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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FORT BELKNAP INDIAN COMMUNITY, Plaintiff, vs. UNITED STATES OF AMERICA, et al., Defendants.	CV 22-103-GF-JTJ UNITED STATES' PROPOSED POST-TRIAL FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT

I. The Fort Belknap Indian Community

1. Plaintiff Fort Belknap Indian Community ("FBIC") is a federally recognized Indian Tribe located within the Fort Belknap Indian Reservation headquartered in Harlem, Montana. (Doc. 86 at ¶ 1.)

2. The Fort Belknap Indian Reservation was established in 1888 by an act of Congress and encompassed approximately 650,000 acres of land at that time. (Doc. 86 at ¶ 2.)

3. The Tribe is composed of the Gros Ventre (Aaniiih) and Assiniboine (Nakoda) tribes, who have inhabited the region for centuries and maintain distinct cultural and linguistic traditions. (Doc. 86 at ¶ 3.)

II. Law enforcement in Indian Country

4. Established by the Indian Law Enforcement Reform Act of 1990, Office of Justice Services (OJS), Bureau of Indian Affairs (BIA), has authority to enforce, or contract with tribes for the enforcement of, certain federal criminal laws on all tribal lands.

5. OJS has primary responsibility for enforcing, on certain tribal lands, the Indian Country Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act, 18 U.S.C. § 1153. In addition, OJS has authority in all states to enforce, among other statutes: (1) embezzlement and theft from tribal organizations, 18 U.S.C. § 1163;

(2) hunting, trapping, or fishing on Indian lands, 18 U.S.C. § 1165; (3) felon in possession of a firearm, 18 U.S.C. § 922(g); (4) interstate (crossing tribal borders) domestic violence, 18 U.S.C. § 2261(a)(1)-(2); (5) interstate (crossing tribal borders) violation of a protective order, 18 U.S.C. § 2262; (6) trafficking in Native American human remains and cultural items, 18 U.S.C. § 1170; (7) controlled substances, 21 U.S.C. §§ 841(a), 844; and (8) bribery of a tribal official, 18 U.S.C. § 666(a)(2). Tribes may also authorize OJS to enforce their respective tribal laws on their lands. 25 U.S.C. § 2802(c)(1).

6. OJS operates several distinct programs: criminal investigations and police services—also described as simply law enforcement—detention/corrections, and tribal justice support, among others. In addition to direct service, OJS also provides oversight and technical assistance to contracted tribal law enforcement programs. (Doc. 83 at ¶ 3.)[1]

7. OJS currently funds and operates or oversees 198 law enforcement programs, 26 of which are operated by OJS serving 46 tribes as direct service operations, and 165 (or portions thereof) of which are operated by tribes under contracts or self-governance compacts pursuant to Title I and Title IV of the Indian

[1] There are several facts in the record the parties do not dispute. Many of these are identified in FBIC's Statement of Disputed Facts (Doc. 83), where FBIC indicates it does not dispute a particular fact asserted by the United States in its Statement of Undisputed Facts (Doc. 68).

Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. § 5301 *et seq*. (Doc. 83 at ¶ 2; Addington, Trial Tr., Vol. 1, 23:4–15.)

8. Whether operated by OJS or tribes, law enforcement programs normally have four components: uniform patrol, criminal investigations, dispatch, and administrative services. (Addington, Trial Tr., Vol. 1, 23:21–24:7.)

III. Unmet law enforcement funding needs in Indian Country

9. The challenge of providing adequate law enforcement services to Indian Country has long been recognized by Congress and the President and has been the subject of numerous commissions, federal statutes, Congressional hearings, and annual scrutiny through the federal budget and appropriations process. (Doc. 83 at ¶ 4.)

10. In fiscal year 2021, law enforcement in Indian Country had a total unmet need of $1.47 billion, and the fiscal year 2021 Congressional appropriation to BIA for public safety and justice reflected only 13 percent of overall need. For this reason, OJS is able to provide only a basic level of law enforcement service across Indian Country. Tribes commonly supplement BIA funds with other federal and tribal funds to provide their desired level of law enforcement services. Numerous federally recognized tribes—including nearly every tribe in Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin—receive no funding

from OJS for law enforcement services. (Doc. 83 at ¶ 5; Addington, Trial Tr., Vol. 1, 33:20–24, 39:19–24; Martin, Trial Tr., Vol. 1, 72:16–19; Exhibit 5.)

11. The Tribal Law and Order Act (TLOA) of 2010, Pub. L. 111-211, Title II, 124 Stat. 2261, requires OJS to submit an annual report to congressional appropriations committees that quantifies the overall public safety program needs of Indian Country. OJS has prepared and submitted this report for each fiscal year from 2011 to 2021. The 2021 TLOA report, which is the most recent report, was published in 2024. The reports are published on the BIA's website and are presented during annual tribal consultations for BIA's budget development. (Doc. 83 at ¶ 6; Addington, Trial Tr., Vol. 1, 33:25–34:7; Martin, Trial Tr., Vol. 1, 72:3–13, 89:1–7; Exhibit 5.)

12. The TLOA report methodology uses scalable budget models and applies operation benchmarks—specifically the U.S. Department of Justice benchmark of 2.8 officers per thousand members of the service population—to estimate need. (Doc. 83 at ¶ 7; Addington, Trial Tr., Vol. 1, 34:8–13; Martin, Trial Tr., Vol. 1, 73:15–19; Exhibit 5.)

13. The TLOA methodology starts by grouping tribes by population size, and then models for each population size group a fully staffed law enforcement program. For example, for tribes with 1,601 to 6,500 enrolled members, the modeled law enforcement program includes 21 total positions: 1 chief of police, 2

patrol sergeants, 11 patrol officers, 1 supervisory criminal investigator, 5 dispatchers, and 1 law enforcement assistant. The number of patrol officers is based on the DOJ benchmark of 2.8 officers per thousand members of the service population, estimated based on the midpoint of the population range. Other positions are based on principles of law enforcement administration and the logistics of shift coverage. (Doc. 83 at ¶ 8; Martin, Trial Tr., Vol. 1, 73:20–24; Exhibits 5, 55.)

14. Staffing models for smaller and larger forces are scaled from this basic model, with adjustments made to account for part-time coverage and economies of scale. From the staffing model, the methodology applies average rates of pay to the positions modeled. Modeled budgets are then increased each year with inflation. (Doc. 83 at ¶ 9; Martin, Trial Tr., Vol. 1, 73:20–24; Exhibits 5, 55.)

