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;

STEVE JUNEAU, in his official capacity as ACTING DIRECTOR OFFICE OF JUSTICE SERVICES OF THE UNITED STATES DEPARTMENT OF THE INTERIOR;

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 DEPARTMETN 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. 5:22-cv-5066

COMPLAINT

COMPLAINT FOR DECLARATORY, MANDAMUS, AND INJUNCTIVE RELIEF

Plaintiff, the federally recognized Oglala Sioux Tribe, seeks to enforce the United States' and the Secretary of the Interior's obligations to provide adequate law enforcement under the U.S. Constitution, various treaties, federal statutory law, and the Federal Government's responsibilities as trustee. These obligations require the Federal Government to provide a sufficient number of law enforcement officers and criminal investigators on the Pine Ridge Indian Reservation ("Pine Ridge" or "Reservation") to ensure the prompt and diligent 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. This is a federal commitment that the United States intentionally made when it entered into the 1825 Treaty with the Sioune and Oglala Tribes and the 1868 Treaty of Fort Laramie, reaffirmed when the United States Congress later ratified that Treaty, and has since reaffirmed in subsequent federal statutes.

The Tribe asks this Court to issue a declaratory judgment that this federal obligation is not being fulfilled when the Tribe receives more than 133,755 Emergency-911 calls annually, spread across 5,400 square miles (3.1 million acres (about the area of Connecticut)), but is provided only 33 federally funded officers and 8 federally funded criminal investigators to respond; and to grant the additional relief at law and in equity requested herein. By and through counsel, Plaintiff states and alleges as follows:

NATURE OF THE CLAIM

1. This is an action for declaratory, mandamus, and injunctive relief. This Action arises under the Treaty with the Sioune and Oglala Tribes, 1825, July 5, 1825, 7 Stat. 252 ("1825 Treaty"); Treaty with the Sioux—Brulé, Oglala, Miniconjou, Yanktonai, Hunkpapa,

Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee—and Arapaho, 1868, April 29, 1868, 15 Stat. 635 ("1868 Treaty"); the Snyder Act, 25 U.S.C. § 13; the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 5301 *et. seq.* ("ISDEAA"); the Administrative Procedures Act ("APA"), 5 U.S.C. § 702; the Indian Law Enforcement Reform Act, 25 U.S.C. § 2801 *et. seq.* ("ILERA"); the Tribal Law and Order Act, Pub. L. No. 111-211, 124 Stat. 2258 (2010) ("TLOA"); the Fifth Amendment, U.S. Const. amend. V; federal common law; and the Declaratory Judgment Act, 28 U.S.C. § 2201, to secure relief for violations of rights guaranteed thereunder.

PARTIES

2. Plaintiff Oglala Sioux Tribe ("Oglala" or "Tribe") is a federally recognized Indian tribe that is entitled to receive federal services by virtue of its status as an Indian tribe. *Indian Entities Recognized by and Eligible to Receive Services From the United States Bureau of Indian Affairs*, 72 Fed. Reg. 7556 (January 29, 2021).

3. The Tribe is one of the bands referred to by the United States as the "Sioux Nation." The Oglala band was a signatory to the 1825 and 1868 Treaties, and the Tribe and its members are beneficiaries of the covenants contained therein. 1825 Treaty, July 5, 1825, 7 Stat. 252; 1868 Treaty, April 29, 1868, 15 Stat. 635. The Tribe's governmental headquarters is located at 107 West Main Street, P.O. Box 2070, Pine Ridge, South Dakota 57770.

4. Defendant the United States of America ("U.S.") is a party to, and is therefore bound by, the obligations it undertook in the 1825 and 1868 Treaties and by the statutes described herein. It is also responsible for the actions of the other defendant parties described below.

5. Defendant the U.S. Department of the Interior ("DOI") is a federal cabinet-level agency charged by Congress with fulfilling the Federal Government's treaty and trust

responsibility to the Oglala Sioux Tribe and with implementing the statutes described herein. By statute, the DOI, acting through the Secretary, provides for the day-to-day federal and Tribal law enforcement services on its federally established Pine Ridge Indian Reservation. 25 U.S.C. § 2802.

6. Defendant Office of Justice Services ("OJS") is a statutorily created subdivision of the Department of the Interior which "under the supervision of the Secretary, or an individual designated by the Secretary," is responsible for "carrying out the law enforcement functions of the Secretary in Indian country." 25 U.S.C. § 2802(b).

7. Defendant Deb Haaland is sued in her official capacity as the Secretary of the U.S. Department of the Interior ("Secretary"). The Secretary of Interior is responsible "for providing, or for assisting in the provision of law enforcement services in Indian county." 25 U.S.C. § 2802(a).

8. Defendant Steve Juneau is sued in his official capacity as the Acting Director of the DOI's Office of Justice Services.

9. Defendant John Burge is sued in his official capacity as the Special Agent in Charge of District 1 of the DOI, 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.

10. Defendant Tino Lopez is sued in his official capacity as the Acting Approving Official for the DOI's 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.

11. Defendant Darryl LaCounte is sued in his official capacity as the Commissioner of the Bureau of Indian Affairs ("BIA"). In this capacity, he is responsible for the overall management of the Bureau of Indian Affairs and the activities, functions, programs, and services that it engages in.

12. Defendant Gina Douville is sued in her official capacity as the Superintendent of the BIA's Pine Ridge Agency. She currently serves as the United States' Indian Agent at Pine Ridge.

JURISDICTION AND VENUE

13. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1362 because this is a civil action brought by an Indian tribe that arises under the Constitution, laws, and treaties of the United States. The Court also has jurisdiction under 28 U.S.C. § 2201 because this is an action for declaratory judgment and injunctive relief against the United States.

14. This Court has jurisdiction pursuant to, and the United States has waived its immunity 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 United States for relief including money damages, injunctive relief, or mandamus.

15. This Court has jurisdiction pursuant to, and the United States has waived its immunity from suit under Section 702 of the Administrative Procedures Act ("APA"), 5 U.S.C. § 702. Section 702 of the APA 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.

16. Venue is proper in this judicial district under 28 U.S.C. § 1391(e)(1) and 28 U.S.C. § 1391(b)(2) because the Tribe and the Pine Ridge Indian Reservation are located within this

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

STANDING

17. The Tribe has standing to sue in its governmental capacity to protect its tribally owned property and its sovereign interests. *See Moe v. Confederated Salish & Kootenai Tribes of the Flathead Reservation*, 425 U.S. 463, 468 n.7 (1976); *See generally, Rosebud Sioux Tribe v. South Dakota*, 900 F.2d 1164 (8th Cir. 1990) (entertaining complaint by the Rosebud Sioux Tribe against the State of South Dakota regarding the exercise of jurisdiction over highways running through the Tribe's Reservation); *United States v. Jicarilla Apache Nation*, 564 U.S. 162 (2011) (reviewing suit by tribe against the United States regarding alleged mismanagement of funds). The Tribe, as recipient of law enforcement funding in dispute, and the beneficiary of law enforcement services provided by the Defendants and funded by the Defendants, suffers its own injury from Defendant's actions.

18. Although it is unnecessary to assert a claim here, the Tribe has *parens patriae* ("parent of the country") standing because the Tribe represents all of its members' interests and raises claims that affect all of its members. *See, e.g., Miccosukee Tribe of Indians v. United States*, 680 F.Supp.2d 1308 (S.D. Fla. 2010); *See also West Virginia v. Chas. Pfizer & Co.*, 440 F.2d 1079, 1089-90 (2d Cir. 1971) (discussing the *parens patriae* theory of standing); *Assiniboine & Sioux Tribes v. Montana*, 568 F. Supp. 269, 277 (D. Mont. 1983) (discussing *parens patriae* doctrine). "When acting solely in a representative capacity, a tribe's

standing is based exclusively on the standing of its individual members: the tribe simply raises claims that its members could raise individually and essentially stands in the same position as they would, had they brought the action collectively." *White Mountain Apache Tribe v. Williams*, 810 F.2d 844, 865 n.16 (9th Cir. 1984). The Tribe has *parens patriae* standing because it 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. *Cheyenne & Arapaho Tribes v. United States*, 151 Fed. Cl. 511, 519 (2020) (quoting *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 601-02, (1982).

19. The Tribe is a "federally recognized Indian tribe" that is "eligible to receive federal services by virtue of its status as an Indian tribe," 87 Fed. Reg. 4636 (Jan. 28, 2022), and seeks declaratory, mandamus, and injunctive relief in part that requires Defendants to provide law enforcement services that comply with the obligations it pledged in the 1825 and 1868 Treaties and subsequent federal statutes. The threat to the health and safety of all tribal members caused by Defendant's actions and failure to take action is part of the Tribe's sovereign governmental interest. *See, e.g., Montana v. United States*, 450 U.S. 544, 566 (1981).

ALLEGATIONS

A. Law Enforcement on the Pine Ridge Reservation.

20. The Oglala Sioux Tribe's Pine Ridge Reservation is larger than the states of Rhode Island and Delaware combined. The Reservation is roughly 5,400 square miles, making it approximately 60 by 90 miles across, or about 3.1 million acres.

