

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

Renee Kay Martin, et al.,

Plaintiff

vs

UNITED STATES OF AMERICA et al.,

Defendant

Case No: 3:22-cv-136

**RESPONSE TO REPORT AND
RECOMMENDATIONS**

The Plaintiff Renee Kay Martin, on behalf of minor children of Brandon Richard Laducer file Plaintiffs' Brief in Response to Defendants Kalen Gourneau, Michael Slater, Joseph Kaufman, Earl Charbonneau, Nathan Gustafson, Reed Messman, Trenton Gunville, Jayde Slater, Mitchell Slater, Andrew Saari Jr, William Poitra, Heather Baker, and Annette Laducer, all in their individual and official capacities, and United States **Motion to Dismiss**.

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STATEMENT OF FACTS

Brandon Richard Laducer was the victim of homicide via officer involved shooting on the Turtle Mountain Indian Band of Chippewa Indian Reservation on August 23, 2020. Renee Kay Martin is the natural parent of Brandon Richard Laducer and is acting on behalf of his two minor children.

LEGAL JURISDICTION

We all agree the warrant the officers used to enter the Laducer homestead was not for Brandon Richard Laducer but for Brandon Lee Laducer who is Caucasian. North Dakota is a non-mandatory state which means the state courts do not have jurisdiction over major crimes on tribal lands but can assume some jurisdiction over tribal citizens on tribal lands. (*Tribal Member Killed, BIA Officer, Suspended, Family Knows Nothing on Turtle Mountain Indian Reservation, p5, Unicorn Riot*).

The Plaintiff used the NDBCI report because it is the only evidence afforded to the Plaintiff. The Bureau of Indian Affairs has evidence but their evidence is not the official evidence as well. The only evidence collected that is official is the FBI findings. According to Kevin Smith, the FBI's Public Affairs Officer for the Minneapolis Division who was tasked with controlling the public narrative. Because the shooting happened on the reservation, **federal jurisdiction mandates the FBI's involvement, even though agents were not on the ground the night Brandon was shot and killed.** What Smith conveyed to a small pool of journalists was a limited statement: that agencies involved in the shooting included the Bureau of Indian Affairs, the Rolette County Sheriff's Office, the Rolette Police Department, and the Rolla Police Department. It would be the last and only statement the FBI would make on the case as it investigates, Smith emailed me. The next step, he said, would be to turn over the facts to the US Attorney's Office in North Dakota for a charging decision. (*Bureau of Indian Affairs officer on leave after fatal shooting of*

Brandon Laducer-A Tale of Two Police Shootings: A Black victim sparked protests, a dead Native man got ignored Native Americans die from police violence more than any other American, a fact that is chronically overlooked, (Monet, J p2, 08/31/20)

Therefore, until all parties have access to the official report, we plead the Motion to Dismiss is premature. We have inserted a diagram as well as the recent report from Attorney General Merrick Garland to tribal nations regarding DOJ process as exhibits.

In other words, the DOJ and the FBI want to sit on the evidence while the rest of us are chasing a fugazi. The defendants are attempting to cloak themselves in state jurisdiction but according to DOJ guidelines as it pertains to major crimes investigations on tribal lands, all participants including witnesses are under federal jurisdiction not state jurisdiction. In other words, if they did not want to be held accountable, they should have followed the DOJ's prescribed guidelines as it pertains to federal jurisdiction and informed BIA officers they had no jurisdiction. BIA officers when contacted by Rolette County Sheriff's department could have stated we can assist but we cannot pursue non-tribal citizens off the reservation.

Since all the defendants listed are engaged in a federal, not a state investigation, they can be held culpable for the violation of Brandon Richard Laducer's civil rights as it pertains to the Indian Civil Rights Act. In a recent federal court case relating to George Floyd, three defendants were charged in Federal Court because the federal indictment charges the officers with "willfully" depriving Floyd of his constitutional rights, saying they "willfully failed to aid Floyd" when he was lying on the ground needing medical attention suggesting not just that they did not act but also specifically chose not to act. In this case we are unsure who provided medical attention per the FBI findings and as a collective, they planned the invasion if you will. If a Turtle Mountain

band member requests assistance, then the BIA police officers or an ambulance from the tribe will be contacted, not Rolette County Sheriff's department or the U.S Border Patrol.

Why is this George Floyd federal case relevant because the officers were Minneapolis police officers, not federal agents, and they violated Mr. Floyd's civil rights by causing irreparable harm which was murder.

The defenses' notion that this court does not have jurisdiction over Craig Zachmeier, or officers from Rolette County we believe is premature or not warranted because there is precedence that non-federal officers and others can be charged in a federal court, individually and officially, also criminally and civilly if they are negligent as a collective.

And as a collective there were opportunities to verify the warrant, secure the scene, and not wait until after the shooting to obtain permission to enter the premises, allegedly. This was done as a collective, the surrounding of the home when no lights and sirens, etc. In other words, someone gave an order, and they all knew what to do upon entering the wrong homestead.

Another example, the witness, Annette Laducer, on August 23, 2020, had an active bench warrant in Burleigh County for felony theft. Rolette County sheriff's officers **with the assistance from Turtle Mountain BIA officers** had authority to apprehend the witness because she was charged with a felony on state land. Brandon Richard Laducer had no warrants and had not committed any crimes on the Turtle Mountain Indian reservation and did not have any active felony warrants in the State of North Dakota at the time of the shooting. Backwards, because technically she should have been detained. And since she has become a witness for the defendants her record has been expunged.

Another example if the officers stated, Brandon Lee Laducer we have a warrant, according to the Fourth Amendment of the constitution, **Brandon Richard Laducer is not compelled to**

respond because he is not Brandon Lee Laducer. If the officers **commanded Brandon Richard Laducer, we have a warrant, then our original theory would be true and the officers used a warrant with a similar name to gain access to the homestead.** But the person on the warrant is Caucasian and lived in Rolette County, so Rolette County police department did not need assistance to pursue Brandon Lee Laducer. Both scenarios illustrate the reason for the Bivens claim, and why none of the officers should be protected by qualified immunity. This was a planned mission and without proper cause, they pursued and killed a tribal citizen with planning and as a collective. And yes Mr. Zachmeier arrived after the shooting but he has a responsibility to secure the scene and note all evidence.

According to FBI agent Reed Messman at our **administrative** meeting with Assistant US Attorney Eric Lundberg on February 17, 2021, the reason the officers were at the Laducer residence was because Ms. Laducer was having a “mental health crisis”. But according to Attorney General Merrick Garland, the DOJ is the jurisdiction for major crimes committed on tribal lands, not the Department of Interior, not the State of North Dakota nor the tribe itself. Mr. Kevin Smith, FBI spokesperson, stated the details of the shooting were being investigated and no information was being shared with public or press. Requests for details about the shooting were forwarded to the FBI, not the tribe, not the BIA but the FBI. We believe the reason for this is because whatever information the FBI has is damaging to the defendants, which the Plaintiff will delve into more because we filed a motion regarding the **Violation of the FOIA STANDARDS AND PRACTICES.**

FEDERAL TORTE CLAIM PROCESS

In the diagram shared on page 15, INDIAN COUNTRY CRIMINAL JURISDICTIONAL CHART for crimes committed within Indian Country as defined by 18 U.S.C. § 1151(a), (b) &

(c) (a) reservations [tribal trust lands] (including rights-of-way/roads), (b) dependent Indian communities, and (c) Indian allotments held in trust (including rights-of-way/roads), it illustrates federal, tribal and state jurisdictions as it pertains to crimes in Indian country.

Because the DOJ, not the Department of Interior, is the jurisdiction the review from Ms. Polk is mute. In fact, even if the request was missing information which according to the FOIA officer, they already knew I was his parent and legally able to obtain the report, the request is still considered received. But it is mute because we had an in-person meeting with the appropriate officials and from that meeting the FBI and USAO assigned were informed we would be filing a Torte claim once we receive Mr. Messman's final report.

A person can file an FTCA administrative complaint online, mailed letter or in person. Agent Messman contacted me in December 2020 and stated we could meet with the US Attorney to find out what transpired and address our concerns. Brandon Richard Laducer's father declined the meeting. At this meeting, we were not given a definitive answer on whether the shooting was justified or unjustified. The facts gathered from the meeting were Ms. Laducer had a mental health crisis and Turtle Mountain Band of Chippewa BIA police officers were called to support her. We asked why the Rolette County officers were called if she is a tribal citizen on tribal land that needed mental health support. Why wasn't an ambulance called? If the witness was having a mental health crisis, Turtle Mountain has a qualified medical providers who could have assisted not the US Border Patrol.

It was in that meeting that Mr. Messman confirmed that Officer Parisien had called the Bottineau tavern owner twice, to inform her Brandon Richard Laducer was apprehended and the second call to inform her he was dead and she did not have to worry anymore. I informed Mr. Messman and Mr. Lundberg that I worked in tribal gaming for 18 years and I had collaborated with many

tribes and what he described was not the appropriate process. Why did the bar owner in another county and off reservation need to be informed of Brandon Richard Laducer's death. No answer to that question, I informed both there were policies violated and I made it clear we are moving forward with a lawsuit. Assistant US Attorney Eric Lundberg did not provide a definitive answer to whether this was justified or not justified. Therefore, could the officers have been charged with manslaughter? Without the DOJ evidence, we cannot even determine if these were criminal acts, another violation of Brandon Richard Laducer's civil rights. Three witnesses were in attendance and provided statements.

FREEDOM OF INFORMATION ACT

A motion was filed stating that the United States of America and The State of North Dalota violated the Freedom of Information Act by not providing the information requested or stating the reasons why it was not available. As stated, no one denies that I am Brandon Richard Laducer's natural parent.

