

a. Description of the Issue

The [redacted] Innocence Project [redacted], founded in [redacted] and housed at the [redacted] [redacted] School of Law at the University [redacted], conducts its work to prevent wrongful conviction in fidelity to its mission: [redacted]

The challenge faced by [redacted] in preventing wrongful conviction is largely illustrated by equity issues; 100 percent of those requesting [redacted] services fall below state and federal poverty levels, ensuring their use of public defenders who, in [redacted], are wildly understaffed, resulting in backlogs, over-burdened attorneys, and cases without representation for significant periods of time). A more glaring equity issue that poses a challenge to the work of wrongful conviction is the fact that American Indians [redacted]

[redacted] represent a mere 7 percent of [redacted] total population, but 19 percent of total arrests and 17 percent of total prison population.¹ This disparity is further illustrated by [redacted] own applicants – 28 percent identify as members as Indigenous. When taken in combination with the socio-economic realities of daily life prior to conviction, the sum of these parts is a disenfranchised population with little confidence in the efficacy of post-conviction recourse, often fearing retaliation. It is this distancing that presents the greatest challenge to preventing wrongful conviction. [redacted]

works to mitigate this by comprehensively informing this population of the resources

¹ [redacted]

available to them and demonstrating the power of efficient, informed representation when inequity has led to a wrongful conviction and imprisonment.

Current resources to support the review of errors including post-conviction claims of innocence and/or mitigating the risk of wrongful conviction exist entirely with [REDACTED]. The state's current legislative session witnessed the introduction of House Bill [REDACTED] – the creation of a conviction integrity unit – but it was voted down prior to transmittal to State Senate. To that end, the existing resources to mitigate the risk of wrongful conviction are privately funded via [REDACTED] own mechanisms (grants, individual donations).

In [REDACTED], the number of innocence claims statewide was 78. The greatest risk for error in evaluating these claims lies in the efficiency of investigations and representation due to the rural geography of [REDACTED] and whether [REDACTED] services are equally accessible to the Indigenous communities who need the legal assistance most (as evidenced by the population's over-representation in state prison). These concerns were brought to light in [REDACTED] when [REDACTED] engaged the services of the Innocence Network Support Unit and convened a Strategic Planning Committee to guide the organization through a comprehensive strategic planning process. Over the course of several months, the Committee identified a diverse group of stakeholders in the criminal legal system, including clients, client family members, lawmakers, law enforcement, prosecution and defense counsel, members of the judiciary, representatives of peer organizations, and [REDACTED] donors and other funders. The outreach resulted in nearly 40 stakeholder surveys and more than 30 interviews to guide the organization's more informed path forward. **The resulting three-year plan identified several strategic priorities and goals focused on advancing Indigenous justice including building investigative capacity and relationships to better serve clients and applicants from rural and tribal communities.** [REDACTED] work has resulted in

seven exonerations; considering [REDACTED] limited staff capacity (which will be addressed by this grant) and the average of 10 years' litigation per case, the agency is proud of these results.

[REDACTED] current intake policy is as follows:

Stage	Description
1	Eligibility: Applicants must have been convicted of a felony crime in [REDACTED] state or federal court; applicants must have completed their trial, sentencing, and direct appeals; and applicants must not currently be represented by an attorney or have access to a public defender. Further, [REDACTED] gives priority to cases where convincing and corroborating new evidence can establish actual innocence; [REDACTED] is unlikely to accept a case without independent and verifiable evidence to support innocence claims or claims of wrongful convictions based on mitigation evidence not previously presented to a court or tribunal.
2	Case-Building: Students (University of [REDACTED] School of Law) and volunteers build a requestor's file by collecting voluminous files and documents (trial transcripts, law enforcement reports, witness statements, physical evidence, etc.) related to the claim of innocence.
3	Investigation: Students and volunteers review case files and documents and memorializing what they discover; legal director partners with and connects investigators, pro-bono attorneys, and experts to the information to assess alongside students/volunteers the viability of the case moving forward.
4	Pre-Litigation: Document drafting and assembling the evidence supporting innocence or wrongful conviction; when new evidence has been discovered, the legal director works with pro-bono attorneys to develop a legal analysis and strategy as well as to draft pleadings to institute legal proceedings.
5	Litigation: [REDACTED] pursues the appropriate course of legal action, including litigation to request DNA testing, the consideration of new evidence, and the appeal(s) of unfavorable decisions.

