excessive distance between police calls) and is inexplicably lower than the Gap Analysis' conclusion that 3.3 officer per 1,000 is the minimum required (Exhibit C at p. 3).

C. The Indian Self-Determination and Educational Assistance Act of 1975 (ISDEAA)

61. The ISDEAA, Pub. L. No. 93-638, Title I, Jan. 4, 1975, 88 Stat. 2203, *codified as amended* 25 U.S.C. § 5321, *et seq*., authorizes the federal government and Indian tribes to enter into contracts in which the tribes supply federally funded services, including law enforcement services, that a federal government agency would otherwise provide. *See id.,* § 5321(a); *see also id.*, § 5302(b). In enacting the ISDEAA, Congress recognized "the obligation of the United States to respond to the strong expression of the Indian people for self-determination by assuring maximum Indian participation in the direction of educational as well as other Federal services to Indian communities so as to render such services more responsive to the needs and desires of those communities." *Id.*, § 5302(a).

62. Congress further declared "its commitment to the maintenance of the Federal Government's unique and continuing relationship with, and responsibility to, individual

Indian tribes and to the Indian people as a whole through the establishment of a meaningful Indian self-determination policy which will permit an orderly transition from the Federal domination of programs for, and services to, Indians to effective and meaningful participation by the Indian people in the planning, conduct, and administration of those programs and services." *Id*., § 5302(b).

63. Section 106 of the ISDEAA, 25 U.S.C. § 5325(a)(1), provides that the "amount of funds provided under the terms of self-determination contracts" "shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract…." The amount of funds that the Secretary of the Interior "would have otherwise provided" for competent law enforcement is no less than the amount than the Secretary is required to expend under the Tribe's treaties, the ILERA and TLOA.

64. Section 102(a)(2) of the ISDEAA, 25 U.S.C. § 5321(a)(2), imposes explicit requirements. The Secretary is *directed* to enter into the proposed contract unless, upon review, the Secretary's objection to the proposal falls within one of only five statutory reasons allowed for declination. If it does not, the law requires the following Secretarial action: "The Secretary shall, within ninety days after receipt of the [tribe's]proposal, approve the proposal and award the contract unless the Secretary provides written notification to the applicant that contains a specific finding that clearly demonstrates that, or that is supported by controlling legal authority that" one of the five statutorily permitted reasons for declination exists. This is mandatory language.

65. The implementing regulations at 25 C.F.R. 900.29(a) require that the Secretary's finding must be accompanied by a detailed explanation of the reasons why one or more of the declination criteria exist, and the documents relied on in making the decision.

66. Section 102(a)(2) of the ISDEAA and the implementing regulations at 25 C.F.R. 900.18 are specific about the consequences for the Secretary not complying with the statutory declination requirements within 90 days of receipt of a tribal proposal. The consequences are that the Secretary is required, as a matter of law, to: (1) approve the Tribe's proposed contracts and approve the Tribe's proposed Annual Funding Agreements for Annual Funding Agreements; (2) award the amended contracts and the new AFAs as proposed; and (3) add to the contract the full amounts of Title I funds pursuant to section 106(a)(1) of the ISDEAA (the amount the Secretary would have spent to comply with the federal governments treaties and trust responsibilities.). 25 U.S.C. § 5321(a)(2).

67. Each provision of ISDEAA (and other federal statutes involving Indians) shall be liberally construed for the benefit of the Tribe.

IV. Law Enforcement on the Pine Ridge Reservation and the Consequences of the Defendant's Failures

68. At roughly 3.1 million acres, the Oglala Sioux Tribe's Pine Ridge Reservation is larger than the states of Rhode Island and Delaware combined.

69. More than 40,000 people reside on or conduct business on the Reservation (Young Decl. ¶ 9, Doc. No. 3), all of whom are dependent on federally funded BIA law enforcement officers to protect them and their on-reservation property. (Young Decl. ¶¶ 9-10, Doc. No. 3; Rodriguez Decl. ¶¶ 9-16 Doc. No. 4). Among these are Oglala Sioux Tribal Members, non-member Indians, and non-Indians who reside on or enter the reservation on a regular

basis. *Id*. These individuals comprise the law-enforcement service population of the Reservation.

70. Defendants have failed to include all of these individuals in calculating the Tribe's law enforcement service population and have instead chosen arbitrarily to count only the Tribe's on-reservation enrolled members. A large percentage of crimes on Pine Ridge involve both an Oglala Sioux member and a non-member Indian, or non-Indian. This decision by BIA is inconsistent with the existing law enforcement obligations of the Defendants, and through the ISDEAA, the Tribe, because the Tribe has, for example, criminal jurisdiction over non-member-Indians under the Indian Civil Rights Act, 25 U.S.C. § 1301; can exercise civil jurisdiction over non-Indians who engage in consensual relationships with the Tribe (*Montana v. United States*, 450 U.S. 544 (1981); can exercise the stop and search jurisdiction detailed in *United States v. Cooley*, 141 S.Ct. 1638 (2021) and other tribal jurisdictional cases; and can exercise expanded criminal jurisdiction over non-Indians in many cases of domestic violence pursuant to the Violence Against Women Act, Pub. L. No. 113-4, Mar. 7, 2013, 127 Stat. 54 (2013). It is also inconsistent with the fact that many Tribal officers, who possess Special Law Enforcement Commissions, are specifically charged with exercising many forms of both tribal and federal criminal jurisdiction over both Indians and non-Indians in Indian country.

71. The BIA's own standard of providing 2.8 officers per 1,000 people is the minimum required by the United States to provide the Tribe with competent and effective law enforcement pursuant to the 1825, 1851, and 1868 Treaties and the duty of competence owed to the Tribe as carried forward from the treaties in both the ILERA and the TLOA.

72. Even this 2.8 officers per 1,000 persons BIA calculation is flawed due to the excessive size of the Reservation, the distance between tribal on-reservation communities, the level of crime on the Reservation, and due to the fact that it is based on a dated 2013 Indian Population and Labor Force count which is no longer accurate. (Exhibit D1 at p. 6; Exhibits D2-D6 at p. 4). This count is not only nine years old, but it also fails to include any of the non-member Indian and non-Indian residents, or tribal and non-tribal workers who live off the Reservation but work on the Reservation. It also fails to include visitors and businesspersons coming onto the Reservation to provide goods and services. All of these individuals also rely upon the OJS contracted Tribal law enforcement services. (Young Decl. ¶ 11, Doc. No. 3). Applying the BIA's 2.8 officers per 1,000 persons standard to the actual Pine Ridge Service Population requires that the Tribe, with a law enforcement service population of over 40,000 individuals, have a minimum of 112 police officers.

73. The United States currently only provides enough funding to employ 33 police officers and 7 criminal investigators to cover the 40,000-person law-enforcement service population. This is less than .9 officers per 1,000 persons in the service population. (Young Decl. ¶¶ 9, 18, Doc. No. 3).

74. This equates to only 6-8 officers per shift. (Young Decl. ¶ 19, Doc. No. 3). The lack of law enforcement officers causes extraordinary danger to the law enforcement officers who are working unreasonable amounts of overtime, patrolling alone, and responding to dangerous calls for service without proper backup. (Young Decl. ¶¶ 23, 54, Doc. No. 3).

75. The lack of adequate law enforcement has had and is continuing to have serious consequences for the Tribe and its citizens, including but not limited to:

A. In 2021, there were 133,755 E-911 calls for service on the Pine Ridge Reservation. (Young Decl. ¶ 16, Doc. No. 3; Rodriguez Decl. ¶ 20, Doc. No. 4). These 2021 calls for services included 794 calls involving an assault, 1,463 domestic violence calls, 522-gun related calls, 541 drug/narcotic calls, and calls reporting 541 missing persons, most of which required immediate attention to protect life, health, and safety. (Young Decl. ¶¶ 16, 17, Doc. No. 3).

B. Many E-911 calls for police service are abandoned, are not being responded to in the time required to ensure public safety or are not being properly investigated or prosecuted because there simply are not enough police officers. (Rodriguez Decl. ¶¶ 20, 27, Doc. No. 4; Young Decl. ¶ 20, Doc. No. 3).

C. The volume of E-911 calls, combined with an inadequate number of police officers, is forcing police officers to drive from call to call at high speeds, endangering both the officer and the public. (Rodriguez Decl. ¶¶ 19-20, Doc. No. 4; Young Decl. ¶ 22, Doc. No. 3).

D. Police response time often exceeds 30 minutes, even in cases of domestic violence, gun activities, and other imminent threats of harm. This can and often does add to the harm suffered by crime victims on the Reservation. (Young Decl. ¶ 21, Doc. No. 3).

E. Police officers operate alone, with backup often being over 30 miles away, even in calls involving guns or weapons. Thus, police officers are often placed in unnecessary danger. (Adams Decl. ¶ 12, Doc. No. 6; Young Decl. ¶ 23, Doc. No. 3).

F. Crimes are not timely or adequately investigated, and witness statements and other evidence are not collected promptly, thereby endangering federal and tribal prosecutions and convictions. (Adams Decl. ¶ 5, Doc. No. 6; Young Decl. ¶ 24, Doc.

No. 3).

G. On-reservation deaths, homicides, drug sales, police-involved accidents, and overdoses have increased significantly since 1999. (Young Decl. ¶ 25, Doc. No. 3).

H. Law enforcement officers and criminal investigators are being called to work an unreasonable amount of overtime and work multiple shifts, with inadequate sleep or downtime. This, too, is endangering both the officers and the public. (Young Decl. ¶ 26, Doc. No. 3).

