



March 2017

HUMAN TRAFFICKING

Action Needed to Identify the Number of Native American Victims Receiving Federally-funded Services

GAO Highlights

Highlights of [GAO-17-325](#), a report to congressional requesters

Why GAO Did This Study

Human trafficking—the exploitation of a person typically through force, fraud, or coercion for such purposes as forced labor, involuntary servitude or commercial sex—is occurring in the United States. Traffickers seek out persons perceived to be vulnerable. Native Americans (i.e., American Indians or Alaska Natives) are considered to be a vulnerable population. DOJ, DHS, and the Department of the Interior investigate human trafficking crimes. Primarily, DOJ and HHS provide grants to fund victim services.

GAO was asked to examine Native American human trafficking. This report focuses on federal efforts to address human trafficking, including the extent to which (1) agencies collect and maintain data on investigations and prosecutions of human trafficking in Indian country or of Native Americans regardless of location and (2) federal grant programs are available to help address such trafficking, and how many Native American trafficking victims have received assistance through these programs. GAO reviewed human trafficking investigation and prosecution data from fiscal years 2013 to 2016; reviewed solicitations for human trafficking-related grant programs; and interviewed grant program officials.

What GAO Recommends

GAO recommends that DOJ require its grantees to report the number of human trafficking victims served and, as appropriate, the Native American status of those victims. DOJ partially concurred with the recommendation. GAO clarified the recommendation and maintains action is needed.

View [GAO-17-325](#). For more information, contact Gretta L. Goodwin at (202) 512-8777 or goodwing@gao.gov.

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What GAO Found

All four federal agencies that investigate or prosecute human trafficking in Indian country—the Federal Bureau of Investigation (FBI), the Bureau of Indian Affairs (BIA), U.S. Immigration and Customs Enforcement (ICE), and the U.S. Attorneys' Offices (USAO)—are required to record in their case management systems whether a human trafficking offense was involved in the case. With the exception of ICE, these agencies are also required to record in their case management systems whether the crime took place in Indian country. ICE officials explained that the agency does not record this information because, unlike BIA and the FBI, ICE is not generally involved in criminal investigations in Indian country. Typically, ICE would only conduct an investigation in Indian country if specifically invited by a tribe to do so. Further, with the exception of BIA, these agencies do not require their agents or attorneys to collect or record Native American status of victims in their cases due to concerns about victim privacy and lack of relevance of the victim's race to the substance of the investigation or prosecution.

The Departments of Justice (DOJ), Health and Human Services (HHS), and Homeland Security (DHS) administered at least 50 grant programs from fiscal years 2013 through 2016 that could help address Native American human trafficking. For example, 21 of these grant programs, which were administered by DOJ and HHS, could be used to provide services to Native American human trafficking victims. However, the total number of Native American victims who received services under these grant programs is unknown. HHS is developing a data collection tool that grantees can use to report information on human trafficking victims served, including Native American status of victims. DOJ's Office on Violence Against Women (OVW) requires grantees to report Native American status of victims served, but not by type of crime. DOJ's Office for Victims of Crime (OVC) and the Office of Juvenile Justice and Delinquency Prevention (OJJDP) do not require grantees to collect and report Native American status of victims served. However, in fiscal year 2017, OVC began providing recipients of human trafficking-specific grant programs the option to report the race or Native American status of victims served. While Native American status may not generally be a factor for determining whether a victim can receive services, it may be a factor for determining how best to assist this particular demographic. According to the 2013-2017 Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States, expanding human trafficking data collection and research efforts for Native Americans and other vulnerable populations is an area for improvement for the federal government. Additionally, *Standards for Internal Control in the Federal Government* states that quality information should be used to achieve objectives based on relevant data from reliable sources. Without collecting data on the Native American status of victims served, federal agencies will not know the extent to which they are achieving government-wide strategic goals to provide and improve services to vulnerable populations, including Native American human trafficking victims.

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Abbreviations

ACF	Administration of Children and Families
BIA	Bureau of Indian Affairs
DHS	Department of Homeland Security
DOI	Department of the Interior
DOJ	Department of Justice
EOUSA	Executive Office for United States Attorneys
FBI	Federal Bureau of Investigation
HHS	Department of Health and Human Services
ICE HSI	U.S. Immigration and Customs Enforcement Homeland Security Investigations
NIJ	National Institute of Justice
OJJDP	Office of Juvenile Justice and Delinquency Prevention
OJP	Office of Justice Programs
OTIP	Office on Trafficking in Persons
OVC	Office of Victims of Crime
OWW	Office on Violence Against Women
USAO	United States Attorney's Office

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March 30, 2017

The Honorable John Hoeven
Chairman
The Honorable Tom Udall
Vice Chairman
Committee on Indian Affairs
United States Senate

The Honorable John Barrasso
United States Senate

The Honorable Jon Tester
United States Senate

Human trafficking—the exploitation of a person typically through force, fraud, or coercion for such purposes as forced labor, involuntary servitude or commercial sex—is occurring in the United States.¹ Human trafficking victims include women, men and transgender individuals, as well as children, foreign nationals and U.S. citizens or nationals, who are diverse with respect to race and ethnicity, among other factors. According to the Attorney General’s fiscal year 2015 annual report to Congress on human trafficking, traffickers seek out persons perceived to be vulnerable.² Vulnerability comes in many forms, including age (minors), poverty, homelessness, chemical dependency, prior experiences of abuse, and lack of resources or support systems, among others. Native Americans are a vulnerable population.³ For example, according to U.S. Census

¹Federal law generally recognizes two forms of human trafficking—sex trafficking and labor trafficking. The Trafficking Victims Protection Act of 2000 (TVPA), as amended, defines human trafficking under the term “severe forms of trafficking in persons,” which means: (1) sex trafficking involving the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for a commercial sex act through force, fraud, or coercion, or where the victim has not attained 18 years of age; or (2) labor trafficking involving the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. See Pub. L. No. 106-386, div. A, § 103, 114 Stat. 1464, 1469-70 (classified, as amended, at 22 U.S.C. § 7102(4), (9), (10)).

²Attorney General’s Annual Report to Congress and Assessment of U.S. Government Activities to Combat Trafficking in Persons, Fiscal Year 2015.

³Throughout this report, we generally use the term “Native American” in reference to an American Indian or Alaska Native.

Bureau statistics, in 2010, 28 percent of Native Americans were living in poverty, compared to 15 percent of the general population. Also, according to the 2010 National Intimate Partner and Sexual Violence Survey, conducted by the Centers for Disease Control and Prevention, about 27 percent of Native American women have been raped in their lifetime compared to 18 percent of women, overall.⁴

Furthermore, according to several academic studies, Native Americans have endured a succession of traumatic events that have had lasting consequences for community members.⁵ For example, Native Americans have been subjected to a number of assimilation policies—including boarding schools, relocation, involuntary sterilization, and forced adoptions, which have disrupted family, kinship, community structures, and governance. The historical trauma that the Native American community has faced is critical to understanding the vulnerability of today's Native men, women, and children to sex and labor trafficking in the United States.

You asked us to research human trafficking in Indian country and of Native Americans, in general, including demographic information on victims, services available to victims, and efforts to increase prosecutions. This report focuses on federal efforts to address human trafficking in Indian country or of Native Americans regardless of location. We will issue a second report later this year that will include perspectives from tribal and local law enforcement agencies and victim service providers on human trafficking in Indian country or of Native Americans regardless of location. Specifically, this report addresses the following questions:

- (1) To what extent do federal agencies collect and maintain data on investigations and prosecutions of human trafficking in Indian country or of Native Americans regardless of location?

⁴Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention.

⁵ Evans-Campbell, T. (2008). Historical Trauma in American Indian/Native Alaska Communities: A Multi-level Frame-work for Exploring Impacts on Individuals, Families, and Communities. *Journal of Interpersonal Violence* 23 (3), 316-338. Retrieved from: <https://ces300.files.wordpress.com/2011/01/j-interpers-violence-2008-evans-campbell-316-38.pdf>. Walters, K., Mohammed, S.A., Evans-Campbell, T., Beltrán, R.E., Chae, D.H., & Duran, B. (2011). Bodies Don't Just Tell Stories, They Tell Histories. *Dubois Review: Social Science Research on Race* 8 (1), 179-189.

(2) To what extent are federal grant programs available to help address human trafficking in Indian country or of Native Americans regardless of location, and how many Native American trafficking victims have received assistance through these programs?

For the purposes of this review, our discussion of human trafficking relates to: (a) human trafficking that occurs in Indian country (regardless of whether the victim is Native American); or, (b) human trafficking of individuals who are Native American (regardless of whether they were trafficked in Indian country or elsewhere).^{6,7}

To address the first objective, we obtained and reviewed data from federal investigative and prosecutorial agencies within the Department of Homeland Security (DHS), the Department of the Interior (DOI), and the Department of Justice (DOJ) on the number of human trafficking investigations and prosecutions they conducted for which the crime occurred in Indian country or at least one of the victims was Native American. We obtained data for fiscal years 2013 through 2016, the most recently available data. We assessed the reliability of the data the agencies provided by questioning knowledgeable officials and reviewing the data for obvious errors and anomalies. We determined that the data, when available, were sufficiently reliable for the purposes of our reporting objectives. We also interviewed headquarters officials from these same agencies to learn about their policies and procedures for collecting information on the Native American status of human trafficking victims involved in their cases. Specifically, at DHS, we interviewed officials from the Office of the Deputy Secretary and U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI). At DOI, we interviewed officials from the Bureau of Indian Affairs (BIA). At DOJ, we

⁶Federal law defines the term “Indian country” as all land within the limits of any Indian reservation under the jurisdiction of the U.S. government, all dependent Indian communities within U.S. borders, and all existing Indian allotments, including any rights-of-way running through an allotment. See 18 U.S.C. § 1151.

⁷Throughout this report, we generally use the term “Native American” in reference to an American Indian or Alaska Native, including persons who have identified themselves as Native American or individuals whom federal agencies have identified as Native American based on relevant legal authorities and agency procedures. The terms “Indian” and “Alaska Native” are defined under federal law for various purposes. See, e.g., 16 U.S.C. § 3102(16); 20 U.S.C. § 1059c(b)(1); 25 U.S.C. §§ 1301(4), 1903(3), 2201(2), 4103(10), 5129; 42 U.S.C. § 13925(a)(13); 43 U.S.C. § 1602(b). The U.S. Census Bureau has noted that “American Indian or Alaska Native” refers to a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

interviewed officials from the Office of the Deputy Attorney General, Federal Bureau of Investigation (FBI), Civil Rights Division/Criminal Section, Criminal Division/Child Exploitation and Obscenity Section, Executive Office for U.S. Attorneys, and the Justice Management Division. We identified these agencies as having responsibility to investigate and prosecute human trafficking based on our prior work.⁸

To address the second objective, we reviewed fiscal year 2014 and 2015 human trafficking grant programs identified through our prior human trafficking work to determine which of these grant programs could be used to address human trafficking in Indian country or of Native Americans regardless of location.⁹ To identify any additional grant programs for which funding was awarded in fiscal year 2016 that could be used to address human trafficking in Indian country or of Native Americans regardless of location, we reviewed grant solicitations on DOJ's and the Department of Health and Human Services' (HHS) websites and interviewed relevant grant officials. We determined that a grant program would be relevant for the purposes of our review if the grant solicitation (1) explicitly identified combatting human trafficking or assisting human trafficking victims as an allowable use and identified tribal entities as eligible recipients or (2) exclusively identified Native American crime victims (regardless of the type of crime) as eligible beneficiaries. It is possible that there are some programs that were not identified by granting agencies or by our analysis of public records. Also, there are additional grant programs that could be used to assist victims of crime in general, but we did not include those programs in our scope if human trafficking victims were not explicitly identified in the solicitation. We reviewed the solicitations for each of the grant programs we identified to determine the allowable uses for the funding (e.g., services to victims versus training for law enforcement). In addition, we interviewed federal officials responsible for administering human trafficking-related grant programs to learn whether the granting agencies required grantees to

⁸GAO, *Human Trafficking: Agencies Have Taken Steps to Assess Prevalence, Address Victim Issues, and Avoid Grant Duplication*, [GAO-16-555](#) (Washington, D.C.: June 28, 2016). As part of our prior human trafficking work, we determined that the Bureau of Diplomatic Security in the Department of State, the Inspector General for the Department of Labor, and the military investigative services in the Department of Defense also have responsibility for investigating human trafficking. However, we excluded them from the scope of this review because they do not have specific authority to investigate crimes in Indian country.