21. In excess of 40,000 people reside on or conduct business on the Pine Ridge Reservation (Young Decl. ¶ 9), all of whom are dependent on federally funded BIA law enforcement officers to protect them and their on-reservation property. (Young Decl. ¶¶ 9-10, Rodriguez Decl. ¶¶ 9-16). 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 Pine Ridge Reservation.

22. In 2021, there were 133,755 E-911 calls for service on the Pine Ridge Reservation. (Young Decl. ¶ 16; Rodriguez Decl. ¶ 20).

23. The 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).

24. The United States currently only provides enough funding to fund 33 police officers and 8 criminal investigators to cover the 40,000-person law-enforcement service population and the more than 133,755 E-911 calls for service on the 3.1 million acres of territory within the Pine Ridge Reservation. (Young Decl. ¶ 9, 16, 18, 20).

25. This equates to only 6-8 officers per shift. (Young Decl. ¶ 19).

26. The lack of adequate law enforcement officers continues to result in 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).

27. DOI has determined that a "basic" law enforcement program needs 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," BIA OJS (dated May 2, 2018; March 2020; July 2020; and Oct 2021 respectively), ("OJS TLOA Reports"), *https://www.bia.gov/bia/ojs/documents-and-forms (FY2016-2018), and https://www.bia.gov/sites/default/files/dup/assets/bia/ojs/ojs/pdf/Report_Final-Cleared.pdf*.

28. The Tribe's current number of law enforcement officers and criminal investigators is insufficient to fulfill the Defendants' obligations to keep the peace on the Pine Ridge Indian Reservation and to fulfill their treaty and trust responsibilities. (Young Decl. ¶ 18).

29. 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. 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; Young Decl. ¶ 20).

B. The volume of E-911 calls, combined with inadequate 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; Young Decl. ¶ 22).

C. 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).

D. 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, Young Decl. ¶ 23).

E. 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; Young Decl. ¶ 24).

F. On-reservation deaths, homicides, drug sales, police-involved accidents, and overdoses have increased significantly since 1999. (Young Decl. ¶ 25).

G. Law enforcement officers and criminal investigators are being called to work an unreasonable amount of overtime, even multiple shifts, with inadequate sleep or downtime. This, too, is endangering both the officers and the public. (Young Decl. ¶ 26).

H. Tribal citizens are often scared to venture out of their homes at night, especially now that gunshots are heard throughout the reservation on a frequent and re-occurring basis. (Young Decl. ¶ 27).

30. 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).

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 lack of law enforcement services to respond to threats. (Young Decl. ¶ 29).

C. Tribal health care costs have increased because of the increased number of overdoses and injuries sustained from domestic violence. (Young Decl. ¶ 30).

D. The Tribal economy is negatively impacted as new businesses are not attracted to high crime areas. The businesses already 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).

31. These impacts and consequences are the result of the failure of the Defendants to uphold their legal, trust, and treaty obligations to keep the peace, protect people and property, and preserve law and order on the Reservation.

32. The crisis in law enforcement created by Defendants' failure to adequately fund law enforcements services on the Pine Ridge Reservation, or to deploy additional federal resources, is escalating.

33. 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 Pine Ridge 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).

34. 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). This does not count the travel hours to and from the office. *Id.*

35. 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).

36. From January through June 2022, there have been a total of 308 gun-related calls to dispatch and the Tribe has received 49 reports of rape. (Young Decl. ¶ 56).

B. The 1825 Treaty and the Fort Laramie Treaty of 1868 Create Federal Treaty Obligations and a Federal Trust Responsibility to Ensure Public Safety.

37. 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. *See Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *United States v. Mitchell*, 463 U.S. 206 (1983) (noting that a principle that "has long dominated the government's dealing with Indians…[is] the undisputed existence of a general trust relationship between the United States and the Indian people."); *See also McGirt v. Oklahoma*, 591 U.S. ___, 140 S. Ct. 2452, 2470 (2020) ("[O]ur rule [is that] treaty rights are to be construed in favor, not against, tribal rights.").

38. Seeking to secure peace with the tribes and to ensure safe trade, 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, 1825, July 5, 1825 (hereinafter "1825 Treaty"), 7 Stat. 252 (1825). Pursuant to the 1825 Treaty, the tribes agreed "that they reside within the territorial limits of the United States, acknowledge [the United States'] supremacy, and claim their protections." *Id.*, art. 1. They also granted the United States a right to "regulate all trade and intercourse with them." *Id.*, art. 3.

39. The United States agreed to receive the Sioune and Ogallala bands "into their friendship, and under their protection." *Id.*, art. 2.

40. The 1825 Treaty established certain trade and intercourse rules, and pledged "That the friendship, which is now established between the United Sates and the Sioune and Ogallala bands should not be interrupted by the misconduct of individuals..." *Id.*

41. To ensure that result, the 1825 Treaty included the following obligations of the United States in Article 5:

> 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. ...
>
> And, it is agreed, that the chiefs of said Sioune and Ogallala bands shall, to the upmost of their power, exert themselves to recover horses or other property, which may be stolen or taken from any citizen or citizens of the United States by any individual or individuals of said bands; and the property so recovered shall be forthwith delivered to the agents or other person authorized to receive it, that it may be restored to the proper owner. And the United States hereby guarantee to any Indian or Indians of said bands, a full indemnification for any horses or other property which may be stolen from them by any of their citizens: *Provided,* The property stolen cannot be recovered, and that sufficient proof is produced that it was actually stolen by a citizen of the United States. ...

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

42. Following the signing of the 1825 Treaty, one of the earliest made by the federal government to provide law enforcement protections, more non-Indians moved into the area. Kerry Oman, *The Beginning of the End; The Indian Peace Commission of 1867-1868*, 22 Great Plains Quarterly 35 (2002).

43. By the 1860's, a series of major confrontations had occurred between the Tribes and non-Indians, which federal studies later concluded were largely due to "aggression of lawless white men" and insufficient federal enforcement. *Id*. at 36.

44. By 1867, Congress had concluded that it was more cost effective to enter into additional treaties with certain tribes, including the Ogallala band, than it was to continue to attempt to control them by military force. *Id.*

45. On April 29, 1868, the United States negotiated and entered into the Treaty of Fort Laramie. Treaty with the Brule, Oglala, Miniconjou, Yanktonai, Hunkpapa, Blackfeet, Cuthead, Two Kettle, Sans Arcs, and Santee and Arapaho (hereinafter "1868 Treaty"). April 29, 1868, 15 Stat. 635 (1868).

46. The 1868 Treaty was entered into to promote peace between the Oglala band and other tribal nations and bands who were parties to the treaty and the United States. In exchange for peaceful relations, the United States renewed the promises made in the 1825 Treaty and expanded its commitments to provide protections, assistance, and services. *Id.*, art 1.

47. When the United States asked the Oglala to meet at Fort Laramie in 1868, its goal was to secure a treaty that provided for peace between the parties. Mark Ellis, *Reservation Akicitas: The Pine Ridge Indian Police, 1879-1885*, South Dakota Hist. Soc'y, 185, 187-189 (1999).

48. In negotiating the 1868 Treaty, the representatives of the United States had an ancillary goal to control activities of the Oglala with less military effort. *Id.* at 199. It knew that a sizable percentage of military engagements between the signatory bands including the Oglala and the United States military and conflicts between the Oglala and signatory bands and individual non-members resulted from the great harm that was being inflicted upon the signatory bands and that the federal government's ability to keep the peace in the Tribal areas was dependent upon its ability to address those harms when they occurred. Thus, the United States was anxious to impose federal law and order systems on the Pine Ridge

Reservation and within the tribal communities. *Id.* at 188-189.

49. In the resulting 1868 Treaty, the federal government proposed, executed, and ratified specific provisions to prevent and punish crimes committed by tribal members and non-Indians within the set-aside territory. 1868 Treaty, 15 Stat. 635, art. I and V. Articles I and V of the 1868 Treaty obligated the United State to provide federal criminal law enforcement services.

50. Article I of the 1868 Treaty includes two clauses that are commonly referred to as the "bad men" clauses. The "bad men" clauses are a set of provisions in the Fort Laramie Treaty that state 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 re-imburse 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 re-imbursed 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 re-imbursed therefor.

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

[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.

51. 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.

52. 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).

53. The tribal signatories to the 1868 Treaty understood that in exchange for signing the treaty, they would receive aid in removing "bad men" from their territory, and that such "bad men" would be "tried," and "punished," in addition to providing a federal Indian agent to address "matters of complaint by and against the Indians as may be presented for investigation…" *Id.*, art. I and V.

54. Prior to the signing of the 1868 Treaty, federal Indian Agents, working at the various federal posts within the territories of the Sioux, had begun hiring their own agency federal police officers to support their efforts to enforce law and order at their individual federal agency locations. William T. Hogan, Indian Police and Judges 83 (1980). Also prior to the signing of the 1868 Treaty, the United States Congress had enacted statutes that provided processes for punishing criminal activity in the Indian territories and for prosecuting offenders. *See* Act of July 22, 1790, Pub. L. No. 1-33 §§ 5 & 6, 1 Stat. 137.

55. Prior to 1868, the Tribe had seen the United States military detaining and punishing Indians and non-Indians in its territory for years. It had seen the U.S. expand its claim of criminal authority to include federal criminal jurisdiction over crimes committed by both Indians and non-Indians after the passage of the General Crimes Act in 1817. 18 U.S.C. § 1152.