I. Tribal citizens are often scared to venture out of their homes at night, especially because gunshots are heard throughout the reservation on a frequent and re-occurring basis. (Young Decl. ¶ 27, Doc. No. 3).

76. The Tribe itself is negatively impacted by the lack of law enforcement services. Negative impacts include, but are not limited to:

A. The Tribe operates numerous tribal on-reservation schools, health facilities, tribal programs, and several tribally owned businesses whose safe operation is compromised by the lack of law enforcement services. (Young Decl. ¶ 28, Doc. No. 3).

B. Some families no longer feel safe sending their children to school, especially without School Resource Officers present. Some students also feel unsafe on school grounds because of the gang violence on the Reservation, which often involves other juveniles, and the lack of law enforcement services to respond to threats. (Young Decl. ¶ 29, Doc. No. 3).

C. Tribal health care costs have increased because of the increased number of overdoses and injuries sustained from assaults, domestic violence and other crimes. (Young Decl. ¶ 30, Doc. No. 3).

D. The Tribal economy is negatively impacted as new businesses are not attracted to high crime areas. The businesses that are located on the reservation must spend additional funds to protect their employees and property. Some have even chosen not to remain open at night. (Young Decl. ¶ 31, Doc. No. 3).

77. These impacts and consequences are the result of the Defendants' failure to uphold their statutory, trust, and treaty obligations to provide competent and effective law enforcement on the Reservation.

78. The crisis in law enforcement created by Defendants' failure to adequately fund law enforcements services on Pine Ridge, or to deploy additional federal resources, is escalating. In 2022, there has been an in increase in the numbers of murders, assaults, and increased drug trafficking activity that has created a public safety crisis on the Reservation. More dangerous drugs and more sophisticated drug dealers have entered the Reservation. Crime has increased substantially, and guns are now carried by many criminals. (Rodriguez Decl. ¶¶ 27, 32, Doc. No. 4). Between July 4, 2022, and September 7, 2022, alone Tribal police responded to calls involving: five homicides, four shootings, four stabbings, three sexual assaults, and five violent assaults. (Young Supp. Decl. ¶¶ 10-14). In the month of July 2022, there were fifty-eight missing persons reports and 159 calls for domestic violence. (Young Supp. Decl. ¶ 8).

79. The average overtime for Tribal law enforcement officers from January through June 2022 is approximately 80 hours per month (on top of their scheduled 160 hours) for a total of 240 hours of work per month. (Young Decl. ¶ 54, Doc. No. 3). This does not count their travel hours to and from the workplace. *Id.*

80. There were 285 missing persons reports received by the Tribe from January through June 2022. Of these reports, two resulted in questionable deaths in February 2022 alone. (Young Decl. ¶ 55, Doc. No. 3).

81. From January through June 2022, there have also been a total of 308 gun-related calls to tribal dispatch, and 49 reports of rape. (Young Decl. ¶ 56, Doc. No. 3).

V. The Tribe's Base Law Enforcement Funding under the ISDEAA

82. The public safety commitments that the federal government made in the 1825 Treaty, the 1851 Treaty, and Articles I & V of the 1868 Treaty; the promises to protect each Tribal individual's right to "property, person, and life" Congress made in the 1877 Act; and the minimum required to meet that commitment articulated by its adoption of the DOJ's Uniform Crime Data average as its national Indian law enforcement standard (and utilizing that standard in its 2011-2019 TLOA reports to Congress) establish a direct relationship between the number of E-911 calls made on the Pine Ridge Indian Reservation and the number of law enforcement officers needed to answer those complaints in an effective manner. Defendants currently are failing to meet that standard in providing law enforcement at the Pine Ridge Reservation.

83. In fact, currently the BIA has no treaty, trust, or needs-based method for determining the base amount of law enforcement it should be providing to the Tribe. (*See generally* Exhibit D1 at p. 3; D2-D6 at p. 2) (noting the historic funding base for its law enforcement funding).

84. Prior to 1998, BIA unilaterally chose to provide tribes with their BIA law enforcement funding through a process called the Tribal Priority Allocation System ("TPA"). TPA is a budget allocation system that provides a tribe with a lump sum of money derived from combining the federal appropriations from a variety of BIA programs. Once these funds are combined, the TPA system allows a tribe to allocate its share of those funds to a

predetermined list of BIA functions, i.e., tribal government operations, human services, child welfare, and (until 1999) law enforcement.

85. In the late 1990's, the DOJ had started making it easier for tribes to apply for and receive short term, highly specific, law enforcement grants from that agency. As DOJ started to provide this short-term funding for law enforcement activities, the Tribe's dependence on the BIA's law enforcement monies, which were at the time being deposited into that lump sum TPA account, decreased temporarily and the Tribe was able to divert more TPA monies into other pressing areas of need, such as social services. (DuBray Decl. ¶ 7-8, Doc. No. 7).

86. Starting in 1998, DOJ offered the Tribe a short-term demonstration program to help better address crime and public safety problems. (DuBray Decl. ¶ 5, Doc. No. 7). This DOJ grant was called the Comprehensive Indian Resources for Community and Law Enforcement ("CIRCLE"). This DOJ effort was expanded when the Tribe was awarded other CIRCLE related DOJ funding from its Community Oriented Policing Services (COPS) program and other DOJ funded programs.

87. The Tribe applied for and accepted these CIRCLE and COPS funds with the full encouragement of both BIA and DOJ, and with the understanding that BIA would absorb the costs of those additional law enforcement positions when the grants ran out. In fact, DOJ, as a condition to awarding the grant, required the Tribe to articulate who would cover the costs of the COPS-funded officers after the COPS grant expired. The Tribe included, and both the BIA and DOJ were aware that it included, in its grant applications a clear statement that the cost of those officers would be absorbed by the BIA's law enforcement program. DOJ never questioned these statements.

88. Instead, in calendar year 2006, the BIA requested and received funding to begin absorbing some of those tribal officers whose costs were then funded by DOJ COPS grants, and which were slated to expire. FY 2006 Budget Justification, United States Department of the Interior, BIA at BIA-SUM-13 (Attached as Exhibit E). Then in 2007, the BIA advised the Congress that "The Bureau is currently pursuing an MOU with the DOJ COPS office to address expiration of grants and the distribution of grants for new resources." FY 2007 Budget Justification, United States Department of the Interior, BIA at PSJ-4 (Attached as Exhibit F). **The additional officers that the DOJ had been funding at the Pine Ridge Reservation were never absorbed by the BIA.**

89. These COPS grants had been funding more than 50 additional law enforcement officers at the Pine Ridge Reservation, and reduced on-reservation crime for the five-year period that they were in effect. (DuBray Decl. ¶ 6, Doc. No. 7).

90. Thus, short term grants from DOJ were funding a significant percentage of the police force on the Pine Ridge Reservation in 1999-2006.

91. In 1998-1999, BIA unilaterally decided to move all its law enforcement funding out of the TPA funding system and re-established that funding as the budget for a separate OJS-operated law enforcement program. (DuBray Decl. ¶¶ 6-9, Doc. No. 7).

92. The Tribe was not, at first, worried about this because it had a full police force funded by the Defendant, United States, mostly from DOJ, and understood that the costs for those Oglala law enforcement positions funded by the DOJ would be absorbed by the BIA and added to its base budget when those COPS grants expired. However, the BIA did not absorb the costs for the COPS-funded law enforcement positions once the COPS grants expired.

93. The BIA not only failed to provide funding for the costs of those DOJ funded law enforcement positions, it also chose to treat the amount of funding that the Tribe took out of its TPA allocation for law enforcement in 1999 (when those DOJ funds were already funding more than 50% of its tribal officers,) as the Tribe's new base budget for all OJS law enforcement activities from that point forward. (Young Decl. ¶¶ 32-33, Doc. No. 3). In other words, the BIA knowingly established the Tribe's base law enforcement budget from 1999 to the present using an amount that BIA knew was artificially low due to the fact that the Tribe had been temporarily receiving CIRCLE and COPS grant funding to pay for over 50% of its law enforcement needs.

94. When the BIA failed to adjust the Tribe's base budget to fully accommodate the loss of those short-term DOJ-funded officers, BIA ignored its treaty and trust duties and the role that those DOJ CIRCLE, COPS, and the other DOJ short term programs were temporarily playing in the fulfillment of the federal government's trust and treaty responsibilities to the Oglala Sioux Tribe.

95. This single, arbitrary BIA decision, which it continues to repeat annually, results in BIA's base funding for law enforcement services on the Pine Ridge Reservation remaining arbitrarily low, causing Defendants to remain out of compliance with their duties created in the 1825, 1851, and 1868 Treaties and reinforced/defined in BIA's minimum standards and subsequent federal statutes. (DuBray Decl. ¶ 9, Doc. No. 7).

96. Equally arbitrary is the fact that the BIA's calculation of the estimated Indian law enforcement service population in the Dakotas has remained the same ever since 2011. (Exhibit D1 at p. 8; D2-D6 at p. 6). This is despite the fact that plaintiff, and many of the tribes in the Dakotas, added new members and businesses, expanded their programs and

services, added new HUD housing clusters, and the oil boom took place on the Fort Berthold Reservation.

97. Even though the BIA's own data shows that the Oglala Sioux Tribe needs more than 112 police officers to fight on-Reservation crime, its current BIA law enforcement TPA base funding has not changed since 1999, when that base funding was artificially low due to the Tribe's temporary receipt of DOJ grant funding for law enforcement. (DuBray Decl. ¶ 9, Doc. No. 7; Young Decl. ¶¶ 32, 35, Doc. No. 3).