[REDACTED] *currently has 29 cases in stage 1, 3 cases in stage 2, 9 cases in stage 3, 1 case in stage 4, and 4 cases in stage 5.* As a result of its system of due diligence, [REDACTED] does not currently have a backlog of cases beyond the most labor-intensive stages. [REDACTED] **is prioritizing cases of wrongfully convicted Indigenous peoples throughout the State of [REDACTED].**

Over the last two calendar years, [REDACTED] processing of cases is demonstrated by: *2021: 104 applications processed; 46 investigations opened; 5 cases litigated; 1 innocent person assisted in attaining pre-release who was later paroled in early 2022. In 2022: 78 applications processed; 22 applications opened; 4 cases litigated.*

[REDACTED] primary challenge impacting the ways in which it mitigates the inequity involved with [REDACTED] wrongful convictions is logistical in nature. Following the strategic planning mentioned on Page 2, [REDACTED] examined the challenges and barriers to conducting successful, comprehensive investigations in Indigenous communities. Two main issues consistently rose to the surface: 1) covering the vastly rural ground needed to conduct thorough investigations is more resource-intensive than those in urban areas; and 2) [REDACTED] existing investigative staff model is not adequate for building the long term, place-based, community trust needed to uncover sensitive relational information and sources of evidence. In regard to the second issue, the establishment of trust with the individual, their social resources, and the community-at-large is paramount; perhaps no population in the United States is more disenfranchised with establishment-based processes and services; to that end, [REDACTED] works intently to approach in a trauma-informed, culturally aware manner that fosters the most open communication and reciprocity that are inherent to case-based work.

Some of the rural places in [REDACTED] require a full day of driving to access. Many investigative tasks like witness interviews must be completed in person due to the precarious nature of the conversations and because many in rural [REDACTED] do not have adequate phone service or internet connection to meet virtually. The success of these investigations relies on the strength of place-based relationships and community trust; this means being able to collect evidence, conduct witness interviews, and examine crime scenes as a wrongful conviction review

entity without extensive obstacles caused by a lack of trust or confidence that [REDACTED] is, in fact, aiming to deliver justice. Achieving this in rural communities and on reservations requires the capacity to create and sustain long-term partnerships with community leaders and local providers like attorneys, investigators, and correctional staff. [REDACTED] existing staffing model cannot fully respond to the travel or relationship-building needs of these innocence investigations.

The rural geography similarly impedes the progress of existing cases by limiting in-person access to people who are incarcerated in [REDACTED] prisons. It takes more than five hours one way to access some of the correctional facilities from [REDACTED] headquarters in [REDACTED] (located in the westernmost part of the state). These drives are lengthened in the winter due to [REDACTED] harsh weather conditions.

In-person visitation is necessary because [REDACTED] prisons have restrictive policies that consistently interfere with privileged phone/mail communications. Regularly traveling to the prisons is necessary but impractical in [REDACTED] current staffing model. This adversely impacts the review process of applications that require the assistance of incarcerated people and lengthens the litigation process of current clients' innocence claims.

The resources sought through this application will underwrite the addition of a staff attorney to serve as an investigative lead responsible for developing and maintaining critical partner agency and other community-based relationships that will allow [REDACTED] to process claims of innocence more efficiently and meaningfully, tangibly expanding its reach into rural and tribal communities of [REDACTED] most in need of these interventions. Further, requested resources will underwrite the funding (and training) of five to seven (5-7) contract investigators who identify as Indigenous and/or have meaningful experience conducting case-based investigations within Indigenous communities.

As mentioned above, the ability with which [REDACTED] is able to establish meaningful foundations of communication, trust, and reciprocity amongst [REDACTED] native communities is a primary mechanism of its work to address the current inequity of wrongful convictions and incarceration. To that end, [REDACTED] fosters increasingly effective relationships with representatives of the [REDACTED] [REDACTED] tribal representatives elected to the [REDACTED] Legislature, tribal judges, leadership from the Tribal Defenders Office and the Tribal Prosecutors office of the [REDACTED] Indigenous scholars, advocates and activists for criminal legal reform and prisoners' rights, and, most importantly, [REDACTED] clients and their family members. [REDACTED] also relies on its working relationships with the [REDACTED] Indigenous Justice team, and [REDACTED] through participation in the [REDACTED] Coalition for Public Safety to identify emerging criminal justice needs in Indigenous communities.

b. Program Design

This project's program design is structured to execute a goal that corresponds with BJA's goal of the ROL/WCR program to enhance the capacity of WCR entities to better identify, assess, and manage post-conviction claims of innocence while translating lessons to prevent future error and bring justice for victims. The project-specific objectives dovetail with BJA's objectives to strategically review cases post-conviction with a focus on those at greatest risk for error; establish or enhance partnerships to apply a strategic review of post-conviction claims of innocence and to inform efforts to prevent wrongful convictions to enhance the collection and analysis of data to support the prevention of error and enhance efforts to review/manage claims of innocence; to identify/apprehend actual perpetrators of crime; and to evaluate whether

systemic issues exist that may compromise the rule of law and to recommend practices for mitigating them.