In August 2021, a FOIA request was sent to Assistant US Attorney Eric Lundberg and I received a response that the request was being reviewed.

In September and December of 2021, I spoke to a FOIA officer in Washington DC case number **2021-002980** and contact number 202-222-7798. The FOIA officer stated that the FBI had not released the report yet but she would continue to search as she was working from home due to the pandemic. The FOIA officer stated there was a backlog of requests and it would take some time. She called me again in December 2021 and told me that she could not obtain the information and to reach out to the Justice Department directly because the FBI would not release the report. It was then that I reached out to an attorney and asked for assistance. The attorney hit a brick wall with the DOJ but received the BIA and NDBCI report. And again,

though the officers work for the Bureau of Indian Affairs, the investigation and jurisdiction belong to the DOJ, not the Department of Interior. The Department of Justice has not provided any reasoning for not following the law as it pertains to FOIA. And especially if they are concerned the evidence is damaging to the defendants. The DOJ's responsibility is to provide the facts as it pertains to law and matter. Not bury the evidence to protect the officers or witnesses. This is a violation of Brandon Richard Laducer's civil rights because any act that was out of compliance that resulted in irreparable harm such as murder per the constitution and the Indian Civil Rights of 1968, needs to be made available to said parties representing him. You cannot legally sit on evidence because it is damaging and on what grounds. Even the President of the United States must comply with such requests. The failure to grant FOIA documents or provide cause for not releasing said documents could lead to the possibility of sanctions against an individual agency employee under limited circumstances. Specifically, if it finds that the agency acted "arbitrarily or capriciously" in improperly withholding records, the U.S. Office of Special Counsel must "initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding." 5 U.S.C. § 552(a)(4)(F).

And the executive branch of our government is the only division that classifies documents. I have not received an official letter from the Biden administration that the DOJ's evidence is classified and sequestered. However, I offered to travel to DC and review the evidence with the appropriate officials and I have not received a response yet as to why that request was not granted.

CONCLUSION

The Plaintiff for Brandon Richard Laducer respectfully requests that the Court deny the motions to dismiss because the administrative process was followed as prescribed by the Department of Justice and the officers and witness are part of a federal, not state case. And as we have stated emphatically, without evidence, how can we proceed, the Department of Justice has sat on the jurisdictional evidence maybe because the evidence is favorable to the Plaintiff and that violates our rights to a fair trial.

We pray that since Mr. Zachmeier was part of a federal investigation, not a state one. that the motion to dismiss be lifted as the decision for him was “without prejudice”.

We request the case be **Continued** until the DOJ releases its final report, without that, we are without the jurisdictional evidence needed, the other reports are theory and conjecture. We all agree that the warrant used to enter the residence was for Brandon Lee Laducer, not Brandon Richard Laducer. We want the audio because we were told they have audio of the commands made by the officers, we need witness statements so we can cross examine, and we need all other evidence that was collected. A basic human and civil right that we as citizens are afforded per the constitution is the right to a fair trial. We as citizens retain the right to request and obtain evidence to participate in that trial. I am not a lawyer so I appreciate the allowances afforded but I believe we have made a case for Bivens’ claim to continue at a federal level both officially and individually because that is the jurisdiction and we followed the DOJ” s administrative process and we were lucky to be granted the meeting so we appreciated the effort.

Lastly, I made a request for accommodation due to my head trauma and I was denied the accommodation. We received a 30-page summary, and though I appreciate your honor’s thoughtful review, my eyes and head were impacted by the heavy reading and it set my therapy

back a couple of weeks. If these objections are denied, and the motions to dismiss prevail, we intend on filing an appeal.

Dated: March 12, 2023



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UNICORN RIOT



 POLICE →

Tribal Member Killed, BIA Officer Suspended, Family Knows Nothing on Turtle Mountain Indian Reservation

By Darren Thompson, Contributor ▶ August 28, 2020

Belcourt, ND – On Sunday, August 23, a Turtle Mountain Chippewa man was shot and killed by police in Belcourt, North Dakota on the Turtle Mountain Indian Reservation, according to a statement made by the Federal Bureau of Investigation (FBI). Law enforcement is currently providing little details about the shooting at a private residence.

In an email, FBI spokesperson Kevin Smith shared that police were involved in a shooting at a home in Belcourt, North Dakota late Saturday night, August 22 and into the early morning hours of Sunday, August 23.

The FBI was called to respond to the shooting, and the North Dakota Bureau of Criminal Investigation assisted with processing the scene, according to the email.

The FBI reported the law enforcement agencies involved in the incident were the Bureau of Indian Affairs (BIA), the Rolette County Sheriff's Office, the Rolette Police Department and the Rolla Police Department.

Phone calls to the Rolette County Sheriff's Department, the Rolette Police Department, and the Rolla Police Department were met with script-like responses of "**that's tribal**", leading to this reporter calling the Turtle Mountain Chippewa Tribal Office. Over the phone, a receptionist shared the phone number for the Bureau of Indian Affairs Turtle Mountain Agency and the BIA stated over the phone that any questions should be directed to the FBI field office in Minneapolis, Minnesota, nearly 500 miles away.

When asked for more information about the incident, FBI spokesperson Kevin Smith said the incident was "**a shooting while officers were present**" and "**the circumstances of the shooting (the who, what, when, where and why) are all part of the investigation.**" No other information is being shared with the public.



What 'checker-boarding' looks like

In 1953, in an effort to reduce its financial and administrative obligations in Indian Country, Congress sought to transfer the federal government's civil and criminal jurisdictional responsibilities over individual actions to the states and passed Public Law 280 (PL280), which is a federal statute. It enabled six mandatory states—Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin—to assume criminal and civil jurisdiction in matters involving American Indians on reservation land.

Prior to the enactment of PL280, these matters were dealt with in either tribal and/or federal court.

In 1968, Congress passed an amendment to Public Law 280 which authorized non-mandatory states to assume civil and/or criminal jurisdiction over Indian Country within its borders. The amendment also required that tribes consent to the imposition of such state jurisdiction.

Since the amendment was passed, Arizona, Florida, Idaho, Iowa, Montana, North Dakota, South Dakota, Utah, and Washington have assumed some jurisdiction over crimes committed by tribal members on reservation land.

No tribe has consented to state authority over its lands. Yet this change has significantly altered the division of legal authority among tribal, federal, and state governments, making navigating through criminal cases often very complex.

Map of Indian Lands of federally recognized tribes of the United States (BIA 2016)

In various states, local police, tribal police, BIA police, and the FBI are the agencies who enforce the laws of tribes, states, and the federal government. However, Public Law 280 added that tribes cannot put non-natives on trial, even when crime occurs on reservation land.

Before PL280, the federal government and tribal courts shared jurisdiction over most civil and criminal matters involving American Indians in Indian Country. The states had no jurisdiction. PL280

authorized state criminal jurisdiction over reservation Indians for offenses involving Native perpetrators and/or victims.

Because North Dakota is considered a non-mandatory state, the federal government ultimately has authority and in this situation, the jurisdiction in an officer involved shooting belongs to the FBI. Because the FBI is involved, the actions of any participating law enforcement agencies are not permitted to share any information with the public, including the Turtle Mountain Chippewa Tribe.

Major felonies involving an Indian, whether as victim or accused, are matters for federal prosecution.

Map of North Dakota reservations (North Dakota Indian Affairs)

"I don't know all of the circumstances, but I was informed that the FBI was called immediately," said Turtle Mountain Chippewa Tribal Chairman Jamie Azure in an email. **"What we're curious about is which officers were involved because some of them are Native, too."**

"One of our own is no longer with us, and that is a tragedy," added Azure. **"Many lives are affected in our community."**

As of Monday evening, KFYRTV Fox West Dakota reported that a BIA Office of Justice Services officer is on administrative leave pending the investigation, according to a spokesperson with the BIA.

Further details, including the officer's identity, are not being released at this time.

"If there is justice to be served, we should definitely pursue it," said Stephanie Laducer, an aunt of Brandon Laducer. **"Nothing is being shared with the family since the FBI has been involved, which makes us left completely in the dark."**

Brandon Laducer's mother was notified by police that there were 5 shots fired in the incident, but according to family at least 20 shots were fired.

"Everyone knows everyone in this town," added Stephanie Laducer. **"Our community is torn apart."**

"He was kind, loving, funny and my nephew," Stephanie Laducer said about her nephew.

"Minutes before he died he said, 'I love you auntie, you are one of the best people I know.'" — Stephanie Laducer

According to Michael Price, whose son is the half-brother of Brandon Laducer, state police were involved in the shooting that occurred on tribal lands.

"There may have been jurisdictional issues. The silence of the investigation is a concern." — Michael Price

The family has arranged a [GoFundMe for funeral expenses](#).

Most of the discussion of police violence in America is justifiably focused around Black people killed or subject to force by officers.

However, victims of American Indian descent have failed to receive similar coverage, partially because of the complicated jurisdiction issues. Navigating through the systems of oppression that affect American Indian communities, land, and people is often very complicated, frustrating, and lacks transparency, leaving victims of crimes in Indian Country vulnerable to this day.

What are Indian lands?

Allotted lands, which are remnants of reservations broken up during the federal allotment period of the late nineteenth and early twentieth centuries. Although the practice of allotting lands had begun in the eighteenth century, it was put to greater use after the Civil War. By 1885, over 11,000 patents had been issued to individual Indians under various treaties and laws. Starting with the General Allotment Act in 1887 (also known as the Dawes Act) until the Indian Reorganization Act of 1934, allotments were conveyed to members of affected tribes and held in trust by the federal government. As allotments were taken out of trust, they became subject to state and local taxation, which resulted in thousands of acres passing out of Indian hands. Today, 10,059,290.74 million acres of individually owned lands are still held in trust for allottees and their heirs.