98. Even 112 officers are far too low when compared with what has been determined to be currently necessary in surrounding jurisdictions. The Rapid City, South Dakota, police department, which has a budget of $19.6 million, has 176 officers, yet in 2021 it responded to fewer police calls (114,816 calls). *Rapid City Police Dep't*, The City of Rapid City S.D., https://www.rcgov.org/departments/police-department.html (last visited Sept. 26, 2022). Aberdeen, South Dakota, has 47 officers, and the State of Connecticut, which is about the same size geographically as the Pine Ridge Reservation, has 6,534 municipal police officers. *Police*, Aberdeen, S.D., https://www.police1.com/law-enforcement-directory/police-departments/aberdeen-police-department-aberdeen-sd-OaFyvyRIjagW0iH7/ (last visited Sept. 26, 2022); Rute Pinho, *No. of Mun. Police Dep'ts in Conn.*, Conn. Gen. Assembly, Off. of Legis. Rsch. 1, https://www.cga.ct.gov/2022/rpt/pdf/2022-R-0025.pdf. (last visited Sept. 26, 2022).

99. The current BIA base funding has no relationship to the Tribe's actual need for law enforcement services and fails to uphold the federal government's treaty duties of providing effective law enforcement to the Tribe on the Reservation. (DuBray Decl. ¶ 10,

Doc. No. 7). In fact, the BIA has no methodology to award its base funding based upon current need.

100. By continuing to assign a base funding amount to the Tribe based upon the Tribe's 1999 TPA law enforcement budget the BIA continues to act in an arbitrary and capricious manner, and such ongoing actions continue to have deadly consequences.

VI. Notice to Defendants of the United States' Failure to Fulfil Law Enforcement Treaty Obligations

101. The Tribe has repeatedly reminded the federal government of its treaty and trust law enforcement obligations and has informed Defendants of its 1999-based funding errors in meetings with DOI, OJS, and the White House, yet the problems remain unaddressed. (DuBray Decl. ¶¶ 13, 16-17, Doc. No. 7; Rodriguez Decl. ¶ 35, Doc. No. 4; Young Decl. ¶¶ 40-45, Doc. No. 3).

102. For example, in fulfilling its notice obligations under Articles I and V of the 1868 Treaty, the Tribe notified BIA Superintendent Douville that both she and the Federal Government were in violation of Articles I and V of the 1868 Fort Laramie Treaty. (Killer Decl. ¶ 12, Exhibit 4, Doc. No. 5).

103. The Tribe has met with federal officials in BIA, OJS and the Department of the Interior repeatedly to notify the Defendants of the rampant unaddressed shortfalls in law enforcement funding, the resulting crimes and related impacts occurring on the Reservation, and to request the Defendants to fulfill their Treaty and statutory obligations. (Killer Decl. ¶ 8, Doc. No. 5); (DuBray Decl. ¶ 17, Doc. No. 7).

104. The Tribe has also placed both monthly crime and drug violation reports into the federal National Incident-Based Crime Reporting System ("NIBRS"), a software database operated by the OJS in conjunction with the Federal Bureau of Investigation for many

years. These reports, that show the volume and types of demands for police services that are received at the Pine Ridge Reservation, are available to all Defendants.

105. Additionally, BIA Superintendent Douville receives regular in-person or telephonic reports from the Tribal Council about the on-reservation public safety crisis on the Pine Ridge Reservation. The Superintendent also receives information on current on-reservation crimes when attending or listening to the Oglala Sioux Tribal Council and its Tribal Law and Order Committee meetings, which are regularly broadcast on the local KILI Radio Station and online. (Rodriguez Decl. ¶ 35, Doc. No. 4; Young Decl. ¶¶ 44-45, Doc. No. 3).

VII. Current Violations of the Indian Self Determination and Education Assistance Act

106. Under ISDEAA, the Secretary is directed "upon the request of any Indian tribe by tribal resolution, to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer" programs, services, functions, and activities administered by the Secretary. 25 U.S.C. § 5321(a)(1).

107. ISDEAA also requires that the "amount of funds provided under the terms of self-determination contracts . . . shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract…." 25 U.S.C. § 5325(a)(1). For the Tribe, this is the amount required to fulfill the Secretary's duties of providing competent law enforcement under the Treaties, the ILERA, and the TLOA.

108. The Tribe has, for over 40 years, contracted with the Secretary under ISDEAA to administer the Secretary's exclusive law enforcement duties owed to the Tribe on the Reservation and has consistently complained about the inadequate contract amount the

government was offering. (DuBray Decl. ¶¶ 17, 21, Doc. No. 7; Young Decl. ¶ 8, Doc. No. 3).

109. When the Tribe's pre-existing ISDEAA contract covering law enforcement and criminal investigations expired and, following a series of mutually agreed-upon extensions, the Tribe requested new contract negotiations on December 27, 2021. (Young Decl. ¶ 47, Doc. No. 3).

110. In its renewal proposal, the Tribe, recognizing that the BIA was in the middle of a Congressionally imposed Continuing Resolution and that it needed funding quickly, only requested small increases in funding in two separate ISDEAA contracts: one for law enforcement and one for criminal investigations. (Young Decl. ¶ 48, Doc. No. 3). For these two reasons only, the increases sought were not based on the Tribe's actual need or the BIA that 2.8 officers per 1,000 persons, but rather on what the Tribe hoped would be minimum, non-controversial, increases and additional help. *Id.*

111. ISDEAA requires that "In negotiation of contracts and funding agreements, the Secretary shall (1) at all times negotiate in good faith to maximize implementation of the self-determination policy; and (2) carry out this chapter in a manner that maximizes the policy of tribal self-determination." 25 U.S.C. § 5321(f).

112. ISDEAA also provides that "The amounts of such contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization." 25 U.S.C. § 5324(c)(2). If the Secretary declines a contract, she may do so only on "written notification . . . that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that--

A. the service to be rendered to the Indian beneficiaries of the particular program or function to be contracted will not be satisfactory;

B. adequate protection of trust resources is not assured;

C. the proposed project or function to be contracted for cannot be properly completed or maintained by the proposed contract;

D. the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 5325(a) of this title; or

E. the program, function, service, or activity (or portion thereof) that is the subject of the proposal is beyond the scope of programs, functions, services, or activities covered under paragraph (1) because the proposal includes activities that cannot lawfully be carried out by the contractor."

Id.

113. Instead of offering the amount required to fulfill its treaty and statutory obligations, declaring that the amount requested was inadequate based on the Tribe's current crime statistics, service population, and current scope of jurisdiction, or even conducting the good faith negotiations required by the ISDEAA, including its obligation to hold open and honest conversations about the funding required and provide such funding as required to uphold the federal government's treaty and trust duties, the Secretary, on January 28, 2022, issued two largely duplicate partial denial letters which contained highly dismissive language. (Killer Decl. ¶ 5, Doc. No. 5).

114. One letter addressed the Tribe's contract proposal related to Criminal Investigations, Missing and Murdered Indigenous Persons, Drug Enforcement, and Internal Affairs ("CI Letter"). (Killer Decl. ¶ 5, Exhibit 1, Doc. No. 5). The second addressed the Tribe's contract proposal related to Law Enforcement and School Resource Officer ("LE Letter"). *Id.* at Exhibit 2. Both letters advised the Tribe that the proposed contracts were "over the direct Secretarial amount funded under the previous contract (Contract No.

A20AVOO269) amount from 2021." (Killer Decl. ¶ 5, Exhibits 1, 2 at p. 1, Doc. No. 5,). The letters also advised the Tribe that the proposed contracts included a request to add new programs (specifically a Missing and Murdered Indigenous Persons function, a Drug Enforcement function, Internal Affairs function, expanded criminal investigations program, and School Resource Officer) which the "BIA OJS does not have a contractible amount of funding that can be contracted by any one individual tribe . . . . " *Id.* at Exhibit 1, p. 2 and Exhibit 2, p. 1.

115. In the January 28, 2022 letters, the OJS further recommended, inter alia, five things: (1) change the contract periods from one to three years; (2) revise and re-submit proposed budgets that concur with the previous amount funded in FY 2021 and the FY 2022 contract extension; (3) re-submit a proposal which removes the Missing and Murdered function, the Drug Enforcement function, the Internal Affairs function, and the School Resource Officer function; (4) re-submit a proposal that incorporates the same provisions that exist today to carry out the Criminal Investigations and Law Enforcement functions. (Killer Decl. ¶ 6, Doc. No. 5). The CI Letter also asked the Tribe to explain why it was asking for $25,000 under the heading of Treatment/Client, which the BIA fully understood from past conversations with the Tribe's Chief of Police was for stress and mental health counseling for those tribal officers who were working under extremely stressful conditions, need professional counseling, and who were willing to seek that professional help. *Id.* at Exhibit 1, p. 3.

116. The Oglala Sioux Tribal Council reviewed those two letters and the BIA OJS recommendations, and concluded that they were a violation of ISDEAA's "good faith" contract negotiations, and the Defendants' treaty, trust, and statutory obligations, and

decided not to provide the re-submittals or responses the BIA had requested. (Killer Decl. ¶ 7, Doc. No. 5).