Specifically, this project’s goals and objectives are:

Goal	Objectives/Strategy to Achieve Goal
<p>Increase [redacted] presence as a wrongful conviction entity in [redacted] rural and Indigenous communities, thereby reducing the number of wrongful convictions occurring there.</p>	<ol style="list-style-type: none"> 1. Staff attorney with existing relationships with [redacted] tribal communities will provide face-to-face, place-based investigations & develop meaningful, results-based relationships with investigators (Indigenous and non-Indigenous), pro-bono attorneys, and representatives, families, and institutions of [redacted] Indigenous communities. 2. Secure 5-7 contract investigators who are Indigenous or have experience investigating within Indigenous communities – ideally one from each of the 7 reservations in the state. 3. Paralegal will support increased communication/collaboration between [redacted] staff attorney, [redacted] leadership, & contract investigators, as well as to support the work of additional wrongful conviction cases/investigations 4. Leverage partnership with [redacted] to identify clients who are Indigenous, facilitate outreach events, and connect [redacted] with Indigenous contract investigators. 5. Increase [redacted] codified relationships with 15 new Indigenous entities including all 7 reservations, community centers, and health centers, thus increasing access to [redacted] services for people who are Indigenous in the places they live/commune. 6. Increase the number of Indigenous applications that move beyond [redacted] investigative stage to the pre-litigation stage by a factor of 30%.

The deliverables for the above –reported to OJP via the semiannual reporting process – include: Identifying and reporting the number of post-conviction and appellate claims of innocence cases reviewed, the state of review conducted for each case, and any outcomes; documentation of a systematic review of areas of risk for wrongful conviction and recommendations and implementation of any strategies to mitigate those risks; and the review, investigations, and adjudication of individual cases of post-conviction claims of innocence and appeal by supporting high quality and effective post-conviction representation and related activities; case review in which requests for review are indicated as ‘received,’ reviewed,’ rejected,’ or ‘other’ according to the source of the request. Other deliverables include explanation of rejected requests, explanation of requests escalated for further review, explanation of withheld evidence, explanation of forensic evidence involvement, explanation of type of felony involved with escalated cases, and number of innocence exonerations. Deliverables will also include a description of partnerships involved in the case reviews/litigation during the grant period.

This strategy – the implementation of a staff attorney to conduct place-based work amongst [REDACTED] rural and Indigenous communities, complemented by place-based contract work of investigators, the support of a paralegal, outreach to any incarcerated individual whose case is at the litigation state to work on re-entry resource coordination and identification of organic supports, and relationship/partner development by [REDACTED] executive director – addresses the needs in the ‘Description of the Issue’ section because it:

A) Involves the intensive review, investigation, and adjudication of individual cases of post-conviction claims of innocence and appeals throughout an overwhelmingly rural state with profound distances between population centers ([REDACTED] spans more than [REDACTED] square miles

with an estimated population of 1.06 million people, in which 44% live in rural areas of the state– *U.S. Census*);

B) Supports the development and stewardship of new partnerships – especially those amongst the state’s Indigenous bodies, authorities, advocates, and change-makers – that will increasingly acclimate rural, marginalized Indigenous communities to [REDACTED] presence and efficacy;

C) Supports ongoing research and outreach to rural, Indigenous, marginalized communities affected by wrongful conviction by conducting community listening sessions (4 over two years), using Masters of Social Work practicum students to provide support to incarcerated individuals whose cases are at the litigation state in an effort to develop case planning/resource coordination for a more productive re-entry, surveying incarcerated persons re: the barriers they face in potentially requesting [REDACTED] reviews of their cases, advancing the knowledge sharing between [REDACTED] and its partners such as the [REDACTED] (MOU attached), and collecting quantitative and qualitative data throughout these processes to improve program delivery. This program design addresses [REDACTED] unique needs by making services accessible for those with little to no means of transportation (by coming to them), by fostering partnerships that increase buy-in from a population reticent to engage with the legal system, and by increasing the depth of knowledge re: the issues of wrongful conviction and accessibility to recourse by those in impoverished, marginalized communities.