Restricted status, also known as restricted fee, where title to the land is held by an individual Indian person or a tribe and which can only be alienated or encumbered by the owner with the approval of the Secretary of the Interior because of limitations contained in the conveyance instrument pursuant to federal law.

State Indian reservations, which are lands held in trust by a state for an Indian tribe. With state trust lands title is held by the state on behalf of the tribe and the lands are not subject to state property tax. They are subject to state law, however. State trust lands stem from treaties or other agreements between a tribal group and the state government or the colonial government(s) that preceded it.

American Indian and Alaska Native tribes, businesses, and individuals may also own land as private property. In such cases, they are subject to state and local laws, regulations, codes, and taxation.

Cover image via Stephani Laducer/Facebook.

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Jenni Monet: Bureau of Indian Affairs officer on leave after fatal shooting of Brandon Laducer



Monday, August 31, 2020

A Tale of Two Police Shootings: A Black victim sparked protests, a dead Native man got ignored

Native Americans die from police violence more than any other American, a fact that is chronically overlooked.

By Jenni Monet

Indigenously

medium.com/indigenously

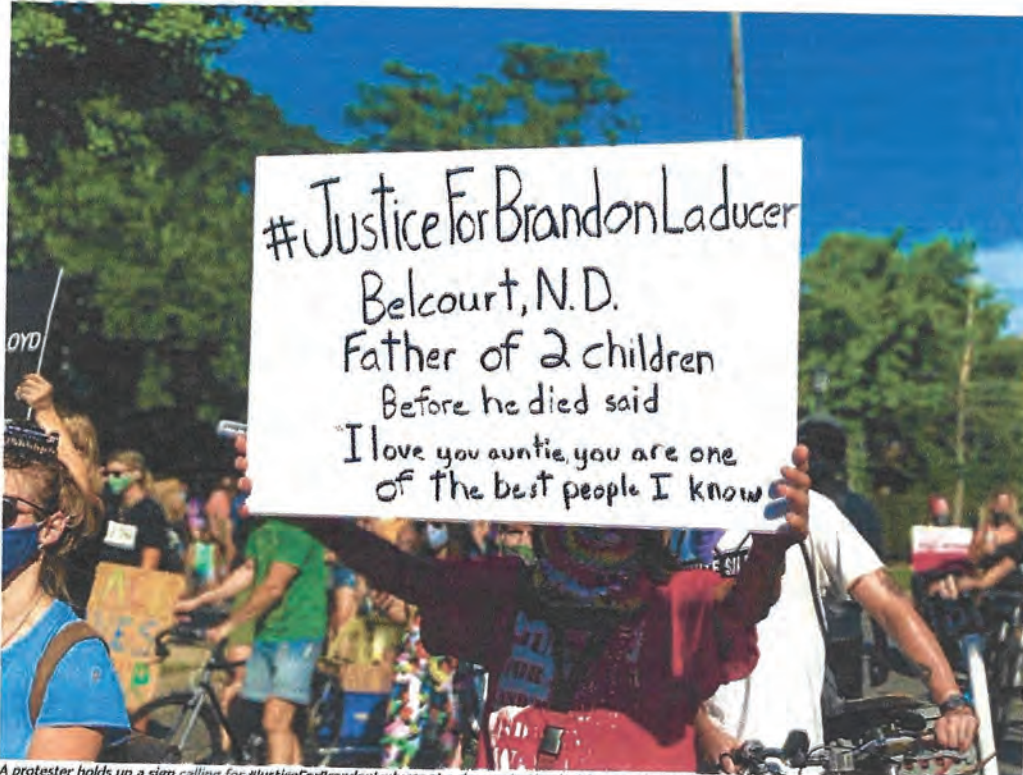
This story is a project of the Indigenously newsletter. [Subscribe today.](#)

In the early morning hours of Sunday, August 23, Stephanie Laducer found herself on the Turtle Mountain Indian reservation outside the home where her nephew, 38-year-old Brandon Laducer, had just been shot by the police. Minutes before he died, Stephanie said he spoke what would be some of his last words. "He said, 'I love you auntie, you are one of the best people I know,'" she [reportedly told Native News Online](#).

Days later, Stephanie, 48, would turn to Facebook to openly grieve. Brandon, she wrote, was like a son to her. "I have no doubt in my soul that [he] knew how much I loved him."

Days after his death, she wasted little time helping to plan his parting. There was wood that needed to be chopped for his four-day spirit fire. A wake had to be scheduled at Fiddler's Hall, and his mass had to be arranged at St. Ann's Catholic Church. More than anything, the family wanted to make sure he was buried next to his grandmother, Delores Laducer.

In between all the preparations, though, for Stephanie, time would distance in learning why police had gunned down her nephew. All she knew was that law enforcement officers from four different surrounding agencies had barged into the home where Brandon had been killed. Some reports say five shots were fired, others say more. It would take two days before the [Associated Press](#) filed a brief, but not with many more leads. In the absence of such attention to the shooting, what the tribe's chairman, Jamie Azure, called a "tragedy," news instead spread via text message and across Facebook, what often typifies life on remote reservations — a deep sense of numbness and fatalism that manifests around a culture of ignored violence among Native Americans.



A protester holds up a sign calling for #JusticeForBrandonLaducer at a demonstration in Minneapolis, MN, Friday, Aug. 28, 2020 in the wake of the Jacob Blake shooting. Photo: [Darren Thompson](#)

One state away in Bemidji, Minnesota, Michael Waasegiizhig Price, an Anishinaabe man and a member of Wikwemikong First Nations in Canada, had also turned to Facebook to lament over Brandon's death. His son and Brandon were brothers, he said. He posted a meme that a nine-year-old Hopi girl had sent to him. It was bright and cheery and honored Brandon's life. But the social media also laid bare the intensity of silence swelling around his death. "Native American people are not invisible!" Micheal declared in his post, repeating a tagline on the meme.

Less connected and further removed from the violence was another Indigenous individual burdened over what happened on Turtle Mountain. Lisa Gasner, a Squaxin/Nisqually/Chehalis writer and nonprofit advocate based in Oakland, CA, was far angrier over the killing. Lisa, who prefers the pronouns they/them/their, called what happened to Brandon "murder" while also expressing distrust for the American press. "I always look to Black, Indigenous and Poor Peoples sources for news on poLice killings to find Truth outside the kop narrative. (sic)," they [wrote in a post on Facebook](#). Months into the national reckoning examining police reform and racial justice in the U.S., Lisa also dug into what has become a rising criticism of journalists' past record on how it reports on gun violence led by police. "This isn't an "officer involved shooting," she wrote. "Brandon Laducer was murdered!"

Kevin Smith, the FBI's Public Affairs Officer for the Minneapolis Division was tasked with controlling the public narrative. Because the shooting happened on the reservation, federal jurisdiction mandates the FBI's involvement, even though agents were not on the ground the night Brandon was shot and killed. What Smith conveyed to a small pool of journalists was a limited statement: that agencies involved in the shooting included the Bureau of Indian Affairs, the Rolette County Sheriff's Office, the Rolette Police Department, and the Rolla Police Department. It would be the last and only statement the FBI would make on the case as it investigates. Smith emailed me. The next step, he said, would be to turn over the facts to the US Attorney's Office in North Dakota for a charging decision.

Through piece-mealed information, a local news network also revealed that a [BIA officer had been placed on administrative leave](#) pending an investigation. It was confirmed by Charles Addington (Cherokee), the Deputy Bureau Director for the BIA's Office of Justice Services, a career-long law enforcement official with deep ties to Indian Country.

But a week after Brandon's death, a father to two children, his family still doesn't know exactly what happened — who shot him and over what. One thing is certain, some of the officers involved were Turtle Mountain tribal citizens, themselves. With unemployment on the reservation as high as almost sixty percent, policing is one of the few jobs available for area residents which, even tribal Chairman Azure said, complicates shootings like the one that ended fatally for Brandon.

that threatened the Standing Rock Sioux Tribe's water supply, the Missouri River, was ultimately a potent symbol to a centuries-long tension that has defined the cultural divide, statewide — a legacy premised on bloody land grabs by white settlers against an Indigenous resistance to colonization.

The lack of information since Brandon's shooting has only compounded the acrimony, exposing the chronic injustices that have defined life in places like Turtle Mountain, a rural pocket tucked inside one of America's most segregated states — North Dakota.



Brandon Laducer posted a photo of himself on Facebook on July 24, 2020.

Kenosha, the latest flashpoint

On the same day Brandon was killed on Aug. 23, drama unfolded with blood-curdled screams in a peaceful neighborhood in Kenosha, Wisconsin. A small crowd of onlookers witnessed Jacob Blake, a 29-year-old Black man, get shot in the back seven times by Rusten Shesky, a 31-year-old white police officer with Kenosha PD.

According to state officials, officers were responding to a domestic complaint when they attempted to arrest Jacob. Shesky tried to tase him, and when that failed to stop Jacob, the officer fired his gun on the man seven times at point-blank range.