15. The resulting estimates of law enforcement need from the TLOA methodology represent the approximate cost of a fully staffed, fully funded program for law enforcement. In a perfect world, all tribes would receive funding to fully meet their law enforcement need, as estimated by the TLOA methodology. In practice, very few do. This is true of both contracting tribes and those receiving OJS direct service. (Martin, Trial Tr., Vol. 1, 77:3–9; Martin, Trial Tr., Vol. 2, 414:12–415:14.)

IV. Tribal priority allocations

16. Prior to 1999, funding for BIA law enforcement programs was allocated as part of the Tribal Priority Allocation (TPA) process. The TPA process is still utilized for a wide array of tribal programs and activities, although law enforcement funding has been budgeted separately since 2000, at the direction of Congress. The TPA process provides tribes the discretion to prioritize their annual base funding among all BIA-funded programs with a TPA designation to serve the unique needs of their communities. During each budget cycle, BIA solicits tribal input into TPA allocations across a range of programs. TPA furthers self-determination by giving tribes the opportunity to establish their own priorities and to move funds among programs accordingly. (Doc. 83 at ¶ 17; Addington, Trial Tr., Vol. 1, 35:6–25.)

17. In 1999, at the direction of Congress, BIA removed law enforcement programs from the TPA program. The amount of TPA funding that tribes allocated to law enforcement programs in 1999 then became the basis for each tribe's base funding levels for law enforcement going forward. Funding increases provided since 1999 have been allocated on top of these base funding levels. (Addington, Trial Tr., Vol. 1, 36:18–37:4; Martin, Trial Tr., Vol. 1, 146:15–147:10; Exhibit 524 at ¶ 20.)

18. In 2000, as today, OJS used prior-year amounts as the starting point for its funding allocations to tribes to ensure compliance with ISDEAA and its restrictions on reducing funding for one tribe to provide to another tribe. OJS did this for direct service locations and contracting tribes alike. (Martin, Trial Tr., Vol. 1, 146:23–147:21.)

19. To this day, Tribes may reallocate unrestricted funds from TPA programs to law enforcement through a base transfer request, thereby increasing their base funding level for law enforcement. (Addington, Trial Tr., Vol. 1, 36:1–7, 37:14–19; Martin, Trial Tr., Vol. 1, 148:2–9; Exhibit 525 at ¶ 39.)

V. The Indian Self-Determination and Education Assistance Act

20. Like other BIA programs, OJS programs are subject to ISDEAA, which directs OJS to enter into a self-determination contract upon the request of a tribe. 25 U.S.C. § 5321(a)(1). Tribes with self-determination contracts are responsible for the day-to-day operation of their law enforcement programs, including hiring, compensation, scheduling, and other operational decisions, with OJS providing support and periodic program evaluation. For other tribes, OJS provides direct service with federal law enforcement officers and support staff. (Doc. 83 at ¶ 11; Addington, Trial Tr., Vol. 1, 22:2–19, 24:8–25:20.)

21. ISDEAA mandates that contract amounts "shall not be less than the Secretary would have otherwise provided for the operation of the programs" under

contract. 25 U.S.C. § 5325(a)(1). BIA commonly refers to this amount as the "Secretarial Amount." BIA budget policy seeks to ensure that tribes have predictable levels of recurring program funding from year to year. BIA commonly refers to such recurring program funding as "base funding." (Addington, Trial Tr., Vol. 1, 25:23–26:7, 27:9–17; Martin, Trial Tr., Vol. 1, 89:24–90:3.)

22. ISDEAA further mandates that contract amounts "shall not be reduced . . . in subsequent years" except in limited circumstances defined by statute. 25 U.S.C. § 5325(b)(2). This statutory restriction also means that BIA cannot take from one tribe's contract to fund another tribe's contract. (Addington, Trial Tr., Vol. 1, 27:18–21, 28:8–12; Martin, Trial Tr., Vol. 1, 71:10–15, 89:24–90:3.)

23. OJS budgeting and resource allocation practices flow directly from the statutory requirements of ISDEAA. (Doc. 83 at ¶ 12; Addington, Trial Tr., Vol. 1, 30:8–12; Martin, Trial Tr., Vol. 1, 90:13–91:4; Martin, Trial Tr., Vol. 2, 407:24–408:23.)

24. ISDEAA contracts take the form of the statutory model contract with attached annual funding agreements that outline program requirements and annual funding amounts. Near the end of each fiscal year, contracting tribes submit proposed funding agreements for the coming fiscal year, and BIA reviews these proposals according to strict procedures and deadlines established by law. If BIA has to issue a funding decision prior to enactment of a full-year appropriation, BIA

will approve or partially approve any annual funding agreement up to the Secretarial Amount provided for the prior fiscal year and will decline or partially decline any request in excess of that amount. Once a full-year appropriation is enacted, BIA distributes any increases provided by Congress. (Doc. 83 at ¶ 13; Addington, Trial Tr., Vol. 1, 27:22–28:7, 29:6–29:11, 47:7–17; Martin, Trial Tr., Vol. 1, 98:7–17, 103:10–18.)

25. OJS determines the Secretarial Amount for a self-determination contract each year using standard BIA budgeting and resource allocation policies and practices. Only for the first year of a contract does BIA have prior-year figures of actual expenditures made by the Secretary for the program to be contracted. In each subsequent year, BIA determines only increases to that initial amount by applying the same formula or methodology to contracting and direct-service tribes alike. This practice ensures contracting tribes receive the amount that the Secretary would have otherwise provided for operation of that program. (Doc. 83 at ¶ 14; Addington, Trial Tr., Vol. 1, 29:12–30:7; Martin, Trial Tr., Vol. 1, 90:13–91:11.)

26. As a result of the requirements of ISDEAA to not reduce funding to a contracting tribe in a subsequent year, nearly all BIA programs use historical amounts allocated for each tribe (i.e., the amount of funds allocated to each contracting tribe or direct-service agency in the prior year) to determine the current allocation for each contracting tribe or direct-service agency. If funding increases

are available in a given year, BIA will allocate increases on top of each tribe's prior year amount. (Doc. 83 at ¶ 15; Addington, Trial Tr., Vol. 1, 30:8–21; Martin, Trial Tr., Vol. 1, 90:13–91:4.)

27. BIA provides in its annual Budget Justifications (also known as the Greenbook) a table listing the base levels of funding for criminal investigations and police services for both contracting tribes and direct-service agencies for the prior fiscal year, or for the latest fiscal year for which enacted levels are available. By providing these reference tables, BIA assists Congress in understanding the nature of these recurring base funding commitments over which BIA does not exercise discretion year to year. (Doc. 83 at ¶ 16; Addington, Trial Tr., Vol. 1, 31:3–18; Martin, Trial Tr. Vol. 1, 126:8–127:10.)