56. The U.S. Supreme Court has held that courts should interpret a treaty's terms to give the effect that the Indians would have had at the time the Treaty was made. *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 196 (1999). The District Court for the District of South Dakota has held that "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." *United States v. Cheyenne River*, 205 F. Supp.3d 1052, 1063 (2016) (quoting *Jones v. Meehas*, 175 U.S. 11, 20 S. Ct. 1 (1899)).

57. In this case, the Tribe would have logically understood that Articles I and V of the 1868 Treaty were commitments by the United States to provide law enforcement services adequate to address what was actually happening within tribal homelands. Otherwise, the Tribe would not have agreed to cease their right to respond to the criminal acts of "bad men" in whatever manner the Tribe decided was appropriate. (Young Decl. ¶ 39).

58. The Tribe would have understood that this federal law enforcement role was something that the United States was insisting upon. (DuBray Decl. ¶ 22; Rodriguez Decl. ¶ 39).

59. The Tribe and its members understood that upon signing the 1825 and 1868 Treaties, the United States was going to send sufficient federal law enforcement officials to ensure the federal government's obligations to the Tribe were met. (Young Decl. ¶ 39).

60. The 1825 and 1868 treaties limited the Tribe's previously exercised power to control activities within its tribal territory and led the Tribe to reasonably expect and deserve

adequate federal law enforcement protections and services. (DuBray Decl. ¶ 22; Rodriguez Decl. ¶ 39).

61. When the federal government helps to create a mess, it must contribute to cleaning it up. *Blue Legs v. United States*, 867 F.2d 1094, 1100 (8th Cir. 1989).

62. The Eighth Circuit Court of Appeals has held that courts must examine the relevant federal statutes, regulations, and treaties to determine whether a claim for breach of a trust duty exists. *Rosebud Sioux Tribe v. United States*, No. 3:16-CV-03038-RAL, 2017 WL 1214418, at *7 (D.S.D. Mar. 31, 2017) (quoting *Blue Legs v. U.S. Bureau of Indian Affairs*, 867 F.2d 1094, 1100 (8th Cir. 1989). ("The existence of a trust duty between the United States and an Indian or Indian tribe can be inferred from the provisions of a statute, treaty or other agreement, reinforced by the undisputed existence of a general trust relationship between the United States and Indian people.")).

63. By executing and ratifying the 1825 and 1868 Treaties, the United States accepted this unique and binding responsibility.

C. Congress Reaffirmed the 1868 Treaty Article I and V Obligations in 1877.

64. The federal government has undertaken a specific trust responsibility to ensure public safety to Indians. *See* Cohen's Handbook at § 20.07[1][a]. Through legislation, the federal government reinforced this assumed duty.

65. On February 28, 1877, the Forty-Fourth Congress enacted a statute to reaffirm the "agreement . . . with different bands of the Sioux Nation of Indians." *See* 44 Cong. Ch, 72, Feb. 28, 1877, 19 Stat. 254 (hereinafter "Act of 1877"). The purpose of this 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. Through the passage of the Act of 1877, the federal government reaffirmed their obligations to the Tribe.

66. Along with confirming promises already made, Congress also unilaterally added additional obligations with 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 Sioux shall be subject to the laws of the United States, and each individual shall be protected in his rights of property, person, and life**.

Id., art. 8 (*emphasis added*).

67. 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. 45 Cong., Ch. 142, May 27, 1878, 20 Stat. 63. Within the next few years, Congress began regularly appropriating such funds. *See* 46 Cong., Ch. 85, May 11, 1880, 21 Stat. 114. This appropriation of funds displays the federal government's intent to uphold their duties under the 1825 and 1868 Treaties.

68. By the end of 1879, the Federal Indian Agent at Pine Ridge 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 an adequate on-reservation law and order program on the Pine Ridge Reservation.

69. The federal government continued to exercise this duty through expansion of criminal jurisdiction in Indian country. The General Crimes Act of 1817 ("GCA") extended federal jurisdiction over non-Indian crimes against Indians within Indian country. 18 U.S.C. § 1152.

70. The federal government 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 another Indians within Indian Country. *Id.* The Supreme Court found the MCA constitutional and recognized the 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.* The expansion of federal criminal jurisdiction as well as the acknowledgement of the duty to protect in the MCA displays the federal government's continued acceptance of their duties under the 1825 and 1868 Treaties.

71. After awarding re-occurring appropriations for federal law enforcement at Pine Ridge for over 42 years, in the 1921 Snyder Act Congress provided on-going authorization of appropriations "for the benefit, care and assistance of the Indians." 25 U.S.C. § 13.

72. One of the purposes set forth in the Snyder Act is to provide funds for the employment of "Indian police" *Id.* From the Snyder Act's enactment forward, the Secretary has been authorized to use its funding to pay for "Indian police." *Id.*

73. Today, these functions are delegated to the DOI's Office of Justice Services, including Defendants Juneau, Burge, and Lopez. These include, among others: the investigation of thefts and apprehension of thieves, controlling violence on the Reservation, and apprehending federal and tribal lawbreakers. 25 U.S.C. § 2802(c).

D. Subsequent Federal Actions in the Field Confirm that the Federal Government Agreed to a Treaty and Trust Responsibility to Provide Adequate Law Enforcement on the Pine Ridge Reservation.

74. As Professor Hogan notes, these 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*.

75. This is reinforced in an 1879 report to the Commissioner of Indian Affairs (CIA), written by Federal Agent McGillycuddy, the federal Indian Agent at Pine Ridge. 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 as follows: "Just over the state line [in Nebraska] was a large Mexican 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.

76. In that same report, McGillycuddy also noted that he was further concerned about Red Cloud, the principal chief at Rosebud, who along with his warriors had successfully closed the Bozeman Trail in the 1860's and who was 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.

E. The Federal Government Reaffirmed its Treaty Obligations and Trust Responsibilities when Congress Enacted Legislation to Ensure Public Safety and Law and Order on the Pine Ridge Reservation in ILERA and TLOA.

77. The Supreme Court has stated that the tribal trust relationship is defined and governed by statutes rather than common law. *Jicarilla Apache Nation*, 564 U.S. at 178. In the area of

the federal government's law enforcement obligations to the Oglala Sioux Tribe, the language of those statutes is very clear.

78. The federal statutes described below also help to establish the level of federal resources required to fulfill the federal government's treaty and trust responsibilities.

79. As the Eighth Circuit has stated, "a trust duty necessary attaches to appropriations that fulfill treaty obligations, which are repayment of treaty debt in installments." *Rosebud Sioux Tribe v. United States*, 9 F.4th 1018, 1024 (8th Cir. 2021) (*quoting Quick Bear v. Leupp*, 210 U.S. 50 (1908)).

80. As was the case in *Rosebud*, here the underlying statutes discussed below, including the following: the General Crimes Act, the Major Crimes Act, the various law enforcement appropriations, the Snyder Act, the Indian Law Enforcement Reform Act of 1990, and the Tribal Law Enforcement Improvement Act of 2010 reinforce a prior existing duty and "the record confirms a history of documented deficiencies" in the quality of those duties. *Rosebud*, 9 F.4th at 1025.

81. Following the Congressional "Indian police" authorization in the 1921 Snyder Act, the Indian Law Enforcement Reform Act of 1990, (ILERA) specifically provided that the United States Secretary of Interior, acting through the Secretary and the BIA, "shall be responsible" for providing law enforcement services in Indian country. Indian Law Enforcement Reform Act of 1990, Pub. L. No. 101-379, 104 Stat. 473 (1990). This language makes her duty-bound, answerable, and accountable for the adequate provision of federal law enforcement services to the Tribe.

82. The ILERA created a specific division within DOI's 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 County. 25 U.S.C. § 2802 (b).

83. Section 2802 (c) of the ILERA places even more specific responsibilities on OJS, stating that 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).

84. In 2010, Congress again reaffirmed the federal government's tribal law enforcement duty when it enacted the Tribal Law and Order Act of 2010 (TLOA), Pub. L. No. 111-211, 124 Stat. 2258 (2010). In its "Findings and Purposes," Congress agreed with the tribes that "The United States has distinct legal, treaty and trust obligations to provide for the public safety of Indian country."

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

86. To the Tribe, these Congressional findings and administration statements were not just words. They reflect the federal government's obligations set forth in the 1825 and 1868 Treaties to take responsibility for effective law enforcement on the Pine Ridge Indian Reservation.

87. Congress has established federal standards for all federally funded tribal law enforcement officers. 25 U.S.C § 2802(b). Those standards must be adhered to by all Tribes and anyone who is a "part of a BIA or tribal law enforcement program receiving Federal funding or operating under a BIA law enforcement commission." 25 C.F.R. part 12.11-14. This demonstrates that the federal government exercises significant control over on-reservation law enforcement services.

88. In ILERA, Congress authorized the DOI Office of Justice Service to adopt a Bureau of Indian Affairs, Office of Justice Services' Law Enforcement Handbook (hereinafter the "Handbook"). Section 25 U.S.C. § 2802. The adopted Handbook establishes a comprehensive list of standards that all tribal law enforcement programs must meet, many of which are unfunded mandates. It even states what items can and cannot be included in law enforcement agreements between the Tribe and local government units. *See generally* Bureau of Indian Affairs, Law Enforcement Handbook 3rd Edition (2015), *https://www.bia.gov/sites/default/files/dup/*BIA%20OJS%20Third%20Edition%20LE%20Handbook%202015%20_%20Approved%20Public%20Release%283%29.pdf (last visited June 6, 2022).