⁹[GAO-16-555](#).

report the Native American status of human trafficking victims they served. We evaluated the granting agencies' data collection requirements against *Standards for Internal Control in the Federal Government* regarding the use of quality information.¹⁰

We conducted this performance audit from January 2016 to March 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Indian Country and the Native American Population

As of January 2017, there were 567 federally recognized American Indian and Alaska Native tribes and villages. According to BIA, there were approximately 326 Indian land areas in the United States that are administered as federal Indian reservations or other tribal lands (e.g., reservations, pueblos, rancherias, missions, villages, communities, etc.). These land areas can generally be referred to as Indian country, which spans more than 56 million acres and 36 states, and varies in size,

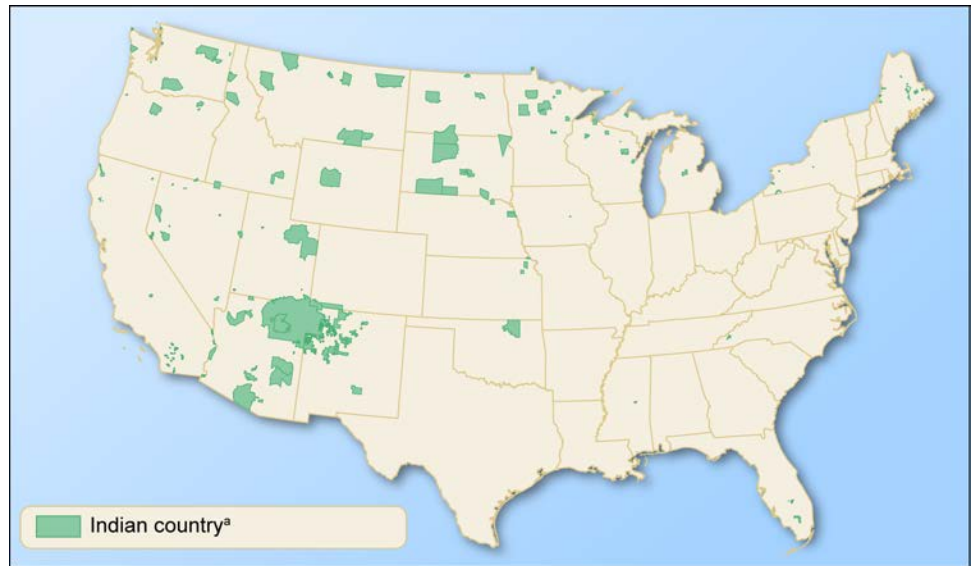
¹⁰[GAO-14-704G](#).

demographics, and location.¹¹ For example, the Navajo Nation consists of approximately 27,000 square miles, whereas certain areas of Indian country in California comprise less than 1 square mile.¹² The 2010 Census found that approximately 169,000 Native Americans lived on the Navajo reservation, while other areas of Indian country have fewer than 50 Native American residents. Indian country is often in remote, rural locations, or may also be located near urban areas. Indian country may have a mixture of Native American and non-Native American residents. Figure 1 illustrates where Indian country is located in the contiguous United States as of 2010.

¹¹Federal law defines the term “Indian country” as all land within the limits of any Indian reservation under the jurisdiction of the U.S. government, all dependent Indian communities within U.S. borders, and all existing Indian allotments, including any rights-of-way running through an allotment. See 18 U.S.C. § 1151. With certain exceptions, there is generally not Indian country in Alaska. In a 1998 decision, the Supreme Court stated that the Alaska Native Claims Settlement Act (Pub. L. No. 92-203, 85 Stat. 688 (1971) (classified, as amended, at 43 U.S.C. §§ 1601-1629h)) “revoked ‘the various reserves set aside...for Native use’ by legislative or executive action, except for the Annette Island Reserve inhabited by the Metlakatla Indians, and completely extinguished all aboriginal claims to Alaska land.” *Alaska v. Native Village of Venetie Tribal Gov’t*, 522 U.S. 520, 523-24 (1998) (citing 43 U.S.C. §§ 1603, 1618(a)). The court held that the “approximately 1.8 million acres of land in northern Alaska, owned in fee simple by the Native Village of Venetie Tribal Government pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. § 1601 et seq., is [not] ‘Indian country.’” *Id.* at 523. In December 2014, the Department of the Interior amended its land-into-trust regulations to allow applications for land to be taken into trust in Alaska outside of the Metlakatla Indian Community of the Annette Island Reserve. *Land Acquisitions in the State of Alaska*, 79 Fed. Reg. 76,888 (Dec. 23, 2014) (to be codified at 25 C.F.R. pt. 151). Interior treats land held in trust by the United States on behalf of a federally recognized Indian tribe as Indian country. 79 Fed. Reg. at 76,893.

¹²The Navajo Nation spans three states—Arizona, New Mexico, and Utah.

Figure 1: Areas of Indian Country in the Contiguous United States, according to the 2010 Census



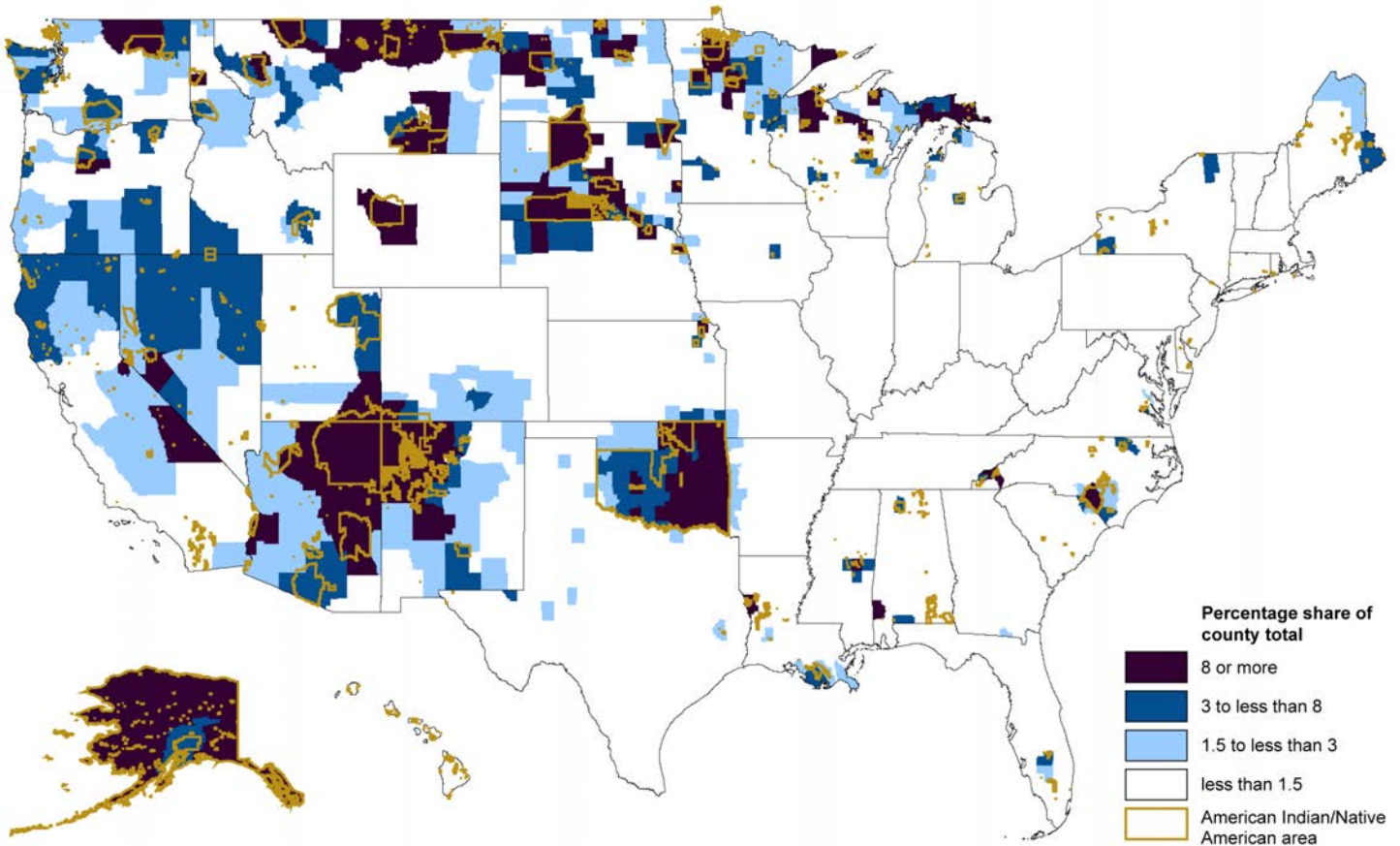
Sources: United States Census Bureau and GAO; MapInfo (map). | GAO-17-325

^aFederal law defines the term "Indian country" as all land within the limits of any Indian reservation under the jurisdiction of the U.S. government, all dependent Indian communities within U.S. borders, and all existing Indian allotments, including any rights-of-way running through an allotment. See 18 U.S.C. § 1151.

According to the 2010 Census, 5.2 million people in the United States identified as Native American, either alone or in combination with one or more other races. Out of this total, 2.9 million people—0.9 percent of the U.S. population at the time—identified as Native American alone. At the time of the 2010 Census, more than 1.1 million Native Americans resided on tribal lands.¹³ Figure 2 shows where Native Americans resided in the United States at the time of the 2010 Census.

¹³United States Census Bureau, www.census.gov/prod/cen2010/briefs/c2010br-10.pdf.

Figure 2: Map of Native American Population in the United States, according to the 2010 Census



Source: United States Census Bureau; MapInfo (map). | GAO-17-325

Note: Throughout this report, we generally use the term “Native American” in reference to an American Indian or Alaska Native. The U.S. Census Bureau has noted that “American Indian or Alaska Native” refers to a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment. The Census Bureau collects race data according to U.S. Office of Management and Budget guidelines, and these data are based on self-identification. People may choose to report more than one race group. People of any race may be of any ethnic origin.

Federal Law on Human Trafficking

Federal law generally recognizes two forms of human trafficking—sex trafficking and labor trafficking. The Trafficking Victims Protection Act of 2000 (TVPA), as amended, defines human trafficking under the term

“severe forms of trafficking in persons.”¹⁴ Pursuant to the TVPA, as amended, sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act.¹⁵ Sex trafficking is a “severe” form of trafficking when it involves force, fraud or coercion, or where the victim has not attained 18 years of age, in which case force, fraud or coercion are not necessary elements.¹⁶ The TVPA, as amended, defines labor related trafficking generally as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.¹⁷

Federal efforts to combat and prevent human trafficking in the United States have evolved over time, including various laws that have established federal agencies’ roles in these efforts. During the 1990s, the United States began to take steps to address human trafficking at home and abroad.¹⁸ Over the past few decades, Congress has taken numerous legislative actions to help combat human trafficking and ensure that victims have access to needed services. In October 2000, the TVPA was enacted to combat trafficking in persons, ensure just and effective punishment of traffickers and protect trafficking victims.¹⁹ Among other things, the TVPA, as amended, makes it illegal to knowingly or recklessly use force, fraud, or coercion to recruit, entice, harbor, transport, provide, obtain, advertise, maintain, patronize, or solicit any person to engage in a

¹⁴Pub. L. No. 106-386, div. A, § 103, 114 Stat. at 1470 (classified, as amended, at 22 U.S.C. § 7102(9)).

¹⁵22 U.S.C. § 7102(10). Under section 7102(4), the term “commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

¹⁶See id. § 7102(9)(A).

¹⁷Id. at § 7102(9)(B).

¹⁸DOJ prosecuted trafficking cases under several federal criminal statutes, including the involuntary servitude statutes (18 U.S.C. §§ 1581-1588), the Mann Act (18 U.S.C. §§ 2421-2424), and labor laws on workplace conditions and compensation (for example, 29 U.S.C. § 1851 (criminal sanctions for violations of the Migrant and Seasonal Agricultural Worker Protection Act and related regulations)).

¹⁹Pub. L. No. 106-386, div. A, § 102, 114 Stat. at 1466-91 (classified at 22 U.S.C. § 7101(a)).

commercial sex act.²⁰ In addition, the TVPA makes it a crime to use certain means, including force, threats of force, physical restraint, or serious harm or threats of such harm, to knowingly provide or obtain persons for any labor or services.²¹ TVPA reauthorization acts were enacted in 2003, 2006 and 2008; and, in 2013, provisions of the TVPA, its reauthorizations, and other related laws, were further amended.²²

In 2015, the President signed into law the Justice for Victims of Trafficking Act of 2015.²³ Among other things, this act required the Attorney General to ensure that law enforcement officers and federal prosecutors receive anti-trafficking training; required the Federal Judicial Center, the research and education agency of the federal judicial system, to provide training for judges on ordering restitution for victims of certain trafficking-related offenses under chapter 77 of title 18, U.S. Code; mandated that the Secretary of Homeland Security implement a human trafficking training program for department personnel; required the Attorney General to implement and maintain a national strategy for combating human trafficking; established the Domestic Trafficking Victims' Fund to supplement existing statutorily authorized grants or activities; and amended the federal definition of child abuse to include human trafficking.