Because this is a lean strategy that centers upon the delivery of direct service, the timeline (as seen within the JustGrants timeline template) is straightforward: The staff attorney, paralegal, and investigator contract positions are currently posted, and interviews are taking place as of April, 2023. To that end, work toward the goals and objectives of this project are set to begin

immediately upon 10/1/23 and BJA budget approval. *In year one of this grant project, [REDACTED] expects to process 90 applications, open 25 cases, and litigate 5 cases. In year two of the program, [REDACTED] expects to process 112 applications, open 29 cases, and litigate 6 cases. At the conclusion of the grant project, [REDACTED] expects to have exonerated 1 individual as a result of proving wrongful conviction.* Throughout the course of the two-year grant period, [REDACTED] will submit eight quarterly progress reports.

This proposal is designed to increase [REDACTED] capacity through hiring. [REDACTED] is the only WCR entity in [REDACTED]. In light of this, the agency is not able to pause its work in [REDACTED] less rural communities to divert resources to the frontier rural communities and townships that require such a profound time commitment to travel; this maneuver would undoubtedly leave existing clients without the recourse promised to them. To that end, this project allows for [REDACTED] to further develop its role as a trusted presence throughout the entirety of the state – most especially amongst the Indigenous communities. [REDACTED] arrival at this conclusion – the necessity of a capacity-building effort – has been marked by engagement with stakeholders, experts, and voices representing the identified communities to develop a thorough program design; **all of these conversations revealed that [REDACTED] must hire additional staff to increase its investigative and legal capacity, as well as its organizational knowledge of criminal justice in rural and Indigenous communities.**

This initiative dedicates a staff attorney, a paralegal, 5-7 contract investigators, pro-bono attorneys/investigators, MSW practicum students, and partnerships to address the lack of access to [REDACTED] services in rural and marginalized communities (Indigenous communities). By increasing familiarity and knowledge of recourse available, [REDACTED] aims to improve case reviews and reduce wrongful convictions, achieving BJA funding objectives. This project focuses on

fostering trust and meaningful engagement with these communities through effective, dignified work and accessibility.

This project stands alone in [REDACTED] is the only WCR entity in the state. As mentioned in the ‘Description of the Issue’ section, there was an attempt at this year’s legislative session ([REDACTED]) to form a CIU, but that bill did not survive transmittal from the House to the State Senate. Indeed, the work of task forces, consortiums, and coalitions in the state such as the [REDACTED] [REDACTED] and [REDACTED] [REDACTED] generates an increasing focus on ensuring that the right people are held accountable for their crimes, but in terms of litigation, [REDACTED] is the sole entity in the state. To that end, this project builds upon the efforts of its existing work, thereby increasing the breadth and depth of its capacity to review, investigate, and litigate wrongful convictions, with that expansion occurring within the rural, marginalized Indigenous populations and communities of the state.

[REDACTED] petitions for DNA testing on a variety of its cases. The mechanism it uses to petition the Court to do so being [REDACTED], which states: [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

If and when forensic evidence – including DNA evidence – is used/analyzed in the aforementioned manner, [REDACTED] cooperates with the court and relevant law enforcement to run the existing DNA (or new DNA evidence) through the Federal DNA Database Unit against

individuals whose profiles are in the National DNA Index System/Combined DNA Index System (CODUS) in hopes of evidence that can be leveraged toward apprehending the true perpetrators of the crime for which [REDACTED] clients have been wrongfully convicted. **In 2018, as a result of a [REDACTED] DNA petition to the court, the analysis of the forensic evidence against CODUS led to the apprehension of the true perpetrator (combined with corroborative evidence).**

This project seeks priority consideration for Priority 1(A) in that it promotes racial equity and the removal of barriers to access and opportunity for [REDACTED] communities that have been historically underserved, marginalized, and adversely affected by inequality – [REDACTED]

Indigenous communities: [REDACTED]
[REDACTED]

[REDACTED]. The [REDACTED] approach of comprehensively outreaching to tribal governments, tribal community centers, tribal health centers, and the NGOs in non-reservation areas that serve the Indigenous communities ensures meaningful accessibility. Due to the overwhelming socio-economic inequity experienced by Indigenous communities, outreach must be approached differently than what may be considered effective for non-Indigenous populations. According to the U.S. Substance Abuse and Mental Health Services Administration’s (SAMHSA) Tribal Affairs and Policy Best Practice, outreach to those communities must involve a tangible acknowledgement of the importance of historical trauma; role of culture and cultural identity; recognition of sovereignty; significance of community; and value of cultural awareness. Building on the inroads [REDACTED] and its leadership has already developed with [REDACTED] Indigenous communities, this project and its approach will increase drastically the capacity to effectively communicate with this marginalized population, increase

cooperation that will support [REDACTED] work to address wrongful convictions, and increase the number of Indigenous clients whose cases move to [REDACTED] pre-litigation stage.