89. Adherence to the Handbook, or its minimum standards, is a condition for the Tribe's receipt of any federal law enforcement funding. *Id*. at pg. 13.

90. In its FY 2023 DOI Budget Justifications to the Congress, the Department of the Interior defines its current law enforcement responsibilities as follows:

> the [DOI] Office of Justice Services **is responsible for** enforcing laws and investigating crimes committed on or involving Indian Country, primarily where States lack local criminal jurisdiction. Programs address major Federal crimes as well as state crimes assimilated into Federal statutes, such as murder, manslaughter, child sex abuse, kidnapping, rape, assault, burglary, robbery, and the production, sale or distribution of illegal drugs….

The United States Department of the Interior Budget Justifications and Performance Information Fiscal Year 2023, Bureau of Indian Affairs ("FY 2023 Budget Justification"), IA-PJS-9, (*emphasis added*).

91. Throughout the long history of the relationship between the United States and the Oglala Sioux Tribe, the United States has clearly recognized its treaty, trust, and statutory duties and responsibilities to provide adequate law enforcement services to the Tribe, the same as it did when it entered into the 1825 treaty and when it proposed the "bad man" clauses in Article I of the 1868 Treaty; committed to provide a federal Indian agent under Article V of the 1868 Treaty; committed to provide the Tribe with an orderly government in the Act of February 28, 1877, imposed federal law and promised to protect each tribal member's rights in property, person and life in an unbroken string of subsequent statutes and actions as set out above.

92. For these reasons, the U.S. has assumed a treaty and trust responsibility for adequate law enforcement services on the Pine Ridge Reservation and has intentionally occupied the field of on-reservation law enforcement on the Pine Ridge Reservation.

F. The Current BIA and OJS Law Enforcement Funding System Does Not Fulfill the Federal Obligations Under the 1825 and 1868 Treaty and Does Not Meet the Tribe's Actual Need for Law Enforcement Services.

93. The public safety commitments that the United States made in the 1825 Treaty, Articles I and V of the 1868 Treaty, and the promises to protect "each individual's right to property, person and life" in the Act of 1877, establish a direct relationship between the number of E-911 calls (i.e., modern day complaints) made on the Pine Ridge Indian Reservation and the number of law enforcement officers needed to answer those complaints in a reasonable, timely and professional manner. This is not the standard BIA currently adheres to in providing law enforcement funding at Pine Ridge.

94. In fact, currently the BIA has no treaty, trust, or needs-based method for determining the amount of law enforcement it should be providing to the Tribe, or even for distributing among federally recognized tribes the law enforcement funding that it does request and receive from Congress.

95. The Tribe's current base funding for law enforcement is primarily established by the annual amount that the local Indian Agents had spent on law enforcement between the enactment of the Snyder Act in 1921 and the enactment of the Tribal Law Enforcement Reform Act in 1990. *See generally* BIA OJS, *Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country,* (Oct. 2021) (noting the historic funding base for its law enforcement funding).

96. 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").

97. 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, housing improvement, education, fire services, natural resources, real estate protection and management, job training, and until 1999, law enforcement.

98. In the late 1990's, the U.S. Department of Justice ("DOJ") had started making it easier for tribes to apply for and receive short term, highly specific, law enforcement grants from that agency. There were also some members of Congress advocating for the transfer of law enforcement trust, treaty, and statutory responsibilities from the DOI to the DOJ.

This was something the Oglala Sioux Tribe and the other tribes in the Great Plains strongly

objected to.

99. As DOJ started to provide more short-term funding for law enforcement activities, the Tribe's sole dependence on the BIA's own law enforcement monies, which were at the time being deposited into that lump sum BIA TPA account, decreased and the Tribe was able to divert more TPA monies into other pressing areas like, for example, social services.

100. The Tribe was one of the tribes which, seeing no danger in doing so, minimized its law enforcement TPA allocations because it could use short term DOJ law enforcement grant funding to supplement law enforcement services. (DuBray Decl. ¶ 5-6).

101. The Tribe was able to do this because, starting in 1998, DOJ offered the Tribe a role in a short-term DOJ demonstration program/study and related programs to help tribes better address crime and public safety problems. The Tribe was hopeful that its participation in this study and these DOJ-related programs would, in future years, lead the BIA to increase its law enforcement funding on the reservation and better fulfill its 1825 and 1868 treaty and trust responsibility to the Tribe. *Id.*

102. This DOJ undertaking was called the Comprehensive Indian Resources for Community and Law Enforcement ("DOJ CIRCLE"). Among other things, DOJ provided the Tribe with funding for more than 50 additional law enforcement officers above those DOI was providing, for a short 3-year period. (DuBray Decl. ¶ 6). This in turn allowed the Tribe to use some of the TPA dollars it received to address other needs. As a result of this short-term DOJ funding, more offenders were arrested and prosecuted on Pine Ridge, and crime on the Reservation decreased.

103. Thus, short term grants from DOJ were funding a significant percentage of the police force on the Pine Ridge Reservation in 1998 and 1999.

104. 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).

105. When it did so, BIA ignored its treaty and trust obligations and the impact that DOJ CIRCLE and the other short term DOJ programs were having on the federal law enforcement responsibilities at the Pine Ridge Reservation. BIA ignored the fact that many of these DOJ dollars were going to disappear within one to three years.

106. Instead, BIA simply chose to treat the amount of funding that each individual tribe took out of its TPA allocation for law enforcement in 1999 as that tribe's new base budget for all OJS law enforcement activities from that point forward. (Young Decl. ¶¶ 32-33).

107. 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 artificially low, ensuring that the Defendants are out of compliance with their obligations in the 1825 and 1868 Treaties and the Act of February 28, 1877. (DuBray Decl. ¶ 9).

108. The current BIA and OJS's base budget system for Tribal law enforcement has no relationship to the Tribe's actual need for law enforcement services; the federal government's treaty or trust responsibilities to the Tribe; or even with the federal government's obligation to distribute and expend federal dollars in an equitable manner. (DuBray Decl. ¶ 10).

109. Even though the Tribe's own data shows that Pine Ridge needs more than 140 police officers to fight on-Reservation crime, its 1999 BIA law enforcement TPA base funding is still the base amount that the BIA applies to its Oglala Sioux Tribe funding decisions. (DuBray Decl. ¶ 9, Young Decl. ¶¶ 32, 35).

110. In assigning that base funding amount to the Tribe, the BIA continues to act in an arbitrary and capricious manner, and such ongoing actions continue to have deadly consequences. *See Allegations, Law Enforcement on the Pine Ridge Reservation, infra.*

111. More specifically, the Defendants failed and continue to fail to use the over 133,755 calls for service that are received at Pine Ridge's E-911 call center to determine the amount of law enforcement services required; failed and continue to fail to obtain any updated tribal law enforcement service population numbers and to use those service population numbers to fund law enforcement services; failed and continue to fail to consider the fact that the DOJ CIRCLE program and other DOJ funding artificially lowered the Tribe's 1999 TPA expenditures on law enforcement; and failed and continue to fail to consider the substantial increase in crime on the Pine Ridge Reservation since 1999.

112. The Defendants also failed and continue to fail to consider that it is the federal government which has chosen to continue to maintain federal law enforcement training, equipment, and operating standards on the Reservation even though it fails to provide adequate BIA dollars to fund the same. Most importantly, they failed and continue to fail to consider the fact that the federal government has specific law enforcement obligations to the Oglala Sioux Tribe and its members under the 1825 Treaty, the 1868 Treaty, the Act of February 28, 1877, the ILERA, TLOA, and under its federal trust responsibility.

G. The Federal Government's Own Documents Define the Scope of Law Enforcement Services Required to Fulfill its 1825 and 1868 Treaty Obligations to the Tribe.

113. The BIA's 2016-2019 TLOA-mandated reports to Congress each contain the same DOI methodology for determining the cost of a "basic" tribal law enforcement program (which includes police officials, dispatchers, administrative services, and supplies and equipment) and all utilize the same determination of law enforcement need on a

reservation area like Pine Ridge, which is 2.8 officers per 1,000 people. *See* BIA OJS, *Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country*, (Oct. 2021) at pg. 4; https://www.bia.gov/bia/ojs/documents-and-forms (FY 2016-2018); and https://www.bia.gov/sites/default/files/dup/assets/bia/ojs/ojs/pdf/2019%20TLOA%20Report%20Final.pdf (FY 2019).

114. BIA has consistently failed to use its own 2.8 officers per 1,000 persons standard, or its own federal law enforcement equipment and operating standards, when developing its own law enforcement budget for the Tribe.

115. Even that 2.8 officers per 1,000 persons calculation, contained in the OJS' TLOA Reports, is flawed as it is based on a 2013 Indian Population and Labor Force count. *Id.* This count is not only nine years old, but it also fails to include any of the non-member Indian and non-Indian residents, 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). 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 140 police officers.