117. Instead, when the BIA contacted the Tribe's Chief of Police by telephone, the Chief of Police was instructed to advise OJS District 1 and the Tribe's Awarding Official of the Tribal Council's position. (Killer Decl. ¶ 8, Doc. No. 5). Immediately thereafter, the Tribal President and other Members of the Oglala Sioux Tribal Council then traveled to Washington, D.C. and met personally with Defendant Haaland; Senior White House Director of Tribal Affairs, Paa Wee Rivera; and Principal Deputy Assistant Secretary of Indian Affairs, Wizipan Garriott during the first week of March 2022. *Id*. During all of those meetings, the Tribal President and Tribal Council members "presented our recent crime statistics, advised Defendants of how the BIA OJS's underfunding was impacting the Tribe and its Tribal Members, and requested their help." *Id*. Despite these meetings, Defendants took no actions to increase law enforcement funding or to provide any additional law enforcement staff or services to the Tribe. *Id.* at ¶ 9.

118. Instead, on March 30, 2022 the Secretary issued two partial denial letters, one for the tribally proposed law enforcement contract and one for the tribally proposed criminal investigations contract. The March 30, 2022, Partial Declination final decision letters are attached hereto as Exhibits A and B (hereinafter "March 30, 2022, Partial Declination Letters").

119. After receiving these March 30, 2022, Partial Declination Letters, on April 1, 2022, the Tribe conditionally agreed to accept the contract portions not declined and advised Defendants that it was exploring its legal options to appeal. (Killer Decl. ¶ 11, Exhibit 3, Doc. No. 5).

120. On April 13, 2022, the Tribal President Kevin Killer issued formal written notice to Gina Douville, Superintendent of the Pine Ridge Agency, that the "United States is in flagrant violation of Articles 1 and 5 of the 1868 Treaty of Fort Laramie in that it has refused to engage in reasonable efforts to preserve the peace on the Pine Ridge Indian Reservation by assuring the proper level of law enforcement and criminal investigations services required to protect the people and property of the Oglala Sioux Tribe and its members." (Killer Decl. ¶ 12, Exhibit 4, Doc. No. 5).

121. Both of the March 30, 2022, Partial Declination Letters failed to consider: (1) the number of E-911 calls (1868 treaty "complaints") received on the Pine Ridge Reservation, (2) the crime and drug numbers provided by the Tribe's monthly law enforcement reports, (3) the unreasonableness of having 33 police officers respond to over 133,755 emergency 911 calls across 5,400 square miles of the Reservation; (4) the federal government's statutory duties and obligations under the ILERA and the TLOA; (5) the United States' 1825, 1851 and 1868 Treaty obligations or its trust responsibilities to the Tribe; (6) the BIA's minimum required law enforcement coverage of 2.8 officers per 1,000 service population: or even (7) the law enforcement issues that the Oglala Sioux Tribe has consistently raised in meetings with OJS and DOI representatives for over 23 years.

122. Both March 30, 2022, Partial Declination Letters state: "We have completed our review of the Proposal, and for the reasons stated here, the BIA OJS **partially declines** the Proposal in accordance with 25 U.S.C. 5321(a)(2)(D) and (E) [which provide that the] . . . '*amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act.*'" Exhibits A, B (emphasis in originals).

123. In other words, according to BIA/OJS, the amount of funds requested in the Tribe's proposal was more than the Secretary would have otherwise provided for the operation of the programs, services, and activities under ISDEAA section 106(a)(1), 25 U.S.C. § 5325(a)(1), even though the Tribe's proposal was well below the BIA's standard of 2.8 officers per 1,000 persons for a competent, basic law enforcement program. Defendants have thus ignored the United States' treaty and trust responsibilities under the 1825, 1851 and 1868 Treaties and its own statutory obligations to enforce federal and tribal law as required by both the ILERA and the TLOA. (Killer Decl. ¶¶ 6-7 Doc. No. 5, Young Decl. ¶ 51 Doc. No. 3).

124. In the March 30, 2022, Partial Declination Letters, the Secretary also denied contract funds for additional tribal drug officers, tribal school resource officers ("SROs"), an internal affairs officer, and a missing and murdered indigenous persons ("MMIP") officer on the basis that "the proposal includes activities that cannot be lawfully carried out by the contractor." Exhibits A, B at p. 2. This determination was arbitrary and capricious for the following reasons:

A. First, the Tribe proposed carrying out only those drug enforcement, SRO, Internal Affairs, and MMIP contractible functions that are local in nature and would not interfere with the activities DOI is performing at a regional or national level. (Young Decl. ¶ 52, Doc. No. 3).

B. Second, the Tribe is currently performing federally funded drug enforcement, murder investigation and missing persons functions under its existing ISDEAA Law Enforcement Contract, but now need additional staff and funding to meet the increased case load for these responsibilities. *Id.* at 53.

C. Third, the Tribe was formerly funded for SRO's via its ISDEAA contracts, and local tribal school administrators, local tribal school boards and federal officials are encouraging all governments to "beef up" security and law enforcement activities at K-12 schools. Additionally, local tribally controlled schools are also seeking immediate police support at the entrances to their schools and at school sponsored events like football and basketball games. (Young Supp. Decl. ¶18). The law has not changed. Therefore, SROs, like drug enforcement and MMIP, is contractible and the "non-contractible" ground provided by the Secretary in her partial denial is not applicable. 25 U.S.C. § 5321(a)(2).

125. OJS's unilateral decision to make all school resource officers a part of the responsibilities of its own federal drug unit, composed exclusively of federal employees in Rapid City, ignores the intent of ISDEAA to allow the contracting tribe the right to make its own decision about how to utilize federal dollars most effectively. 25 U.S.C. § 5301(a)(1).

126. OJS's decision not to include School Resource Officer funding as a delegable duty and not to fund such positions also ignores the increased number of firearms tribal police have taken from juveniles in the last year, the gang related violence involving juveniles, and the threats that exist in all K-12 schools from active shooters in this country. It also ignores the federal government's existing obligation to address the other criminal activities taking place at on-reservation schools, including, but not limited to the following: thefts, violence, threats, attempts at suicide, and the use of non-federally banned substances, like gasoline and cleaning chemicals for obtaining a "high." None of these can be addressed by a federal drug unit in Rapid City. (Young Decl. ¶ 51, Doc. No. 3).

127. Although the OJS operates its own federally operated drug enforcement unit and its own federally operated MMIP Unit in South Dakota, both of those units are located over eighty (80) miles away in Rapid City and are rarely seen on the Reservation. (Young Decl. ¶ 52, Doc. No. 3).

128. In reviewing the Tribe's ISDEAA positions in this case, each provision of ISDEAA "shall be liberally construed for the benefit of the [Tribe]." *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 194 (2012) (*quoting* 25 U.S.C. § 5329(c) (Model Agreement § 1(a)(2)). "The Government, in effect, must demonstrate that its reading is clearly required by the statutory language." *Id.*

129. As a result of the actions and failures to act described herein, the Tribe has been and continues to be harmed.

130. The Tribe has exhausted all of its administrative remedies in this matter.

FIRST CLAIM FOR RELIEF

Violation of Treaty, Statutory, and Common Law Trust Duty: The United States' Failure to Provide Competent and Effective Law Enforcement Services

131. The Tribe realleges the preceding paragraphs and incorporates them by this reference.

132. By proposing, incorporating, and ratifying Article V of the 1825 Treaty, the 1851 Treaty, and the "bad men" clauses in Article I and Article V of the 1868 Treaty, and imposing federal criminal jurisdiction and federal law enforcement responsibility on the Pine Ridge Reservation, the United States obligated itself to provide a sufficient number of properly equipped law enforcement officers and criminal investigators on the Pine Ridge Reservation to ensure the timely investigation and reporting of all crimes, and the arrest and punishment of all offenders who violate federal law or otherwise threaten or harm the Tribe or its property, or the person or property of any tribal member.

133. This federal commitment was part of the explicit bargain exchanged for the Tribe curtailing its sovereign authority and practical ability to deal with criminal acts as it had been for centuries, to allow open passage thru Tribal lands and a guarantee of peace. It is the foundation of the trust obligation owed by Defendants to the Tribe to provide competent and effective law enforcement services.

134. Today, as in 1825, 1851, and 1868, the Pine Ridge Reservation remains under federal criminal jurisdiction and law enforcement authority. Today, as in 1877, this federal commitment is necessary to ensure the Tribe an orderly government and to ensure the safety of persons and property on the Pine Ridge Reservation.

135. Pursuant to the 1825, 1851 and 1868 Treaties, the 1877 Act, the 1921 Snyder Act, the Indian Law Enforcement Reform Act of 1990, and the Tribal Law and Order Act of 2010, Defendants have a specific, special trust duty to provide competent and effective law enforcement services to the Tribe and its members and promptly and diligently investigate and report crimes and immediately arrest and punish offenders.

136. Having bargained for and undertaken federal responsibility for law enforcement services on the Pine Ridge Reservation, the United States has a trust obligation to provide sufficient financial support to the Tribe for law enforcement services adequate to provide for competent and effective law enforcement.

137. The mechanism through which this trust obligation has been implemented since shortly after the enactment of the ISDEAA, has been, pursuant to that Act, to contract with Tribe for the Tribe to perform the law enforcement responsibilities and functions of the Secretary, the Bureau of Indian Affairs and the Office of Justice Services, and to provide the Tribe with funding equal to the amount that would be spent by the Secretary to directly provide

such functions in compliance with the Secretary's treaty and trust obligations.

138. The Defendants have implemented that program in such a manner as to make these treaty and trust obligations unobtainable on the Pine Ridge Reservation. (Young Decl. ¶¶ 18, 20, Doc. No. 3; Rodriguez Decl. ¶¶ 22, 28, 36, 37, Doc. No. 4).