Jurisdiction over Crimes Committed in Indian Country

As a general principle, the federal government recognizes Native American tribes as “distinct, independent political communities” with inherent powers of self-government to regulate their “internal and social relations,” which include enacting substantive law over internal matters

²⁰18 U.S.C. § 1591(a). The TVPA also makes it illegal to take such actions, and thus cause a person under 18 years of age to engage in a commercial sex act, with or without the use of force, fraud, or coercion. *Id.*

²¹See *id.* § 1589(a). In addition, it is a federal crime to knowingly recruit, harbor, transport, provide, or obtain by any means, any person for labor or services in violation of chapter 77 of title 18, U.S. Code. *Id.* at § 1590(a).

²²Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. No. 108-193, 117 Stat. 2875; Trafficking Victims Protection Reauthorization Act of 2005, Pub. L. No. 109-164, 119 Stat. 3558 (2006); William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, 122 Stat. 5044; Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, tit. XII, 127 Stat. 54, 136-60.

²³Pub. L. No. 114-22, 129 Stat. 227. In 2014, the Preventing Sex Trafficking and Strengthening Families Act included new requirements on responding to child trafficking cases intersecting with child welfare, including application to tribal agencies administering or supervising the administration of Title IV-E of the Social Security Act. See Pub. L. No. 113-183, 128 Stat. 1919 (2014).

and enforcing that law in their own forums.²⁴ However, the Supreme Court has recognized that Congress has plenary and exclusive authority to regulate or modify the powers of self-government that tribes otherwise possess, and has exercised this authority to establish an intricate web of jurisdiction over crime in Indian country.²⁵

As determined by relevant statutes, the exercise of criminal jurisdiction in Indian country depends on several factors, including the Native American status of the victim and alleged offender, the nature of the crime, and whether jurisdiction has been conferred on a particular entity (e.g., the state in which Indian country is located) by, for example, federal treaty or statute.²⁶ The General Crimes Act, as amended, extends the criminal laws of the federal government into Indian country and generally establishes federal criminal jurisdiction where either, but not both, the alleged offender or the victim is Native American.²⁷ In addition, federal criminal jurisdiction may attach to a crime, such as a human trafficking offense committed in Indian country, if it affects interstate or foreign

²⁴See, e.g., *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55-56 (1978) (citing *United States v. Mazurie*, 419 U.S. 544, 557 (1975); *United States v. Kagama*, 118 U.S. 375, 381-82 (1886); F. Cohen, *Handbook of Federal Indian Law* 122-123 (1945); *United States v. Wheeler*, 435 U.S. 313, 322-24 (1978); *Roff v. Burney*, 168 U.S. 218 (1897) (membership); *Jones v. Meehan*, 175 U.S. 1, 29 (1899) (inheritance rules); *United States v. Quiver*, 241 U.S. 602 (1916) (domestic relations); *Williams v. Lee*, 358 U.S. 217 (1959)). See also 25 U.S.C. § 1301(2) (defining an Indian tribe's power of self-government).

²⁵See *United States v. Lara*, 541 U.S. 193, 200-01 (2004) (noting that the Supreme Court has traditionally cited the Indian Commerce Clause, U.S. CONST., art. I, § 8, cl. 3, and the Treaty Clause, U.S. CONST. art. II, § 2, cl. 2, as authority for the federal regulation of Indian affairs).

²⁶See, e.g., 18 U.S.C. §§ 1152 (codifying the General Crimes Act, as amended), 1153 (codifying the Major Crimes Act, as amended, which provides the federal government with criminal jurisdiction over Native Americans charged with felony level offenses enumerated in the statute, even when the victim is Native American; the tribes retained exclusive jurisdiction over other generally misdemeanor level criminal offenses where both parties are Native American), and 1162 (codifying State criminal jurisdiction provisions of Public Law 280, as amended, which confers criminal jurisdiction over offenses committed in Indian country to the governments of six states—Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin—except as specified by statute, thereby waiving federal jurisdiction in Indian country under the General and Major Crimes Acts and subjecting Native Americans to prosecution in state court).

²⁷18 U.S.C. § 1152.

commerce.²⁸ With the exception of certain circumstances involving domestic or dating violence offenses or violations of protection orders, tribal governments do not have jurisdiction to prosecute non-Native American offenders, even if the victim is Native American and the crime occurred in Indian country.²⁹ Rather, non-Native American offenders who commit crimes against Native Americans may be prosecuted by the federal government, or by a state government, where jurisdiction has been conferred on a state.³⁰

²⁸See, e.g., 18 U.S.C. §§ 1591 (sex trafficking in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States), 2421 (transporting an individual in interstate or foreign commerce, or in any U.S. territory or possession, with intent that such individual engage in prostitution or any other criminal sexual activity).

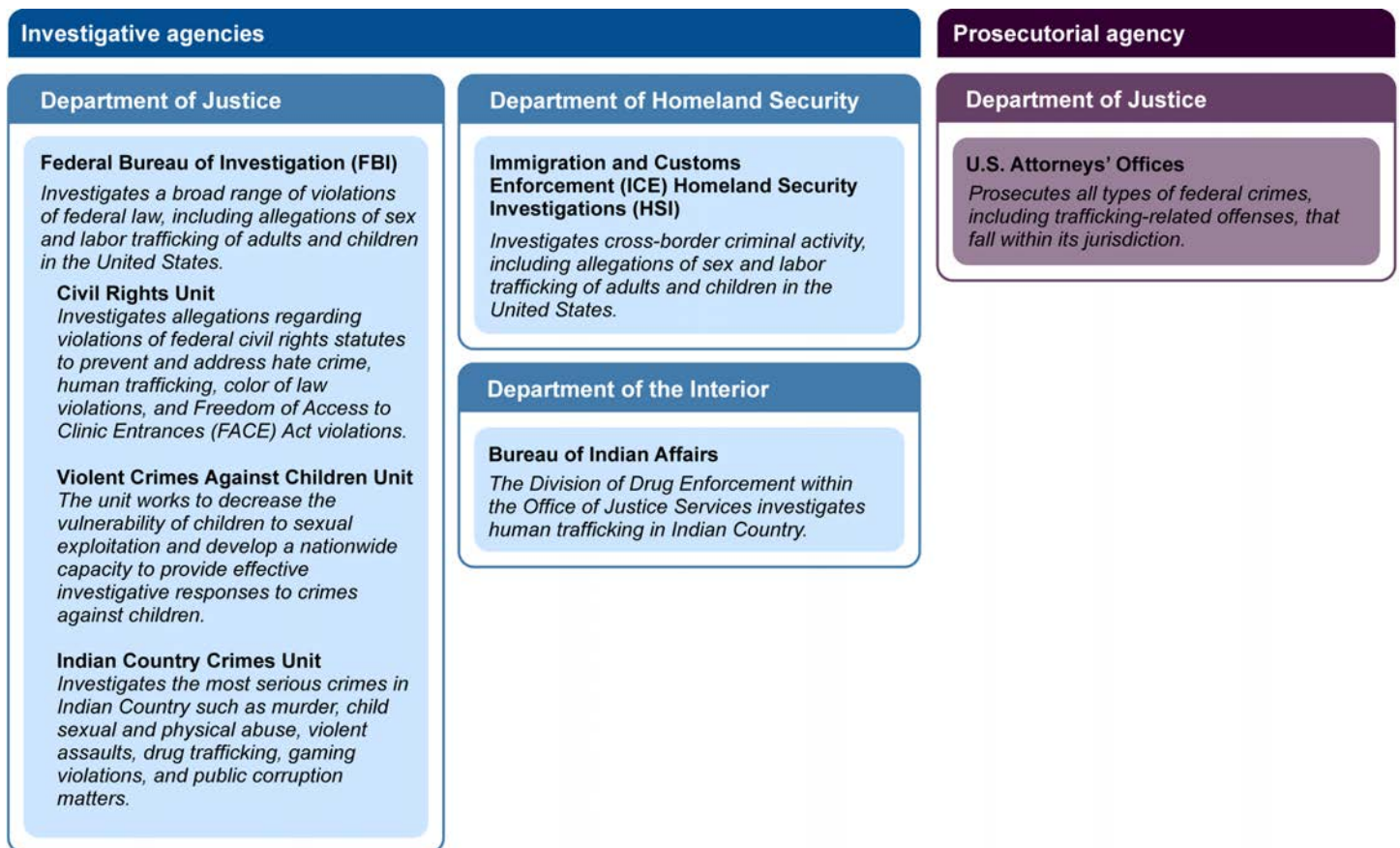
²⁹The Violence Against Women Reauthorization Act of 2013 (amending the Indian Civil Rights Act of 1968), confers special domestic violence criminal jurisdiction over specified domestic or dating violence offenses or violations of protection orders, on participating tribes that elect to exercise such jurisdiction, concurrent with the jurisdiction of the federal government, a state, or both, except that a participating tribe may not exercise this jurisdiction if neither the defendant nor the alleged victim is a Native American, or if the defendant lacks sufficient ties to the participating tribe. See Pub. L. No. 90-284, tit. II, § 204, 82 Stat. 73, as added by Pub. L. No. 113-4, tit. IX, § 904, 127 Stat. 54, 120-23 (classified at 25 U.S.C. § 1304).

³⁰Federal statutes have conferred criminal jurisdiction over Indian country to certain states and, in some cases, renounced federal criminal jurisdiction. For example, Public Law 280, as amended (18 U.S.C. § 1162), gives states criminal jurisdiction over offenses committed by or against Native Americans in the areas of Indian country within six states—Alaska, (except the Metlakatla Indian Community of the Annette Islands Reservation), California, Minnesota (except the Red Lake reservation), Nebraska, Oregon (except the Warm Springs Reservation), and Wisconsin. See Pub. L. No. 83-280, 67 Stat. 588, 588-89 (1953) (codified, as amended, at 18 U.S.C. § 1162(a)). The trust lands of the Kickapoo Traditional Tribe of Texas are also subject to state criminal jurisdiction in accordance with section 1162 (see Texas Band of Kickapoo Act, Pub. L. No. 97-429, § 6, 96 Stat. 2269, 2270 (1983)). In addition, the Secretary of the Interior is authorized to accept retrocession of jurisdiction by a state. See 25 U.S.C. § 1323(a). Other laws confer criminal jurisdiction over Indian country on states. See, e.g., 25 U.S.C. §§ 1321 (authorizing a state to assume criminal jurisdiction over areas of Indian country with the consent of the Indian tribes occupying those areas, though such jurisdiction is to be concurrent with the federal government at the request of an Indian tribe and with the Attorney General's consent). See also, e.g., Act of May 31, 1946, ch. 279, 60 Stat. 229 (conferring criminal jurisdiction over Devils Lake Sioux Indian Reservation in North Dakota, now Spirit Lake Tribe).

Federal Agencies Responsible for Investigating and Prosecuting Human Trafficking Crimes in Indian Country

Several components within DOJ, DHS, and DOI have responsibility for investigating and prosecuting human trafficking crimes in Indian country, as shown in figure 3.

Figure 3: Federal Agencies Responsible for Investigating and Prosecuting Human Trafficking Crimes in Indian Country



Source: GAO analysis. | GAO-17-325

The FBI has investigative responsibilities for Indian country where the federal government has criminal jurisdiction, and has assigned more than 100 agents and 40 victim assistance staff, located in 19 of its 56 field offices, to work Indian country cases full time. In addition, the FBI's headquarters-based Indian country Crimes Unit promotes liaison and intelligence sharing through its Safe Trails Task Forces and working

groups and provides training to Indian country law enforcement in partnership with DOJ and BIA.³¹

BIA is statutorily responsible for enforcing federal law and, with the consent of the tribe, tribal law in Indian country.³² BIA supports tribes in their efforts to ensure public safety and administer justice within Indian country, as well as to provide related services directly or to enter into contracts or compacts with federally recognized tribes to administer the law enforcement program.³³ To that end, BIA's Office of Justice Services (OJS) provides direct law enforcement services for 40 tribes. Specifically, BIA provides both uniformed police and criminal investigative services for 32 of these tribes, and criminal investigative services for 8 of these tribes, with a total of 301 uniformed police, 62 criminal investigators, and 19 victim assistance staff. Two hundred three tribes have their own law enforcement agencies that are operated by the tribes and funded either by contracts or compacts, or by the tribes, themselves. Further, the agency is responsible for developing and providing training and technical assistance to tribal law enforcement, and for consulting with tribal leaders to develop regulatory policies and other actions that affect public safety

³¹In March 1994, the FBI initiated "Operation Safe Trails" with the Navajo Department of Law Enforcement in Flagstaff, Arizona. According to the FBI, the purpose of the operation, which would later evolve into the Safe Trails Task Force (STTF) Program, was to unite the FBI with other federal, state, local, and tribal law enforcement agencies in a collaborative effort to combat the growth of crime in Indian country. STTFs allow participating agencies to combine limited resources and increase investigative coordination in Indian country to target violent crime, drugs, gangs, and gaming violations. There are 16 STTFs located in 11 states (Arizona, California, Florida, Michigan, Minnesota, Nevada, New Mexico, Oregon, South Dakota, Washington, and Wisconsin).