116. Even 140 officers are far too low when it is compared with what has currently been determined to be 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 July 20, 2022). Aberdeen, South Dakota, has 50 commissioned officers and 9 civilian employees, and the State of Connecticut, which is about the same size geographically as Pine Ridge, has 6,534 municipal police officers. *Police*, Aberdeen, S.D., https://www.aberdeen.sd.us/21/Police (last visited July 20, 2022); Rute Pinho, *No. of Mun. Police Dep'ts in Conn.*, Conn. Gen. Assembly, Off. of Legis. Rsch. 1 (Feb. 2, 2022), https://www.cga.ct.gov/2022/rpt/pdf/2022-R-0025.pdf.

117. The Tribe has repeatedly reminded the federal government of its treaty and trust responsibility and pointed out this base funding error in meetings with DOI, OJS, and the White House, yet the problems remain unaddressed. (DuBray Decl. ¶¶ 13, 16-17; Rodriguez Decl. ¶ 35; Young Decl. ¶¶ 40-45).

118. While the Congress has found that the United States has treaty and trust responsibility to provide law enforcement services to the Tribe, and while the BIA has acknowledged that responsibility in public statements, it has nonetheless failed to conduct a law enforcement needs assessment on Pine Ridge for over ten years. (Young Decl. ¶ 38).

119. The BIA and OJS have not adequately increased Oglala's law enforcement annual base funding to keep pace with the on-reservation increase in the law enforcement service population and crime. *Id.* at ¶ 32, ¶ 35, ¶ 37. The BIA and OJS have failed to correct their own past mistakes.

120. While the Federal Government has the authority to make rational decisions regarding the amount of money it requests from Congress and how it chooses to spend the dollars it receives, it cannot use that fact as a justification for breaching its treaty obligations, and it cannot do so in violation of its treaty and trust responsibilities and statutory obligations to

the Oglala Sioux. It also cannot use this authority to expend its monies in an inequitable, irrational, or arbitrary way.

H. The Tribe Has Provided Defendants with Notice of the Federal Government's Failures.

121. Fulfilling its notice obligations under Articles I and V of the 1868 Treaty, the Tribe notified the BIA Superintendent Gina 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 and Exhibit 4).

122. The Tribe has met with federal officials in BIA, OJS and the Department of Interior repeatedly. (Killer Decl. ¶ 8); (DuBray Decl. ¶ 17)

123. 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 Federal Bureau of Investigation for many years. These reports that show the volume and types of demands for police services that are received at Pine Ridge are available to, among others, the Secretary, the Assistant Secretary for Indian Affairs, the Director of BIA's Office of Justice Services, the Special Agent in Charge of OJS District 1, the Superintendent, and the U.S. Commissioner on Indian Affairs.

124. 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, Young Decl. ¶¶ 44-45).

I. Defendants Have Violated the Requirements of the Indian Self Determination and Education Assistance Act.

125. As with the ILERA and TLOA, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. §§ 5301 et. seq. ("ISDEAA"), embodies the Federal Government's treaty-based obligations and trust responsibility to provide adequate law enforcement services to the Tribe.

126. By stating in the TLOA reports that 2.8 officers per 1,000 law enforcement service population is what is required to fulfill Defendants' basic law enforcement obligations at the Pine Ridge Reservation, the BIA has admitted that this is the minimal level of law enforcement services required to fulfill its treaty and trust responsibilities to the Oglala Sioux Tribe.

127. 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).

128. The Oglala Sioux Tribe has, for over 40 years, contracted with the Secretary under ISDEAA to operate law enforcement services under contract. (DuBray Decl. ¶¶ 17, 21; Young Decl. ¶ 8).

129. 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).

130. In its renewal proposal, the Tribe requested increased funding and two separate contracts: one for law enforcement and one for criminal investigations. (Young Decl. ¶ 48). The increases sought were not based on the Tribe's actual need or the BIA announced standard

of 2.8 officers per 1,000 persons, but rather on what the Tribe hoped would be minimum, non-controversial, increase and additional help. *Id.*

131. 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).

132. 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.

133. Instead of conducting the good faith negotiations required by the ISDEAA, including its obligation to hold open and honest conversations about the funding required, the DOI, on January 28, 2022, issued two largely duplicate letters which contained highly dismissive language. (Killer Decl. ¶ 5).

134. 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 and Exhibit 1). 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 pg. 1). The letters also advised the Tribe that the proposed contracts included a request to add a 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, pg. 2 and Exhibit 2, pg. 1.

135. 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). 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 willing to seek that professional help. *Id.* at Exhibit 1, pg. 3.

136. The Oglala Sioux Tribal Council reviewed those two letters and those BIA OJS recommendations, which it concluded were a violation of the BIA's P.L.93-638 "good faith" contract negotiations, and its treaty, trust, and statutory obligations, and decided not to provide the re-submittals or responses the BIA had requested. (Killer Decl. ¶ 7).

137. Instead, when the BIA contacted our Chief of Police by telephone, he was instructed to advise OJS District 1 and the Tribe's Awarding Official of the Tribal Council's position. (Killer Decl. ¶ 8). The Tribal President and other Members of the Oglala Sioux Tribal Council 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.

138. Instead, on March 30, 2022, DOI, issued two partial denial letters, one for the tribally proposed law enforcement contract and one for the tribally proposed criminal investigations contract. DOI's March 30, 2022, Partial Declination final decision letters

attached hereto as EXHIBITS A, B (hereinafter "March 30, 2022, Partial Declination Letters").

139. After receiving these March 30, 2022, Partial Declination Letters, on April 1, 2022, the Tribe accepted the contract portions not declined and advised Defendants that it was exploring its legal options on the partial declinations. To date, BIA has not released the funds under that portion of the contract that was not declined. (Killer Decl. ¶ 11, Exhibit 3).

140. 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 property 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).

141. Both of the March 30, 2022, denial letters failed to consider: (1) the number of E-911 calls (1868 treaty "complaints") received at Pine Ridge, (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 Reservation; (4) the federal government's statutory duties and obligations under ILERA and TLOA; (5) the federal government's own 1825 and 1868 Treaty obligations or its trust responsibilities to the Tribe; or even (6) the law enforcement issues that the Oglala Sioux Tribe has consistently raised in meetings with OJS and DOI representatives for over 23 years.

142. 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 original).

143. In other words, according to the OJS, the amount of funds requested in the Tribe's proposal is more than the Secretary would have otherwise provided for the operation of the programs, services, and activities under Section 106(a)(1), 25 U.S.C. § 5325(a)(1), even though the Tribe's proposal was well below the BIA's own 2.8 officers per 1,000 persons standard. This equates to the United States' admission that it intends to ignore its own treaty and trust, responsibilities under the 1825 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; Young Decl. ¶ 51).

144. The March 30, 2022 Partial Declination Letters were issued even though in FY 2022, the BIA received a lump sum appropriation of $1,820,334,000, less some small statutorily earmarked amounts, and the BIA and OJS have the authority to request to reprogram the monies that it receives from Congress to fulfill its treaty and trust responsibilities to the Oglala Sioux Tribe. *FY 2023 Budget Justification*.

145. The March 30, 2022, Partial Declination Letters were issued even though OJS received a total FY 2022 appropriation of over $221 million to run all OJS Operations. *Id*.

146. Both the lump sum of $1,820,334,000 and the $221 million OJS received far exceed the amount required to fully fund the two ISDEAA contracts proposed by the Oglala Sioux

Tribe at $9,628,345, a level which is below that stated to be appropriate by the DOI's own FY 2016-2019 TLOA Reports (2.8 officers per 1,000 people). (Killer Decl. Exhibit 2 pg. 2), TLOA Reports at pg. 4.

147. In the March 30, 2022, Partial Declination Letters, the DOI also denied contracting 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 pg. 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).

B. Second, the Tribe is currently performing federally funded drug enforcement, murder investigation and missing persons functions under its existing P.L. 93-638 Law Enforcement Contract. *Id.* at 53.

C. Third, the Tribe was formerly funded for SRO's and numerous federal officials are encouraging all governments to "beef up" security and law enforcement activities at K-12 schools. The law has not changed. Therefore, SROs, like drug enforcement and MMIP, is contractible and the "non-contractible" ground provided by DOI in its partial denial is not applicable. 25 U.S.C. § 5321(a)(2).

148. DOI 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.

149. DOI OJS's decision not to include School Resource Officer funding as a delegable duty and not to fund such positions also ignores the threats that exist in all K-12 schools from active shooters in this country and 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).

150. 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).

151. The March 30, 2022, Partial Declination Letters include an appeal notice informing the Tribe that it may "request a hearing on the record [by appealing to the Interior Board of Indian Appeals]." EXHIBITS A, B at pg. 2. The Board hearing provided in the letters is ineffectual because hearing officers do not have the authority to hear treaty and constitutionally based claims. *Oestereich v. Selective Serv. Sys. Loc. Bd. No. 11, Cheyenne, Wyo.*, 393 U.S. 233, 242 (1968) (Harlan, J., concurring) ("Adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies.").