139. The Defendants have breached and continue to breach their treaty obligations under the 1825, 1851, and 1868 Treaties and their trust duty to the Tribe and its members by providing law enforcement services to the Tribe at levels that fall substantially below the levels necessary for the effective law enforcement that is required by Articles I and V of the 1868 Treaty and the BIA's minimum law enforcement standards.

140. There is a substantial controversy between the Tribe and Defendants of sufficient immediacy and reality to warrant the issuance of a declaratory judgment pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201.

141. The Tribe asks this Court to declare that the proper interpretation and construction of the obligations undertaken by and through the 1825 Treaty, the 1851 Treaty, the 1868 Treaty, the 1877 Act, the 1921 Snyder Act, the ILERA and the TLOA, and the trust relationship between the United States and the Tribe thereunder, is that the United States is legally obligated to provide for and to ensure competent and effective law enforcement to the Tribe within the Pine Ridge Reservation.

SECOND CLAIM FOR RELIEF

Breach of Trust Responsibilities to Provide an Accounting

142. The Tribe realleges the preceding paragraphs and incorporates them by this reference.

143. A Tribe may bring a claim for mismanagement and accounting in the District Court. *Cobell v. Babbitt*, 30 F.Supp.2d 24 (D.D.C. 1998).

144. The Defendants have an obligation to not take actions or fail to act in a manner that results in the "termination of any existing trust responsibility of the United States with respect to the Indian people." 25 U.S.C. § 5332.

145. The Defendants also have an obligation "to not to reduce funds to make funding available for contract monitoring or administration by the Secretary." 25 U.S.C. § 5325(b)(1).

146. The request to require accounting of law enforcement dollars appropriated by Congress is a request for specific remedies, which are an attempt to give the Tribe the thing to which it is entitled. *Modoc Lassen Indian Hous. Auth. v. United States Dep't of Hous. & Urban Dev.*, 881 F.3d 1181 (10th Cir. 2017). The Tribe is entitled to request and review Defendants' use of law enforcement funds to ensure the Defendant is abiding by federal laws.

147. By controlling and supervising law enforcement funding through federal actions, Defendants have undertaken a fiduciary relationship to the Tribe. *United States v. Mitchell*, 463 U.S. 206, 225 (1983). The fiduciary relationship exists regardless of whether there is express language under a statute or other fundamental document about a trust fund, or a trust or fiduciary conditions. *Id*. In fact, all funds held by the United States for Indian tribes are held in trust. *Rogers v. United States*, 697 F.2d 886, 890 (9th Cir. 1983).

148. The Defendants have an obligation to perform a complete historical accounting of assets. *Cherokee Nation v. United States Dep't of Interior*, 531 F.Supp.3d 87, 99 (D.D.C. 2021) (quoting *Cobell v. Norton*, 240 F.3d 1081, 1102 (D.C. Cir. 2001). This report "must contain sufficient information for the beneficiary readily to ascertain whether the trust has been faithfully carried out." *Id.*

149. The Defendants use of 1999 TPA funding levels for law enforcement as its base law enforcement budget for the Tribe has prejudiced the Tribe because the Tribe's 1999 TPA law enforcement budget was abnormally low, resulting from the Tribe's participation in the DOJ CIRCLE, COPS and other short-term DOJ grant programs.

150. The Defendants use of 1999 TPA based funding levels and 2013 BIA Labor Force Report service population numbers has resulted in an arbitrary and capricious distribution of law enforcement funds and services and unfair treatment of the Tribe in relation to other tribes.

151. The March 30, 2022, Partial Declination Letters, including the Tribe's proposal to operate the SRO, DDE, MMIP, and IA programs, were based on arbitrary and capricious base funding levels and service population numbers.

152. An accounting of the use of funds requested from and allocated by Congress under the TLOA, the ILERA, and the 1921 Snyder Act for law enforcement services from 1998 to the present time is a basic obligation of the Defendants in fulfillment of their treaty and trust responsibilities to the Tribe.

153. The Tribe requests a Declaratory Judgment that the Defendants have a trust obligation to provide an accounting to the Tribe of the funds and uses of funds appropriated to Defendants by Congress for law enforcement services from 1998 to the present time.

154. The Tribe requests an order compelling the Defendants to provide a detailed accounting to the Tribe of its appropriations requests to the Department of the Interior (DOI), to OMB and to the Congress and the responses thereto, and of the funds received and used by each individual division of BIA and OJS from 1998 through the present date for law enforcement services. This accounting should include the following: 1) all OJS requests to DOI for inclusion in the President's budget request to Congress, and all responses thereto;

2) all requests made from DOI to OMB for the same purpose, and the responses thereto; 3) all direct, contracted and administrative funding provided to OJS by the Congress and/or DOI, including all specialty programs (including, but not limited to, the Drug Task Force, MMI Task Force, Police Academy, Internal Affairs Division, each District Office and each tribal law enforcement location (whether direct service or Tribally contracted)). Such accounting shall be by Tribe or location, fiscal year, amount, and scope of work, and shall note the service population of each tribe or location served by OJS; 4) all payments of bonuses, special employee awards, or incentive payments made to federal OJS employees; and 5) the GS Ratings for all OJS full-time equivalent employees; and 6) such other accounting information as the Court deems appropriate.

THIRD CLAIM FOR RELIEF

Declination of Law Enforcement and Criminal Investigations Programs in Violation of ISDEAA, 25 U.S.C. § 5301 et seq.

155. The Tribe realleges the preceding paragraphs and incorporates them by this reference.

156. The ISDEAA requires the "amount of funds provided under the terms of self-determination contracts . . . shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof for the period covered by the contract…." 25 U.S.C. §5325(a)(1). It also requires that the Secretary "at all times negotiate in good faith to maximize implementation of the self-determination policy." (25 U.S.C. § 5321 (f)(1)) and specifically provides that ISDEAA contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization." 25 U.S.C. § 5324(c)(2).

157. The Secretary is required to approve a proposed ISDEAA contract, and such contract is deemed approved (25 C.F.R. §900.18), unless she provides within ninety days from receipt

of the proposal "written notification to the applicant that contains a specific finding that clearly demonstrates that, or that is supported by a controlling legal authority that" the proposal is declined under one or more of four specific circumstances. 25 U.S.C. §5321(a)(2); *see also* 25 C.F.R. §900.29 (requiring from the Secretary a "specific finding that clearly demonstrates . . . together with a detailed explanation of the reason for a decision to decline the proposal and, within 20 days, any documents relied on in making the decision . . . .")

158. Defendant Lopez's March 30, 2022, Partial Declination Letters contain no specific findings or detailed explanation of the reason for the declination of the Tribe's proposal to operate the law enforcement ("LE") and criminal investigation ("CI") programs. The letters merely parrot the statutory language by finding that "the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act." Exhibits A, B at p. 1. The letters neither provided any details nor documentation of the determination of the section 106(a)(1) amount claimed to have been exceeded, which is the sole ground for refusal. There is also no explanation as to why the Tribe is tied to the dollar amount claimed to have been exceeded, particularly in light of the lump sum appropriated to the BIA by Congress and the obligations undertaken by Defendants in the Tribe's treaties.

159. The March 30, 2022, Partial Declination Letters also reference letters to the Tribe dated January 28, 2022. As with the March 30 letter, those letters also fail to provide a detailed explanation and the documents relied on by Defendants in making their determination, merely stating instead that the amount sought for the programs "is significantly different than the previously approved [annual funding agreements]." (Killer Decl. Exhibits 1-2 pg.

2). Those letters also fail to articulate the section 106(a)(1) amount that Defendants allege is exceeded by the Tribe's proposals.

160. Stating that the amount sought for the programs is in excess of the previously approved annual funding agreement does not, however, "clearly" demonstrate with a "detailed explanation" why the Tribe is tied to the previous year's funding, especially when that funding is tied to what has been shown to be incorrect and incomplete information. It also does not meet treaty or trust obligations and is based upon an artificially low base contract amount arbitrarily and capriciously assigned to the Tribe by BIA over twenty years ago. Any statutorily sufficient explanation must, at a minimum, address how Mr. Lopez arrived at his determination of the 106(a)(1) amounts for the Law Enforcement and Criminal Investigation programs so that the Tribe may determine why its proposals are in excess of those amounts. Merely stating that it is in excess of the previous year's annual funding agreement is not a clear, detailed explanation, particularly when the previous year's funding is also inadequate.

161. The Tribe submitted its proposals to amend the contract and the Annual Funding Agreements ("AFA") for the fiscal year 2022 by letter dated December 27, 2021, which was acknowledged and received by BIA on December 30, 2021. Although Mr. Lopez's letters of March 30, 2022, were issued within 90 days (the time period within which any declination must be issued), they do not meet the statutory or regulatory requirements for an effective declination of the Tribe's proposals.

162. The 90-day period within which the Secretary is permitted to decline has passed; it expired on March 30, 2022.

163. The Tribe requests a declaratory judgment that the partial declinations of funding for the Tribe's Law Enforcement and Criminal Investigation programs violates the ISDEAA, 25 U.S.C. §§ 5321(a)(1)(E) and (a)(2) and 25 C.F.R. §900.29.

164. The Tribe also requests an order requiring the Secretary to (1) approve the Tribe's proposed contracts to operate the Law Enforcement and Criminal Investigation programs and approve the Tribe's proposed Annual Funding Agreements for FY 2022 related to those programs; (2) award the amended contracts and the new AFAs as proposed for the operation of those programs; and (3) add to the contracts the full amount of Title I funds pursuant to section 106(a)(1) of the ISDEAA for the operation of those programs.