VI. OJS's law enforcement funding methodology

28. Congress appropriates money to BIA for the "Operation of Indian Programs" in an annual lump-sum appropriation. Nearly all BIA programs are funded from this single appropriation, which for fiscal year 2023 was $1,906,998,000. Within this lump-sum appropriation, Congress further directs appropriations through explanatory statements and committee reports. For fiscal year 2023, Congress identified $579,725,000 for public safety and justice programs. This amount included $274,152,000 for criminal investigations and police services, an overall increase of $23,524,000 from the prior fiscal year. From

that amount, Congress directed various amounts for specified purposes, including $62,000,000 for tribes affected by the *McGirt v. Oklahoma*, 591 U.S. 894 (2020), decision as well as dedicated amounts for missing and murdered cases, drug enforcement, and unserved tribes, among others. (Doc. 83 at ¶ 20; Addington, Trial Tr., Vol. 1, 31:19–32:11, 33:12–15; Martin, Trial Tr., Vol. 1, 68:6–12, 68:25–70:16, 71:3–9; Exhibits 522, 523.)

29. After accounting for all amounts specified by Congress, the fiscal year 2023 appropriation for criminal investigations and police services reflected a general unrestricted increase of only $4,000,000. The gap between overall appropriated increases and general unrestricted increases has been the topic of OJS briefing to tribal leaders. In recent years, Congress has increasingly used continuing resolutions to fund the government for a few months at a time, with full-year appropriations arriving several months into the fiscal year. This has meant that OJS is often only able to calculate final budget amounts for tribes many months into the fiscal year. (Doc. 83 at ¶ 21; Martin, Trial Tr., Vol. 1, 92:3–15, 94:14–18; Exhibits 510, 529, 530.)

30. When Congress appropriates a general unrestricted increase, OJS uses a funding formula to allocate that increase to tribes on top of their prior year base amounts. OJS applies the formula to all tribes, including FBIC, without regard to whether a tribe is a direct-service tribe or a contracting tribe. The OJS funding

formula uses objective, weighted criteria to ensure more resources get to the areas of greatest need, based on: (1) reported violent crime rates (35 percent weight); (2) unmet program need estimated using the TLOA Report methodology (35 percent); (3) size of trust land base in service area (20 percent); and pro-rata based on the existing base amounts (10 percent). To estimate reported violent crime rates, OJS relies on data from DOJ's National Incident Based Reporting System (NIBRS). To estimate the size of the trust land base in each service area, OJS uses land tenure data maintained in the BIA Trust Asset Accounting Management System (TAAMS). OJS additionally provides fixed-cost increases to both contracting tribes and direct-service agencies. (Doc. 83 at ¶ 22; Addington, Trial Tr., Vol. 1, 38:8–39:2; Martin, Trial Tr., Vol. 1, 78:6–24, 82:8–23, 83:12–85:1, 151:19–152:22; Martin Trial Tr., Vol. 2, 425:7–13; Exhibits 2, 5, 533, 548.)

31. OJS publishes its formula criteria in the TLOA Report and regularly communicates it to tribes, including during quarterly budget consultation meetings held by the Tribal-Interior Budget Council. (Doc. 83 at ¶ 23; Martin, Trial Tr., Vol. 1, 86:12–89:17; Exhibits 5, 529.)

32. Application of the OJS funding formula is not required by statute, regulation, or appropriations language. It is applied at the discretion of OJS. In the absence of the OJS formula, standard BIA practice would be to allocate increases pro-rata, meaning that every tribe would receive the same percentage increase

based on its prior year amount. Compared to pro rata distribution, the OJS formula better targets limited funding increases to the areas of greatest need. (Doc. 83 at ¶ 24; Addington, Trial Tr., Vol. 1, 33:12–15, 37:25–38:6; Martin, Trial Tr., Vol. 1, 84:12–85:1.)

VII. Funding for direct-service agencies

33. Unlike contracting tribes, there is no statutory prohibition of reducing funding amounts for direct-service tribes in subsequent years. Although it is generally the practice of the BIA to maintain historical amounts for direct-service tribes from year to year, OJS retains discretion to reallocate funding among direct-service operations. It is not uncommon for some direct-service budgets to increase at rates greater than those of contracting tribes as funds are reallocated to those tribes from other direct-service tribes. At the same time, those other direct-service base budgets will necessarily decrease from one year to the next. (Doc. 83 at ¶ 25; Martin, Trial Tr., Vol. 1, 126:5–7.)

34. If a tribe currently receiving OJS direct service submits a contract proposal, the Secretarial Amount of that contract is determined based on the most recent years of direct-service allocations and expenditures. (Doc. 83 at ¶ 25; Addington, Trial Tr., Vol. 1, 29:12–23.)

35. On the other hand, it is rare for contracting tribes to retrocede law enforcement programs back to OJS. Over the past decade, only five tribes have

retroceded criminal investigations and police services programs. When retrocession does occur, OJS takes the contract amount as its starting budget for the retroceded program. OJS may then reallocate funds to or from the retroceded program within the pool of other direct-service agencies. (Doc. 83 at ¶ 26; Addington, Trial Tr., Vol. 2, 385:5–7, 385:16–386:1; Martin, Trial Tr., Vol. 2, 431:10–432:16; Exhibits 1, 525 at ¶ 48.)

36. Separate from its direct-service operations, OJS operates nine district offices, a headquarters office, and 10 national law enforcement programs that do not have defined service populations. These offices and programs serve all tribes, including both direct-service and contracting tribes. For example, OJS district offices provide oversight and administrative services to contracting tribes, including technical assistance for contract proposals. The OJS headquarters office oversees law enforcement operations across Indian Country and engages with tribes, Congress, and other federal agencies. Among the national law enforcement programs operated by OJS, the Missing and Murdered Unit (MMU) investigates high priority missing and murdered cases across Indian Country, and the Division of Drug Enforcement (DDE) investigates drug trafficking networks with connections to Indian Country. In many cases, nationwide programs are supported by dedicated Congressional appropriations. (Doc. 83 at ¶ 27; Addington, Trial Tr.,

Vol. 1, 25:7–14, 32:9–20; Martin, Trial Tr., Vol. 1, 69:24–70:12; Martin, Trial Tr., Vol. 2, 422:4–423:10.)

