



**Statement of  
the Honorable Peter Yucupicio, Chairman  
Pascua Yaqui Tribe of Arizona  
Before the  
The Department of the Interior &  
United States Department of Justice  
Oklahoma v. Castro-Huerta Listening Session  
Monday, September 26, 2022, 3:00 -5:00 p.m. EST**

Lios enchi ania Kettle allea, hello, my name is Peter Yucupicio, and I currently serve as the Chairman of the Pascua Yaqui Tribe, a Federally Recognized Tribe from the State of Arizona. Thank you for the opportunity for the Pascua Yaqui Tribe to contribute to the discourse regarding the recent *Oklahoma v. Castro-Huerta* case. I want to begin by thanking the United States Congress, the Biden Administration, the Department of Justice (DOJ), the Department of the Interior (DOI), the National Congress of American Indians (NCAI), the Tribal Law & Policy Institute (TLPI), and the National Council of Juvenile & Family Court Judges (NCJFCJ)<sup>1</sup> for their leadership and assistance regarding criminal jurisdiction matters, VAWA 2013 SDVCJ, VAWA 2022 STCJ implementation, and the development and funding of tribal justice programs, it has made our community safer.

Without question, it is important to start with the premise that the Pascua Yaqui Tribe's first duty has always been to protect and safeguard its citizenry, the people. A crime against one person is an offense against the people and the sovereign laws of our government. The Pascua Yaqui Tribe's sovereignty and duty to protect operate in large part to safeguard the political integrity, economic security, and the health and welfare of our community. Nothing is more important or vital to the health and survival of our people. Our governing Council retains and exercises the power to prescribe and enforce our internal criminal and civil laws.<sup>2</sup>

Our ancestors walked the earth by the grace of the Creator; they were indigenous and roamed our aboriginal territory from Durango in Southern Mexico, north to Colorado, and west to present day

---

<sup>1</sup> Humble thanks and praise to the United States Congress for passing the Reauthorization of VAWA, thank you to President Biden and Vice President Harris for championing this historic legislation and signing it into law, thanks to the Department of Justice, (DOJ), OTJ Director Tracy Toulou, and National Indian Country Training Coordinator Leslie Hagen. Thanks for the efforts of the Department of the Interior (DOI), and Associate Director Tricia Tingle. Thanks to Technical Assistance providers: The National Congress of American Indians, (NCAI), the Tribal Law & Policy Institute (TLPI), Chia Halpern Beetso & Jerry Gardner, and the National Council of Juvenile & Family Court Judges (NCJFCJ). Finally, thank you to all the members of the Intertribal Technical Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG).

<sup>2</sup> "Tribes still possess aspects of sovereignty not withdrawn by treaty, or statute, or by implication..." *United States v. Wheeler*, 435 U.S. 313, 323, 55 L. Ed. 2d 303, 98 S. Ct. 1079 (1978).

California. The Tribe has prospered and endured in our Rio Yaqui homeland since time immemorial. Authority was inherent and derived in part by our elder's ability to protect, provide, and administer to the needs of the people. For nearly 500 years, the Yaqui people have fought to protect our homelands and way of life.<sup>3</sup> Long before the marking of the international border and the birth of the State of Arizona, the Pascua Yaqui people had settled in various communities from present day Tumacacori, to Guadalupe, Arizona. In 1964, Congressman Morris K. Udall introduced a bill in Congress authorizing the transfer of 202 acres of land to our Yaqui elders southwest of the City of Tucson, Arizona.<sup>4</sup> On September 18, 1978, Congress, through Public Law 95-375, recognized the Tribe as a United States Indian Tribe.<sup>5</sup>

### **Problem:**

In 2022, Indian Country is still experiencing a public safety and public health crisis created primarily by misguided policies and a series of outdated federal statutes and federal court decisions that specify that Tribes lack the territorial, criminal, and civil jurisdiction that states possess. Instead, criminal jurisdiction in Indian country is divided between three jurisdictions, a three-pronged, overlapping, "jurisdictional maze" that lacks proper coordination, communication, and accountability. This is the primary reason for victims being neglected, offenders escaping punishment, and for the human rights crisis of Missing and Murdered Indigenous Women and Girls (MMIWG). Colonial flashpoints and genocidal policies disrupted traditional tribal cultural lifeways, health, safety, food cultivation, subsistence activities, and free seasonal movement for hunting, gathering, and sustainability practices. The problems are multi-jurisdictional and multi-layered. The roots of injustice go back hundreds of years and what we currently are experiencing are the natural consequences of a broken jurisdictional structure. From Alaska to Maine, federal laws and court cases should not prevent or handcuff our tribe from doing what our ancestors once did, protect their way of life.