FOURTH CLAIM FOR RELIEF

Declination of SRO, DDE, MMIP, and IA Programs in Violation of the ISDEAA, 25 U.S.C. § 5301 et seq.

165. The Tribe realleges the preceding paragraphs and incorporates them by this reference.

166. Mr. Lopez's March 30, 2022, Partial Declination Letters do not contain any specific findings or any detailed explanation of the reason for the declination of the Tribe's proposal to operate the SRO, Division of Drug Enforcement ("DDE"), MMIP, and Internal Affairs ("IA") functions. Exhibits A, B. The letters do not comply with the statutory or regulatory requirements for denying an ISDEAA contract under 25 U.S.C. §5321(a)(2) and 25 C.F.R. §900.29, as they merely quote a basis for declination from the law, stating that the programs are central office functions "ineligible for contracting." Exhibits A, B. The letters include no specific finding clearly supporting the ground recited, offer no detailed explanation of the facts on which the conclusions reached by the agency were based, nor cite to controlling legal authority that clearly demonstrates why the listed declination criteria apply.

167. Mr. Lopez's March 30, 2022, letters continue his disregard for the requirements of ISDEAA and its regulations. Simply noting to the Tribe that the SRO, DDE, MMIP, and IA programs are central office functions that may not be lawfully carried out by the Tribe does not meet the requirements of 25 U.S.C. §5321(a)(2); 25 C.F.R. §900.29. This decision ignores the fact that the Tribe sought only to contract the local portions of the programs, those necessary for their day-to-day operation and for the health and safety of the Tribal community.

168. The Tribe submitted its proposals to amend the contracts and for Annual Funding Agreements for the fiscal year 2022 by letter dated December 27, 2021, which was acknowledged and received by BIA on December 30, 2022. Although Mr. Lopez's letters of March 30, 2022, were issued within 90 days (the time period within which any declination must be issued), they do not meet the statutory or regulatory requirements for an effective declination of the Tribe's proposals.

169. The 90-day period within which the Secretary is permitted to decline has passed; it expired on March 30, 2022.

170. The Tribe requests a declaratory judgment that the partial declination of funding for the SRO, DDE, MMIP, and IA programs in the Tribe's proposals to operate the SRO, DDE, MMIP, and IA programs violates the ISDEAA, 25 U.S.C. §§ 5321(a)(1)(E) and (a)(2).

171. The Tribe also requests an order requiring the Secretary to: (1) approve the Tribe's proposed contracts to operate the SRO, DDE, MMIP, and IA programs and approve the Tribe's proposed Annual Funding Agreements for FY 2022 related to those programs; (2) award the amended contracts and the new AFAs as proposed for the operation of those

programs; and (3) add to the contracts the full amount of Title I funds pursuant to section 106(a)(1) of the ISDEAA for the operation of those programs.

FIFTH CLAIM FOR RELIEF

Declination of the Tribe's Proposals to Operate the LE and CI Programs in Violation of the ISDEAA, 25 U.S.C. § 5301 et seq.

172. The Tribe realleges the preceding paragraphs and incorporates them by this reference.

173. Even if Mr. Lopez's March 30, 2022, Partial Declination Letters were considered an effective declination, Defendants have not met their burden of proof, which is "to establish by clearly demonstrating the validity of the grounds for declining the contract proposal." 25 U.S.C. § 5321(e)(1).

174. Defendant Lopez's March 30, 2022, Partial Declination Letters recite the following declination criteria listed in Section 102(a)(2) of the ISDEAA in partially refusing the Tribe's Law Enforcement and Criminal Investigation programs: that "the amount of funds proposed under the contract is in excess of the applicable funding level for the contract, as determined under section 106(a) of the Act." Exhibits A, B at p. 1 (citing 25 U.S.C. § 5321(a)(2)(D)).

175. In the March 30, 2022, Partial Declination Letters, there is no discussion of how the ISDEAA Section 106(a)(1) base funding amount was "determined" or of what the Secretary would have provided had it run the Law Enforcement or Criminal Investigation program under its treaty and statutory obligations, which is what the Section 106(a)(1) amount requires. 25 U.S.C. § 5325(a)(1). Neither is there a discussion of whether the Law Enforcement or Criminal Investigations programs funded by the Section 106(a)(1) amount would be ineffective, unnecessary, or obsolete. Thus, the letters contain no consideration, much less determination, of what funding level is "applicable" under the ISDEAA, the

Treaties, or is necessary to carry out the standards required under the TLOA, the ILERA, and incorporated into the BIA Law Enforcement Handbook at 25 C.F.R. §§ 12.11, 12.14. There is no showing that the Tribe's proposal was excessive given its treaties and the demonstrated errors in the base funding amount being applied by Defendants. Mr. Lopez's failure to make a finding relevant to this criterion renders the partial declination deficient and arbitrary, capricious, and contrary to law.

176. The BIA and OJS decision to calculate the Tribe's section 106(a)(1) amounts using a base amount actually expended from TPA funds in 1999 renders Mr. Lopez's partial disapproval of the Tribe's contract proposals to operate its Law Enforcement and Criminal Investigations programs legally deficient and arbitrary. Nothing in the Treaties, the ISDEAA, the ILERA, or the TLOA authorizes or allows such an outcome.

177. The amount of funds required under ISDEAA section 106(a)(1) may not be determined arbitrarily. Such an interpretation would violate ISDEAA's requirement in section 106(a)(1) that the "amount of funds . . . [which] shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof *for the period covered by the contract*." 25 U.S.C. § 5325(a)(1) (emphasis supplied). The ISDEAA requires that the agency cannot simply pick a funding amount it used at any prior random point in time of its own choosing and impose that historic base funding amount on a Tribe as its current section 106(a)(1) determination. Rather, Congress directs that the section 106(a)(1) amount represents "what the Secretary would have provided for the operation of the programs" at the time of contracting. Given the current service population, the size of the Reservation, the Tribe's level of criminal activity, and the over 133,755 E-911 calls, this cannot be the amount calculated using the base funding

the Secretary provided more than twenty years ago, when relevant conditions were vastly different, and cannot be the amount provided during a point in time when the amount of funds the Secretary "would have otherwise provided" was temporarily and artificially lowered by a substantial amount due to outside short-term DOJ funding.

178. The Defendants' actions violate the purpose of the ISDEAA, which is to end the "prolonged Federal domination of Indian service programs" by giving "Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities." 25 U.S.C. § 5301(a)(1).

179. Defendants' actions and failures to take corrective action violate the ISDEAA's express statutory obligation to carry out a meaningful Indian self-determination policy, which transitions away from federal domination of programs for Indians to allow meaningful participation by Indian people in the planning conduct and administration of federal programs, and to further the goal of "supporting and assisting Indian tribes in the development of strong and stable tribal governments." 25 U.S.C. § 5302.

180. 25 U.S.C. § 5321(f) requires that the Secretary shall: "at all times negotiate in good faith to maximize implementation of the self-determination policy."

181. The Secretary's actions violate the duty of fair dealing in negotiating ISDEAA contracts by making a take-it-or-leave-it offer to the Tribe without any regard for the federal governments' treaty and trust obligations, or any arm's length negotiation.

182. The Secretary cannot claim "good faith" negotiations when its representatives are unwilling to discuss the contract price or the contract's scope of work.

183. The Secretary engaged in bad faith negotiations when she refused to negotiate the contracts incorporation of school resource officers, Missing and Murdered Indigenous Persons

functions, Internal Affairs, or additional drug officers. The Secretary also engaged in "bad faith" when she notified the Tribe that she was only willing to approve a specific contract amount for each contract, and arbitrarily reached the contract amount in the absence of any treaty considerations or contract negotiation whatsoever.

184. In the absence of any negotiations whatsoever, a take-it-or-leave-it letter does not meet the "good faith" requirements of 25 U.S.C. § 5321(f).

185. Imposing such an outcome also violates several Indian self-determination policies articulated by the Secretary of the Interior and the Congress, including the commitment to the following:

A. Afford tribes the flexibility and discretion needed to design contractable programs to meet the needs of their communities, 25 C.F.R. 900.3(b)(3); and

B. Interpret federal laws and regulations in a manner that facilitates the inclusion of programs or portions of programs for the benefit of Indians in ISDEAA contracts. 25 C.F.R. 900.3(b)(8).

C. That the amounts of such contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization." 25 U.S.C. § 5324(c)(2).

186. The Tribe requests that the Court enter an order finding that the March 30, 2022, partial declinations of the Tribe's proposals to operate the Law Enforcement and Criminal Investigations programs are arbitrary and capricious and otherwise not in accordance with law.

187. The Tribe requests a declaratory judgment that the Defendants, as a matter of law, were required to: (1) approve the Tribe's proposed contracts to operate the Law Enforcement

and Criminal Investigation programs and approve the Tribe's proposed Annual Funding Agreement for FY 2022 related to those programs; (2) award the amended contracts and the new AFAs as proposed for the operation of those programs; and (3) add to the contracts the full amount of Title I funds pursuant to section 106(a)(1) of the ISDEAA for the operation of those programs and (4) add to those contracts an amount appropriate to fulfill the United States' treaty and trust obligations to provide competent and effective law enforcement to the Tribe within the Pine Ridge Reservation.