152. 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.*

COUNT I
Violation of Treaty, Statutory, and Common Law Trust Duty:
Declaratory Judgment, Mandamus, and Injunctive Relief

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

154. By proposing, incorporating, and ratifying Article V of the 1825 Treaty, the "bad men" clauses in Article I and Article V of the 1868 Treaty, and imposing federal criminal jurisdiction over Tribal citizens, 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. This is a federal commitment that the United States unilaterally and intentionally offered to the Tribe in its federally drafted 1825 and 1868 Treaties; a commitment which was reaffirmed when the Congress of the United States later ratified the 1868 Treaty; and a commitment that the United States has since reaffirmed in subsequent federal statutes.

155. This federal commitment was part of the explicit bargain exchanged for a guarantee of peace and is the foundation of the trust obligation owed by Defendants to the Tribe to provide adequate law enforcement services. Today, as in 1825 and 1868, the Pine Ridge Reservation remains under federal-tribal criminal jurisdiction. 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 Reservation.

156. Pursuant to the 1825 and 1868 Treaties, as confirmed in the 1921 Snyder Act, the Indian Law Enforcement Reform Act, and the Tribal Law and Order Act of 2010, Defendants have a specific, special trust duty to provide competent and adequately equipped law enforcement services to the Tribe and its members and promptly and diligently investigate and report crimes and immediately arresting and punishing offenders. *See* 25 U.S.C. § 3601(2) (finding in the context of the Tribal Law and Order Act that the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government.). *See also* 25 U.S.C. § 2802(c) (ILERA provision carrying forward Articles I and V of the 1868 Treaty); *Seminole Nation v. United States*, 316 U.S. 286, 296–97 (1942) ("In carrying out its treaty obligations with the Indian tribes the Government is something more than a mere contracting party. . .. [Instead], it has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards."); *Salazar v. Ramah Navajo Chapter*, 567 U.S. 182, 194 (2012).

157. A trust relationship exists between the United States and Indian Tribes. *Cheyenne River Sioux Tribe v. Jewell*, 205 F.Supp.3d 1052, 1061 (D.S.D. 2016). *See also United States v. Navajo Nation*, 537 U.S. 488 (2003). This trust relationship is rooted in promises made to tribes by the federal government in treaties and reinforced by federal statutes. *Cheyenne River Sioux Tribe*, 205 F.Supp.3d at 1061.

158. When it enacted the Tribal Law and Order Act of 2010, the Congress found that "the United States has distinct legal, treaty, and trust obligations to provide for the public safety of Indian country." Tribal Law and Order Act, 25 U.S.C. § 2801 note, Pub. L. No. 111-211,

124 Stat. 2262 (2010).

159. 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." 25 U.S.C. § 2801 note, Pub. L. No. 111-211, 124 Stat. 2263 (2010).

160. Having bargained for and undertaken responsibility for law enforcement services on the Pine Ridge Reservation, Defendants have a trust obligation to provide sufficient financial support for law enforcement services adequate to provide prompt and diligent investigation, reporting, and immediate arrest and punishment of offenders occurs.

161. The Defendants have instead chosen to implement a program and decisions which makes these treaty and trust obligations unobtainable on the Pine Ridge Indian Reservation. (Young Decl. ¶¶ 18, 20; Rodriguez Decl. ¶¶ 22, 28, 36, 37).

162. The Defendants have a duty to prevent what it knows are preventable dangers to federally funded law enforcement officers and criminal investigators.

163. The Defendants have breached and continue to breach their treaty obligations under the 1825 Treaty and the 1868 Treaty 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 prompt and diligent investigation, reporting and immediate arrest and punishment of offenders that is required by Articles I and V of the 1868 Treaty.

164. The Defendants have also breached and continue to breach their treaty obligations under the 1825 Treaty and the 1868 Treaty and their trust duty to ensure the prompt prosecution of federal crimes committed against the Tribe and its members by failing to provide sufficient federal resources to ensure prompt and diligent investigation, reporting and immediate arrest and punishment of offenders.

165. The Defendants have breached their treaty obligations under the 1825 Treaty and the 1868 Treaty and their trust duty when they only provide 33 officers and 8 criminal investigators (fewer than it did in 1878 when it provided over 50 federal police officers to answer the "complaints" of the 8,000 Tribal citizens) to handle over 133,755 E-911 calls for police assistance to a service population that has grown more than fourfold to 40,000 people.

166. 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.

167. The Tribe asks this Court to hold that a proper interpretation and construction of the 1825 Treaty, the 1868 Treaty, the Act of February 28, 1877, and subsequent tribal law enforcement statutes as well as the trust relationship which exists between the U.S. and the Tribe thereunder requires the U.S. to ensure the prompt and diligent investigation of crimes occurring on the Pine Ridge Indian Reservation and the appropriate arrest and prosecution of offenders in accordance with federal law. *Rosebud Sioux Tribe v. United States*, 9 F.4th 1018 (8th Cir. 2021).

168. The Tribe requests a declaratory judgment under the Declaratory Judgements Act, 28 U.S.C. § 2201, that Defendants have violated their treaty obligations under Articles I and V of the 1868 Treaty and Article V of the 1825 Treaty, and the trust duty owed to the Tribe,

arising under the 1825 and1868 Treaties, the Act of Feb. 28, 1877, the 1921 Snyder Act, the ILERA, the TLOA, and ISDEAA to ensure prompt and diligent investigation and reporting of alleged crimes and to cause the timely arrest and punishment of offenders to occur according to the laws of the United States.

169. The Tribe also requests mandamus relief requiring all Defendants to comply with their nondiscretionary treaty obligations and trust duties to the Tribe to protect the Tribe's treaty and trust rights to federally funded law enforcement services sufficient to provide for the prompt and diligent investigation and reporting of crimes and the immediate arrest and punishment of offenders occurs according to the laws of the United States.

170. The Tribe also requests a permanent injunction on the OJS and BIA distribution of law enforcement funding at levels below the level required to fulfill the Defendant's treaty and trust obligations to the Tribe based on the current law enforcement service population of 40,000.

COUNT II
Breach of Trust Responsibilities to Provide an Accounting and to Fund Law Enforcement Services
Declaratory, Mandamus and Injunctive Relief

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

172. 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).

173. 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.

174. 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).

175. The District Court has "original jurisdiction of any 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." 28 U.S.C. § 1361.

176. The request to require accounting of law enforcement dollars appropriated by Congress is a request of a specific remedies, which are an attempt to give the Tribe the thing to which they are entitled. *United States Dep't of Hous. & Urb. 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.

177. 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). Pursuant to the 1825 and 1868 Treaties, the 1877 Act, ILERA, TLOA, ISDEAA, and other subsequent federal actions, the Tribe and United States have a fiduciary relationship.

178. 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 (2001)). This report "must contain sufficient information for the beneficiary readily to ascertain whether the trust has been faithfully carried out." *Id.*

179. The Defendants use of 1999 TPA funding levels as its base budget has prejudiced the Tribe by virtue of its having participated in the DOJ CIRCLE and other short-term DOJ grant programs.

180. 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.

181. The March 30, 2022, partial declination letters, including the Tribe's proposal to operate the SRO, DDE, MMIP, and IA programs were based on the arbitrary and capricious base funding levels and service population numbers.

182. An accounting of the use of funds allocated by Congress under TLOA, ILERO, 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.

183. 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.

184. The Tribe requests an injunction on the Defendants compelling the Defendants to provide a detailed accounting to the Tribe of receipts and the use by Defendants of all law enforcement dollars appropriated by Congress to DOI, BIA, and OJS from 1998 through the present date for law enforcement services under ILERA, TLOA, the 1921 Snyder Act, or any other statute. This accounting should include the following: 1) all direct and administrative funding provided to DOI, OJS Central, and OJS Field Operations 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)) by Tribe, fiscal year, amount, and scope of work; and 2) all payments of bonuses, special employee awards, or incentive payments made to federal OJS employees; and 3) the GS Ratings for all OJS full-time equivalent employees.

185. At the present time, the Defendants have not released law enforcement funding to the Tribe, even for those portions of the Tribe's contract proposal that was not declined and have refuse to do so in violation of ISDEAA, 25 U.S.C. §5321(a)(4). (Killer Decl. ¶ 11, Exhibit 3).

186. The Tribe requests a writ of mandamus compelling Defendants to release the law enforcement funds to the Tribe for those portions of its contract proposals not declined.

187. The Tribe requests an injunction compelling Defendants to fund the Tribe's law enforcement services contracts at levels consistent with the funding levels necessary to hire, fully train, equip, and fund the Tribe's law enforcement contracts based on the current law enforcement service population, the Pine Ridge Reservation size, and E-911 service calls, in compliance with Defendants treaty and trust obligations.

COUNT III
Ineffective Declination of Law Enforcement and Criminal Investigations Programs in Violation of ISDEAA
Declaratory and Injunctive Relief

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

189. The Declaratory Judgment Act, 28 U.S.C. § 2201, authorizes this Court to grant declaratory relief.

190. 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. *Pyramid Lake Paiute Tribe v. Burwell*, 70 F. Supp. 3d 534, 542 (D.D.C. 2014) ("The Secretary's written notice to the tribe must explain the reasons for a declination; she may not rely on post-hoc justifications.").

191. 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.

192. 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 pg. 1. The letters neither provided any details nor documentation of the determination of the 106(a)(1) amount claimed to have been exceeded, which is the sole ground for refusal. There is 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.

193. 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 neither provide a detailed explanation nor documents relied on by Defendants in making their determination, merely stating 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 never mention what 106(a)(1) amount is supposed to have been exceeded by the Tribe's proposals.