Fractured authority creates a great deal of confusion and requires extensive coordination between police departments, prosecutors' offices, court systems, probation, parole offices, and victim services providers. The current system has helped to perpetuate a lawless atmosphere where marginalized tribal victims must flee their communities and are displaced from their own homelands. Tribal victims flee for safety and take refuge in surrounding cities where support services are not tuned in to the problem, where people do not understand the suffering that comes with decades of abuse, racism, and historical trauma, and where victims are targeted for human

---

<sup>3</sup> The Pascua Yaqui are an ancient and enduring people, indigenous to this land. As the story of our struggle is told, it started in 1533 "with a line drawn in the sand by a Yaqui leader, he proclaimed to an invading group of Spanish Conquistadors, "Up to this line and as far as the eye can see in these three directions, is Yaqui land. No invaders will be allowed to enter." After a fierce battle, the Spaniards defeated, went away describing the Yaquis as "the fiercest fighters in the New World." Nearly 500 years later, having battled at least three separate government armies, following periods of brutal war, massacre, deportation, slave labor, a policy of extermination, and genocide, the torch has been passed so that we may continue the fight. The power and authority of the Yaqui people was not dependent on Congress regulating commerce, Yaqui sovereignty existed prior to and within or without the boundaries of newly formed states, and within or without the new territorial limits of the United States.

<sup>4</sup> Act of October 8, 1964, Private Law 88-350, 78 Stat 1196.

<sup>5</sup> 25 U.S. Code § 1300f - Status of Pascua Yaqui Indian People. Pub. L. 95-375, § 1, Sept. 18, 1978, 92 Stat. 712; Pub. L. 103-357, § 1(a), Oct. 14, 1994, 108 Stat. 3418.

trafficking, and sexually and economically exploited. These issues are systemic and institutional. Outdated programs and policies were not meant to support thriving Native American communities; they were meant to simply deal with the “Indian problem” of the time. A few hundred years later, with the federal government, states, and tribes each responsible for some criminal and civil jurisdiction, the crisis has only grown. The first responsibility of any government, tribal or otherwise, is the safety and protection of its people. There can be no security or peace where there is insecurity, violence, and fear. Violent behavior against intimate partners or vulnerable family members by tribal members or non-Indians and missing and murdered family members are problems that can no longer be tolerated. Protecting victims of violent crime, domestic violence, and sexual assault is about justice and safety, and the starting place to reverse historical jurisdictional problems and injustices in Indian Country is with strong tribal justice systems and regional coordination and cooperation. Tribes are in the best position to close jurisdictional gaps and safe havens for lawbreakers in Indian Country.

### **Background:**

Recently, the Supreme Court in an Indian Country criminal jurisdiction case, *Oklahoma v. Castro-Huerta*,<sup>6</sup> ruled in a 5-4 decision, that the federal government, tribes, and states have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. The Court indicated that the opinion applies to Oklahoma and all other states.<sup>7</sup> *Oklahoma v. Castro-Huerta* is concerning, as it overturns long held Indian Law foundational Supreme Court precedent where states have been prohibited from asserting jurisdiction over reservation crimes involving Indians, absent a federal law to the contrary. *Castro-Huerta* was a direct response to the *McGirt v. Oklahoma*<sup>8</sup> decision, but the facts and the landscape across Indian Country, from an on-the-ground practical perspective, is anything but what was described by the court, especially in Arizona. On initial review, the ruling does apply to Arizona Indian Country, but operationally, on the Pascua Yaqui Tribe’s Reservation, the short-term impact will cause confusion and uncertainty. The long-term impact may ultimately provide an opportunity for increased safety, cooperation, and coordination.