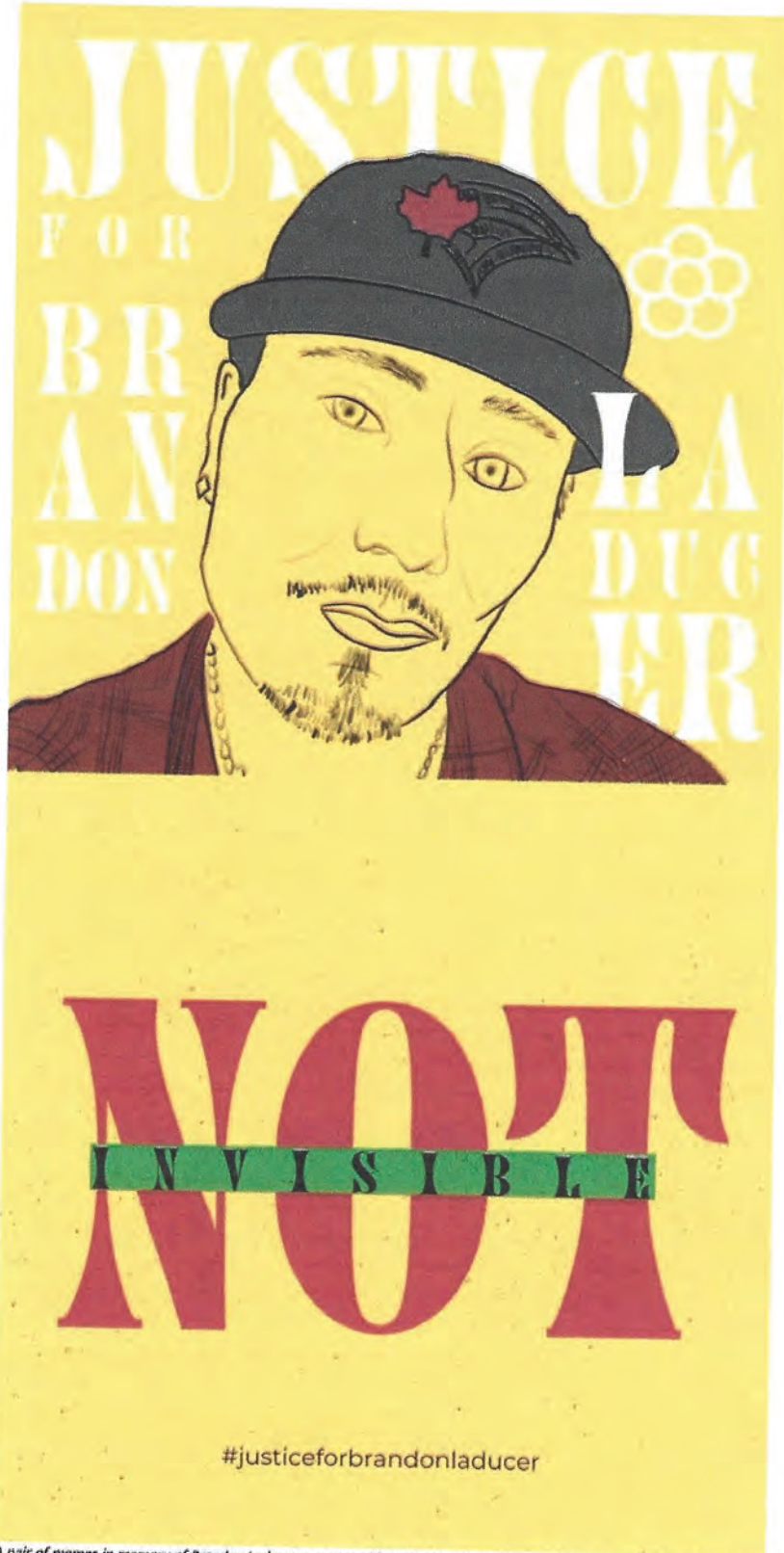
Until Wednesday, much of what was known of the shooting was from video footage taken by a neighbor that showed Shesky shoot Jacob as he tried to get into his SUV. His children were reportedly in the backseat. Jacob survived, but today, is apparently paralyzed. His father told [CNN](#), "My son is fighting for his life."

In a tale of two shootings by police, Kenosha, not Turtle Mountain, has become the latest flashpoint in a summer of unrest sparked by the alleged murder of George Floyd in Minneapolis — largely because the facts are so clear and accessible. Also, the latest police gunfire is so easily couched within the greater Black Lives Matter movement.

The nationwide soul-searching has played out in protests in cities across America. In Kenosha, the uprising took a violent turn. Two demonstrators were killed Tuesday and a third was wounded in a shooting incident led by Kyle Rittenhouse, 17. Outrage sparked when the white teen, wielding a long firearm, was not immediately apprehended by police after conveying that he was there to protect the area from looting.

Tensions grew when reports surfaced that Jacob, immobile from the waist down, had been shackled to his hospital bed while heavily sedated. The Milwaukee County Sheriff's Office removed the handcuffs and released Jacob from police custody after he posted bond for what court records show were for felony warrants filed several weeks before he was shot.

Kenosha officials have since issued a 7 p.m. curfew in an attempt to suppress the protests. Meanwhile, President Trump tweeted on Wednesday that he planned to deploy federal law enforcement officials to Kenosha and that Wisconsin Gov. Tony Evers, a Democrat, had agreed to help. Trump has been working to maintain the support he gained from the white state of Wisconsin since winning their electoral votes in 2016.



A pair of memes in memory of Brandon Laducer, a 35-year-old Turtle Mountain Chippewa father who was killed by police gunfire on Aug. 23, 2020, on the Turtle Mountain reservation in Belcourt, North Dakota. Images: Michael Wassegijig Price

Brandon, also a tribal citizen of Turtle Mountain, had lived in nearby Minot and Fargo before returning back to the reservation sometime after 2018. Court records trail his whereabouts from year to year, at first, documenting his struggle to maintain driving privileges in good standing, and once those problems mounted, drug charges soon entered the fray. By the spring of 2016, Brandon faced multiple drug possession allegations in Morton and Burlington counties, two districts most immediate to Bismarck, the North Dakota city roughly two-hundred miles south of Belcourt, where Brandon was killed. From those low-level charges, Brandon would sit in a state penitentiary for nearly two years before making his way back to Turtle Mountain.

Still, there is a sentiment among Natives that despite such criminal history, that doesn't warrant police the right to kill.

Natives statewide have long griped about being pulled over by police for what they consider no good reason. "Driving while Indian," they'd say. One glaring example of the

The federal indictment charges the officers with "willfully" depriving Floyd of his constitutional rights, saying they "willfully failed to aid Floyd" when he was lying on the ground needing medical attention. That notably is a high standard, Collins said, and addresses their mind-sets at the time, suggesting not just that they did not act but also specifically chose not to act.

George Floyd -

In the Federal Case over George Floyd's

Killing - The Washington Post

3-11-24

CR

INDIAN COUNTRY CRIMINAL JURISDICTIONAL CHART

for crimes committed within Indian Country as defined by 18 U.S.C. § 1151(a), (b) & (c) -
 (a) reservations [tribal trust lands] (including rights-of-way/roads), (b) dependent Indian communities,
 and (c) Indian allotments held in trust (including rights-of-way/roads).

INDIAN OFFENDER:

1. VICTIM CRIMES: FOR OFFENSES AGAINST A VICTIM'S PERSON OR PROPERTY

<i>WHO IS THE VICTIM?</i>	<i>WHAT WAS THE CRIME?</i>	<i>JURISDICTION</i>
INDIAN (enrolled or recognized as Indian by a government entity and possessing some degree of Indian blood)	Major Crimes Act crimes: murder, manslaughter, kidnapping, maiming, sexual abuse under Ch. 109-A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault on a person less than 16 years old, felony child abuse or neglect, arson, burglary, robbery, theft under 18 U.S.C. § 661 (Authority: 18 U.S.C. § 1153)	FEDERAL
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if CFR Court)	TRIBAL
NON-INDIAN	Major Crimes Act crimes: murder, manslaughter, kidnapping, maiming, sexual abuse under Ch. 109-A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault on a person less than 16 years old, felony child abuse or neglect, arson, burglary, robbery, theft under 18 U.S.C. § 661 (Authority: 18 U.S.C. § 1153)	FEDERAL
	Other federal crimes (unless tribe has punished Indian defendant), including crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act: (Authority: 18 U.S.C. §§ 1152 and 13)	FEDERAL
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if CFR Court)	TRIBAL

2. VICTIMLESS CRIMES: NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME (e.g., traffic offenses, disorderly conduct, prostitution, etc.)

a. Crimes in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act. (Authority: 18 U.S.C. §§ 1152 and 13)	FEDERAL
b. Crimes in tribal code. (Authority: tribal code or 25 CFR Pt. 11, if no tribal code)	TRIBAL

3. GENERAL FEDERAL CRIMES: OTHER FEDERAL CRIMES OF GENERAL APPLICABILITY

FEDERAL

(Federal prosecution not based solely on territorial jurisdiction)
 (e.g., drug offenses, bank robbery, felon in possession of firearm, mail fraud, embezzlement or theft from tribal organization, theft from casino, failure to report child abuse, etc.)
 (Authority: individual federal statute)

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NON-INDIAN OFFENDER:

1. VICTIM CRIMES: AN OFFENSE AGAINST A VICTIM'S PERSON OR PROPERTY

WHO IS THE VICTIM?	WHAT WAS THE CRIME?	JURISDICTION
INDIAN (enrolled or recognized as Indian by a government entity <u>and</u> possessing some degree of Indian blood)	Indian Country Crimes Act Crimes: All federal crimes which apply to the "special maritime and territorial jurisdiction of the United States under the U.S. Code." (Authority: 18 U.S.C. § 1152)	FEDERAL
	All remaining crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act. (Authority: 18 U.S.C. §§ 1152 & 13)	FEDERAL
NON-INDIAN	All crimes contained in state code. (Authority: <i>United States v. McBratney</i> , 104 U.S. 621 (1881))	STATE

2. VICTIMLESS CRIMES: NO VICTIM'S PERSON OR PROPERTY INVOLVED IN CRIME

(e.g., traffic offenses, disorderly conduct, prostitution, etc.)