194. 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, does not meet treaty or trust obligations and is based upon an artificially low base contract amount forced upon the Tribe by the Federal Government over twenty years ago. Any statutorily sufficient explanation must, at a minimum, address how the BIA arrived at its determination of the 106(a)(1) amounts for the CI and LE 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.

195. The Tribe submitted its proposals to amend the contract and for 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.

196. The 90-day period within which the Secretary is permitted to decline has passed; it expired on March 30, 2022. Section 102(a)(2) of the ISDEAA and 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 FY 2022; (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.

197. At the present time, the Defendants have not released law enforcement funding to the Tribe and refuse to do so. (Killer Decl. ¶ 11, Exhibit 3).

198. Because the declination of the Tribe's proposals to operate the LE and CI programs is ineffective, the Tribe requests a declaratory judgment that, as a matter of law, the Defendants were without legal authority to issue the March 30, 2022, partial declinations of funding for criminal investigation and police officers.

The Tribe also requests an injunction requiring the Defendants to (1) approve the Tribe's proposed contracts to operate the LE and CI 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.

COUNT IV
Ineffective Declination of SRO, DDE, MMIP, and IA Programs Violated the ISDEAA and Cannot be Sustained
Declaratory and Injunctive Relief

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

200. The Declaratory Judgment Act, 28 U.S.C. § 2201, authorizes this Court to grant declaratory relief.

201. 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. *Pyramid Lake Paiute Tribe v. Burwell*, 70 F.Supp.3d 534, 542 (D.D.C. 2014) ("The Secretary's written notice to the tribe must explain the reasons for a declination; she may not rely on post-hoc justifications.").

202. 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.

203. Mr. Lopez's March 30, 2022, Partial Declination Letters do not contain any specific findings or 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 as they merely quote a basis for declination from the law, stating that the programs are central office functions "ineligible for contracting." *Id*. 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.

204. Mr. Lopez's March 30, 2022, letters continue the Agency's disregard for the requirements of ISDEAA and its regulations in notifying the Tribe that the SRO, DDE, MMIP, and IA programs are central office functions that may not be lawfully carried out by the Tribe. 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.

205. 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.

206. The 90-day period within which the Secretary is permitted to decline has passed; it expired on March 30, 2022. Section 102(a)(2) of the ISDEAA and 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 FY 2022; (2) award the amended contracts and the new AFAs as proposed; and (3) add to the contracts the full amount of Title I funds pursuant to section 106(a)(1) of the ISDEAA.

207. Because the declination of the Tribe's proposals to operate the SRO, DDE, MMIP, and IA programs is ineffective, the Tribe requests a declaratory judgment that the Defendants, as a matter of law, were without legal authority to issue to issue the March 30, 2022, partial declination of funding for the SRO, DDE, MMIP, and IA programs.

208. The Tribe also requests an injunction requiring the Defendants 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.

COUNT V
The Declination of the Tribe's Proposals to Operate the LE and CI Programs Violated the Requirements of the ISDEAA
Declaratory Relief

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

210. Even if Mr. Lopez's March 30, 2022, Partial Declination letters were considered an effective declination, the Tribe asserts that 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.

211. 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 LE and CI 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 pg. 1 (citing 25 U.S.C. § 5321(a)(2)(D)).

212. 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" as required by law, or of what the Secretary would have provided had it run the Law Enforcement or Criminal Investigation program, 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 effective, unnecessary, or obsolete, and thus no consideration, much less determination, of what funding level is "applicable" under ISDEAA or necessary to carry out the standards required under the ILERA (25 U.S.C § 2802(b)) and incorporated into the BIA Law Enforcement Handbook at 25 C.F.R. part 12.11-14. There is no showing that the Tribe's proposal was excessive given the demonstrated errors in the base funding amount being applied by Defendants and the lump sum appropriation received by the BIA for law enforcement services. The Defendant's failure to make a finding relevant to this criterion renders the partial declination deficient and arbitrary.

213. In its partial declination of the Law Enforcement and Criminal Investigations programs, Defendants arbitrarily and irrationally limited the Tribe's base contract amounts to an artificially low amount set by the BIA over 20 years ago in 1999, which funds significantly fewer tribal police than the United States was funding in 1879.

214. 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 its partial disapproval of the Tribe's contract proposals to operate its Law Enforcement and Criminal Investigations programs legally deficient and arbitrary. Nothing in ISDEAA, ILERA, or TLOA authorizes or allows such an outcome.

215. The amount of funds required under ISDEAA Section 106(a)(1) may not be determined arbitrarily. Such an interpretation violates 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). Common sense requires that the agency cannot simply pick a funding amount it used at any prior random point in time of its own choosing and merely impose that historic base funding amount on a Tribe as its current 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 Secretary's clearly stated treaty and trust obligations, 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 certainly should not be the amount calculated using the base funding DOI provided more than twenty years ago, and certainly not 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.

216. The Defendants' actions violate 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).

217. Each provision of ISDEAA (and other federal statutes involving Indians) "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). *See also, Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985).

218. Defendants' actions and failures to take corrective action violate 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.

219. 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."

220. Defendants' 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 arm's length negotiation.

221. In this instance, Defendant Lopez and OJS approached their federal review of the Tribe's proposed contract only after Defendants had already decided what law enforcement programs, functions, services, and activities the OJS wanted to operate itself using only federal employees, and on the amount of federal law enforcement funding that they wanted to reserve in their OJS account to pay for that federal effort. The federal government cannot claim "good faith" negotiations when its representatives are unwilling to discuss the contract price or the contract's scope of work, especially when they are not even willing to

engage in open and honest conversations about the issues underlying the contract including the contract amount.

222. Negotiation is the "consensual bargaining process in which the parties attempt to reach agreement . . .." *Negotiation*, Black's Law Dictionary (11th ed. 2019). That did not happen here. There was no negotiation. Instead, there were two take-it -or-leave-it March 30, 2022, Partial Declination letters.

223. Black's Law Dictionary gives as examples of "bad faith" an instance where one of the parties seeks "evasion of the spirit of the bargain," and where a party engages in an "abuse of power to specify terms." *Bad Faith*, Black's Law Dictionary (11th ed. 2019). That is what Mr. Lopez did when he refused to negotiate the contracts incorporation of school resource officers, Missing and Murdered Indigenous Persons functions, Internal Affairs, or additional drug officers, while at the same time keeping many of those same people as federal employees at OJS.

224. The federal government also engaged in a "bad faith" abuse of power to specify terms when it notified the Tribe that it was only willing to approve a specific contract price for each contract which it arrived at in the absence of any contract negotiation whatsoever.

225. 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).

226. 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).

227. Because the March 30, 2022 partial declinations of the Tribe's proposals to operate the Law Enforcement and Criminal Investigations programs were not in accordance with law, they were ineffective and 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 LE and CI 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.

COUNT VI
The Declination of the Tribe's Proposals to Operate the SRO, DDE, MMIP, and IA Programs Violated the ISDEAA and Cannot be Sustained
Declaratory Relief

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

229. 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 pg. 2.

230. 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 pg. 2 (*citing* 25 U.S.C. § 5321(a)(2)(e).

231. The only justification BIA gives 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 pg. 2.

232. As a reading of the Tribe's proposed contracts reveals, however, Defendant Lopez's statement is incorrect as a matter of law and plain English. 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.

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

234. 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)

235. 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). 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*).

236. Given these statutory directives, for BIA to 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 ILERA, and the purpose of TLOA to empower tribal justice systems.

237. The Tribe had successfully operated the SRO, DDE, MMIP, and IA programs for years. (Young Decl. ¶ 40). For the Defendants 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 ISDEAA and effectively repeals the "or portions thereof" option provided in ISDEAA. 25 U.S.C. § 5321(a)(1).

238. It is a violation of ISDEAA for the BIA and OJS 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 directly interferes with the Tribe's right to exercise its rights under the ISDEAA, ILERA, and TLOA.

239. The BIA and OJS 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 local activities that the Tribe has concluded are necessary to maintain law and order on the Reservation.

240. BIA and OJS 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.

241. BIA and OJS 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 sometimes taken up to three years to complete. (Young Decl. ¶ 50).

242. 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 many members of the local community. *Id.*

243. The Tribe's contract proposal allows the Tribe to investigate and close internal investigations, 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.

244. Nothing in ISDEAA, ILERA, or TLOA authorizes BIA or OJS to decline to contract the services requested in the Tribe's proposal.

245. Each provision of ISDEAA (and other federal statutes involving Indians) "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). *See also Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985).

246. The BIA and OJS action to issue a declination to contract SRO, DDE, MMIP, and IA programs directly contravenes 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).

247. BIA and OJS action to decline to contract the services discussed herein violates the duty of fair dealing in negotiating ISDEAA contracts by making a take-it-or-leave-it offer to the Tribe without any arm's length negotiation. 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."

248. Defendant Lopez and OJS staff approached their federal review of the Tribe's proposed contract only after they had already decided what law enforcement programs, functions, services, and activities the OJS wants to operate itself using only federal employees, and on the amount of federal law enforcement funding that OJS wanted to reserve in the OJS account in order to pay for that federal effort. The federal government cannot claim "good faith" negotiations when its representatives are unwilling to discuss the contract price or the contract's scope of work, especially when they are not even willing to engage in open conversations about the issues underlying the contract.