188. The Tribe further requests the Court to enter an Order compelling agency action unlawfully withheld or unreasonably delayed pursuant to 5 U.S.C. § 706(1), namely compelling Defendants to: (1) approve the Tribe's proposed contracts to operate the Law Enforcement and Criminal Investigation programs and approve the Tribe's proposed Annual Funding Agreement for FY 2022 related to those programs; (2) award the amended contracts and the new AFAs as proposed for the operation of those programs; (3) add to the contracts the full amount of Title I funds pursuant to section 106(a)(1) of the ISDEAA for the operation of those programs; and (4) add to those contracts an amount appropriate to fulfill the United States' treaty and trust obligations to provide competent and effective law enforcement to the Tribe within the Pine Ridge Reservation.

SIXTH CLAIM FOR RELIEF

Declination of the Tribe's Proposals to Operate the SRO, DDE, MMIP, and IA Programs in Violation of the ISDEAA, 25 U.S.C. § 5301 et seq.

189. The Tribe realleges the preceding paragraphs and incorporates them by this reference.

190. The second declination criterion cited in the March 30, 2022, Partial Declination Letters decline the Tribe's proposals to operate the SRO, DDE, MMIP, and IA programs. Exhibits A, B at p. 2.

191. The declination criterion cited is that: "The program, function, service, or activity (or a portion thereof) that is the subject to the proposal is beyond the scope of the programs, functions, services, or activities covered under section 102(a)(1) of the Act because the proposal includes activities that cannot lawfully be carried out by the contractor." Exhibits A, B at p. 2 (citing 25 U.S.C. § 5321(a)(2)(e)).

192. The only justification Mr. Lopez gave is that that these functions are "central office functions carried out by BIA OJS to provide nationwide activities for Tribes and are ineligible for contracting under the ISDEAA." Exhibits A, B at p. 2.

193. As a reading of the Tribe's proposed contracts reveals, however, Mr. Lopez's statement is incorrect as a matter of law because the Tribe's proposal clearly purports to contract only the local portions of these functions and, Title B of the contract proposal describes the Program Standards the Tribe would follow in performing these programs and specifically obligates the Tribe to operate these programs in compliance with the BIA Law Enforcement Handbook. *See also*, 25 C.F.R. §§ 12.11, 12.14.

194. The ILERA states that, subject "to the provisions of this Act and other applicable Federal or tribal laws, the responsibility of the Division of Law Enforcement Services in Indian country *shall include*, . . . *in cooperation with appropriate . . . tribal law enforcement agencies, the investigation of offenses against criminal laws of the United States*." 25 U.S.C. § 2802(c)(2) (*emphasis added*).

195. Applicable federal or tribal laws do not limit this cooperative approach to law enforcement in Indian Country by removing the SRO, DDE, MMIP, and IA programs from tribal operations as Defendant Lopez appears to suggest.

196. In passing the TLOA, Congress expressly found that "tribal justice systems are often the most appropriate institutions for maintaining law and order in Indian country." 25 U.S.C. § 2801(2)(B).

197. The TLOA's purpose is "to empower tribal governments with the authority, resources, and information necessary to safely and effectively provide public safety in Indian country." *Id.* at (b)(3).

198. The ISDEAA requires the Secretary "to enter into a self-determination contract or contracts with a tribal organization to plan, conduct, and administer programs *or portions thereof* . . .." 25 U.S.C. § 5321(a)(1) (*emphasis added*).

199. Mr. Lopez's claim that the Tribe "cannot lawfully carry out" the local portions of the SRO, DDE, MMIP, and IA programs directly contravenes the Tribe's right to choose to contract only a portion of a program under ISDEAA, the cooperative mandate in the ILERA, and the purpose of the TLOA to empower tribal justice systems.

200. The Tribe had successfully operated the SRO, DDE, MMIP, and IA programs for years. (Young Decl. ¶ 40, Doc. No. 3). For Mr. Lopez to take the position that this is now illegal, with no analysis showing controlling legal authority to support that assertion, denies the Tribe its contracting rights under the ISDEAA and effectively repeals the "or portions thereof" option provided in ISDEAA. 25 U.S.C. § 5321(a)(1).

201. It is a violation of the ISDEAA for Mr. Lopez to assert that the Tribe may not contract the local portions of the SRO, DDE, MMIP, and IA programs because they are part of the agency's "nationwide activities." Such an outcome violates the Tribe's right to exercise its rights under 25 U.S.C. § 5321(a)(1), 25 U.S.C. § 2802, and 25 U.S.C. §2801(2)(B), especially in light of the Tribe's scope of work under its prior ISDEAA contracts.

202. Mr. Lopez's actions put the Tribe in the untenable—and unacceptable—position of both foregoing its right to an ISDEAA contract and impeding the Tribe's ability to engage in the day-to-day activities that are necessary to maintain law and order on the Reservation.

203. Mr. Lopez's action to decline that portion of the Tribe's contract proposal forces the Tribe to rely on the OJS's Rapid City-based Drug Task Force and a Missing and Murdered Indigenous Persons Task Force, both 80 miles away, to respond to a random drug sale and a missing persons call respectively. This is particularly serious when the Tribe receives an E-911 call about a missing person and the first 48 hours is critical. (Young Supp. Decl. ¶8).

204. Mr. Lopez's action to decline that portion of the Tribe's contract for local internal affairs also ties the Tribe's hands in investigating citizen complaints against police officers because OJS internal affairs investigations have generally taken up to a year to complete and have sometimes taken up to three years to complete. (Young Decl. ¶ 50, Doc. No. 3).

205. This delay has prevented Oglala Sioux Tribal officers from getting Special Law Enforcement Commissions while waiting for the results of the Indian Bureau of Internal Affairs' work and has caused problems for the working relationship between the Tribal police and members of the local community. *Id.*

206. The Tribe's contract proposal allows the Tribe to investigate and close internal investigations (other than possible Civil Rights violations), thereby allowing the Tribe to terminate or redeploy an officer in its already undersized police force, instead of waiting months to resolve a citizen's complaint.

207. Nothing in the ISDEAA, the ILERA, or the TLOA authorizes Mr. Lopez to decline to contract the services requested in the Tribe's proposal.

208. Mr. Lopez's refusal to contract the SRO, DDE, local MMIP, and IA programs directly contravenes the ISDEAA's express statutory commitment to carry out a meaningful Indian self-determination policy, which transitions away from federal domination of programs for Indians to allow meaningful participation by Indian people in the planning conduct and administration of federal programs, and to further the goal of "supporting and assisting Indian tribes in the development of strong and stable tribal governments." 25 U.S.C. § 5302(b).

209. 25 U.S.C. § 5321(f) requires that the Secretary shall: "at all times negotiate in good faith to maximize implementation of the self-determination policy." Mr. Lopez's refusal to contract the services discussed herein violates Section 5321(f). The Secretary cannot claim "good faith" negotiations when she was unwilling to discuss the contract price or the contract's scope of work prior to sending the partial denial letters.

210. The Secretary engaged in a bad faith negotiations when she notified the Tribe that she was only willing to approve a specific contract price and prior scope of work which she arrived at in the absence of any contract negotiation.

211. In the absence of any negotiations, two take-it-or-leave-it-letters do not meet the "good faith" requirements of 25 U.S.C. § 5321(f).

212. Mr. Lopez's declinations to contract the requested services violates the Indian self-determination obligations imposed under the ISDEAA, including the commitment to:

A. Afford tribes the flexibility and discretion needed to design contractable programs to meet the needs of their communities, 25 C.F.R. 900.3(b)(3); and

B. Interpret federal laws and regulations in a manner that facilitates the inclusion of programs or portions of programs for the benefit of Indians in ISDEAA contracts. 25 C.F.R. 900.3(b)(8).

C. "The amounts of such contracts may be renegotiated annually to reflect changed circumstances and factors, including, but not limited to, cost increases beyond the control of the tribal organization."

25 U.S.C. § 5324(c)(2).

213. The Tribe requests that the Court set aside the declinations of the Tribe's proposals to operate the SRO, DDE, and local MMIP, and IA programs as being arbitrary and capricious and otherwise not in accordance with law.

214. The Tribe also requests a declaratory judgment that Defendants, as a matter of law, were required to do the following: (1) approve the Tribe's proposed contracts to operate the SRO, DDE, and local MMIP, and IA programs and approve the Tribe's proposed Annual Funding Agreement for FY 2022 related to those programs; (2) award the amended contracts and the new AFAs as proposed for the operation of those programs; and (3) add to the contracts the full amount of Title I funds pursuant to section 106(a)(1) of the ISDEAA for the operation of those programs.

215. The Tribe further requests the Court to enter an Order compelling agency action unlawfully withheld or unreasonably delayed pursuant to 5 U.S.C. 706(1), namely compelling Defendants to: (1) approve the Tribe's proposed contracts to operate the SRO, DDE, and local MMIP, and IA programs and approve the Tribe's proposed Annual Funding Agreement for FY 2022 related to those programs; (2) award the amended contracts and the new AFAs as proposed for the operation of those programs; and (3) add to the contracts the full amount of Title I funds pursuant to section 106(a)(1) of the ISDEAA for the operation of those programs.

SEVENTH CLAIM FOR RELIEF

Violation of the APA, 5 U.S.C. § 701 et seq.

216. The Tribe realleges the preceding paragraphs and incorporates them by this reference.

217. Because through the 1921 Snyder Act "Congress specifically appropriated funds" for tribal law enforcement services while also placing, through the TLOA and the ILERA, "statutory conditions upon the expenditure" of those funds, Defendants' decisions related to the provision of tribal law enforcement services are judicially reviewable. *Yankton Sioux Tribe v. U.S. Dept. of Health and Human Services*, 869 F. Supp. 760, 765 (D.S.D. 1994).