STATE ONLY

3. GENERAL FEDERAL CRIMES: OTHER FEDERAL CRIMES OF GENERAL APPLICABILITY

(Federal prosecution not based solely on territorial jurisdiction)
 (e.g., drug offenses, bank robbery, felon in possession of firearm, mail fraud, embezzlement or theft from tribal organization, theft from tribal gaming facility, failure to report child abuse, etc.)

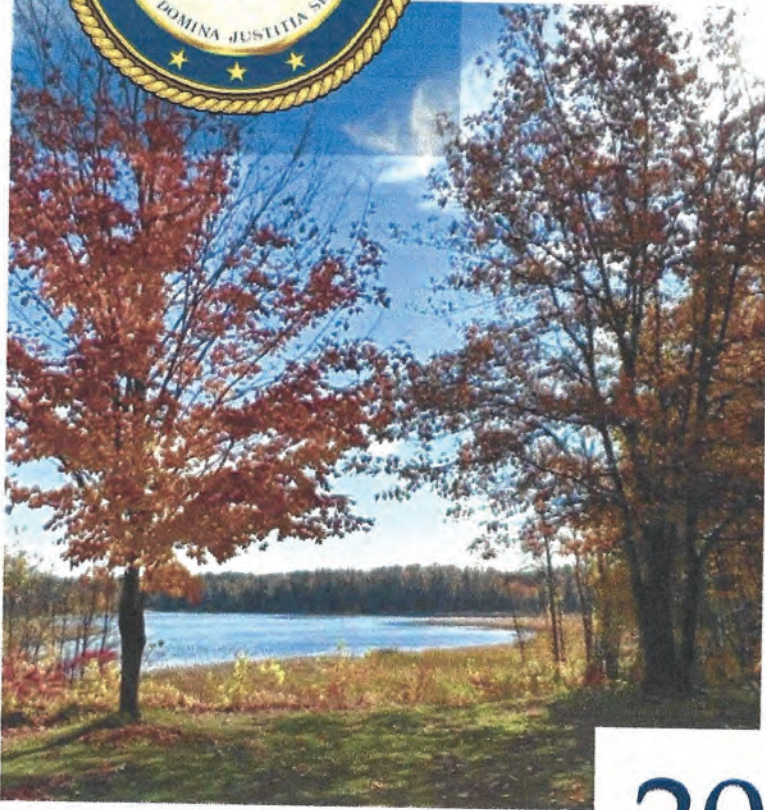
FEDERAL

(Authority: individual federal statute)



U.S. Department of Justice

Indian Country Investigations and Prosecutions



2021

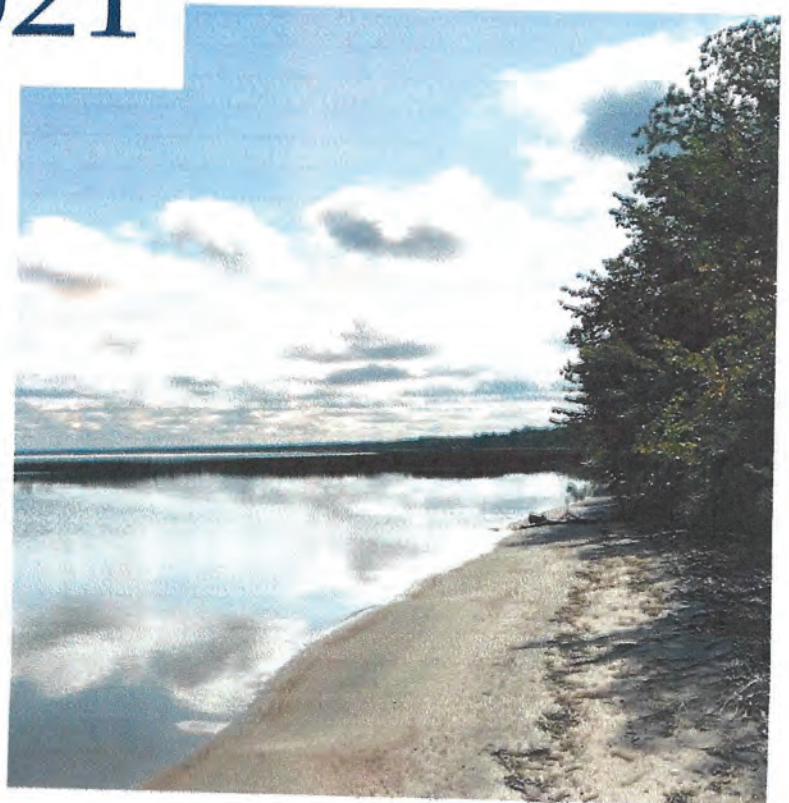


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Cover Photographs

“The Seasons” on Red Lake Indian Reservation, MN

“The Justice Department is committed to partnering with Tribal communities, governments, courts, and law enforcement agencies to help reduce crime and support victims.”

*—Merrick B. Garland,
United States Attorney General*

Executive Summary

The Department of Justice (Department) presents to Congress this report on Indian country investigations and prosecutions during calendar year (CY) 2021, as required by Section 212 of the Tribal Law and Order Act (TLOA). Since TLOA's inception more than a decade ago, the Department has worked to improve public safety for American Indians and Alaska Natives by consistently engaging with and working collaboratively with Tribal leaders and federal, Tribal, state, and local law enforcement agencies to develop reforms and practices aimed at reducing violence in Indian country and at strengthening the capacity of Tribal law enforcement and justice systems to protect their communities and pursue justice.

Section 212 of TLOA requires that the Attorney General submit an annual report to Congress detailing investigative efforts by the Federal Bureau of Investigation (FBI) and dispositions of matters received by United States Attorneys' offices (USAOs) with Indian country responsibility. The data presented in this report covers only those offenses reported to the FBI and federal prosecutors. The majority of criminal offenses committed, investigated, and prosecuted in Tribal communities are adjudicated in Tribal justice systems. Not only do Tribal law enforcement and Tribal justice systems hold criminals accountable and protect victims, but Tribal systems also provide youth crime prevention and intervention programs, confront precursors to crime, such as alcohol and substance abuse, and address criminal justice issues through culturally appropriate programs and healing centers. These efforts are often in partnership with federal agencies or accomplished with support from federal programs and federal funding.

To satisfy TLOA's Section 212 reporting requirements for CY 2021, the FBI and the Executive Office for United States Attorneys (EOUSA) have compiled four types of case-specific declination information:

- The type of crime(s) alleged;
- The status of the accused as Indian or non-Indian;
- The status of the victim(s) as Indian or non-Indian; and
- The reason for deciding against referring the investigation for prosecution (FBI) or the reason for deciding to decline, refer, or terminate the prosecution (USAOs).

As discussed in the report, data limitations make it difficult to draw broad conclusions. However, the data provides a useful snapshot of the Department's current law enforcement and prosecution work in Indian country. The Department hopes that this report will provide helpful context as Congress and the Department continue to work together with Tribes to improve public safety in Indian country.

Despite data limitations, the below facts for CY 2021 are clear:

- The FBI had a 25 percent increase in investigations closed (2,577 total in CY 2021 compared to 1,931 in CY 2020).

- Approximately 59 percent of Indian country criminal investigations opened by the FBI (1,517 out of 2,577) were closed due to adjudication or administrative closure.
- The FBI closed approximately 30 percent (770 out of 2,577) of Indian country investigations administratively (without referral for prosecution).
 - For CY 2021, in 53 percent of investigations administratively closed (411 out of 770), it was determined there was no evidence of a federal crime, or insufficient evidence to substantiate criminal activity
 - Approximately 22 percent of investigations administratively closed (170 out of 770) were death investigations.
 - Approximately 74 percent of the death investigations (126 out of 170) were administratively closed because the death was caused by means other than homicide (i.e., accidents, suicides, or natural causes).
- In CY 2021, USAOs resolved 6,849 Indian country matters.
- In CY 2021, approximately 31 percent of the total number of Indian country matters resolved (2,097 of 6,849) were suspects terminated in magistrate court, district court or defendants filed in district court.
- The USAO declination rate dropped to approximately 18 percent in CY 2021 (1,212 out of 6,849 Indian country matters resolved were declined).¹ In CY 2020, 22 percent of matters resolved were declined (639 of 2,878); in CY 2019, 32 percent of matters resolved were declined (780 of 2,426); in CY 2018, 33 percent of matters resolved were declined (820 of 2,523); in CY 2017, 32 percent of matters resolved were declined (773 of 2,390); and in CY 2016, 28 percent of matters resolved were declined (755 of 2,666).²
- The most common reason for declination (56 percent) by USAOs in CY 2021 was insufficient evidence. In CY 2020, this reason served as the basis for 82.8 percent of declinations; in CY 2019, it was 79.2 percent; in CY 2018, it was 78.3 percent; in CY 2017, it was 81.8 percent; and in CY 2016, it was 81.3 percent.
- USAOs referred 49 percent of Indian country matters resolved (3,324 out of 6,849) to another jurisdiction (i.e., Tribe or state) for prosecution.

The 2009 Senate report accompanying TLOA acknowledged that “[d]eclination statistics alone do not show the Department’s commitment to combating reservation crime. In fact, they likely reflect

¹ Since July 2020, when the Supreme Court decided *McGirt v. Oklahoma (MvO)*, which recognized that the land belonging to the Muscogee (Creek) Nation in Oklahoma was not disestablished and thus Indian country, and the State of Oklahoma recognized the same for the Cherokee, Seminole, Choctaw, Quapaw, and Chickasaw Nations in Oklahoma, the USAOs in Oklahoma have experienced a dramatic increase in case referrals and prosecutions based on federal criminal jurisdiction.