c. Capabilities and Competencies

A 12-person Board of Directors governs the mission of [REDACTED] (30% of which identify as Indigenous people), and thereby its overall work throughout the state, including work toward the implementation of this strategy. On a day-to-day level, though, [REDACTED] is comprehensively led by its executive director, [REDACTED] [REDACTED] who directly supervises the three existing paid positions at the agency: [REDACTED], administrative and program support specialist; [REDACTED], communications and outreach manager; and [REDACTED], legal director. [REDACTED] and [REDACTED] involvement will be supportive in nature. [REDACTED] will directly supervise the work of the attorney, paralegal, and contract investigators. [REDACTED] currently supervises the work of clinical law students and pro-bono attorneys. [REDACTED] [REDACTED] will maintain regular communication with the staff attorney and the contract investigators to maintain relationships and strategize active cases. Applicant intake to [REDACTED] services will be addressed by the paralegal, and their work will also be supervised by [REDACTED].

The existing key partner for this strategy is the [REDACTED] (MOU attached). The overall relationship between [REDACTED] and [REDACTED] is managed by both [REDACTED] and [REDACTED]. The product of that relationship is pro-bono & contract investigators who are members of Indigenous communities in [REDACTED]. As the relationship develops, the ancillary benefit is more targeted outreach to Indigenous communities. As relationships intensify and are codified, this network of key partners will grow; the work of existing staff and the yet-to-be-hired attorney is to place an emphasis on the development of codified relationships with tribal governments on all seven of [REDACTED] reservations, with urban Indian community and health

centers, and with relevant community centers used by ██████ Indigenous communities.

Progress toward meeting the relationship establishment and codification goals will be monitored by ██████ and ██████, and will develop MOUs with entities as they agree to participate in this process.

██████ will implement an enhanced model for ██████ Indigenous communities to double efforts to address wrongful convictions and build upon previous success. ██████ has exonerated seven wrongfully convicted individuals; and secured probation and parole for two Indigenous clients in the past year, while continuing to litigate their full exoneration.

██████ staff are uniquely qualified to implement this strategy – and the management structure is directly tied – by direct attribution of each existing partner and proposed position’s duties correlating directly to working with the Indigenous population. As requested, key staff resumes are attached, but in summation:

████████████████████, *Executive Director*: Unique career removing barriers to equitable service for marginalized populations • Direct experience analyzing and prioritizing cases, assessing trends, and leveraging the knowledge resulting from that work • Leadership roles with ██████ Justice Foundation, ██████ Bar Foundation • Law degree from University of ██████ School of Law.

████████████████████, *Legal Director*: Direct experience (9 years) in post-conviction relief services • Four years’ experience in criminal defense • Direct experience supervising work of pro-bono attorneys, law students, investigators • Direct experience analyzing and prioritizing cases • Law degree from ██████ University, ██████ School of Law.

████████████████████ is a key partner in operationalizing this project’s approach. They use Indigenous traditions of data gathering and knowledge transfer to effectively collect and disseminate large quantities of data. Their approach will be crucial in ongoing knowledge

sharing with the BJA, State of [REDACTED], and WCRs to create a replicable model of post-conviction services for Indigenous populations.

[REDACTED] will recruit a staff attorney, a paralegal, and 5-7 contract investigators for this project through a strategic plan focused on qualified applicants from Indigenous communities. The attorney will be selected based on their credibility within the community, in addition to meeting the necessary education and experience requirements outlined in the attached job description. Contract investigators will be recruited through a comprehensive search using employment websites, on-site recruitment at the law school, and existing relationships with Indigenous communities and decision-makers. Interviews have started in April 2023.

Application implementation is to be led by executive director [REDACTED], with close coordination with legal director [REDACTED]. The screening, evaluation, and legal representation of post-conviction claims of innocence will see the direct involvement of [REDACTED], with the direct representation of the staff attorney to be hired.

d. Plan for Collecting the Data Required for this Solicitation's Performance Measures

At [REDACTED] data are collected by attorneys, investigators, law student clinicians, and the legal director (client-level data, partner data, outcomes, court-based information such as motions, briefs, subpoenas, etc). Upon collection, these data are input to Clio by the paralegal position. Clio is a cloud-based software for law firms that handles various law practice management tasks including client intake, contact management, calendaring, document management, timekeeping, billing, and trust accounting. On a quarterly basis – and upon BJA request – data corresponding to deliverables and the ‘Upholding the rule of Law and Preventing Wrongful Convictions’ performance measures relating to General Award Administration, Case Review, and Partnerships are uploaded via the JustGrants platform.