The Pascua Yaqui Tribe, a distinct community occupying its own territory, was federally recognized in 1978 as a “PL-280”<sup>9</sup> Tribe, where the State of Arizona had civil and criminal jurisdiction on our Reservation. The Pascua Yaqui Tribe’s reservation currently consists of 2,200 acres situated approximately 10 miles southwest of Tucson, Arizona, in the major metropolitan area of Pima County. For many reasons, state jurisdiction did not work for our community.<sup>10</sup> In

---

<sup>6</sup>*Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022).

<sup>7</sup> See *Oklahoma v. Castro-Huerta*, 597 U.S. (2022), slip op. at 24 n.9.

<sup>8</sup> *McGirt v. Oklahoma*, 140 U.S. 2452 (2020). The Court held the Muscogee Creek Nation’s reservation—and by implication, the reservations of the other tribes in eastern Oklahoma—had never been disestablished.

<sup>9</sup> Public Law 83-280(PL 280)18 U.S.C. § 1162(a); 28 U.S.C. § 1360(a).

<sup>10</sup> Yaquis are multi-dimensional, a treaty Tribe, a fish tribe, and transnational people separated by the international border. Yaquis speak an ancient mother tongue characterized as Uto-Aztecan, the Yaqui dialect of the language called Cahita, and it links us orally to our relatives who are scattered across North America: the Shoshone, Hopi, Paiute, Cahuilla, the Ute Nation, the Pimas, O’odham, Tarahumara, Opata, Mayo, Comanche, and Nahua. Yaqui people have our own religion, our own creation story, and deep cultural and historical roots. Our history and sovereignty predate the State of Arizona, Mexico, and the cities of Tucson and Phoenix.

1985, the Tribe decided to “retrocede.” Arizona Governor Bruce Babbitt signed a proclamation that supported the Tribe’s request for retrocession and it was accepted by the federal government.<sup>11</sup> Between 1985 and 1988, the Department of Interior operates a court system through a “Court of Indian Offenses,” a “CFR” Court operated by the Bureau of Indian Affairs, (B.I.A.). In 1988, unsatisfied with the services provided by the BIA, the Tribe took over the judicial system through a B.I.A. 638 contract. Over the course of three decades, the Pascua Yaqui Tribe has worked with our federal partners, the Pascua Yaqui tribal court, and the U.S. Federal District Court to prosecute crimes, including crimes involving non-Indian offenders. The Tribe, the State of Arizona, and the federal government agreed that the Tribe and the U.S. Government should have criminal and civil jurisdiction in most cases.

The Pascua Yaqui Tribe (“PYT”) is a federally recognized Indian tribe, possessing all the attributes of inherent sovereignty that have not specifically been taken away by acts of Congress. The Tribe has over 21,000 active enrolled tribal members, approximately 5-6000 people reside on the Reservation. Crime does not respect borders and the influx of illegal drugs, guns, and wrongdoers from surrounding communities is a major issue that impacts the safety of our community and strains our criminal justice system. According to U.S. Census data, Pascua Yaqui Reservation residents include 500 non-Indians and a small number of individuals who are members of other tribes. PYT was among the first three tribal Nations to exercise restored criminal jurisdiction under VAWA 2013, § 904, by implementing all necessary provisions of VAWA Special Domestic Violence Criminal Jurisdiction (“SDVCJ”) and was approved by the United States Attorney General for early exercise of that authority.<sup>12</sup> On July 2, 2014, The Pascua Yaqui Tribe was the first tribe to convict a non-Indian defendant in tribal court since the 1978 U.S. Supreme Court decision *Oliphant v. Suquamish*. On May 9, 2017, the first jury trial conviction of a non-Indian DV defendant under VAWA occurred, in the Pascua Yaqui Tribe’s Tribal Court. In 2018, the tribe was awarded the National Congress of American Indians (NCAI) distinguished leaders in Indian Country at NCAI’s 20th Annual Leadership Awards. The Tribe was recognized for leading the successful implementation of the groundbreaking tribal jurisdiction provisions in the Violence Against Women Act of 2013.

---

<sup>11</sup> 50 Fed. Reg. 34, 555.