² In CY 2019, USAOs began tracking cases that were referred to another jurisdiction (i.e., Tribe or state) for prosecution (prior to CY 2019, these cases were tagged as declinations). Since the CY 2020 Report, to facilitate year-to-year comparisons, USAO data from CY 2018 and prior was adjusted to reflect that cases referred to another jurisdiction for prosecution are no longer considered declinations. This adjustment is not reflected in reports prior to the CY 2020 Report; thus the declination data in this report is not comparable to data in reports prior to CY 2020.

difficulties caused by the justice system in place” including the “lack of police on the ground in Indian country” and “shortfalls for training, forensics equipment, [and] personnel.” The Department agrees that declination rates are not an effective way to measure justice or success. The Department believes that prioritizing initiatives in Indian country, including efforts to build capacity in Tribal courts and supporting prevention efforts that reduce risk factors for victims and potential offenders, will lead to enhanced public safety and a better quality of life for Native Americans. Improved public safety, enhanced reentry opportunities for inmates returning to their Tribal communities, and robust Tribal courts are far better measures of success. The Department has made great strides in these areas and remains committed to seeing that justice is done throughout Indian country.

I. Tribal Law and Order Act of 2010 Background

TLOA is intended to establish accountability measures for federal agencies responsible for investigating and prosecuting crime occurring in Indian country. To that end, TLOA Section 212 requires the Attorney General to submit annual reports to Congress detailing investigative efforts and prosecutorial disposition reports.

The FBI is required to report “by Field Division, information regarding decisions not to refer to an appropriate prosecuting authority cases in which investigations had been opened into an alleged crime in Indian country.” USAOs are to submit to EOUSA’s Native American Issues Coordinator information by federal judicial district regarding “all declinations of alleged violations of federal criminal law that occurred in Indian country that were referred for prosecution by law enforcement agencies.” The FBI’s and USAOs’ reporting obligations require us to identify:

1. The type of crime(s) alleged;
2. The status of the accused as Indian or non-Indian;
3. The status of the victim(s) as Indian or non-Indian; and
4. The reason for deciding against referring the investigation for prosecution (FBI) or the reason for deciding to decline or terminate the prosecution (USAOs).

The information the FBI must report under TLOA is substantively different from the information reported by USAOs. The FBI is responsible for *investigating* allegations of federal crimes in Indian country, while USAOs are responsible for reviewing such crimes referred by all federal and Tribal investigative agencies for *prosecution*. The FBI’s data contains criminal matters not referred to USAOs, and EOUSA’s data accounts for cases referred by various investigative agencies, including the FBI. Therefore, direct comparisons between the data from FBI and EOUSA should not be made.

II. Federal Criminal Responsibilities in Indian Country

The United States Constitution, treaties, federal statutes, executive orders, and court decisions establish and define the unique legal and political relationship that exists between the United States and Indian Tribes. The two main federal statutes governing federal criminal jurisdiction in Indian country are the General Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act, 18 U.S.C. § 1153. Section 1153 gives the federal government jurisdiction to prosecute certain enumerated offenses, such as murder, manslaughter, sexual abuse, aggravated assault, and child sexual abuse, when committed by Indians in Indian country. Section 1152 gives the federal government jurisdiction to prosecute most

crimes committed by non-Indians against Indian victims in Indian country.³ Section 1152 also grants the federal government jurisdiction to prosecute crimes by Indians against non-Indian victims, although that jurisdiction is shared with Tribes, and provides that the federal government may not prosecute an Indian who has been punished by the Tribe for that offense.

The federal government also has jurisdiction to prosecute federal crimes of general applicability, such as drug and certain financial crimes, when they occur in Indian country. On a limited number of reservations, the federal government has ceded federal criminal responsibilities under Sections 1152 and 1153 to the states pursuant to Public Law (P.L.) 280 or other federal laws.⁴

The FBI and USAOs are two of many law enforcement agencies with responsibility for investigating and prosecuting crimes that occur in Indian country.⁵ In addition to the FBI, the Department of the Interior's (DOI) Bureau of Indian Affairs, Office of Justice Services (BIA-OJS) plays a significant role in enforcing federal law, including investigating violations of 18 U.S.C. §§ 1152 and 1153. Prior to issuance of this report in 2022, an updated Memorandum of Understanding (MOU) between DOI and the Department was signed that delineated the responsibilities between the FBI and BIA-OJS.⁶ This MOU provided that, in consultation with each United States Attorney "whose criminal jurisdiction includes Indian country, the FBI and BIA-OJS shall develop written guidelines outlining the investigative roles and responsibilities of BIA-OJS, the FBI, and the Tribal criminal investigators, if applicable." In short, the efficient administration of criminal justice in Indian country requires participation by numerous federal and Tribal law enforcement agencies. Determining which law enforcement agency, federal or Tribal, has primary responsibility for investigating a particular crime may depend on the nature of the crime and any applicable local guidelines.

Indian country case statistics are drawn from three different jurisdictions: federal, state, and Tribal. The FBI's Uniform Crime Report (UCR) contains offense data from all three sources, but data submission is generally voluntary (except for federal agencies). Therefore, the UCR only contains crime data from non-federal agencies that choose to submit their data to law enforcement. Likewise, the UCR does not have the ability to collect specific information on declinations and administrative closings, which is required by TLOA Section 212. Additionally, matters and cases from P.L. 280 jurisdictions do not generally appear in federal Indian country crime statistics because, in most instances, the state prosecutes these cases. As such, the FBI and EOUSA numbers presented in this report only include

³ Since June 29, 2022, when the Supreme Court issued its opinion in *Oklahoma v. Castro-Huerta*, states have concurrent criminal jurisdiction to prosecute crimes committed by non-Indians against Indian victims in Indian country. *See Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022). However, this decision did not alter federal jurisdiction in Indian country. Thus, concurrent federal and state criminal jurisdiction exists to prosecute crimes committed by non-Indians against Indian victims in Indian country. Further, Tribes have concurrent jurisdiction to prosecute non-Indians who commit crimes against Indian victims in Indian country as set forth in 25 U.S.C. § 1304, which recognizes the inherent power of a participating Tribe to exercise special Tribal criminal jurisdiction.

⁴ Federal jurisdiction was ceded under P.L. 83-280, 18 U.S.C. § 1162, which granted jurisdiction over Indian country crimes to six states and divested the federal government of jurisdiction to prosecute under the Major and General Crimes Acts in those areas, while giving other states the option to assume that jurisdiction. Congress has also passed a variety of Tribe-specific statutes providing for a similar framework of state jurisdiction over crimes in those locations. Nonetheless, the federal government always retains jurisdiction to prosecute generally applicable offenses in P.L. 83-280 areas.

⁵ FBI jurisdiction for the investigation of federal violations in Indian country is statutorily derived from 28 U.S.C. § 533, pursuant to which the FBI was given investigative authority by the Attorney General. Among others, federal agencies with criminal jurisdiction in Indian country include the Bureau of Indian Affairs, United States Marshals Service, National Park Service, DEA, ATF, Bureau of Land Management, DHS, United States Postal Service, and the United States Secret Service.

⁶ Memorandum of Understanding between FBI and BIA.

cases subject to federal jurisdiction and reported to the FBI, or cases referred to USAOs by federal, state, Tribal, or local agencies. Accordingly, this report represents only a portion of the total Indian country criminal offenses. A more comprehensive view of crime rates in Indian country would require all reported criminal offenses reported to and/or filed within federal, state, and Tribal jurisdictions to be collectively gathered and analyzed. Currently, however, no system or database exists for maintaining this data across sovereigns.

III. Federal Bureau of Investigation TLOA Report

The FBI has investigative responsibility for federal crimes committed on approximately 188 Indian Reservations. This responsibility is shared concurrently with BIA-OJS and other federal agencies with a law enforcement mission in Indian country. This number generally excludes tribes in P.L. 280 states, although the FBI and other federal law enforcement agencies still investigate crimes of general applicability for Tribes within these states (e.g., drug offenses and interstate violence against women). Currently, there are approximately 153 Special Agents and 43 Victim Specialists working in support of Indian country investigative matters. Table 1 lists FBI Field Divisions with federally recognized tribes within their area of responsibility.⁷

(Space Left Intentionally Blank)

⁷ Not all FBI Divisions had CY 2021 Indian country investigations to report under TLOA. Additionally, some FBI Divisions overlap multiple states.

Table 1: FBI Divisions

FBI Division Name	FBI Abbreviation	State(s)
Albany	AL	NY
Albuquerque	AQ	NM
Anchorage	AN	AK
Boston	BS	MA, ME, RI
Buffalo	BF	NY
Charlotte	CE	NC
Columbia	CO	SC
Dallas	DL	TX
Denver	DN	WY, CO
Detroit	DE	MI
El Paso	EP	TX
Indianapolis	IP	IN
Jackson	JN	MS
Kansas City	KC	KS, MO
Las Vegas	LV	NV
Los Angeles	LA	CA
Memphis	ME	TN
Miami	MM	FL
Milwaukee	MW	WI
Minneapolis	MP	MN, ND, SD
Mobile	MO	AL
New Haven	NH	CT
New Orleans	NO	LA
New York	NYC	NY
Oklahoma City	OC	OK
Omaha	OM	NE, IA
Portland	PD	OR
Phoenix	PX	AZ
Richmond	RH	VA
San Antonio	SA	TX
Sacramento	SC	CA
Seattle	SE	WA
San Diego	SD	CA
San Francisco	SF	CA
Salt Lake City	SU	ID, MT, UT
Tampa	TP	FL

All FBI investigations must follow the Attorney General's Guidelines for Domestic FBI Operations (AGG-Dom) and the FBI Domestic Investigations and Operations Guide (DIOG). These documents standardize policy to ensure all FBI investigative activities are conducted in compliance with relevant laws, policies, and regulations designed to protect civil liberties and privacy. Under DIOG, FBI

investigations regarding alleged federal law violations in Indian country include both “assessments” and “predicated investigations.”⁸ Therefore, whenever the FBI engages in any substantive investigative activity (e.g., interviewing a complainant or potential victim of a vague or non-specific allegation), it is considered an “investigation” for purposes of TLOA reporting.