249. Negotiation is the "consensual bargaining process in which the parties attempt to reach agreement . . .." *Negotiation*, Black's Law Dictionary (11th ed. 2019). That did not happen here. There was no negotiation. Instead, there were two take-it -or-leave-it appeal letters.

250. Black's Law Dictionary gives as examples of "bad faith" an instance where one of the parties seeks "evasion of the spirit of the bargain," and where a party engages in an "abuse

of power to specify terms." *Bad Faith*, Black's Law Dictionary (11th ed. 2019). That is what Mr. Lopez did when he refused to negotiate the contract for school resource officers, Missing and Murdered Indigenous Persons functions, Internal Affairs, or additional drug officers, while at the same time keeping many of those same people as federal employees under direct OJS supervision.

251. The federal government engaged in a "bad faith" abuse of power when it notified the Tribe that it was only willing to approve a specific contract price which it arrived at in the absence of any contract negotiation.

252. 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).

253. BIA and OJS declinations to contract services violates the Indian self-determination obligations imposed under 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).

254. Because the declinations of the Tribe's proposals to operate the SRO, DDE, MMIP, and IA programs was without legal authority, those declinations were ineffective and the Tribe requests a declaratory judgment that the Defendants, as a matter of law, were required to

do the following: (1) approve the Tribe's proposed contracts to operate the SRO, DDE, 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.

COUNT VII
The Defendants' Actions are Arbitrary and Capricious and in Violation of the Administrative Procedures Act, 5 U.S.C. § 702 et seq.
Declaratory Judgment and Mandatory Injunction

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

256. The APA provides that "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial relief thereof." 5 U.S.C. § 702. The APA allows for judicial review of agency action or inaction that cause harm and supports the "basic presumption of judicial review." *Abbot Labs. v. Gardner*, 387 U.S. 136, 140 (1967). Unless an action is committed to agency discretion, this general presumption of judicial review applies. *See Lincoln v. Vigil*, 508 U.S. 182 (1993).

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

258. 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 funds significantly

fewer police officers on the Pine Ridge Reservation than the Defendants were funding in 1879. Such funding decision is arbitrary and capricious, an abuse of discretion, and contrary to the Tribe's rights.

259. 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). Common sense requires that the agency cannot simply pick a funding amount it used at any prior random point in time 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 clearly stated treaty and trust obligations, the current service population, the size of the Reservation, the crime statistics, and the over 133,755 E-911 calls, this should not be an amount which is based upon the amount DOI provided more than twenty years ago, and certainly not 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.

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

261. BIA and OJS' 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).

262. The BIA and OJS 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 and arbitrary. Nothing in ISDEAA, ILERA, or TLOA authorizes such an outcome.

263. Each provision of ISDEAA (and other federal statutes involving Indians) "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). *See also Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985).

264. Because Defendants failed to comply with their obligations under the 1921 Snyder Act and implementing law in ISDEAA, ILERO and TLOA, the Tribe is entitled to declaratory and injunctive relief under the APA, in addition to remedies that may be available directly under ISDEAA, for Defendant's failure to adequately fund the Tribe's section 106(a)(1) amount for LE and CI services. *See* 5 U.S.C. § 702 (providing for mandatory and injunction remedies).

265. For these reasons, under the APA the Tribe is entitled to a declaratory judgment that Defendants violated the APA, 5 U.S.C. § 702 *et. seq.*, by relying on an inaccurate, artificially lowered amounts 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).

266. The Tribe is also entitled under the APA to a mandatory injunction requiring 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 today to enforce Federal 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. Defendants have a treaty and trust responsibility to provide and adequately equip a sufficient number of law enforcement and criminal investigations officers on the Pine Ridge Indian Reservation ("Pine Ridge" or "Reservation") to reasonably ensure 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. Defendants are violating those responsibilities to the Tribe; and

   B. Defendants 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 section 5321 (a)(1).); and

   C. Defendants 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 and 1868 treaties; and far below the amount that the BIA concluded was necessary in its own TLOA Reports to Congress. Additionally, it is amounts that Defendants knew were based upon arbitrary and incomplete information that it chose at a time when it knew that the Tribe was supplementing its law enforcement services budget with temporary and long since expired DOJ grant funds; and

D. Defendants violated their trust duty owed to the Tribe arising under the 1825 and 1868 Treaties, as carried forward in the Snyder Act, the Indian Law Enforcement Reform Act, the Tribal Law and Order Act, the Indian Self Determination and Education Assistance Act, and federal common law, to ensure that the law enforcement services provided to the Tribe are fully and competently carried out in a manner that reasonably ensures the investigation and reporting of all crimes, and the timely arrest and punishment of offenders; and

E. Defendants' inadequate funding of the Tribe's law enforcement programs violates the rights of the Tribe and its members under the 1825 and 1868 Treaties and violates the Defendants' trust responsibility to the Tribe; and.

F. 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. A writ of mandamus requiring Defendants to release the law enforcement funds to the Tribe pursuant 25 U.S.C. §5321(a)(4) for those portions of the Tribe's contract proposals not declined. 25 U.S.C. §5331(a) ("United States district courts . . . may order appropriate relief including . . . mandamus to compel [Defendants] to perform a duty provided under this subchapter . . .")

3. An injunction that:

   A. Preliminarily and permanently compels Defendants to fund and equip a minimum of 2.8 tribal law enforcement officers per 1,000 on-reservation people according to the BIA's own published standard in the TLOA Reports; and

   B. Compels Defendants to increase the base funding to the Tribe to account for the size of the Pine Ridge Reservation, increases in crime, calls for service, and the law enforcement service population; and

   C. Compels Defendants to fund the Tribe's ISDEAA LE and CI contract at a level that complies with the 1825 and 1868 Treaties and applicable Federal laws; and.

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

   E. Requires Defendants to comply with its treaty and trust duties to the Tribe by taking sufficient measures to ensure competent, prompt, and diligent investigation and reporting of all crimes on the Reservation and the immediate arrest and punishment of offenders; and

   F. Requires Defendants to provide an accounting to the Tribe of the use by Defendants of all law enforcement dollars appropriated by Congress and distributed to DOI, BIA, and

OJS from 1998 through the present date for law enforcement services under ILERA, TLOA, and the 1921 Snyder Act. This accounting should include the following: 1) all direct and administrative appropriations provided to DOI, OJS Central, and OJS Field Operations including all specialty programs (including, but not limited to, the Drug Task Force, MMI Task Force, Police Academy, Internal Affairs Division, District Offices and each tribal location – both direct service and Tribally contracted – by Tribe, fiscal year, amount, and scope of work; and 2) all payments of bonuses, special employee awards, or incentive payments made to all full-time equivalent OJS employees; and 3) the GS Ratings for all full-time equivalent OJS employees; and

G. Compels Defendants to fund the Tribe's law enforcement and criminal investigations services contracts at levels consistent with the funding levels necessary to equitably fund the Tribe based on law enforcement service population, Reservation size, present day number of crimes, and E-911 service calls, in compliance with Defendants treaty and trust obligations; and

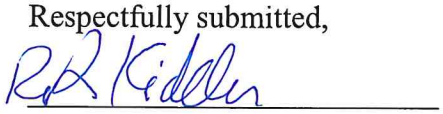
H. Compels Defendants to stop withholding all law enforcement services funding from the Tribe during the pendency of this dispute.

4. An award of costs and disbursements 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 monetary, declaratory, and equitable relief as this Court may find to be just.

Dated: July 26, 2022

Respectfully submitted,



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Attorneys for the Oglala Sioux Tribe

JS 44 (Rev. 04/21)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Oglala Sioux Tribe

(b) County of Residence of First Listed Plaintiff Oglala Lakota County, S
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

See attachment

DEFENDANTS

The United States of America (see attachment for others)

County of Residence of First Listed Defendant Washington DC
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☐ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
5 U.S.C. § 702; 25 U.S.C. §§13, 2801 and 3601;

Brief description of cause:
Violation of Treaty obligations and ISDEAA

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE
7/26/2022

SIGNATURE OF ATTORNEY OF RECORD
/s/ Rebecca Kidder

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Attachment to Civil Cover Sheet

I.(b). Plaintiff's County of Residence:

Oglala Lakota County, SD

I.(c). Plaintiff's Attorneys:

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I. Defendants:

THE UNITED STATES OF AMERICA
THE UNITED STATES DEPARTMENT OF THE INTERIOR
THE BUREAU OF INDIAN AFFAIRS
Department of the Interior: Debra HAALAND, Secretary of the Interior
Bureau of Indian Affairs: Steve JUNEAU, Director, Bureau of Indian Affairs- Office of Justice Services
Bureau of Indian Affairs: John BURGE, Special Agent in Charge of District 1, Bureau of Indian Affairs- Office of Justice Services
Bureau of Indian Affairs: Tino LOPEZ, Acting Awarding Official, Bureau of Indian Affairs- Office of Justice Services
Bureau of Indian Affairs: Darryl LACOUNTE, Commissioner, Bureau of Indian Affairs
Bureau of Indian Affairs: Gina DOUVILLE, Superintendent of Indian Affairs, Bureau of Indian Affairs