VIII. Law enforcement funding for FBIC (2023)

37. FBIC entered into self-determination contracts with the BIA under the ISDEAA to operate law enforcement services on the reservation prior to 1999. Today—and at all times relevant to this litigation—FBIC operates all aspects of the law enforcement program on the Fort Belknap Reservation, including uniform police, criminal investigations, dispatch, and administration. (Doc. 86 at ¶ 6; Addington, Trial Tr., Vol. 1, 26:15–21.)

38. In its original Complaint, FBIC challenged OJS's partial declination of FBIC's contract proposal for fiscal year 2023. In its Second Amended Complaint, FBIC also challenges funding it received for 2016 to 2026. Because the 2023 funding is the principal year at issue in this case, the Court first addresses funding for that year and, in the next section, discusses the other years. (*See* Docs. 1, 47, and 95.)

39. Like Indian Country as a whole, FBIC has significant unmet need according to the TLOA report methodology. In Deputy Associate Director Martin's calculation of fiscal year 2023 base increases, law enforcement services at FBIC had $2,303,227 in unmet need. This unmet need represented 62.5 percent of

total estimated need at FBIC. (Doc. 83 at ¶ 10; Martin, Trial Tr., Vol. 1, 80:7–81:13; Martin, Trial Tr., Vol. 2, 414:12–20; Exhibit 2.)

40. While FBIC has 62.5 percent unmet need, it is better positioned than most contracting and direct-service locations. As of 2023, FBIC was ranked 138 out of 196 service locations in terms of unmet need, which meant that 137 service locations had higher unmet need than FBIC. (Addington, Trial Tr., Vol. 1, 34:14–19; Martin, Trial Tr., Vol. 1, 81:14–24; Exhibits 2, 525 at ¶ 34.)

41. This significant unmet need persists even though, between 1999 (the final year that law enforcement was part of TPA) and fiscal year 2023, the base amount allocated to FBIC roughly doubled from $694,436 to $1,391,133. (Martin, Trial Tr., Vol. 2, 393:22–394:3; Exhibit 51.)

42. The 2022 Secretarial Amount for FBIC law enforcement was $1,353,247. This amount was also distributed in several parts: $228,243 from a part-year continuing resolution; $1,073,770 from the full-year appropriation; and $51,234 from a general unrestricted increase allocated by the OJS funding formula plus a fixed-cost increase. (Doc. 83 at ¶ 29; Martin, Trial Tr., Vol. 1, 95:5–14; Exhibits 2, 501, 505, 528.)

43. On July 1, 2022, FBIC submitted to OJS a proposed funding agreement for fiscal year 2023. The proposed funding agreement requested $5,194,549.39 for criminal investigations and police services, an increase of

$3,841,302.39 from the previous fiscal year. On September 26, 2022, OJS issued a decision letter to FBIC approving the proposal in the amount of $1,353,247 and declining the balance of the proposal. (Doc. 83 at ¶ 30; Addington, Trial Tr., Vol. 1, 40:23–41:17; Exhibits 59, 501.)

44. Because the decision letter was issued prior to enactment of a full-year appropriation, OJS partially approved the annual funding agreement up to the Secretarial Amount provided for 2022 and partially declined the request in excess of that amount. Once a full-year appropriation was enacted, OJS distributed to FBIC a base increase calculated by the OJS funding formula applied to the general unrestricted increase provided by Congress. This made the 2023 Secretarial Amount $1,391,133. (Doc. 83 at ¶ 31; Addington, Trial Tr., Vol. 1, 41:11–17; Martin, Trial Tr., Vol. 1, 96:10–97:1, 98:7–17; Exhibits 51, 501, 505, 528.)

45. FBIC received additional federal funding for law enforcement in 2023. First, FBIC received $579,809 in contract support costs under its law enforcement contract, transferred in two parts. Contract support funding covers costs such as human resources, information technology, and other overhead-type functions that support FBIC law enforcement. Second, FBIC received $26,525 in one-time funding. One-time funding generally comes from unspent OJS direct-service and central office funds from the prior fiscal year. Third, FBIC received $26,944 in supplemental funding from the American Rescue Plan. One-time and

supplemental funding is generally limited to one-time expenses such as the purchase of equipment. In all, BIA provided $2,024,411 to FBIC for 2023 under its law enforcement contract. (Doc. 83 at ¶ 32; Addington, Trial Tr., Vol. 1, 39:3–15, 40:14; Martin, Trial Tr., Vol. 1, 99:21–101:5; Exhibits 501, 505, 528.)

46. Consistent with BIA policy and practice, the amount provided to FBIC in 2023 was based primarily on the prior year amount, with a base increase determined by the OJS funding formula, as well as additional funds discussed above. (Doc. 83 at ¶ 41; Martin, Trial Tr., Vol. 1, 90:13–91:11.)

47. The base funding provided to FBIC for 2023—$1,391,133—is the same amount the Secretary would have otherwise provided if it would have directly operated FBIC's law enforcement service. OJS's funding methodology is applied the same to all tribes, both contracting tribes and direct-service agencies. FBIC has provided no evidence that OJS would have provided a higher level of funding if it were to operate FBIC's law enforcement program directly or otherwise provided funds inconsistent with the funding formula that OJS applies to all contracting tribes and direct-service agencies. (Addington, Trial Tr., Vol. 1, 40:18–22, 41:11–42:1; Martin, Trial Tr., Vol. 1, 101:6–19; Exhibit 2.)

48. Each tribe, whether a contracting tribe or a direct service agency, presents its own unique circumstances that lead to differing levels of base funding (i.e., Secretarial Amounts) across the tribes. These factors include varying

population sizes, service areas, crime rates, geographical constraints, unmet need, and each tribe's or agency's TPA funding allocation in 1999. Given these varying factors, tribe-by-tribe or agency-by-agency comparisons are of little utility. (Addington, Trial Tr., Vol. 2, 378:23–379:10; Martin, Trial Tr., Vol. 2, 394:4–395:2; Exhibit 524 at ¶¶ 37–38.)

49. Historic funding data illustrates that, overall, the base funding levels for contracting tribes have grown at a rate similar to or better than direct-service agencies. In other words, the funding data shows that OJS does not favor direct-service agencies over contracting agencies, like FBIC. Over the decade ending with 2023, the base funding levels for contracting tribes (i.e. the Secretarial Amount) grew by 34.3 percent whereas the Secretarial Amount for direct-service agencies grew by only 24.1 percent. Looking only at 2023, contracting tribes received an average base increase of 2.1 percent, while direct-service tribes received an average base increase of 1.1 percent. (Martin, Trial Tr., Vol. 2, 395:8–396:13, 397:18–398:24; Exhibits 502, 503.)