³²25 U.S.C. § 2802(c)(1). The statute notes that the responsibilities of the BIA's Office of Justice Services are subject to the provisions contained therein and other applicable Federal or tribal laws. See *id.* § 2802(c).

³³Under the Indian Self-Determination and Education Assistance Act of 1975, as amended, federally recognized tribes can enter into self-determination contracts and self-governance compacts with the federal government to take over administration of certain federal programs previously administered on their behalf. Pub. L. No. 93-638, 88 Stat. 2203 (classified as amended at 25 U.S.C. §§5301-10). Self-determination contracts allow tribes to assume responsibility for managing the program's day-to-day operations, with BIA providing technical oversight to ensure that the tribe meets contract terms, as opposed to BIA administering the program on their behalf. Self-governance compacts transfer to tribes the administration of the program and provide the tribes with some flexibility in program administration. For both self-determination contracts and self-governance compacts, the Secretary of the Interior negotiates and enters into written annual funding agreements with the governing body of the tribe, which specifies the Interior program that the tribe will administer, the tribe's and Interior's obligations, and the funds being transferred to the tribe.

and justice in Indian country.³⁴ Unlike FBI and BIA, ICE is not generally involved in criminal investigations in Indian country but may assist with criminal investigations at the request of the tribe, according to ICE HSI officials.

Forty-nine of the 94 U.S. Attorney's Offices (USAO) include Indian country within their jurisdiction.³⁵ Each of these USAOs has at least one Assistant U.S. Attorney appointed as Tribal Liaison. Each Tribal Liaison is responsible for most dealings with tribes in their district. Officials noted that some districts with large amounts of Indian country have more than one Assistant U.S. Attorney assigned to the position of Tribal Liaison. According to Executive Office for United States Attorneys (EOUSA) officials, there are approximately 168 attorneys, including 62 attorneys who have been designated as Tribal Liaisons, who handle a significant portion of Indian country cases as part of their work duties in these 49 offices. Also in these offices, there are 78 victim assistance staff, including 12 victim assistance staff who are exclusively assigned to work Indian country matters, who assist victims and work on cases arising from Indian country. However, the other attorneys and victim assistance staff may also assist with Indian country cases, when needed. The Civil Rights Division and Criminal Division within DOJ may also prosecute human trafficking cases; however, officials from these offices stated that any Indian country human trafficking prosecutions they conduct would be done in collaboration with the U.S. Attorney's Offices that have jurisdiction in the geographical areas where the crime took place.

Federal Agencies Responsible for Administering Grant Programs to Address Human Trafficking

In addition to investigating and prosecuting human trafficking crimes, federal agencies, primarily DOJ and HHS, support efforts to combat human trafficking and assist victims.³⁶ Several components within DOJ, including the Office on Violence Against Women (OVW) and the Office of Justice Programs, which includes the Office of Juvenile Justice and Delinquency Prevention (OJJDP), the Office for Victims of Crime (OVC), the Bureau of Justice Assistance (BJA), and the National Institute of Justice (NIJ), provide grants to help state, local, and tribal law

³⁴25 U.S.C. § 2802(c)(9), (12).

³⁵One additional USAO—the Eastern District of Virginia—has a federally recognized tribe in its jurisdiction, but no Indian country at this time.

³⁶See, e.g., 18 U.S.C. § 3014(a)-(h); 22 U.S.C. § 7105(b)(1), (f)(1), (2), (3); 42 U.S.C. § 5714-41; Pub. L. No. 114-22, tit. VII, 129 Stat. at 261-63.

enforcement agencies combat human trafficking and to support nongovernmental organizations and others in assisting trafficking victims or conducting research on human trafficking in the United States. HHS provides grant funding to entities to provide services and support for trafficking victims, primarily through the Administration for Children and Families (ACF), which includes the Office on Trafficking in Persons (OTIP), the Children's Bureau, the Family and Youth Services Bureau, and the Administration for Native Americans. These services include housing, employment, education, food, clothing, job training, medical care, and child care. Further, OTIP coordinates anti-trafficking responses across multiple systems of care. Specifically, HHS builds the capacity of health care providers, child welfare, social service providers and other first responders likely to interact with potential victims of trafficking through a variety of grant programs.

While Federal
Agencies Generally
Maintain Data on
Human Trafficking
Cases in Indian
Country, They Do Not
Maintain Data on
Native American
Status of Victims

Three of the Four Investigative and Prosecutorial Agencies Maintain Data on Human Trafficking Cases in Indian Country

All four agencies that have the authority to investigate or prosecute human trafficking in Indian country—FBI, BIA, ICE HSI, and the U.S. Attorneys' Offices (USAO)—are required to record in their case management systems if a human trafficking offense was involved in the case. Three of these agencies—FBI, BIA, and the USAOs—also record in their case management systems whether the crime took place in Indian country.³⁷ According to officials from these three agencies, they record whether the crime took place in Indian country to help establish whether they have jurisdiction to investigate or prosecute the crime. ICE HSI officials explained that they do not have a field for Indian country in their case management system because, unlike BIA and the FBI, ICE HSI is not generally involved in criminal investigations in Indian country; rather, ICE HSI would only conduct an investigation in Indian country if specifically invited by a tribe to do so.

According to information provided to us by federal agencies that investigate or prosecute human trafficking in Indian country, there were 14 federal investigations and 2 federal prosecutions of human trafficking offenses in Indian country from fiscal years 2013 through 2016.^{38, 39} From fiscal years 2013 through 2015, there were over 6,100 federal human trafficking investigations and approximately 1,000 federal human trafficking prosecutions, overall.⁴⁰ In certain circumstances, state or tribal law enforcement may have jurisdiction to investigate crimes in Indian country; therefore, these figures likely do not represent the total number of human trafficking-related cases in Indian country. Also, considering that human trafficking is known to be an underreported crime, it is unlikely that these figures, or any other investigative or prosecutorial data, represent the full extent to which human trafficking is occurring in Indian country. (See app. I for a description of federally-funded efforts to determine the prevalence of human trafficking in the United States and

³⁷BIA started recording offenses as “human trafficking” in its case management system in 2014. Prior to 2014, human trafficking offenses were recorded under other crimes, such as sex crimes.

³⁸Prosecutions are cases where a charging document has been filed in district court. [GAO-16-555](#).

³⁹According to USAO officials, one of the two prosecutions resulted in a conviction.

⁴⁰We obtained data on fiscal year 2013 through 2015 human trafficking investigations and prosecutions as part of our prior work; fiscal year 2016 data were not available at the time. See [GAO-16-555](#). “Cases prosecuted” is when all appeals for all defendants in a case have been exhausted or when an office has relinquished its responsibility for the remaining appeal.

applicability of those efforts to the Native American population.) Table 1 provides the number of federal human trafficking investigations and prosecutions in Indian country, by agency, from fiscal years 2013 through 2016.

Table 1: Number of Federal Investigations and Prosecutions Involving Human Trafficking Offenses in Indian Country, Fiscal Years 2013 - 2016

	Department	Agency	Number of cases involving human trafficking in Indian country
Investigative agencies	Department of Justice	Federal Bureau of Investigation (FBI)	2 ^a
	Department of Homeland Security	Homeland Security Investigations (HSI)	— ^b
	Department of the Interior	Bureau of Indian Affairs (BIA)	12
Prosecutorial agencies	Department of Justice	U.S. Attorneys' Offices	2

Source: GAO analysis of Department of Justice, Department of Homeland Security, and Department of the Interior data. | GAO-17-325

^aThe FBI has three investigative components: Civil Rights Unit, Indian Country Crime Unit, and the Violent Crimes Against Children Program. The FBI's Civil Rights Unit reported 2 investigations involving human trafficking offenses in Indian Country during fiscal year 2013-2016.

^bICE HSI does not have a data field for Indian country in their case management system and was not able to determine the number of investigations in Indian country.

Most of the Federal Investigative and Prosecutorial Agencies that Address Human Trafficking Do Not Consistently Collect Native American Status of Victims in Their Cases

Three of the four federal agencies that investigate or prosecute human trafficking-related crimes do not require their agents or attorneys to consistently collect or record the race or ethnicity, including Native American status, of victims in their cases. Therefore, the total number of federal human trafficking investigations and prosecutions that involved Native American victims is unknown. Agents and attorneys may voluntarily collect this information and record it in their case management systems when there is a designated data field.⁴¹ The FBI and USAOs that have Indian country in their jurisdiction are statutorily required to collect and report information on victims' Native American status when they decline to refer or prosecute an Indian country case, but not otherwise.⁴² Based on the limited data that were available, federal agencies initiated a minimum of 6 human trafficking investigations that involved Native

⁴¹For Indian country cases only, the case management systems for FBI and BIA have data fields to collect victim race or Native American status.

⁴²Indian Law Enforcement Reform Act, Pub. L. No. 101-379, § 10, 104 Stat. 473, 477-78 (1990), as amended by Tribal Law and Order Act of 2010 (TLOA), Pub. L. No. 111-211, tit. II, subtit. A, § 212, 124 Stat. 2258, 2267-68 (classified, as amended, at 25 U.S.C. § 2809).

American victims from fiscal years 2013 to 2016—the FBI Civil Rights Unit initiated 5 investigations and BIA initiated 1. Table 2 shows the policies of the investigative and prosecutorial agencies with respect to collecting information on victims’ Native American status.

Table 2: Federal Investigative and Prosecutorial Agencies’ Policies on Collecting Victims’ Native American Status in Criminal Cases

	Agency	Required to collect information on victim’s Native American status
Investigative agencies	Federal Bureau of Investigation (FBI)	In limited circumstances ^a
	Homeland Security Investigations	No
	Bureau of Indian Affairs (BIA)	Yes ^b
Prosecutorial agencies	U.S. Attorney’s Offices	In limited circumstances ^c

Source: GAO analysis of Department of Justice, Department of Homeland Security, and Department of the Interior data. | GAO-17-325

^aFederal law requires the FBI to compile annual investigation data, including the victim’s Native American status, for cases involving alleged crimes in Indian country that it decides not to refer for prosecution. See 25 U.S.C. § 2809(a)(2). Otherwise, the FBI does not collect information on the victim’s Native American status.

^bThe BIA records the tribal affiliation of victims, which is related to Native American status.

^cFederal law requires the Department of Justice to compile annual prosecution data, including the victim’s Native American status, for case declinations related to alleged crimes occurring in Indian country. See 25 U.S.C. § 2809(a)(4). Otherwise, U.S. Attorney’s Offices are not required to collect information on the victim’s Native American status. Also, U.S. Attorney’s Offices that do not have any Indian country in their jurisdiction do not have the capability to enter a victim’s Native American status in their case management system.

Federal investigative and prosecutorial agencies provided two primary reasons why they do not collect information on the Native American status of victims, including concerns about relevance of Native American status to the substance of the case and victim privacy. For example, officials told us that Native American status of victims is only relevant for Indian country cases because it is necessary for establishing which law enforcement agency has jurisdiction over the case. According to EOUSA officials, Native American status has no impact on whether the federal government can investigate or prosecute cases outside of Indian country. Additionally, EOUSA officials said that when prosecutors have to determine the Native American status of victims in Indian country, they do not base that determination on the victim’s appearance or self-reporting. Instead, prosecutors must review tribal enrollment documents or obtain information on the victim’s blood quantum, and carrying out this process

for victims outside of Indian country would be arduous.⁴³ Similarly, FBI officials reported that they only collect information that is necessary for the investigation, which does not include the victim's race or Native American status. Further, officials from all of the investigative and prosecutorial agencies raised concerns related to either the sensitivity of asking victims about their race or Native American status or collecting additional personal information about the victim that could make them identifiable to the defendant or others during the discovery phase of a criminal trial.⁴⁴

At Least 50 Federal Grant Programs Can Be Used to Address Human Trafficking in Indian Country or of Native Americans, but Number of Native American Victims Served Is Unknown

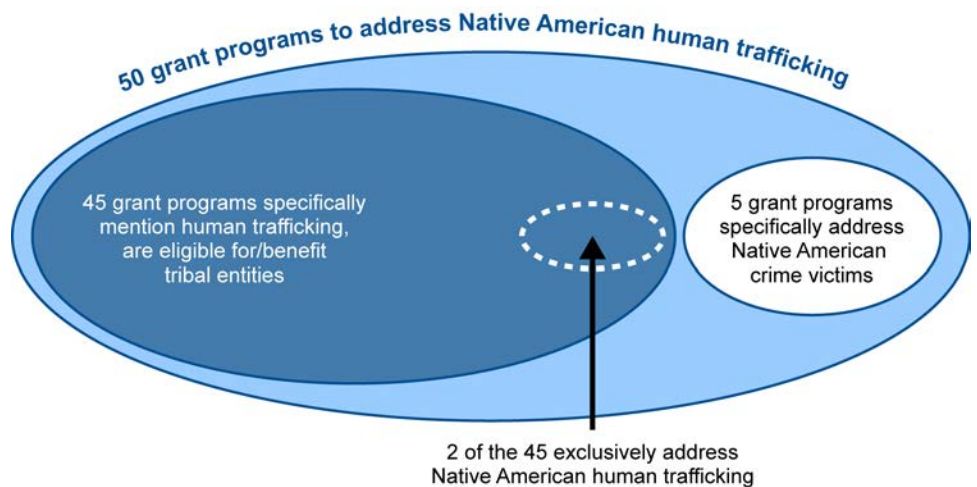
⁴³According to BIA, "blood quantum" refers to the degree of American Indian or Alaska Native blood from a federally recognized tribe or village that a person possesses. Blood quantum is one means by which a person is considered to be an American Indian or Alaska Native. Other factors, such as a person's knowledge of his or her tribe's culture, history, language, religion, familial kinships, and how strongly a person identifies himself or herself as American Indian or Alaska Native, may also be considered.