<sup>12</sup> On February 6, 2014, the Pascua Yaqui Tribe received official notice that pursuant to VAWA 2013, the Tribe was designated a participating Pilot Tribe to exercise SDVCJ. <http://www.justice.gov/tribal/docs/letter-to-pascua-yaqui.pdf>; On **February 12, 2014** VAWA Pilot information was posted for notice in the Federal Register by the Department of Justice. Fed. Reg. Volume 79, Number 29 (Wednesday, February 12, 2014)[Notices][Pages 8487-8488] Federal Register Online via the Government Printing Office [www.gpo.gov] [FR Doc No: 2014-03023] <http://regulations.justia.com/regulations/fedreg/2014/02/12/2014-03023.html> See also 78 Fed. Reg. 71645 (Nov. 29, 2013)

One of the primary objectives of the Violence Against Women Act<sup>13</sup> of 2013 and the Tribal Law and Order Act of 2010 (hereinafter “TLOA”),<sup>14</sup> was to close jurisdictional loopholes.<sup>15</sup> Through VAWA 2013, Congress reaffirmed tribes’ inherent authority to prosecute all persons who commit dating violence, domestic violence, or who violate a protective order against Indian women on tribal land. Prior to 2013, tribes lacked criminal jurisdiction over non-Indians.<sup>16</sup> Since VAWA implementation in February 2014, and prior to the *McGirt* decision, PYT had experienced the most investigations, cases, and convictions of non-Indian perpetrators across the country. VAWA 2013 authorized tribes, including Pascua Yaqui, to exercise SDVCJ over non-Indian defendants and the exercise of SDVCJ during the initial pilot project period resulted in 27 arrests of 23 offenders, 12 guilty pleas, 2 referrals for federal prosecution, 1 acquittal, 11 dismissals, 1 outstanding warrant, and no habeas corpus appeals; reflecting that non-Indian domestic violence and crime on Indian Reservations was an ongoing regional problem. Since 2014, the tribe has investigated over 108 criminal matters perpetrated by non-Indian offenders in SDVCJ cases, many of those cases were violent assaultive crimes, and importantly, they were cases that weren’t being prosecuted by the state or the federal government.<sup>17</sup> Under *Castro-Huerta*, the state of Arizona will have concurrent jurisdiction over similar cases that arise on our Reservation in the future.<sup>18</sup>

The Pascua Yaqui Tribe has been exercising jurisdiction over non-Indian domestic violence offenders under VAWA 2013 for nearly 9 years. Despite the success, perpetrators still found gaps in the law. There have been approximately 32 children present during the acts of domestic violence at Pascua Yaqui. These children ranged in age from infant to 11 years old. Some of them have been witnesses to domestic violence, the reporting party of the domestic violence act(s), and victims themselves, that the tribe could not protect. This gap in jurisdiction prevented the Tribe from protecting the most vulnerable and impressionable of our people, our children. Other typical situations of domestic violence gave rise to circumstances which would otherwise be chargeable crimes had the perpetrator been tribal or if the crime occurred off the reservation and the State handled the prosecution, such as:

---

<sup>13</sup> 25 U.S.C §1304 (2013).

<sup>14</sup> Pub. L. 111-211, Title II (2010), 25 U.S.C. §2810, et. seq.: the Tribal Law and Order Act of 2010 (TLOA) The purpose of TLOA was to clarify responsibilities with respect to prosecuting crimes committed in Indian country; increasing coordination and communication between federal, state, tribal, and local law enforcement; empowering tribal governments to provide public safety; and increasing and standardizing the collection of criminal data. VAWA 2013 recognized tribal authority to exercise concurrent criminal jurisdiction over domestic violence cases, regardless of whether the defendant is Indian or non-Indian; clarified that tribal courts have civil jurisdiction to issue and enforce protection orders involving any person, Indian or non-Indian; created federal statutes to address crimes of violence committed against a spouse or intimate partner; and provided more robust federal sentences for acts of domestic violence in Indian country.

<sup>15</sup> A purpose that will be further served by an Intergovernmental Agreement between the Pascua Yaqui Tribe and Pima County, and a Tribal Special Deputy County Attorney program.

<sup>16</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978); Tribes can assert civil jurisdiction over non-Indians in Indian country in two circumstances: 1.) over non-Indians who enter a consensual relationship with the tribe or its citizens or 2.) over non-Indians engaged in conduct that imperils tribal welfare. *Montana v. United States*, 450 U.S. 544, 566 (1981).