50. Finally, if, as FBIC contends, direct-service tribes are allocated more funding than contracting tribes, one would expect there to be relatively few tribes that choose to contract for services. The opposite is true, though—the overwhelming majority of tribes choose to contract for services rather than opt for direct-services through OJS. There are currently 165 tribes that contract for

services, while only 46 tribes receive direct service. Likewise, if OJS were operating direct services with more resources than contracting tribes, one would expect to see frequent retrocessions—i.e., contracting tribes discontinuing their contracts in favor of direct services. But, again, the numbers show the opposite is true—retrocessions are rare. In the last ten years, only five tribes have elected to retrocede their criminal investigations and police services programs, which are the programs at issue here. (Addington, Trial Tr., Vol. 1, 23:4–15; Addington, Trial Tr., Vol. 2, 385:5–7; Martin, Trial Tr., Vol. 2, 399:5–15, 431:10–12, 434:8–12; Exhibit 524 at ¶¶ 4, 28.)

IX. Law enforcement funding for FBIC (2016–2026)

51. FBIC's Second Amended Complaint expands the scope of its claims to include the years 2016 to 2026.

52. Other than 2023, the years 2018 and 2026 were the only two years during this period in which OJS issued a partial declination.[2] In other words, in every other year during this period, Fort Belknap received precisely the funding it had proposed to OJS. The only years, then, that warrant further discussion are 2018

[2] OJS partially declined Fort Belknap's 2021 proposal but rescinded that partial declination when Fort Belknap resubmitted a proposal for the Secretarial Amount. (Martin, Trial Tr., Vol. 1, 104:5–105:2; Exhibits 520, 521.)

and 2026. (Martin, Trial Tr., Vol. 1, 101:22–102:16, 107:15–20; Exhibits 518, 519, 578, 580.)

53. On June 21, 2017, FBIC proposed $1,863,198.14 in funding for criminal investigations and police services, an increase of $595,443.14 from the previous fiscal year. On September 8, 2017, OJS issued a decision letter to FBIC approving the proposal in the amount of $1,267,755 and declining the balance of the proposal. (Martin, Trial Tr., Vol. 1, 102:22–104:4; Exhibits 518, 519.)

54. Because the decision letter was issued prior to enactment of a full-year appropriation, OJS partially approved the annual funding agreement up to the Secretarial Amount provided for the prior fiscal year and partially declined the request in excess of that amount. Once a full-year appropriation was enacted, OJS distributed to FBIC a fixed-cost base increase, which was the only increase provided by Congress that year, for a final 2018 Secretarial Amount of $1,279,957. (Martin, Trial Tr., Vol. 1, 103:10–15; Martin Trial Tr., Vol. 2, 437:3–14; Exhibits 508, 510, 518.)

55. OJS responded similarly to FBIC's request for 2026 funding in the amount of $5,717,387.69, which was $4,326,254.69 higher than the 2025 Secretarial Amount ($1,391,133). OJS partially approved FBIC's contract proposal in the amount of $1,391,133 and declined funding in excess of that amount.

(Martin, Trial Tr., Vol. 1, 108:5–109:11; Martin, Trial Tr., Vol. 2, 437:3–14; Exhibits 578, 580.)

56. Again, as with FBIC's funding for 2023, the base funding (i.e., the Secretarial Amount) that OJS provided to FBIC in 2018 and 2026 is the same amount the Secretary would have otherwise provided if it would have directly operated FBIC's law enforcement services. OJS applied the same funding methodology to all tribes, both contracting tribes and direct service agencies. In both 2018 and 2026, FBIC proposed funding that exceeded the Secretarial Amount, which is why OJS partially declined FBIC's proposals. FBIC has not provided any evidence that OJS would have provided a higher level of funding if it were to operate FBIC's law enforcement program directly. (Martin, Trial Tr., Vol. 1, 106:14–107:1, 109:6–110:9; Martin, Trial Tr., Vol. 2, 436:13–437:14.)

X. FBIC's contentions

57. FBIC presented fact and expert testimony challenging the United States' assertion that OJS had valid grounds for partially declining FBIC's law enforcement funding proposals in 2018, 2023, and 2026. While FBIC presented a variety of models for analyzing components of OJS's law enforcement funding, the analysis does not show what level of funding OJS would have provided to FBIC if OJS were to operate the service directly. (Martin, Trial Tr., Vol. 2, 435:22–436:12.)

58. Natalya Abdrasilova, CPA, is FBIC's financial expert witness. Ms. Abdrasilova offered testimony describing various models that are intended to show a discrepancy between the law enforcement funding FBIC has received and that received by other contracting tribes and direct-service agencies. (Abdrasilova, Trial Tr., Vol. 2, 357:10–16.)

59. One model, for instance, identified the median staffing level for various direct-service agencies at 2.45 to 2.81 FTE/1000. Since FBIC has a population of 8,308, Ms. Abdrasilova translated this to a proposed staffing level of 20.35 to 23.35 staff for FBIC. Ms. Abdrasilova then used this staffing level to calculate a proposed budget for FBIC. This analysis was captured in Exhibits E and F of Ms. Abdrasilova's Supplemental Expert Report. She testified that this analysis amended or replaced two previous models she created as part of her initial expert report (i.e., Schedules 1 and 2). (Abdrasilova, Trial Tr., Vol. 2, 364:5–18, 365:15–23; Martin, Trial Tr., Vol. 2, 400:2–6, 401:1–19; Exhibit 68 at pp. 26–28.)

60. Ms. Abdrasilova's analysis of median staffing levels had methodological flaws that produced unreliable results. The Exhibit E analysis, for example, included two agencies—Truxton Canyon and Western Nevada—that are significant outliers, which skews the median staffing level by approximately a whole full-time equivalent per thousand: from approximately 2.5 to approximately 1.5. Moreover, the only two agencies with staffing levels near the 20.35 and 23.35

level are Standing Rock and Wind River, which are magnitudes larger than FBIC both in terms of population and acreage. (Abdrasilova, Trial Tr., Vol. 2, 365:24–367:15, 369:5–25; Martin, Trial Tr., Vol. 2, 402:10–404:6, 405:19–406:1; Exhibit 68 at p. 26.)