⁴⁴The discovery phase is the pretrial evidence gathering process in which the federal prosecutor is to, among other things, determine what information is legally subject to disclosure to the defendant.

DOJ, HHS, and DHS Grant Programs that Address Human Trafficking in Indian Country or of Native Americans Can Be Used to Foster Collaboration and Provide Training and Victim Assistance, among Other Things

DOJ, HHS, and DHS administered at least 50 grant programs from fiscal years 2014 through 2016 that could help address human trafficking in Indian country or of Native Americans.⁴⁵ Of the 50 grant programs, 45 specifically mention addressing human trafficking as an allowable use of funding and identify tribal entities as eligible recipients. The remaining five specifically mention assisting Native American crime victims as an allowable use, although human trafficking is not explicitly identified, as shown in figure 4 below. However, the total number of Native American human trafficking victims who received services under these grant programs is unknown.

Figure 4: Federal Grant Programs that Could Address Human Trafficking in Indian country or of Native Americans for which Funding Was Awarded in Fiscal Years 2014 - 2016



Source: GAO analysis of Department of Justice, Department of Health and Human Services, and Department of Homeland Security human trafficking grant programs. | GAO-17-325

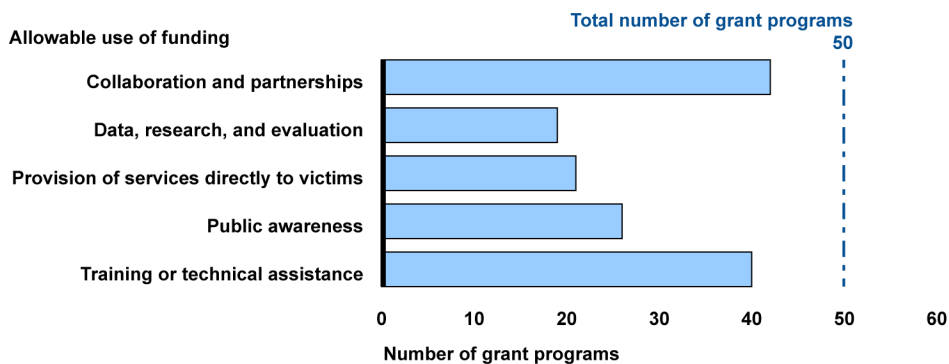
Of the 45 grant programs that explicitly mention addressing human trafficking as an allowable use, 2 exclusively address human trafficking of Native Americans. In fiscal year 2016, OVC established two Project Beacon grant programs that are designed to increase the quantity and quality of services available to Native American victims of sex trafficking who reside in urban areas. One program offers qualified grant award

⁴⁵Forty-one grant programs were administered by DOJ, 12 programs were administered by HHS, and 1 program was administered by DHS. See appendix II for a complete breakdown of the 54 grant programs by allowable use.

recipients the opportunity to develop comprehensive, culturally appropriate services for Native American victims, while the other program was intended to provide an award to a qualified organization to provide training and technical assistance to organizations that received a direct services award. OVC made three awards under the direct services Project Beacon program fiscal year 2016, but was unable to make an award under the Project Beacon training and technical assistance program.

The 50 grant programs provide funding for various categories of activities, including collaboration activities, research, victim services, public awareness and training or technical assistance. A breakdown of the allowable uses is outlined in figure 5 below. (See app. II for a list of all grant programs and how the funding can be used.)

Figure 5: Allowable Activities of Federal Grant Programs that Could Be Used to Address Human Trafficking in Indian Country or of Native Americans in Fiscal Years 2013 - 2016



Source: GAO analysis of Department of Justice, Department of Health and Human Services, and Department of Homeland Security human trafficking grant programs. | GAO-17-325

Note: Federal grant programs generally provide for more than one allowable use.

Collaboration and partnerships: 42 of the 50 grant programs allow funds to be used for collaboration between or within law enforcement and service providers through mechanisms such as task forces, coalitions, and partnerships. For example, the Tribal Governments Program, administered by OVC, strengthens the tribal criminal justice system's response to human trafficking of Native American women by facilitating collaborative agreements between tribal law enforcement and tribal prosecution, and federal, state, or local partners to address sex trafficking, among other crimes. Another example is ACF's Domestic Victims of Human Trafficking grant program, which requires grantees to

provide a strategy for expanding victim service partnerships to enhance community response, including victims in historically marginalized populations like tribal communities.

Data, Research, and Evaluation: 19 of the 50 grant programs include an element of data collection on human trafficking cases, research on human trafficking, or evaluation of best practices. OVC's Fellowship Program was established in 2002. Fellowships are competitively awarded through the OVC grant process. Fellows provide direct operational assistance to OVC in designing and developing innovative or enhanced service initiatives, management systems, training programs, capacity-building initiatives, and program evaluation efforts.

Victim services: 21 of the 50 grant programs can be used to provide services directly to victims of human trafficking, including Native Americans. Services include housing, health care, mental health and substance abuse services, and legal services. For example, the Social and Economic Development Strategies grant program, administered by ACF, can be used to develop and implement culturally appropriate strategies to provide outreach and services for Native American victims of sex trafficking.

Public awareness: 26 of the 50 grants may be used to raise public awareness of human trafficking. For example, OWW administers the Tribal Domestic Violence and Sexual Assault Coalitions program, which works to design and conduct public education campaigns to increase the awareness of crimes against Native American women, including sex trafficking.

Training and technical assistance: 40 of the 50 grant programs may be used to provide training and technical assistance to service providers or law enforcement stakeholders on elements of identifying and serving victims of human trafficking. For example, the Defending Childhood American Indian/Alaska Native Policy Initiative program, administered by OJJDP, awards funding to entities that will design and implement training and technical assistance for tribal sites according to their needs.

DOJ and HHS Do Not
Require Grantees to
Report Data on the
Number of Native
American Victims Served

Among the 21 grant programs administered by DOJ and HHS that allowed for the provision of victim services, the number of Native American human trafficking victims who received services is unknown because agencies generally did not require grantees to report the Native American status of victims served.⁴⁶ For example, 3 of the 21 grant programs—all of which are administered by OWW—currently require grantees to report the Native American status of victims served; that is, if the information is available and can be provided without compromising the victim’s safety or confidentiality.⁴⁷ The remaining 18 grant programs do not require grantees to report the Native American status of victims served; however, 5 of these programs exclusively fund services for Native American victims, in which case the Native American status of victims served would have been determined for the purpose of program eligibility. However, even when grantees are required to report the Native American status of victims served or it is inherent in their reporting, grantees are only required to do so in the aggregate and not by the type of crime to which the victim was subjected. Therefore, the grantee data cannot be used to determine the number of Native American human trafficking victims that were served. Table 3 describes whether the agencies and components require grantees to report the Native American status of victims served.

⁴⁶The DHS grant program that we identified does not include providing services to victims as an allowable use of funding; instead, the funding can be used to support collaboration and partnerships as well as data, research, and evaluation efforts.

⁴⁷OWW’s *FY15 Coordinated Tribal Assistance Purpose Area 5: Tribal Governments Program*, *FY 15 Tribal Sexual Assault Services Program*, and *FY16 Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies* are grant programs that allow for the provision of victim services as well as other activities, and address domestic and dating violence, sexual assault, stalking, and sex trafficking. Grantees under these programs are required to submit semi-annual progress reports, which include demographic information on victims served, types of victimizations for which victims needed services, services provided, and more. Grantees are expected to report demographic data, but only to the extent that they obtain these data in the course of providing services that respond to victims’ immediate safety needs and can provide the data without compromising victim confidentiality.

Table 3: Native American Status Reporting Requirements for Federal Grant Programs that Provide Services for Native American Human Trafficking Victims

Agency	Component	Number of the 21 grant programs that provide services for victims	Require grantees to report number of Native American victims served?
Department of Justice	Office on Violence Against Women (OWV)	4	Yes ^a
Department of Justice	Office for Victims of Crime (OVC)	9	No ^b
Department of Justice	Office of Juvenile Justice and Delinquency Prevention (OJJDP)	3	No
Department of Health and Human Services	Administration for Children and Families (ACF)	5	No ^c

Source: GAO analysis. | GAO-17-325

^aOWV does not currently collect demographic data on victims served for 1 of the 4 programs, the Tribal Domestic Violence and Sexual Assault Coalitions Program, but plans to update the progress report form for this program to capture demographic data.

^bBeginning in fiscal year 2017, OVC will provide an option for recipients of human trafficking-specific grant programs to report the race and ethnicity of victims served.

^cCurrently, ACF requires its grantees to report some victim demographics, but not the victim's race.

In fiscal year 2015, HHS began its Human Trafficking Data Collection Project to establish uniform data collection across OTIP grant programs. According to HHS officials, the intent was to ultimately develop an interoperable platform that would ensure standard collection of data among a broader group of HHS grantees—including grantees that receive funding from other HHS components—that provide services to victims of trafficking and populations at high risk for trafficking.⁴⁸ Grantees will be asked to report data on demographics and predisposing factors, services provided, costs of victim and survivor care, and unmet service needs. This would include capturing data on victims' race and ethnicity, such as Native American status and tribal affiliation. HHS expects to pilot test these uniform data elements and make them available for public comment in fiscal year 2017, after which HHS may make revisions,

⁴⁸In addition to OTIP grantees, HHS hopes to standardize human trafficking data collection among grantees from other HHS components including other ACF divisions, Indian Health Services, Health Resources and Services Administration, Centers for Disease Control and Prevention, and Substance Abuse and Mental Health Services.

submit the revised tool to the Office of Management and Budget for review, and then make the tool available to grantees.⁴⁹

According to OVC and OJJDP officials, they do not require grantees to collect and report victims' Native American status because it is generally not an eligibility requirement for receiving victim services. They also raised concerns about whether including the victims' race or Native American status in grant reports, which could be made available to the public, could compromise the victims' confidentiality.⁵⁰ According to OJJDP, its grantees are required to submit descriptive demographic data for youth victims served, and those data are included in OJJDP's performance measurement system. However, this system does not include data on the Native American status of youth victims served; rather, grantees identify whether or not they provided services to any Native American youth victims during the reporting period. According to OVC, beginning in fiscal year 2017, OVC provided an optional category in the Trafficking Information Management System (TIMS) to allow grantees of human trafficking-specific grant programs—that is, grant programs funded by the Trafficking Victims Protection Act—to report the race or Native American status of victims served. However, OVC does not require grantees to report the race of human trafficking victims because race is not a performance measure for OVC grantees. Also, OVC officials stated that in communities with few members of a particular race, if grantees have just one victim of that race in their data, people may correctly guess the identity of that victim. Similarly, OVC noted the importance of balancing the need for monitoring data with the provision of timely, accessible, and confidential services. OVC officials stated that OVC maintains this balance by collecting an aggregate number of Native American victims served during each 6-month reporting period rather than

⁴⁹Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires federal agencies to provide an opportunity for the public and affected agencies to comment on any proposed data collection projects. See Pub. L. No. 104-13, § 2, 109 Stat. 163, 171-76 (codified, as amended, at 44 U.S.C. § 3506(c)(2)(A)).

⁵⁰ Service providers are required to protect the confidentiality and privacy of persons receiving services. See 42 U.S.C. § 13925(b)(2)(A). Without a victim's consent, service providers are not to disclose, reveal, or release any personally identifying information or individual information collected in connection with services, regardless of how the information is protected. See *id.* § 13925(b)(2)(B). Service providers may share non-personally identifying data in the aggregate regarding client services and non-personally identifying demographic information in order to comply with reporting, evaluation, or data collection requirements; however, personally identifying information may not be shared in furtherance of such compliance. *Id.* at § 13925(b)(2)(D).

collecting this information for each type of victimization—including sex trafficking—which OVW officials believe could jeopardize victim confidentiality, especially in rural tribal communities. We understand the importance of maintaining victim confidentiality, in which case for grantees concerned that reporting the number of Native American human trafficking victims served could reveal the identity of those victims, OVC, OJJDP, and OVW could consider exempting them from any such reporting requirement on a case-by-case basis.