<sup>17</sup> PYT has conducted over 108 investigations of domestic violence perpetrated by 64 non-Indian defendants (57 male, 7 female). There have been 80 cases charged in the Pascua Yaqui Tribal Court, resulting in 37 convictions.

<sup>18</sup> Pascua Yaqui tribal members are tribal citizens, state citizens, and U.S. federal citizens, and each sovereign government has specific responsibilities to protect tribal members by enforcing their criminal and civil laws.

- A non-tribal offender was arrested for domestic violence, but there was a secondary victim present, i.e., the sister of the original victim. The Tribe was unable to issue any charges relating to the victimization of the sister due to lack of jurisdiction.
- The Tribe also lacked jurisdiction in a case where the Defendant, who was on probation for a VAWA-related offense, violated the terms and conditions of his probation specifically prohibiting his possession and/or use of narcotic drugs. There were no allegations that the Defendant committed any new domestic violence related offenses against a tribal member. The case was ultimately declined as the Defendant’s possession/use of narcotic drugs did not fall within in the limited scope of SDVCJ jurisdiction, even as a probation violation.
- In another case, during the pendency of a VAWA investigation, the victim had a new boyfriend who is a tribal officer, and the Defendant made threats against him. However, the Tribe could not charge the threats against the new boyfriend, even though he is a Tribal officer, due to lack of jurisdiction.

These cases could not be charged by the Tribe, and they were not charged by the State of Arizona, or the U.S. Attorney.<sup>19</sup> This does not mean there was no domestic violence occurring in the homes, but that the Tribe was limited in its response to the domestic violence and other violent acts.

On March 15, 2022, President Biden signed the Violence Against Women Act Reauthorization bill (VAWA 2022) in the Consolidated Appropriations Act of 2022, Public Law 117-103, which included significant amendments to 25 U.S.C. 1304, to include expanding Tribal criminal jurisdiction, in part, because of the data sharing and experience of the Pascua Yaqui Tribe’s implementation of VAWA 2013’s SDVCJ. Due to the success of VAWA 2013 and the need to address additional non-Indian related crime, Congress expanded special criminal jurisdiction of Tribal courts to cover non-Native perpetrators of sexual assault, child abuse, stalking, sex trafficking, obstruction of justice, and assaults on tribal law enforcement officers on tribal land.<sup>20</sup> On July 27, 2022, in order to control our internal relations, help preserve our customs, and keep our community safe, the Pascua Yaqui Tribal Council adopted resolutions amending the Tribe’s criminal code to exercise VAWA’s additional restored criminal authority and empowered the Pascua Yaqui Prosecutor’s Office to operate a Tribal Special Deputy County Attorney program.<sup>21</sup> The Special Tribal Criminal Jurisdiction provisions of VAWA 2022 go into effect on October 1, 2022.<sup>22</sup>

---

<sup>19</sup> *United States v. Bryant*, 136 S. Ct. 1954, 1960 (2016) (“Even when capable of exercising jurisdiction, however, States have not devoted their limited criminal justice resources to crimes committed in Indian country.”)

<sup>20</sup> Violence Against Women Act Reauthorization Act of 2022 (“VAWA 2022”). Pub. L. No. 117-103, 136 Stat. 49 (2022); 25 U.S.C. 1304(d)(2).

<sup>21</sup> Resolution No. C07-219-22 (Ord. 50-22); Resolution of the Pascua Yaqui Tribe Approving an Ordinance Comprehensively Revising the Criminal Code to Fully Exercise and Implement Special Tribal Criminal Jurisdiction as Authorized in the Violence Against Women Act Reauthorization Bill of 2022 and Enhanced Sentencing Authority as Authorized in the Tribal Law and Order Act of 2010; Resolution No. C07-226-22; Resolution of the Pascua Yaqui Tribe Amending Title 2, Part II, Chapter 2-17 of the Pascua Yaqui Code; <https://www.pascuayaqui-nsn.gov/tribal-code-v1/>

<sup>22</sup> Recent reforms amended criminal offenses, the rules of criminal procedure and rules of evidence, and the development of a new criminal sentencing structure.