61. But the fatal flaw of the Abdrasilova Exhibit E analysis is its assumption that OJS funds tribes primarily based on median staffing levels without regard to other factors unique to each individual tribe and without regard to the requirements of ISDEAA. The wide variance of staffing levels in OJS direct-service operations evident on the face of Exhibit E is enough to disprove this assumption. For these reasons, the Court does not find Ms. Abdrasilova's model to be a reliable indication of how OJS would staff or fund FBIC's law enforcement program if it were to operate the service directly. (Martin, Trial Tr., Vol. 2, 401:20–402:9, 404:9–20, 406:2–20.)

62. OJS does not set law enforcement budgets—either for contracting tribes or direct-service operations—by comparing staffing levels across various agencies or tribes. Instead, OJS establishes base funding levels by first looking to the prior year's base funding level and then distributing base funding increases (if any) according to the multifactor methodology discussed above. (Martin, Trial Tr., Vol. 2, 404:9–16, 404:21–405:6, 406:2–11.)

63. Director Charles Addington testified that if OJS were to operate FBIC's law enforcement program directly, OJS would likely employ fewer law enforcement officers than FBIC currently employs because OJS would likely pay its officers a higher salary under the same level of funding. (Addington, Trial Tr., Vol. 2, 377:6–13, 387:6–10.)

64. Ms. Abdrasilova also compared FBIC's law enforcement funding to three direct-service agencies— Mescalero, Ute Mountain Ute, and Ft. Totten (Spirit Lake)—for the period 2014 to 2024. Ms. Abdrasilova testified that these three service locations are similar in population and acreage to FBIC but their funding is substantially larger. (Abdrasilova, Trial Tr., Vol. 2, 340:20–341:11, 342:11–25, 362:9–364:2; Exhibit 68 at p. 24.)

65. The core assumption of this analysis suffers from the same fatal flaw in that it assumes that tribes of similar population and acreage will have similar base funding levels. This assumption is not consistent with how OJS allocates funding under ISDEAA. (Abdrasilova, Trial Tr., Vol. 2, 362:24–364:2; Martin, Trial Tr., Vol. 2, 407:22–408:23.)

66. While each of the three other service locations has higher funding than FBIC, they each started out with higher funding in 1999, which meant that the three other service locations made the decision themselves to allocate higher levels of funding for law enforcement in 1999 before law enforcement was removed from

the TPA program. A better analysis considers the constraints of ISDEAA and instead looks at increases to base amounts provided to each tribe. Deputy Associate Director Martin testified that the comparative growth among these locations since 2014 does not show that OJS has favored the three other locations compared to FBIC. FBIC's budget grew by 13.6% during this period. Ute Mountain Ute's budget grew by 2.5%, Ft. Totten's grew by 8.9%, and Mescalaro's grew by 21.8%. This analysis, which focuses on the funding increases that OJS has discretion over, reveals no disparate or unfair treatment of FBIC compared to these other tribes. (Martin, Trial Tr., Vol. 2, 412:13–413:25; Exhibit 526 at ¶ 15.)

67. FBIC witness Gary LaMere also offered testimony suggesting that Mescalero's law enforcement budget was larger than FBIC's despite Mescalero being smaller in terms of population and acreage. The evidence, however, shows that Mescalero is a poor comparator because of its high violent crime rate. (LaMere, Trial Tr., Vol. 1, 218:16–219:8; Addington, Trial Tr., Vol. 2, 378:23–379:10; Martin, Trial Tr., Vol. 2, 410:11–411:10, 415:15–23.)

68. In 2023, Mescalero received $2,443,592 in base funding, compared to $1,391,133 for FBIC. Mescalero's funding reflects the extraordinarily high violent crime rates seen on the Mescalero Reservation in the late two-thousands, which drove funding increases in the years leading to 2014. In 2006, for example, Mescalero reported 187 violent crimes, which computes to a violent crime rate of

4,205 per 100,000 residents. This amount is more than 10 times the national average used by OJS in 2023. Because of Mescalero's unusually high violent crime rate, OJS specifically targeted Mescalero with increased staffing under the Department of the Interior's High Priority Performance Goal for Safe Indian Communities, which was meant to demonstrate that additional resources for law enforcement in Indian Country would result in decreases to violent crime. Mescalero is, for that reason, an outlier among direct-service agencies, as shown by its unusually low estimated unmet need. (Lamere, Trial Tr., Vol. 1, 250:15–251:21; Martin, Trial Tr., Vol. 2, 410:11–412:4, 414:1–415:23; Exhibits 2, 525 at ¶¶ 55–57, 535, 568.)

69. Ms. Cuts the Rope testified that OJS has utilized incorrect land acreage for FBIC in its funding methodology for base funding increases. OJS does not dispute this and now utilizes correct acreage data. Kevin Martin testified that, if OJS had operated FBIC's law enforcement service directly, it would have used the same data, which would have resulted in the same level of funding. (Cuts the Rope, Trial Tr., Vol. 1, 174:17–175:9; Martin, Trial Tr., Vol. 1, 425:3–427:2.)

70. Ms. Abdrasilova further testified that OJS began using a different data source for tribal population data in 2023 for all tribes. Neither Ms. Abdrasilova nor any other FBIC witness, though, offered any testimony as to how this change in funding data affected FBIC's law enforcement funding levels, only that it meant

FBIC and other tribes were classified differently for purposes of estimating unmet need. Kevin Martin testified that this change in data source was the result of tribal consultation and was implemented after approval by the Assistant Secretary. Kevin Martin also testified that, if OJS had operated FBIC's law enforcement service directly, it would have used the same data, which would have resulted in the same level of funding. (Abdrasilova, Trial Tr., Vol. 2, 336:22–339:5; Martin, Trial Tr., Vol. 2, 429:8–431:7.)

71. During her testimony, Ms. Abdrasilova presented data suggesting that FBIC's law enforcement officers are compensated less than municipal police officers in certain cities in Montana and less than OJS's officers employed with direct-service operations. Mr. Martin confirmed that all compensation paid to OJS officers, including benefit contributions, is paid out of each direct service agency's budget. And FBIC is free to increase the salaries and benefits for its officers. Director Addington testified that if OJS were to directly operate FBIC's law enforcement program, it would do so under the same budget but would pay its officers a higher wage than what FBIC pays, which would result in fewer officers being employed for FBIC. (Abdrasilova, Trial Tr., Vol. 2, 325:22–331:1; Addington, Trial Tr., Vol. 2, 387:6–10; Martin, Trial Tr., Vol. 2, 434:13–435:21.)