Also, while Native American status is generally not a factor for determining whether a victim can receive services or relevant for current performance measures, it may be a factor for determining how best to assist this particular demographic. According to the 2013-2017 Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States, expanding human trafficking data collection and research efforts for vulnerable populations, which include Native Americans, is an area for improvement for the federal government. The plan also states that vulnerable populations, including Native Americans, are often under-identified as victims, which leads to unreliable statistics. The plan states that the federal government acknowledges that it currently does not have enough information on human trafficking and service provision to Native Americans and other vulnerable populations to begin making recommendations on evidence-based practices to the field. It goes on to state that vulnerable populations require more attention and focus so that responses to human trafficking are effective and federal agencies are committed to spending the time and resources to learn more. The plan establishes goals to provide and improve services to vulnerable populations.

Standards for Internal Control in the Federal Government state that quality information should be used to achieve objectives based on relevant data from reliable sources.⁵¹ Agencies are expected to identify the information requirements needed to meet their objectives and on a timely basis obtain the relevant data based on the requirements. Without collecting data on the Native American status of victims served, federal agencies will not know the extent to which they are achieving government-wide strategic goals to provide and improve services to vulnerable populations, including Native American crime victims.

⁵¹[GAO-14-704G](#).

In addition, awareness about whether a victim of human trafficking is Native American can be helpful to ensure culturally appropriate practices are made available in the healing and recovery process. HHS' Administration for Native Americans reported that there is a need for culturally relevant and trauma-informed approaches when assisting victims.⁵² For example, using women's circles and other culturally appropriate practices have proven helpful in the healing process for Native American victims. According to a Trafficking in Indian Country brief released by the National Congress for American Indians, many Native American human trafficking victims felt they owed their survival to Native cultural practices and most wished for Native healing approaches to be integrated with mainstream services.⁵³

Conclusions

Native Americans experience several risk factors that make them vulnerable to becoming victims of human trafficking. Federal agencies responsible for addressing human trafficking have acknowledged that Native Americans are a vulnerable population and have set agency and government-wide goals to help ensure public safety in Indian country and protect Native Americans from human trafficking and other crimes. Federal agencies that have the authority to investigate and prosecute human trafficking crimes in Indian country generally record in their case management systems whether the crime took place in Indian country. They do not always record the Native American status of victims, however, because that information may not generally be relevant to the case or it may have the potential to identify particular victims. Native American status may have relevance with respect to the provision of services, nonetheless. While victim confidentiality must be protected accordingly, the absence of data collection by granting agencies regarding the Native American status of human trafficking victims served hinders their ability to determine whether their victim assistance goals are being met. It may also make it difficult to determine where to focus their efforts on providing culturally appropriate services that have been shown to aid in the healing and restoration of Native American victims of crime.

⁵²Department of Health and Human Services, Administration for Native Americans, Recognizing and Responding to Human Trafficking among American Indian, Alaska Native and Pacific Islander Communities. (January 29, 2015) (Revised November 18, 2015).

⁵³National Congress of American Indians Policy Research Center, Human Trafficking: Trends and Responses across Indian Country, Tribal Insights Brief, Spring 2016.

Recommendations for Executive Action

To help ensure that DOJ is contributing to efforts to improve data collection and service provision to Native Americans, we recommend that:

- the Director of OVV require grantees to report the number of human trafficking victims served using grant funding, and, as appropriate, the Native American status of those victims; and
- the Assistant Attorney General for OJP direct OVC and OJJDP to require their grantees to report the number of human trafficking victims served using grant funding, and, as appropriate, the Native American status of those victims.

Agency Comments and Our Evaluation

We provided a copy of our report to HHS, DHS, DOI, and DOJ for review and comment. DHS and DOI stated that they did not have any comments on our report. HHS and DOJ provided technical comments, which we incorporated as appropriate. DOJ also provided written comments, which are reproduced in appendix III.

DOJ partially agreed with our recommendations. In its comments, DOJ indicated a willingness to implement the first part of the recommendations, which is to require grantees to report the number of human trafficking victims served with grant funding. However, DOJ disagreed with the second part of the recommendations, which is to require grantees to report the Native American status of those victims. As we stated in our report, OVC currently requires its grantees to report the number of human trafficking victims served through the Trafficking Information Management System (TIMS). According to DOJ, OJJDP could require grantees for its human trafficking-related grant programs to report the number of human trafficking victims served through OJJDP's Data Collection and Technical Assistance Tool (DCTAT). Similarly, DOJ stated that OVV will begin asking grantees to include the number of sex trafficking victims served in their grantee progress reports.

However, DOJ identified several reasons why OVC, OJJDP, and OVV should not require grantees to report the Native American status of human trafficking victims served, including concerns about overburdening grantees, having a chilling effect on the delivery of services, and victim confidentiality. With respect to overburdening grantees, DOJ stated that it would be hard to justify collecting Native American status solely for victims of human trafficking and not for victims of other types of crime. Therefore, according to DOJ, implementing our recommendation would lead the components to collect demographic information for all types of victimizations, thereby greatly increasing the burden on service providers.

We believe that collecting demographic information on victims of all types of crimes could be very informative; however, our recommendation is that DOJ collect demographic data specific to its human trafficking programs, as appropriate. DOJ has identified combating human trafficking as a priority for the department, and the Federal Strategic Action Plan on Services for Victims of Human Trafficking in the United States identifies Native Americans as a vulnerable population. Therefore, we believe that collecting additional information specifically on Native American human trafficking victims is justifiable. In addition, based on preliminary results of a survey we conducted as part of a related review, it appears that some of the DOJ- and HHS-funded victim service providers do collect information on the Native American status of victims served by type of victimization. We surveyed 315 victim service providers that received funding from either DOJ or HHS in fiscal year 2015; 162 of the providers responded. Of the 162, 67 reported that they provided services to at least one human trafficking victim, and 58 were able to tell us whether any of the human trafficking victims they served were Native American; 9 were not able to tell us.

Concerning the potential chilling effect on service delivery, according to DOJ, asking victims about their race could cause confusion, fear, or make the individual less likely to engage in services. Therefore, DOJ is opposed to requiring victims to disclose their race, but acknowledged that if victims voluntarily disclose this information, grantees could include victims' race when reporting to DOJ. Similarly, with respect to victim confidentiality, DOJ stated that collecting Native American status by type of victimization creates a much greater—and unnecessary—risk that a particular victim could be publicly identified, especially in rural tribal communities. Also, according to DOJ, OVW grantees are statutorily prohibited from reporting a victim's personally identifying information to OVW for grant monitoring purposes. It is not our position that victims should be required to disclose their race in order to receive services, and that certainly was not the intent of our recommendation. However, we do think there are situations where it may be appropriate to ask the victim about their race. We also understand that there may be instances where reporting the Native American status of human trafficking victims could, on its own, or in conjunction with other information, identify individual victims. As we stated in our report, the components could exempt grantees from reporting Native American status on a case-by-case basis if such instances arise. To help ensure that our recommendation is not interpreted to mean that DOJ must require human trafficking victims to disclose their Native American status or that grantees must report Native American status, even if doing so significantly increases the risk that the victim could be

identified, we modified our recommendation. Specifically, we clarified that agencies should require grantees to report the Native American status of human trafficking victims “as appropriate.”

DOJ identified other reasons why requiring grantees to report the Native American status of human trafficking victims was not necessary. One benefit to collecting this information that we cited in our report is that DOJ would be able to help ensure that Native American victims are receiving culturally appropriate services. However, DOJ stated that OVC and OVV already use grantee progress reports to monitor whether grantees are providing culturally appropriate services and to identify promising practices for doing so. Further, DOJ stated that it funds training and technical assistance for grantees on providing culturally appropriate services to Native Americans. We are encouraged by DOJ’s efforts related to ensuring that Native Americans are receiving culturally-appropriate services, and we think having information on which of their grantees are serving Native American victims, and how many victims there are, could enhance their efforts.

Finally, DOJ stated that the utility of the data that grantees would report on Native American status of human trafficking victims would be limited because it would not be statistically relevant. Specifically, grantee data would not identify all Native American human trafficking victims, but just those served with DOJ funding. DOJ said that efforts underway by the Bureau of Justice Statistics and the National Institute of Justice would produce more meaningful data. We recognize that grantee data cannot be used to determine the prevalence of human trafficking of Native Americans nationwide. That was never the intent of the recommendation, especially considering the challenges that DOJ and others have previously identified with respect to estimating prevalence of human trafficking, in general. Rather, we recognized that the federal strategic action plan articulated a need for more information on Native American victims of human trafficking, and collecting information on the extent to which DOJ funding is being used to provide services to this population is an incremental step towards bridging this information gap.

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, copies of this report will be sent to the appropriate congressional committees; the Attorney General; the Secretaries of Health and Human Services, Homeland Security, and the

Interior. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or goodwing@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix IV.

A handwritten signature in black ink that reads "Gretta L. Goodwin". The signature is written in a cursive style with a large, stylized initial "G".

Gretta L. Goodwin
Acting Director, Homeland Security and Justice

Appendix I: Department of Justice Efforts to Develop Methodologies to Determine Prevalence of Human Trafficking, and Applicability to Native American Populations

Federal agencies have several efforts under way that either assess the prevalence of human trafficking for a particular subgroup of the population or aim to develop a methodology or tool that could be used to determine prevalence, in general. From fiscal years 2012 through 2015, the National Institute of Justice (NIJ) awarded Trafficking in Persons grants to San Diego State University, Abt Associates, Inc. and Northeastern University for this purpose. While none of the current efforts are designed to determine prevalence among Native Americans, specifically, grantees told us some of the methodologies could have potential to be used for such an effort.¹

Between 2009 and 2015, San Diego State University has been involved in three projects to determine prevalence of labor and sex trafficking for specific populations. The *Labor Trafficking among Migrant Workers in North Carolina* project sought to identify indicators that could be used by state and local law enforcement as signals that labor trafficking may be taking place in their communities. The goals of the study were to: (1) document the characteristics and indicators of labor trafficking, including component crimes, collateral crimes, and other community impacts; and (2) provide law enforcement with actionable knowledge to help identify labor trafficking. Researchers interviewed 380 farmworkers, who were attending migrant worker and Hispanic/Latino festivals or living at farm labor camps, and collected data on demographic characteristics (age, sex, race/ethnicity), citizenship and language spoken at home, unemployment and agricultural business patterns, crime, communicable disease, and pregnancy and infant mortality. According to researchers, these data allowed them to develop a comprehensive description of farmworkers who are being exploited and may be in labor trafficking situations. The study was completed in August 2013.

The second San Diego State University project, *Looking for a Hidden Population: Trafficking of Migrant Laborers in San Diego County*, applied

¹Throughout this report, we generally use the term “Native American” in reference to an American Indian or Alaska Native, including persons who have identified themselves as Native American or individuals whom federal agencies have identified as Native American based on relevant legal authorities and agency procedures. The terms “Indian” and “Alaska Native” are defined under federal law for various purposes. See, e.g., 16 U.S.C. § 3102(16); 20 U.S.C. § 1059c(b)(1); 25 U.S.C. §§ 1301(4), 1903(3), 2201(2), 4103(10), 5129; 42 U.S.C. § 13925(a)(13); 43 U.S.C. § 1602(b). The U.S. Census Bureau has noted that “American Indian or Alaska Native” refers to a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

respondent-driven sampling and unique access to migrant communities in San Diego County, California, to produce valid estimates on the scope of labor trafficking activities in one of the largest Spanish-speaking immigrant destinations. ² The study found that 30 percent of undocumented migrant laborers were victims of trafficking, 55 percent were victims of other abuses, and about half of these victimization experiences occurred within the past 12 months. The study found that the rate of trafficking violations varied markedly across business sectors that typically hire unauthorized migrant workers. The construction and janitorial services sector had the most reported trafficking violations and labor abuses across these business sectors.

The third project, *Sex Trafficking in Tijuana, Mexico*, involved in-depth interviews with semi-structured and open-ended questions, field observations, and conversations with major players in the prostitution business, law enforcement and advocacy groups. The main emphasis in the recruitment of participants in the project was to maximize the range and variety of the search for discernable patterns of trafficking activities and the operation of the sex industry in Tijuana. According to documentation from the study, although hundreds of interviews were conducted with a wide variety of individuals, the study does not intend to produce statistical estimates about the scope of sex trafficking activities or any other aspect of the sex industry in Tijuana. The identified cases of sex trafficking happening in Tijuana were limited to individual pimps (male and female) who were adept at seeking out women in vulnerable situations and controlling them through emotional manipulation, social isolation, and/or violence.