218. Defendants arbitrarily and irrationally limited the Tribe's base contract amounts to the artificially low amounts set by the BIA over 20 years ago in 1999, which ignored its treaty and trust obligations, funds significantly fewer police officers on the Pine Ridge Reservation than the Defendants were funding in 1879, and calls for less officers than are prescribed by its own minimum standard of 2.8 officers per 1,000-service population. Such funding decision is arbitrary and capricious, an abuse of discretion, and contrary to the Tribe's rights.

219. The Defendants' base funding decisions violate ISDEAA's section 106(a)(1) obligation to provide the "amount of funds . . . [which] shall not be less than the appropriate Secretary would have otherwise provided for the operation of the programs or portions thereof *for the period covered by the contract*." 25 U.S.C. § 5325(a)(1) (emphasis supplied).

220. The ISDEAA does not permit Defendants to ignore the obligations the United States made in prior treaties and pick a funding amount it used more than 20 years ago and impose that historic base funding amount on a Tribe as its current ISDEAA section 106(a)(1) base funding amount. Rather, Congress directs that the section 106(a)(1) amount represents "what the Secretary would have provided for the operation of the programs" at the time of contracting. Given the Secretary's treaty and trust obligations, current law enforcement service population, the size of the Reservation, the distance between its residential

communities, the crime statistics, and the over 133,755 E-911 calls, this cannot be the amount which is based upon the amount the Secretary provided more than twenty years ago, when relevant conditions were vastly different, and cannot be the amount provided during a point in time when the amount of funds the Secretary "would have otherwise provided" was temporarily and artificially lowered by a substantial amount due to outside short-term DOJ funding.

221. The BIA and OJS March 30, 2022, partial declination decisions on the Law Enforcement and Criminal Investigations funding amounts violate the "Additional responsibilities" of the Secretary, BIA, and OJS pursuant to 25 U.S.C. § 2802(c) (carrying forward the 1825, 1851 and 1868 Treaty obligations of the United States Government to "enforce Federal law" through the investigation, arrest, and punishment of offenders).

222. Mr. Lopez's March 30, 2022, partial declination decision on the Law Enforcement and Criminal Investigations funding amounts violates the purpose of ISDEAA, which is to end the "prolonged Federal domination of Indian service programs" by giving "Indian people an effective voice in the planning and implementation of programs for the benefit of Indians which are responsive to the true needs of Indian communities." 25 U.S.C. § 5301(a)(1).

223. Mr. Lopez's decisions to calculate the Tribe's ISDEAA section 106(a)(1) amounts by using a base amount expended from TPA funds in 1999 renders its partial disapprovals of the Tribe's contract proposals deficient, arbitrary and capricious and otherwise not in accordance with law. Nothing in the ISDEAA, the ILERA, or the TLOA authorizes such an outcome.

224. Because Defendants failed to comply with their obligations under its treaties, the 1877 Act, the 1921 Snyder Act and implementing law in the ISDEAA, the ILERO and the TLOA, the Tribe is entitled to declaratory and injunctive relief under the APA, in addition to remedies that may be available directly under the ISDEAA, for Defendant's failure to adequately fund the Tribe's section 106(a)(1) amount for Law Enforcement and Criminal Investigation services.

225. For these reasons, the Tribe is entitled to a declaratory judgment that Defendants violated the APA, 5 U.S.C. § 701 *et. seq.*, by relying on an inaccurate, artificially lowered amount in determining the Tribe's base law enforcement and criminal investigations contract amounts and not making any determination as to the section 106(a)(1) amounts required for the "operation of the programs or portions thereof for the period covered by the contract" in violation of 25 U.S.C. § 5325(a).

226. The Tribe is also entitled to an order compelling agency action unlawfully withheld or unreasonably delayed pursuant to 5 U.S.C. § 706(1), namely compelling Defendants to comply with the statutory requirements of 25 U.S.C. § 2802 and 25 U.S.C. § 5325(a) by properly funding the Tribe's section 106(a)(1) amounts at a level sufficient to competently and effectively enforce Federal and Tribal law on the Reservation through investigation, arrest, and punishment of offenders.

PRAYER FOR RELIEF

WHEREFORE, the Tribe prays for the following relief:

1. A declaratory judgment stating that:

   A. The United States has a treaty and trust responsibility to provide competent and effective law enforcement to the Tribe and its members within the Pine Ridge Reservation, including the prompt and diligent investigation and reporting of all

complaints of crime, and the arrest and punishment of all offenders who violate federal or tribal law or otherwise threaten or harm the Tribe or its property, or the person or property of any tribal member;

B. Defendants have a statutory and trust obligation to the Tribe to provide for and adequately equip a sufficient number of law enforcement and criminal investigations officers on the Pine Ridge Reservation to reasonably ensure that Defendants' treaty, statutory and trust obligations are met, and that the Defendants are providing for the competent, prompt and diligent investigation and reporting of all complaints of crime, and the arrest and punishment of all offenders who violate federal or tribal law or otherwise threaten or harm the Tribe or its property, or the person or property of any tribal member, and that Defendants are violating those responsibilities to the Tribe; and

C. Defendant Lopez has violated 25 U.S.C. § 5321(a)(2)(E) by improperly declining those portions of the Tribe's programs that are contractable by the Tribe under 25 U.S.C. § 5321 (a)(1); and

D. Defendants have violated the APA and 25 U.S.C. § 5321(a)(2)(D) by partially declining those portions of the Tribe's contract proposals, which Defendants determined to be "in excess" of the applicable Section 106(a)(1) amounts, based upon an irrational, arbitrary, and unreasonable base amount that it unilaterally arrived at over twenty years ago, which is far below the Tribe's actual needs; far below the amount that the federal government obligated itself to in the 1825, 1851 and 1868 Treaties, the 1877 Act, and far below the amount that the BIA concluded was necessary in its own Gap Analysis (Exhibit C at p. 3) and its the OJS TLOA Reports to Congress (Exhibits D1-D-6). Additionally, that Defendants knew such amounts were based upon arbitrary and

incomplete information that Defendants chose at a time when they knew that the Tribe was supplementing its law enforcement services budget with temporary and long since expired DOJ grant funds; and

E. Defendants violated their trust duty owed to the Tribe arising under the 1825, 1851, and 1868 Treaties, as carried forward in the 1921 Snyder Act, the ILERA , the TLOA, and federal common law, to ensure that the law enforcement services provided to the Tribe are competently and effectively carried out in a manner that reasonably ensures the investigation and reporting of all crimes, and the timely arrest and punishment of offenders; and

F. Defendants' inadequate funding of the Tribe's law enforcement programs violates the rights of the Tribe and its members under the 1825, 1851, and 1868 Treaties, the 1877 Act, the 1921 Snyder Act, the ILERA, the TLOA, and violates the Defendants' trust responsibility to the Tribe; and

G. The Defendants have a trust obligation to provide an accounting to the Tribe of the funds and uses of funds appropriated to Defendants by Congress for law enforcement services from 1998 to the present time.

2. An Order compelling Defendants to:

A. Fund and equip a minimum of 2.8 tribal law enforcement officers per 1,000 law enforcement service population, as defined by the scope of federal and tribal jurisdiction, according to the BIA standard for a competent, basic law enforcement program articulated in its own GAP Analysis and its TLOA Reports for Congress, and to base such funding and equipment on the aforementioned law enforcement service population, the distance between on-Reservation residential communities, the

Reservation size, the present day number of crimes and E-911 service calls, in compliance with Defendants' treaty and trust obligations; and

B. Comply with 25 U.S.C. § 5321(a) by approving the Tribe's proposal to contract and operate the Division of Drug Enforcement, Missing and Murdered Unit, Internal Affairs, and School Resource Officer Programs; and

C. Comply with its treaty and trust duties to the Tribe by taking sufficient measures to ensure effective, prompt, and diligent investigation and reporting of all crimes on the Reservation and the immediate arrest and punishment of offenders; and

D. To provide a detailed accounting to the Tribe of its appropriations requests to the Department of Interior (DOI), to OMB and to the Congress and the responses thereto; and an accounting of the funds received and used by each individual division of BIA and OJS from 1998 through the present date for law enforcement services. This accounting should include the following: 1) all OJS requests to DOI for inclusion in the President's budget request to Congress, and all responses thereto; 2) all requests made from DOJ to OMB for the same purpose, and the responses thereto; 3) all direct, contracted and administrative funding provided to OJS by the Congress and/or DOI, including all specialty programs (including, but not limited to, the Drug Task Force, MMI Task Force, Police Academy, Internal Affairs Division, each District and each tribal law enforcement location (whether direct service or Tribally contracted)). Such accounting shall be by Tribe or location, fiscal year, amount, and scope of work, and shall note the service population of each tribe served under OJS; 4) all payments of bonuses, special employee awards, or incentive payments made to federal OJS

employees; and 5) the GS rating for all OJS full-time equivalent employees; and 6) such other accounting information as the court deems appropriate.

3. For an Order temporarily, preliminarily, and permanently restraining Defendants from continuing to assign a base ISDEAA law enforcement funding amount to the Tribe based upon the Tribe's 1999 TPA law enforcement budget.

4. Award to the Tribe of its costs, fees and expenses incurred in this lawsuit, including attorney's fees under the Equal Access to Justice Act, 28 U.S.C. § 2412, and other applicable statutes, and under general principles of law and equity.

5. Such other and further relief as this Court may deem just and proper.

Dated: October 4, 2022

Respectfully submitted,

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