72. Ms. Abdrasilova offered testimony showing that OJS spent funds on FBIC's detention program after retrocession that were beyond the previously

established base funding level. FBIC contends this over-expenditure is evidence that OJS would spend more than the current base funding level for FBIC's law enforcement program if it were to operate the program directly. The United States does not dispute that OJS spent beyond the base funding level for detention when it assumed control of FBIC's detention program. Director Addington testified, however, that FBIC's detention operation was in significant disrepair when OJS assumed control, which required significant financial expense. Moreover, because OJS did not have permanent staff at the FBIC detention facility, OJS was required to detail officers from other parts of the country to FBIC so that OJS could operate the detention facility. Those details resulted in significant expense due to ongoing travel and lodging costs. (Abdrasilova, Trial Tr., Vol. 2, 348:14–19; Addington, Trial Tr., Vol. 2, 381:4–384:20.)

73. Director Addington also testified that detention operations are fundamentally different than law enforcement operations because OJS must ensure that various standards are in place to ensure that detainees' constitutional rights are not violated. These various factors illustrate that detention operations are different than law enforcement operations and make for a dubious comparison in terms of funding and expenditures by OJS. (Addington, Trial Tr., Vol. 2, 379:11–381:3, 384:21–385:4; Martin, Trial Tr., Vol. 2, 433:1–7; Exhibit 525 at ¶¶ 50–52.)

74. Retrocessions by law enforcement programs are more relevant to this case because this case involves a law enforcement program, not a detention program. Deputy Associate Director Martin testified that only five tribes retroceded their criminal investigations and police services programs in the decade before 2023. Three of those tribes were absorbed into a multi-tribe direct-service operation or ceased altogether. Of the two others, OJS-operated one within 12 percent, both above and below the Secretarial Amount, and OJS operated the other underbudget by as much as 50 percent following retrocession. There is no evidence that OJS consistently spends beyond the base funding level when it takes over a previously-contracted program. (Addington, Trail Tr., Vol. 2, 385:5–386:1; Martin, Trail Tr., Vol. 2, 431:10–432:25; Exhibit 525 at ¶¶ 46–49.)

75. There is no persuasive evidence to suggest that OJS would significantly overspend FBIC's current base funding level if OJS were to assume control of the law enforcement program. (Addington, Trial Tr., Vol. 2, 385:23–386:17; Martin, Trial Tr., Vol. 2, 434:2–12.)

76. Ms. Abdrasilova testified that FBIC's violent crime data was missing from OJS's funding allocation spreadsheet, which resulted in FBIC receiving less funding for 2023 than it should have. Ms. Abdrasilova also testified that she was not aware of who was responsible for reporting violent crime data to OJS, and that

she did not analyze the financial or budgeting effects of the missing crime data. (Abdrasilova, Trial Tr., Vol. 2, 334:24–335:5, 361:8–16.)

77. OJS uses violent crime data collected by the National Incident-Based Reporting System (NIBRS) to calculate the violent crime rates used in the OJS funding formula. NIBRS is the only source of crime data that covers all tribes with consistent and nationally uniform reporting standards. In applying the OJS funding formula, OJS does not permit exceptions to the use of NIBRS because it would be impossible for OJS to ensure an accurate comparison among all tribes. In the absence of NIBRS crime data for a particular tribe, OJS does not apply the national average crime rate or any other placeholder crime rate because doing so would punish tribes that do report crime data to NIBRS as required but have crime rates lower than the placeholder rate. (Martin, Trial Tr., Vol. 1, 151:19–152:22, 154:19–25; Exhibit 525 at ¶ 30.)

78. Director Addington testified that, in 2020, OJS switched platforms for tribes' mandatory reporting of violent crimes. Historically, tribes reported violent crime through the FBI's Uniform Crime Reporting platform (UCR). In 2020, OJS began to transition to NIBRS. Director Addington testified—and the exhibits show—that OJS repeatedly informed FBIC of this transition to NIBRS and offered to provide technical assistance. Numerous emails and correspondence between OJS and FBIC memorialize this outreach. Despite repeated overtures from OJS,

FBIC failed to make the mandatory reporting for 2021, 2022, and 2023. (Addington, Trial Tr., Vol. 2, 373:7–376:3; Exhibits 533, 548.)

79. During his testimony, FBIC Chief of Police Joshua Roberge acknowledged OJS's efforts to notify FBIC of the transition to NIBRS and OJS's offers of technical assistance. Chief Roberge repeatedly testified it was FBIC's responsibility for failing to report the data to NIBRS. Chief Roberge further testified that FBIC is currently using NIBRS, and Mr. Martin testified that FBIC will benefit from that reporting in any future use of the OJS funding formula. (Roberge, Trial Tr., Vol. 2, 309:24–313:12, 314:7–23, 318:12–22; Martin, Trial Tr., Vol. 2, 427:12–17.)

80. OJS cannot be faulted for FBIC's missing NIBRS data. Moreover, FBIC did not provide any testimony or calculation identifying the monetary effect of the missing data. Kevin Martin testified that even if the missing data had been entered, that would not have resulted in FBIC receiving the $5.1 million in funding it requested for 2023 or any amount close to that. (Martin, Trial Tr., Vol. 2, 427:3–11.)

CONCLUSIONS OF LAW

I. ISDEAA

81. Recognizing tribes' desire for self-determination, Congress passed ISDEAA in 1975. *See* 25 U.S.C. § 5301 *et seq*. Upon request of a tribe or

authorized tribal organization, ISDEAA requires BIA to enter into or renew a self-determination contract with the tribe to administer any program, function, service, or activity that is currently provided by the BIA for the benefit of the tribe. *See* 25 U.S.C. § 5321(a)(1). Such contracts are often referred to as "638 contracts" or "ISDEAA contracts." 25 U.S.C. § 5321.

82. Generally, ISDEAA contracts include a "model contract specifying a multi-year term, with the funding amount for each year to be determined during subsequent negotiations and incorporated through annual funding agreements." *Navajo Nation v. United States Dep't of Interior* (*Navajo Nation I*), 852 F.3d 1124, 1126 (D.C. Cir. 2017) (citing 25 U.S.C. § 5329(c)). Tribes who wish to contract or renew a contract under ISDEAA annually submit proposed funding agreements to OJS for review and negotiation of the proposed terms, including the funding amount. *See* 25 C.F.R. §§ 900.8, 900.12.

83. ISDEAA provides that the funding transferred pursuant to an ISDEAA contract "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). This amount is sometimes called the "Secretarial Amount."