In 2015, NIJ also awarded a Trafficking in Persons grant to Abt Associates. The purpose of Abt's research project, *Advancing Human Trafficking Prevalence Estimation*, is to develop a methodology to calculate prevalence of human trafficking.³ Abt has selected county-level sites to test a methodology that, if successful, could be used to estimate human trafficking at the city, state, or national level. Further, according to Abt, if targeted appropriately or conducted on a large enough scale, the

²Respondent-Driven Sampling (RDS), combines "snowball sampling" with a mathematical model that weights the sample to compensate for the fact that the sample was collected in a non-random way.

³GAO, *Human Trafficking: Agencies Have Taken Steps to Assess Prevalence, Address Victim Issues, and Avoid Grant Duplication*, [GAO-16-555](#) (Washington, D.C.: June 28, 2016).

methodology could be used to estimate human trafficking of Native Americans or in Indian country.⁴ Abt researcher told us they plan to use a screening tool developed by the Vera Institute of Justice to determine how many individuals who are in jails, shelters, or have recently visited emergency rooms are human trafficking victims (i.e., potentially unknown human trafficking victims). Then they plan to compare this number to the known human trafficking victims to see if this approach identifies additional victims. Abt is currently in the first year of a 3-year plan.

The Abt researcher noted that to accurately measure the prevalence of human trafficking in Indian country using a similar methodology, a study must oversample the Native American population. Based on the small sampling size being used to test the current methodology, Abt told us the current study can likely report the number of Native Americans and the number of human trafficking victims on its test sites, but would not be able to generalize results from this study to the entire Native American population.

Northeastern University's research project, *Capturing Human Trafficking Victimization through Crime Reporting* is a 3-year study to test a multiple system list estimation methodology to estimate the prevalence of human trafficking in three sites, which are expected to be selected by mid-October 2016.⁵ According to the program manager, this methodology consists of comparing human trafficking reporting from the FBI's Uniform Crime Reporting System to the data systems of non-law enforcement entities—welfare, victim service providers, domestic violence shelter, licensing and inspection agencies, among others. Any differences or similarities across the data would help determine whether victims are being captured in multiple areas (systems) and the results could be used to develop prevalence estimates for the test sites. According to the program manager, if the methodology works in the test sites, the U.S. government could replicate it to estimate prevalence nationally or at other levels of government.

⁴Federal law defines the term "Indian country" as all land within the limits of any Indian reservation under the jurisdiction of the U.S. government, all dependent Indian communities within U.S. borders, and all existing Indian allotments, including any rights-of-way running through an allotment. See 18 U.S.C. § 1151.

⁵At the time of our review, NIJ had not yet received a status update from Northeastern University. Therefore, we do not have information on which locations were selected for this study.

**Appendix I: Department of Justice Efforts to
Develop Methodologies to Determine
Prevalence of Human Trafficking, and
Applicability to Native American Populations**

The coordinators of these research projects noted that there are major obstacles that hinder the estimation of human trafficking in the United States, including a lack of systematic information about the existence of victims in areas where human trafficking activities are known to exist. Abt and San Diego State University stated that even though their methodologies are not specifically designed to assess prevalence of human trafficking in Indian country or of Native Americans regardless of location, their approaches could be modified to achieve that goal. However, Abt noted that to correctly measure the prevalence of human trafficking in Indian country, a study must oversample the Native American population.

Appendix II: Allowable Uses for 50 Federal Grant Programs that Could Address Human Trafficking in Indian Country or of Native Americans

Grant Program	Agency Component	Collaboration and Partnerships	Data, Research, and Evaluation	Provision of Services Directly to Victims	Public Awareness	Training or Technical Assistance	Exclusive to Tribal Entities
Department of Health and Human Services (8 Grant Programs)							
Family Violence Prevention and Services Program Grant to Tribes	Administration for Children and Families (ACF)	—	—	X	X	—	X
Social and Economic Development Strategies	ACF	—	—	X	X	—	X
Demonstration Grants for Domestic Victims of Human Trafficking	ACF	X	—	X	—	X	—
Demonstration Grants for Domestic Victims of Severe Forms of Human Trafficking	ACF	X	—	X	X	—	—
Grants to Address Trafficking within the Child Welfare Population	ACF	X	X	—	X	X	—
National Human Trafficking Resource Center	ACF	X	—	X	X	X	—
Rescue & Restore Regional Program	ACF	X	—	—	X	X	—
Expansion Grant for Safe Place Runaway and Homeless Youth Training and Technical Assistance Center	ACF	X	—	—	—	X	—
Department of Justice (41 Grant programs)							
Coordinated Tribal Assistance Coordination Purpose Area 5: Tribal Governments Program	Office on Violence Against Women (OVW)	X	—	X	X	X	X

Appendix II: Allowable Uses for 50 Federal Grant Programs that Could Address Human Trafficking in Indian Country or of Native Americans

Grant Program	Agency Component	Collaboration and Partnerships	Data, Research, and Evaluation	Provision of Services Directly to Victims	Public Awareness	Training or Technical Assistance	Exclusive to Tribal Entities
Tribal Domestic Violence and Sexual Assault Coalitions Program	OWW	X	—	X	X	X	X
National Indian Country Clearing House on Sexual Assault	OWW	—	—	—	—	X	X
Tribal Sexual Assault Services Program	OWW	—	—	X	X	—	X
Technical Assistance Initiative Solicitation	OWW	X	—	—	X	X	—
Consolidated Grant Program to Address Children and Youth Experiencing Domestic and Sexual Assault and Engage Men and Boys as Allies	OWW	X	—	X	X	—	—
FY16 Project Beacon: Increasing Services to American Indian and Alaska Native Victims of Sex Trafficking	Office for Victims of Crime (OVC)	X	—	X	X	X	X
FY16 Project Beacon Training and Technical Assistance Program	OVC	—	—	—	—	X	X
FY 15 Coordinated Tribal Assistance Coordination Purpose Area 6: Children's Justice Act Partnerships for Indian Communities	OVC	X	X	X	X	X	X
FY 15 Coordinated Tribal Assistance Coordination Purpose Area 7: Comprehensive Tribal Victim Assistance Program	OVC	X	X	X	X	X	X

Appendix II: Allowable Uses for 50 Federal Grant Programs that Could Address Human Trafficking in Indian Country or of Native Americans

Grant Program	Agency Component	Collaboration and Partnerships	Data, Research, and Evaluation	Provision of Services Directly to Victims	Public Awareness	Training or Technical Assistance	Exclusive to Tribal Entities
Vision 21: National Resource Centers for Victim Research, Evaluation, and Reaching Underserved Victims	OVC	X	X	—	X	X	—
Fellowship Program	OVC	X	X	—	—	X	—
A Pathway to Justice, Healing, and Hope: Addressing Polyvictimizations in a Family Justice Center Setting Demonstration Initiative	OVC	X	X	—	—	X	—
Comprehensive Services for Victims of Human Trafficking Program	OVC	X	—	X	X	X	—
Services for Victims of Human Trafficking	OVC	X	—	X	X	X	—
Specialized Services for Victims of Human Trafficking	OVC	X	—	X	X	X	—
Training and Technical Assistance on Comprehensive Legal Services for Human Trafficking Victims	OVC	—	—	—	—	X	—
Service, Support & Justice: A Strategy to Enhance Law Enforcement Response to Victims Demonstration Project	OVC	X	—	—	—	—	—
Sexual Assault Response Team (SART) Toolkit 2.0	OVC	—	X	—	—	—	—
Vision 21 Victim Legal Assistance Networks	OVC	X	X	X	—	X	—

Appendix II: Allowable Uses for 50 Federal Grant Programs that Could Address Human Trafficking in Indian Country or of Native Americans

Grant Program	Agency Component	Collaboration and Partnerships	Data, Research, and Evaluation	Provision of Services Directly to Victims	Public Awareness	Training or Technical Assistance	Exclusive to Tribal Entities
Vision 21 Innovation Grants: Enhancing and Transforming Services for Victims of Crime	OVC	—	—	—	X	X	—
Vision 21: Law Enforcement and the Communities They Serve: Supporting Collective Healing in the Wake of Harm	OVC	X	X	—	—	X	—
Improving Outcomes for Child and Youth Victims of Human Trafficking: A Jurisdiction wide Approach	OVC	X	X	X	X	X	—
Mentoring for Child Victims of Commercial Sexual Exploitation and Domestic Sex Trafficking	Office on Juvenile Justice and Delinquency Prevention (OJJDP)	X	—	X	X	X	—
National Girls Initiative	OJJDP	X	—	—	X	X	—
Defending Childhood American Indian/Alaska Native Policy Initiative: Supporting Trauma-Informed Juvenile Justice Systems for Tribes	OJJDP	X	—	X	X	X	X
Victims of Child Abuse Regional Children's Advocacy Centers Program	OJJDP	X	—	—	X	X	—
Court-Appointed Special Advocates Membership and Accreditation Program and Training and Technical Assistance	OJJDP	X	—	—	X	X	—

Appendix II: Allowable Uses for 50 Federal Grant Programs that Could Address Human Trafficking in Indian Country or of Native Americans

Grant Program	Agency Component	Collaboration and Partnerships	Data, Research, and Evaluation	Provision of Services Directly to Victims	Public Awareness	Training or Technical Assistance	Exclusive to Tribal Entities
VOCA Training and Technical Assistance for Child Abuse Professionals	OJJDP	X	X	—	—	X	—
Reducing Reliance on Confinement and Improving Community-based Responses for Girls at Risk of Entering the Juvenile Justice System	OJJDP	X	X	X	—	—	—
National Mentoring Resource Center	OJJDP	X	—	—	—	X	—
Research and Evaluation on Trafficking in Persons	National Institutes of Justice (NIJ)	—	X	—	—	—	—
Regional Information Sharing Systems	Bureau of Justice Assistance (BJA)	X	—	—	—	X	—
Adjudication and Law Enforcement National Initiatives: Improving Responses to Criminal Justice Issues	BJA	X	X	—	—	X	—
Visiting Fellows Program	BJA	X	X	—	—	X	—
Justice Information Sharing Solutions Implementation Program	BJA	X	X	—	—	—	—
Law Enforcement: National Training and Technical Assistance	BJA	X	—	—	—	X	—

Appendix II: Allowable Uses for 50 Federal Grant Programs that Could Address Human Trafficking in Indian Country or of Native Americans

Grant Program	Agency Component	Collaboration and Partnerships	Data, Research, and Evaluation	Provision of Services Directly to Victims	Public Awareness	Training or Technical Assistance	Exclusive to Tribal Entities
National Training and Technical Assistance: Anti-Human Trafficking Training for Law Enforcement and State Prosecutors Program	BJA	X	—	—	—	X	—
Anti-Human Trafficking National Training and Technical Assistance Program for Law Enforcement Task Forces	BJA	X	—	—	—	X	—
Enhanced Collaborative Model to Combat Human Trafficking Program	BJA/OVC	X	X	X	X	X	—
Community Policing Development	Office of Community Oriented Policing Services (COPS)	X	X	—	—	X	—
Department of Homeland Security (1 Grant Program)							
Center of Excellence – Center for Borders, Trade and Immigration Research	Science & Technology Directorate	X	X	—	—	—	—

Source: GAO Analysis | GAO-17-325

Appendix III: Comments from the Department of Justice



U.S. Department of Justice

MAR 10 2017

Washington, D.C. 20530

Ms. Gretta L. Goodwin
Acting Director
Homeland Security and Justice
Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Goodwin:

Thank you for the opportunity to review and comment on the draft Government Accountability Office (GAO) report entitled, "Human Trafficking: Action Needed to Identify the Number of Native American Victims Receiving Federally-funded Services" (GAO-17-325). The U.S. Department of Justice (DOJ) appreciates the GAO's work in planning and conducting this review and issuing the draft report.

The draft GAO report contains two Recommendations for Executive Action, one directed to the Office on Violence Against Women (OVW) and one directed to the Office of Justice Programs (OJP). However, even though these recommendations are provided for two different DOJ components, the recommendations themselves are substantively identical. For ease of review, the recommendations are restated below in bold text and are followed by DOJ's response.

To help ensure that DOJ is contributing to efforts to improve data collection and service provision to Native Americans, we recommend that:

- **the Director of OVW require grantees to report the number of human trafficking victims served using grant funding and the Native American status of those victims; and**
- **the [Assistant Attorney General for] OJP direct OVC and OJJDP to require their grantees to report the number of human trafficking victims served using grant funding and the Native American status of those victims.¹**

DOJ partially agrees with these Recommendations for Executive Action, and appreciates the feedback provided by the GAO. This letter explains DOJ's rationale for not agreeing in full with the recommendations, with component-specific information provided where necessary. DOJ believes that the data collected from grantees, along with the planned changes to select research and data collection efforts, will achieve the intended outcome of the recommendation, while not

¹ The draft GAO report directs this recommendation to the "Director of OJP." As noted in OJP's technical comments, the recommendation should be directed to the Assistant Attorney General for OJP, not the Director.

overburdening grantees, deterring victims from seeking services, or compromising victim confidentiality.