FBI Indian Country Assessments

The two most prevalent examples of Indian country assessments that result in an FBI investigation but not a predicated investigation or referral for prosecution are as follows:

Example A: A non-specific allegation of child sexual abuse is referred to the FBI. The FBI presents the child for a forensic interview and medical examination. The child discloses no allegation of child sexual abuse, and the medical exam and other preliminary investigation reveal no corroborative evidence of sexual abuse. The matter is documented to an FBI Indian country child sexual abuse assessment file and the investigation is administratively closed. (NOTE: Documenting the incident permits the FBI to reopen the matter as a Predicated Investigation at a later date, should the victim later wish to make a report.)

Example B: The FBI is called to a hospital that reports treating an assault victim from a nearby reservation. During the course of this assessment, the assault victim, who may have serious bodily injury, chooses not to make a report and does not identify the assailant or describe the details of the assault. The FBI documents the matter to an FBI Indian country assault assessment file and administratively closes the investigation.

By including assessments in TLOA investigation data, the FBI seeks to provide further information regarding the breadth and scope of alleged crimes in Indian country. The classification of assessments involving any substantive investigative activity as “investigations” reflects FBI’s commitment to providing accurate and complete reporting under TLOA. Additionally, ongoing FBI investigations do not preclude Tribal law enforcement from continuing an investigation and making a referral to Tribal court.

FBI Predicated (Full) Investigations

Predicated “full” investigations in Indian country are submitted to the federal, state, or Tribal prosecuting authority, or are administratively closed after the FBI has completed all reasonable investigation into the alleged crime.

FBI TLOA Investigation Data Collection

The following information provides a description of the FBI data used to generate the tables in this report.

⁸ FBI Domestic Investigations and Operations Guide (DIOG), 2022 version.

Measurement of FBI TLOA Requirements

1. **Types of crimes alleged** are classified by the most serious offense and are determined at case initiation. To protect information regarding sensitive investigations, the following criminal programs are combined: Financial Crime, Public Corruption, and Civil Rights. Domestic violence investigations are included under the “Assault” category. The “Property Crime” category includes burglary, robbery, larceny, theft, arson, and motor vehicle theft. The “Death Investigation” category includes homicides, vehicular homicides, and other investigations of suspicious or unattended deaths. The “Other” category includes offenses such as weapon possession by felons, counterfeit or trafficking of cultural items, and any other investigations not applicable to the other nine categories.
2. **The status of the victim and subject** as American Indian or non-American Indian is generally based on self-reported information provided to the FBI or records obtained from tribal authorities.⁹ In the following circumstances, the victim or subject status is categorized as not applicable: the victim or subject is a business; the case was opened with an unknown/unidentified subject and/or victim; the victim or subject information was not documented in the case file (e.g., drug investigations, public corruption matters); or duplicate cases or administrative errors.
3. **Reasons for non-referral to prosecuting authorities** are determined after reviewing all individual case circumstances. Table 2 provides a list of non-referral categories.

Table 2: Reasons for FBI Non-Referral for Prosecution in Indian Country

Non Referral Category
Death was not a homicide
Does not meet USAO guidelines or statutory definitions
No remaining leads ¹⁰
Victim is unable to identify subject
Unsupported allegation
Victim or witness is unable or unwilling to assist
Interagency cooperation ¹¹
Cannot be addressed with current resources ¹²
Duplicate or case reopened
Subject died

⁹ The FBI does not have direct access to Tribal enrollment information.

¹⁰ The FBI exhausted all logical investigation, and was unable to present enough facts for a prosecutive opinion.

¹¹ The FBI may open an investigation solely for the purpose of assisting another agency (e.g., opening an investigation solely to give a polygraph examination). Because the FBI is not the primary investigating agency, these investigations are administratively closed.

¹² Primarily due to the prioritization of violent crimes against persons.

9.35 Bivens Claim Against Federal Defendant in Individual Capacity— Elements and Burden of Proof

9.35 Bivens Claim Against Federal Defendant in Individual Capacity— Elements and Burden of Proof

The plaintiff brings [his] [her] claim[s] under a Supreme Court decision known as “*Bivens*,” which permits a plaintiff to seek damages from any person who, acting under color of federal law, deprives the plaintiff of certain rights, privileges, or immunities secured by the Constitution of the United States.

To prevail on [his] [her] *Bivens* claim against the defendant [*name of individual defendant*], the plaintiff must prove each of the following elements by a preponderance of the evidence:

1. the defendant acted under color of federal law; and
2. the [act[s]] [failure to act] of the defendant deprived the plaintiff of [his] [her] particular rights under the United States Constitution, as explained elsewhere in these instructions.

A person acts “under color of federal law” when the person acts or purports to act in the performance of official duties under any federal law. [[The parties have stipulated] [I instruct you] that the defendant acted under color of federal law.]

If you find the plaintiff has proved each of these two elements, and if you also find that the plaintiff has proved all the elements [he] [she] is required to prove under Instruction[s] [*specify the instruction[s] that deal[s] with the particular right[s]*], your verdict should be for the plaintiff. If, on the other hand, you find that the plaintiff has failed to prove any one or more of these elements, your verdict should be for the defendant.

Comment

In 1971, the Supreme Court in *Bivens* adopted an “implied cause of action theory” that permits a plaintiff to seek damages from federal officers for the unreasonable search and seizure in plaintiff’s home. See *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971). Since then, the Supreme Court has recognized a *Bivens* action in two other contexts: a claim asserting that a Congressman discriminated on the basis of gender in employment, in violation of the Fifth Amendment due process clause, *Davis v. Passman*, 442 U.S. 228 (1979), and an Eighth Amendment claim for cruel and unusual punishment against federal jailers for failing to treat a prisoner’s severe asthma. *Carlson v. Green*, 446 U.S. 14 (1980).

The most recent Supreme Court decision discussing the scope of a *Bivens* action is *Egbert v. Boule*, 142 S.Ct. 1793 (2022). *Egbert* “emphasized that recognizing a cause of action under *Bivens* is a ‘disfavored judicial activity.’” *Id.* at 1803 (quoting *Ziglar v. Abassi*, 137 S.Ct. 1843, 1856-57 (2017)). With that consideration in mind, *Egbert* explained that to determine whether a *Bivens* remedy exists in a particular case, the court must undertake a two-step process. At the first step, a court must “ask whether the case present a new *Bivens* context—*i.e.*, is it meaningfully different from the three cases in which the [Supreme] Court has implied a damages action.” *Id.* at 1803 (internal quotations and alterations omitted). The three cases in which the Supreme Court has held that the Constitution provides an implied cause of action through which plaintiffs can seek damages from federal officers who violate their constitutional rights are *Bivens*, in which the Court held that a plaintiff could seek damages from the Federal Bureau of Narcotics agents who allegedly violated his Fourth Amendment right to be free from unreasonable searches and seizures; *Davis v. Passman*, 442 U.S. 228 (1979), in which the Court provided a remedy for the plaintiff who alleged that her employer, a Member of Congress, had discriminated against her because of her sex, which was a Fifth Amendment due process violation; and *Carlson v. Green*, 446 U.S. 14 (1980), in which the Court held that the estate of a deceased prisoner could seek damages from federal prison officials for violating the prisoner’s Eighth Amendment right to be free from cruel and unusual punishment. *Pettibone v. Russell*, 59 F.4th 449, 454 (9th Cir. 2023). In *Pettibone*, *id.* at 455, the Ninth Circuit held that the plaintiff’s asserted *Bivens* claim that the defendant violated the Fourth Amendment presented a new context because the federal officer defendant was of a different rank than the officers in *Bivens*, his actions took place at a higher level of generality than the *Bivens* officers, his legal mandate of directing a multi-agency operation to protect federal property under an executive order, and providing a *Bivens* remedy would create an increased risk of disruptive intrusion by the courts into the other branches’ functioning. The Ninth Circuit likewise held in *Mejia v. Miller*, 61 F.4th 663 (9th Cir. 2023), that the plaintiff’s *Bivens* excessive force claim against Bureau of Land Management (BLM) agents created a new context because the alleged conduct occurred on public lands, not in the plaintiff’s home, and a Fourth Amendment claim against BLM agents would have “systemwide consequences” for BLM’s mandate to maintain order on public lands. Further, in *Harper v. Nedd*, 71 F.4th 1181 (9th Cir. 2023), the court held that the plaintiff’s Fifth Amendment due process *Bivens* claim presented a new context from *Davis*, because the claim involved a new category of defendants and the legal mandate the BLM officers were operating under (the Civil Service Reform Act of 1978 (CSRA)) was different from the one in *Davis*.