84. ISDEAA prohibits the Secretary from reducing contract amounts from one year to the next, except in limited circumstances. 25 U.S.C. § 5325(b)(2). The

prior year amount thus "sets a floor, not a ceiling" on the contract amount. *Navajo Nation v. United States Dep't of Interior* (*Navajo Nation II*), 57 F.4th 285, 290 (D.C. Cir. 2023).

85. The "provision of funds under" ISDEAA "is subject to the availability of appropriations and the Secretary is not required to reduce funding for programs, projects, or activities serving a tribe to make funds available to another tribe or tribal organization" that receives an ISDEAA contract. 25 U.S.C. § 5325(b).

86. Within ninety days of receiving a proposal for a new or renewed contract, the Secretary must approve the proposal and award the contract[3] unless the Secretary makes specific written findings that there are grounds to decline the proposal under the ISDEAA. 25 U.S.C. § 5321(a)(2). Among others, these grounds include: "(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) . . . ." *Id.*; 25 C.F.R. § 900.22.

87. Where only a portion of a tribe's ISDEAA contract proposal supports a declination finding, the Secretary must approve any severable portion of the proposal for which there are no statutory grounds to decline. 25 U.S.C. §

[3] Where a tribe proposes to renew an existing ISDEAA contract, the Secretary may only decline provisions of a subsequent annual funding agreement that propose a "material and substantial change to the scope or funding of a program, functions, services, or activities." 25 C.F.R. § 900.33.

5321(a)(4). When a tribe "proposes a level of funding that is in excess of the applicable level determined under [25 U.S.C. § 5325(a)]," the Secretary may partially decline the excess amount under Section 5321(a)(4)(B). 25 U.S.C. § 5321(a)(4)(B); *see also Los Coyotes Band of Cahuilla & Cupeño Indians v. Jewell*, 729 F.3d 1025, 1035 (9th Cir. 2013).

88. A tribe may challenge a declination through a civil action. *See* 25 U.S.C. § 5331(a). In such an action, "the Secretary shall have the burden of proof to establish by clearly demonstrating the validity of the grounds for declining the contract proposal (or portion thereof)." 25 U.S.C. § 5321(e)(1). ISDEAA assigns the burden of proof to the Secretary for select other actions not at issue here. 25 U.S.C. §§ 5325(l)(2) (suspension, withholding, or delay in payment), 5330 (rescinding, assuming, or reassuming a contract). For all other claims, the burden rests with Plaintiffs.

II. OJS's partial declination of FBIC's 2023 contract proposal complied with ISDEAA.

89. When OJS established FBIC's base funding level for 2023, it did so by first referencing the 2022 base funding level. This is what ISDEAA requires because OJS cannot reduce the base funding level from a prior year's base funding level, subject to exceptions not applicable here. *See* 25 U.S.C. § 5325(b).

90. FBIC's proposed funding agreement for 2023 sought $5,194,549.39 in funding—an increase of $3,841,302.39 over its 2022 base funding level. Consistent with ISDEAA, OJS partially declined FBIC's proposed funding agreement—it approved the funding agreement in the amount of $1,353,247 and declined the remainder. 25 U.S.C. § 5321(a)(2); 25 C.F.R. § 900.22.

91. OJS explained the grounds for the partial declination in its decision letter and prior correspondence with FBIC. The proposed increase in funding meant that the FBIC proposal was "not substantially the same as that which was funded previously," and the proposed amount was "in excess of the applicable funding level for the contract, as determined under [25 U.S.C. § 5325(a)]," which was $1,353,247. This amount represented the "ongoing direct program funding base (Secretarial level)," updated with the recently distributed 2022 "congressionally appropriated base funding increase." Because OJS did "not know the status of the FY2023 congressionally appropriated amount that will be made available under the expiring [funding agreement]," the 2022 Secretarial Amount was the applicable funding level for the contract.

92. Following enactment of a full-year FY23 appropriation, OJS was then able to provide a base increase for FY23. The amount of the increase for FBIC—as for all contracting and direct-service tribes—was determined according to the funding formula discussed above plus an amount for fixed costs. After adding

these increases made available through the 2023 appropriation, the Secretarial Amount for FY23 was $1,391,133.

93. The record therefore establishes that OJS had valid grounds for partially declining the FBIC 2023 contract proposal for law enforcement. The amount proposed by FBIC, $5,194,549.39, was in excess of the applicable funding level for the contract, which was $1,353,247 at the time of the partial declination and $1,391,133 upon enactment of 2023 appropriations. OJS calculated this amount in the same way it would have had OJS operated law enforcement at FBIC. OJS explained these grounds in correspondence to FBIC.

94. The Secretary has met his burden under ISDEAA with respect to FBIC's 2023 funding. *See* 25 U.S.C. § 5321(e)(1).

III. OJS's provision of funds to FBIC in 2016–2026 complied with ISDEAA.

95. The same conclusion follows for funding FBIC received in 2016–2026. The years 2018 and 2026 were the only years for which OJS issued a partial declination that it did not rescind. In every year other than 2018 between 2016 and 2026, FBIC received precisely the funding it had proposed to OJS. For those years, FBIC lacks standing because it suffered no injury in fact—FBIC did not request additional base funding those years and, therefore, was not denied base funding it had requested. *See, e.g.*, *Flathead Irrigation Dist. v. Jewell*, 121 F. Supp. 3d 1008,

1021–22 (D. Mont. Aug. 19, 2015) (observing plaintiffs must "plead an injury in fact" to have Article III standing).

96. As discussed above, the base funding (i.e., the Secretarial Amount) that OJS provided to FBIC in 2018 and 2026 are the same amounts the Secretary would have otherwise provided if OJS would have directly operated FBIC's law enforcement service. OJS applied the same funding methodology to all tribes, both contracting tribes and direct service agencies.

97. The record therefore establishes that OJS had valid grounds for partially declining the FBIC 2018 and 2026 contract proposals for law enforcement.

98. The Secretary has met his burden under ISDEAA with respect to FBIC's 2018 and 2026 funding. *See* 25 U.S.C. § 5321(e)(1).

99. To the extent FBIC asserts claims that predate 2016—e.g., claims related to the 1999 TPA allocation and OJS's allocation of funding in 2000—those claims are barred by the six-year statute of limitations. 28 U.S.C § 2401. Even if the statute of limitations did not apply, FBIC did not present any evidence or testimony showing that OJS would have provided a different level of funding.

100. In summary, the factual record shows that OJS complied with ISDEAA in its provision of funds to FBIC for the years 2016–2026.

101. Defendants are entitled to judgment in their favor on FBIC's claims.

DATED this 25th day of June 2026.

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