As noted in the draft GAO report, OVW and OJP's Office for Victims of Crime (OVC) and Office of Juvenile Justice and Delinquency Prevention (OJJDP) collect similar but slightly different data on grant-funded victim services. However, all three offices make decisions about data collection in accordance with the following principles:

1. The primary priority of all victim service providers must be to address victims' immediate safety needs. To that end, while OVW and OJP require *reports* from grantees, they do not require complete and comprehensive data on each victim served. Both components expect grantees to collect and report data to the extent that it is safe and feasible to do so, understanding that the data may be incomplete for various reasons.
2. OVW and OJP collect aggregated data from grantees to monitor performance and ensure permissible use of grant funds. These data should not be so granular as to potentially jeopardize victim confidentiality.
3. Statistical data collection and research functions require skills that are different from those of service providers. For that reason, it is not the best use of limited services funding for DOJ to expect victim service providers to collect representative statistics or conduct substantive research.

DOJ's concerns about the GAO recommendation hinge on the above principles, which are discussed further in this letter. In determining grantee reporting requirements, OVW and OJP are careful to assess the monitoring value of data against the burden that collecting that data places on service providers and victims. For example, OVW emphasizes in training grantees on completing progress reports that their first priority is to help victims with their immediate safety needs, and data collection is subordinate to that priority. OVW and OJP collect different data from grantees: OVW already collects the total number of American Indian/Alaska Native victims of several types of crimes served with grant funds, while OVC's Trafficking Information Management System (TIMS) and the OJJDP Data Collection and Technical Assistance Tool (DCTAT) make reporting on race or ethnicity of victims served an optional category. However, both OVW and OJP approach grantee reporting by balancing the need for data related to required grant performance measures with the burden on grantees and the risk to service delivery and victim confidentiality.

Requirement to Report Number of Human Trafficking Victims Served

DOJ partially agrees with this Recommendation for Executive Action to each of the DOJ components; however, because of statutory or system differences, each component may implement the recommendations in a slightly different manner. As to the first part of each recommendation (that OVW, OVC and OJJDP require their grantees to report the number of human trafficking victims served using grant funding), the OVC reporting system, TIMS, already gathers this information from grantees receiving funds to deliver services to trafficking victims across various programs. The OJJDP reporting system, DCTAT, does not currently

collect this information, but this requirement could be added for the three OJJDP programs, identified in Appendix II of the draft report, that provide services directly to human trafficking victims.

The OVW grant programs reviewed by GAO address only one form of human trafficking – sex trafficking – and OVW therefore will collect data only on victims of sex trafficking served with these grant funds. OVW is in the process of updating the progress report forms that grantees are required to submit every six months as a condition of receiving grant funds. One planned improvement to the forms that is responsive to the GAO recommendation is the addition of sex trafficking as a victimization category (in those questions that already list domestic violence, dating violence, sexual assault, and stalking) under OVW programs that include sex trafficking. The current progress report forms for these programs do not include sex trafficking, as it was added to the list of crimes addressed by these programs since the forms were last updated. This change will partially implement the GAO recommendation by collecting the number of sex trafficking victims served during the six-month reporting period.

Requirement to Report Native American Status of Trafficking Victims Served

DOJ respectfully disagrees with the second part of each recommendation directing that its components (OVW, OVC and OJJDP) require grantees to report the Native American status of the trafficking victims served for the following four reasons.

1. Victim Confidentiality

DOJ must balance the need for data with the importance of having its components support the provision of timely, accessible, and confidential services for victims. Collecting Native American status information by type of victimization creates a much greater – and unnecessary – risk that a particular victim could be publicly identified, especially in rural tribal communities. Such a potential breach of confidentiality for reporting purposes is statutorily restricted in OVW grant programs, which are governed by strict confidentiality provisions preventing grantees from reporting information to OVW for grant monitoring purposes when the information could identify the victims served.² Although OVW requires grantees to submit progress reports, one section of which collects demographic data on victims served, OVW grantees are only expected to report data they can collect without compromising service quality and victim confidentiality. The forms request the total number of victims of all five crimes covered by the programs (domestic violence, dating violence, sexual assault, stalking, and sex trafficking) in each demographic category, including American Indian and Alaska Native victims. However, the forms do not break the demographic counts down for each of the five crimes, and grantees may

² This provision permits grantees to share non-personally identifying data in the aggregate regarding services to their clients and non-personally identifying demographic information in order to comply with federal grant reporting requirements. However, it also specifically provides that no personally identifying information may be shared in order to comply with such federal reporting requirements. See 42 U.S.C. § 13925(b)(2)(D)(i)(I), (ii)(II); see also 28 CFR § 90.4. “Personally identifying information” is defined to include any “information, including date of birth, racial or ethnic background, or religious affiliation that would serve to identify an individual.” 42 U.S.C. § 13925(a)(20)(E). Thus, OVW grantees must consider when demographic information, like Native American status, would serve to identify an individual; such information is more likely to be identifying when there are a small number of reported victimizations during the six-month reporting period.

use a box labeled “unknown” to capture the number of victims for whom they do not have any race or ethnicity information or whose confidentiality could be compromised by providing it. The draft GAO report notes that grantees could be instructed not to provide the information when it would be identifying, but setting DOJ reporting forms to collect more granular data about victims would increase the likelihood that grantees would inadvertently report identifying information.

2. Additional Burden to Grantees

Fully implementing the GAO recommendation likely would mean a more burdensome collection of all categories of demographic data for each type of victimization covered by the various OVW and OJP grant programs. It would be hard to justify collecting more granular demographic information (Native American status) for one category of victimization (trafficking) and not for the other victimizations that DOJ grant programs address. All components would also have to revise progress report forms to collect demographic information by type of victimization, thereby greatly increasing the reporting burden on service providers and increasing the likelihood that the small numbers reported in each demographic category would make it possible to identify victims. To the extent there may be programs covered by the recommendations in which an estimate of Native American trafficking victims served can be made, DOJ intends to implement the GAO recommendations to the greatest extent possible so long as doing so will not require grantees to report data at a level of specificity that is both overly burdensome (and likely to compromise victim confidentiality). For example, although grantees under OVW’s three tribal-specific programs covered by the recommendation do not serve exclusively Native American victims, they do focus on serving such victims. Therefore, the number of sex trafficking victims they serve could help OVW estimate how many Native American sex trafficking victims these grantees served during the six-month reporting period.

3. Effective Uses of Other Methods to Ensure Culturally Appropriate Practices in Providing Services

DOJ is committed to ensuring that culturally appropriate practices are made available to victims, one of the stated purposes of the GAO recommendation. For example, both OVW and OVC already monitor whether grantees are providing culturally appropriate services to victims and identify promising practices for doing so, using existing information on grantee progress reports. In addition, both components fund technical assistance and training for grantees on providing culturally appropriate services to Native American victims. However, given the breadth of information currently reported on the use and impact of grant funds, DOJ disagrees that focusing exclusively on demographic and victimization data is necessary to fully address these cultural issues. Specifically, our current data collections include the types and quantities of services, training topics (e.g., cultural issues and advocacy specific to American Indian and Alaska Native victims), and grantees’ accomplishments and challenges described in their own words. DOJ values this kind of narrative data just as much as demographic and victimization numbers. Narrative information helps grant making organizations monitor grantees’ progress toward goals, identify promising practices, and spot training and technical assistance needs. Without this context, the draft GAO report omits how DOJ grant programs already collect data to meet the recommendation’s objective and presents an incomplete picture of the breadth, depth, and utility

of these data. DOJ believes that encouraging grantees to provide services in a culturally-competent, trauma-informed manner, and minimizing barriers to receiving services, enables grantees to serve an increasing number of human trafficking victims, including Native American survivors.

4. Potential Chilling Effect on Delivery of Services

Implementing this part of the recommendations will have a chilling effect on service delivery—the principal purpose of DOJ grant funding. Much as the Executive Office of United States Attorneys (EOUSA) reported that prosecutors do not base a determination of Native American status on a victim's appearance, victim service providers should not do so either. Therefore, to implement this requirement, all human trafficking service provider grantees would have to ask all potential human trafficking clients if they identify as Native American during client intake. This would have a deleterious impact on a service provider's rapport with a victim. Both OVW and OJP allow human trafficking grantees flexibility during victim screening and intake, given the trauma suffered by victims, and do not require grantees to report on victim demographics (either in TIMS, DCTAT, or on OVW progress reports) beyond what is required for grant performance metrics. Victims are not required to self-identify their race or ethnicity even if asked, and can choose to not answer this question. Asking this question in the first place could cause confusion, fear, or make the individual less likely to engage in services. DOJ believes enforcing this requirement would actually be counterproductive to the report's recommendation to increase service delivery to this population. DOJ grantees can input a victim's race or ethnicity in the reporting systems if the victim voluntarily discloses this information during engagement with the service provider. The key, however, is the voluntary nature of the disclosure; otherwise such probing questions may discourage a victim from continuing to seek or participate with vital services that victim needs.

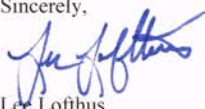
DOJ Research and Data Collection Efforts Will Achieve the Intended Outcome of the Recommendation

DOJ can agree that there is a need for accurate and complete statistical information on this subject. However, the information collection as recommended by the GAO inherently cannot provide such statistically relevant data on the extent of human trafficking of Native Americans, whether in or outside of Indian country, because the utility of performance data reported by grantees is very limited. Grantee data only covers victims served with DOJ grant funds, meaning that the full breadth of an organization's services is not captured, unless the organization operates exclusively on DOJ funding. Moreover, DOJ-funded victim service providers are not necessarily representative of all service providers assisting Native American victims of trafficking. Finally, because such grantee data is by definition limited to tabulating only those victims who seek assistance, any compilation of such data would not be a statistically accurate portrayal of the magnitude of the underlying, unreported issue. Service providers cannot know what does not come in the door; it is the job of statisticians and researchers to account for the unknown.

DOJ is nonetheless committed to both 1) data collection and research regarding human trafficking in Indian country, and 2) the provision of comprehensive victim services for those victims who are actually identified. That is why, in addition to providing services, DOJ has engaged both the Bureau of Justice Statistics (BJS) and the National Institute of Justice (NIJ) in this area too. For example, in Fiscal Year 2016, NIJ initiated a study of sex trafficking in Indian country that is expected, among other things, to include recommendations that will enhance services to be provided in the future for survivors.³ In addition, the trained statisticians in BJS are currently conducting a national census of victim service providers, followed by a survey of a nationally representative sample of victim service providers.⁴ Both of these projects represent an example of how DOJ currently uses the statistical and research arms of the Department, with appropriate funding, to manage statistical collections of data or conduct large-scale research on this issue. Having organizations (with no research or statistical expertise) divert a portion of their limited funds intended to provide actual services to instead collect or assess research or statistical information would not be the best use of either professional researchers or limited service dollars.

If you have any questions regarding this response, you or your staff may contact Louise Duhamel, Senior Audit Liaison Specialist, Justice Management Division, at (202) 514-4006.

Sincerely,



Lee Lofthus
Assistant Attorney General for Administration

cc: Alan R. Hanson
Acting Assistant Attorney General
Office of Justice Programs

Nadine M. Neufville
Acting Director
Office on Violence Against Women

³ For more information on this study, see <https://external.ojp.usdoj.gov/selector/awardDetail?awardNumber=2016-VT-BX-K001&fiscalYear=2016&applicationNumber=2016-90905-DC-IJ&programOffice=NIJ&po=NIJ>.

⁴ For more information on the census and survey, see <https://www.bjs.gov/index.cfm?ty=tp&tid=98>.

Appendix IV: GAO Contacts and Staff Acknowledgements

GAO Contact

Gretta L. Goodwin, (202) 512-8777 or goodwing@gao.gov

Staff Acknowledgments

In addition to the contact name above, Kristy Love, Assistant Director; Kisha Clark, Analyst-in-Charge; Jessica Ard; Paulissa Earl; Marycella Mierez; Susan Hsu; Jon Najmi; Michele Fejfar; and David Blanding made significant contributions to the work.

Related GAO Products

Human Trafficking: State Has Made Improvements in Its Annual Report but Does Not Explicitly Explain Certain Tier Rankings or Changes. [GAO-17-56](#). Washington, D.C.: December 5, 2016.

Human Trafficking: Implementation of Related Statutory Provisions, Law Enforcement Efforts, and Grant Funding. [GAO-16-748T](#). Washington, D.C.: June 28, 2016.

Human Trafficking: Agencies Have Taken Steps to Assess Prevalence, Address Victim Issues, and Avoid Grant Duplication. [GAO-16-555](#). Washington, D.C.: June 28, 2016.

Human Trafficking: Actions Taken to Implement Related Statutory Provisions. [GAO-16-528R](#). Washington, D.C.: May 26, 2016.

Human Trafficking: Oversight of Contractors' Use of Foreign Workers in High-Risk Environments Needs to Be Strengthened. [GAO-15-102](#). Washington, D.C.: November 18, 2014.

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