If the answer at the first step is yes, meaning that the “claim arises in a new context,” the second step indicates that “a *Bivens* remedy is unavailable if there are no ‘special factors’ indicating that the judiciary is at least arguably less equipped than Congress to ‘weigh the costs and benefits of allowing a damages action to proceed.’” *Id.* at 1803 (quoting *Ziglar*, 137 S.Ct. at 1858). “If there is even a single ‘reason to pause before applying *Bivens* in a new context,’ a court may not recognize a *Bivens* remedy.” *Id.* (quoting *Hernandez v. Mesa*, 140 S.Ct. 735, 743 (2020)). For example, “a court may not fashion a *Bivens* remedy if Congress already has provided, or has authorized the Executive to provide, ‘an alternative remedial structure.’” *Id.* (quoting *Ziglar*, 137 S.Ct. at 1858). The existence of an alternative remedial structure precludes a *Bivens* action even where the availability remedial scheme does not provide monetary relief. *Pettibone v. Russell*, 59 F.4th 449, 457 (9th Cir. 2023) (quoting *Egbert*, 142 S.Ct. at 1806). Nor may a *Bivens* cause of action lie “where . . . national security is at issue.” *Egbert*, 142 S.Ct. at 1804. See also *Pettibone*, 59 F.4th at 455 (quoting *Ziglar*, 137 S. Ct. at 1860) (holding that *Bivens* remedy cannot be extended where, “because [defendant] was carrying out an executive order, providing a *Bivens* remedy. . . would carry a greater risk of ‘disruptive intrusion by the Judiciary into the functioning of other branches’ than was present in *Bivens*”). See also *Mejia*, 61 F.4th at 669 (explaining plaintiff has alternative remedies to address his grievance).

A *Bivens* defendant is at risk of personal liability, including punitive damages, and a plaintiff is entitled to a jury trial in a *Bivens* action. See *Carlson*, 446 U.S. at 22. Because a *Bivens* action is brought against a federal official in the official’s personal capacity, it is not considered to be an action against the United States and thus is not barred by sovereign immunity.

Use this instruction only in conjunction with an applicable “particular rights” instruction, such as Instructions 9.9–9.33, modified as necessary to reflect that the defendant is a federal actor, not a state actor. Such an instruction should set forth the additional elements a plaintiff must establish to prove the violation of a particular constitutional right.

To be individually liable in a *Bivens* action, an individual must personally participate in an alleged deprivation of rights. See *Avalos v. Baca*, 596 F.3d 583, 587 (9th Cir. 2010). In a *Bivens* action, as with a § 1983 action, “the plaintiff must also demonstrate that the defendant’s conduct was the actionable cause of the claimed injury.” *Harper v. City of Los Angeles*, 533 F.3d 1010, 1026 (9th Cir. 2008). “To meet this causation requirement, the plaintiff must establish both causation-in-fact and proximate causation.” *Id.*

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In a *Bivens* action, a supervisor can be held liable in his or her individual capacity only if (1) he or she personally participated in the constitutional violation, or (2) there is a "sufficient causal connection between the supervisor's wrongful conduct and the constitutional violation." *Hansen v. Black*, 885 F.2d 642, 645-46 (9th Cir. 1989); see also *Chavez v. United States*, 683 F.3d 1102, 1110 (9th Cir. 2012) ("[T]aking qualified immunity into account, a supervisor faces liability under the Fourth Amendment only where it would be clear to a reasonable [supervisor] that his conduct was unlawful in the situation he confronted.") (quotation marks omitted; first brackets added; second brackets in original). Moreover, for liability to attach, supervisors must have actual supervisory authority over the government actor who committed the alleged violations. See *Felarca v. Birgeneau*, 891 F.3d 809, 820 (9th Cir. 2018). In other words, "[t]hey cannot be supervisors of persons beyond their control." *Id.*


If the plaintiff alleges that a supervisor personally participated in a constitutional violation, use the instruction shown above. If, however, the plaintiff alleges that a subordinate committed a constitutional violation and there is a causal connection between the violation and the supervisor's wrongful conduct, use Instruction 9.4 and replace "state law" with "federal law."

One of the defenses that may be available to a federal official in a *Bivens* lawsuit is official immunity from actions for damages. There are two types of official immunity available as affirmative defenses: absolute and qualified. Absolute immunity is often granted to judges, prosecutors, legislators, and the President, so long as they are acting within the scope of their duties. Qualified immunity applies to all other federal officials. See *Harlow v. Fitzgerald*, 457 U.S. 800, 807-808 (1982).

"For purposes of immunity, we have not distinguished actions brought under 42 U.S.C. § 1983 against state officials from *Bivens* actions brought against federal officials." *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 433 n.5 (1993). For a discussion of qualified immunity under § 1983, see Comment at Instruction 9.34.

Revised Aug. 2023

File:

 [9.35_civil_8_2023.docx](#) [1]

Source URL: <https://www.ce9.uscourts.gov/jury-instructions/node/1211>

Links

[1] https://www.ce9.uscourts.gov/jury-instructions/sites/default/files/WPD/9.35_civil_8_2023.docx



Renee Martin <shenae3110@gmail.com>

FOIA Requests - Laducer

2 messages

Solberg, Derek (USAND) <Derek.Solberg@usdoj.gov>
To: "shenae3110@gmail.com" <shenae3110@gmail.com>

Thu, Oct 14, 2021 at 10:21 AM

Ms. Martin –

Mr. Lundberg forwarded your FOIA request to me because I am the FOIA contact for the district. This has been forwarded to the FOIA Unit for the Executive Office for U.S. Attorney's (See attachment - **02 Acknowledgement Letter (10-14-21).pdf**).

He also sent me your request from August 12, 2021. This request was also forwarded to the FOIA Unit for the Executive Office for U.S. Attorney on August 13, 2021 (See Attachment - **02A Acknowledgement letter (signed).pdf**). This letter was returned to me by the postal service with the notation below -



Renee K Martin
624 6th Street East #1
West Fargo, ND 58078


Please refer to the attached letters for further information concerning these requests and contact information.

Derek G. Solberg
Paralegal Specialist
U.S. Attorney's Office
Bismarck, ND
(701) 530-2431

2 attachments

02 Acknowledgement Letter (10-14-21).pdf
379K

cc

 **02A Acknowledgement letter (signed).pdf**
368K

Renee Martin <shenae3110@gmail.com>
To: "Solberg, Derek (USAND)" <Derek.Solberg@usdoj.gov>

Thu, Oct 14, 2021 at 10:43 AM

Thank you. The corrected address is 624 6yh Street East Apt 2 West Fargo ND ,58078.

[Quoted text hidden]

2 attachments



image003.png
56K

Renee Martin
624 6yh Street East Apt 2
West Fargo ND 58078



image003.png
56K

Renee Martin
624 6yh Street East Apt 2
West Fargo ND 58078

23
9/28



U. S. Department of Justice

Nicholas W. Chase
Acting United States Attorney
District of North Dakota

William L. Guy Federal Building
220 East Rosser Avenue - Room 372
P.O. Box 699
Bismarck, ND 58502-0699

701-530-2420
FAX: 701-530-2421
TOLL FREE: 888-828-8050

October 14, 2021

Renee K Martin
624 6th Street East #1
West Fargo, ND 58078

Re: Laducer FOIA Request

Dear Ms. Martin:


AUSA Eric Lundberg forwarded to me the FOIA Request you submitted today (October 14, 2021). I am the FOIA Contact for the U.S. Attorney's Office for the District of North Dakota. Your request has been forwarded to the FOIA Unit for the Executive Office for United States Attorneys in Washington, D.C., as required by regulation. The FOIA Unit is the component responsible for processing FOIA/Privacy Act requests made to United States Attorneys' Offices. The address and telephone number for the FOIA Unit are:

FOIA Staff
Executive Office for U.S. Attorneys
175 N Street, NE, Suite 5.400
Washington, D.C. 20530-0001
(202) 252-6020

Please direct any future correspondence in this matter to the FOIA Unit.

Sincerely,

NICHOLAS W. CHASE
Acting United States Attorney


DEREK G. SOLBERG
Paralegal Specialist

cc: FOIA Staff - EOUSA

Handwritten initials, possibly "RKM", in the bottom right corner of the page.

Freedom of Information Act Request Letter

Bottineau County Attorney
U.S Department of Justice, District of North Dakota
Bottineau, ND 58502-0699

Re: Freedom of Information Act Request

To Whom it May Concern:

This is a request under the Freedom of Information Act.

We are requesting copies of documents of allegations and witness statements made against Brandon Richard Laducer involving an incident that occurred August 22, 2020 at KC's Landing establishment. Brandon Laducer's autopsy showed he had a 1.9% alcohol level upon his death and the officer who delivered the fatal gunshot contacted the establishment and informed her he was deceased and she didn't have to worry per FBI and witness reports. These documents include 911 recording(s), witness statements, and any/all videos, communications, pictures pertaining to the events that led to BIA police as well as Rolette County, and U.S Border Patrol's involvement.

I request a waiver of all fees for this request as I am his parent and disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the series of events that led to this tragedy. We believe Brandon Laducer's civil rights were violated and we want to investigate.

I am willing to travel to review video, and audio if necessary.

Thank you for your consideration of this request.

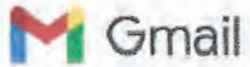
Sincerely,



Renee K Martin
624 6th Street East #1
West Fargo, North Dakota 58078
701-729-4474

Cc; file





Renee Martin <shenae3110@gmail.com>

FOIA


1 message

Renee Martin <shenae3110@gmail.com>
To: emily.deschamp@co.bottineau.nd.us
Cc: eric.lundberg@usdoj.gov

Thu, Oct 14, 2021 at 7:37 AM

Please see attached request.

Thank you

 **FOIA Request 08-12-2021.docx**
9K

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A