The exercise of jurisdiction over tribal and non-tribal offenders who commit crimes on the Pascua Yaqui reservation demonstrates a willingness on the part of the Tribe to protect the most vulnerable members of the tribal community.<sup>23</sup> Up until, 1918 in the United States, and 1929 in Mexico, our leaders never hesitated to shed blood or give their lives for the defense of the Yaqui way of life.<sup>24</sup> For hundreds of years, Pascua Yaqui ancestors fought to preserve the territorial integrity of their homeland and to protect their people. The decision to exercise SDVCJ to protect tribal victims is a mission that is consistent with that history. Pascua Yaqui was chosen for the VAWA Pilot Project, in part, because our leaders felt it was important to provide protection to our community members when it was not being provided before.

Now, with the passage of VAWA 2022 and an increase in Special Tribal Criminal Jurisdiction over additional covered crimes, the Tribe plans to proactively protect community members by prosecuting more serious criminal cases in collaboration with the federal government. The revised Pascua Yaqui Criminal Code takes advantage of enhanced punishment for the worst offenders, while retaining the opportunity for holistic treatment and services for those who need it most. The Tribe's new criminal code amendments completes robust criminal justice system reforms which have been developed over the last few decades and promises not only increased safety for the community but maintains strong due process and civil rights protections for criminal offenders.

Since 2015, the Pascua Yaqui Office of the Prosecutor has coordinated criminal justice meetings with all Reservation based criminal justice stakeholders to collaboratively discuss criminal code reform. Present at the meetings were the Tribal Court, Probation department, Office of the Prosecutor, Law Enforcement, Public Defender's, and the Office of the Attorney General. The stakeholders also met with Yaqui cultural leaders to discuss the philosophy of Yaqui justice and the appropriateness of implementation. The amended criminal code and sentencing structure was also presented to the community for input.<sup>25</sup> The justice system departments presented at several community meetings to take questions and obtain community input, including: (1) a Yaqui Elder presentation at the Senior Center on May 9, 2016, (2) a General Community meeting on May 10, 2016, (3) a General Community meeting on May 12, 2016, (4) Pascua Yaqui Anti-Drug Initiative Town Hall Meeting October 26, 2021, (5) Pascua Yaqui Youth Panel on December 11, 2021, at the Education Building, (6) Created a Criminal Code Video for YouTube-March 1, 2022,<sup>26</sup> (7) a "Pascua Is Family" Radio Series with the Office of the Prosecutor on KPYT Radio Station on

---

<sup>23</sup> Many of the non-Indian VAWA offenders were residents who lived on Reservation, were in long term relationships with tribal members, parents of tribal children, or were spouses of tribal members. Some offenders are lineal tribal descendants who did not qualify for enrollment, but lived in tribal housing, were cultural participants, and who enjoyed tribal services like fire and police protection and other tribal services. The same non-Indians offenders may qualify for jury duty in tribal court, if they were employed by the tribe, resided in tribal housing, or were spouses of tribal members. Jury eligibility is open to nonmember Indians as well as being open to non-Indian residents or employees.

<sup>24</sup> On January 9, 1918, the last time the United States Army and Native Americans engaged in combat was the Battle of Bear Valley, an engagement fought between a band of Yaquis and a detachment of United States Army soldiers of the American 10th Cavalry Regiment (Buffalo Soldiers), near Arivaca, Arizona. It was the final official battle of the American Indian Wars. However, the Yaqui were still engaged in defense of their people in war with Mexico, the last major engagement of the Yaqui Mexican Wars came in what was called "The Yaqui Revolt of 1926–1929.

<sup>25</sup> An Indian tribe may also regulate the conduct of its members on the reservation. *Montana v. United States*, 450 U.S. 544, 564, 67 L. Ed. 2d 493, 101 S. Ct. 1245 (1981).

<sup>26</sup> [https://www.youtube.com/watch?v=vwrfAC\\_qjE](https://www.youtube.com/watch?v=vwrfAC_qjE)

March 17, 2022, (8) Criminal Code Sessions for Public on June 14, 2022, June 18, 2022 and June 28, 2022, at the PYT Health and Social Service Building, (9) Criminal Code Public Session at the Senior Center on July 13, 2022; and (10) in 2017 the Office of the Prosecutor coordinated a meeting with cultural leaders from all Yaqui communities to provide a presentation, solicit input, review the draft code, and seek input on how to incorporate the importance of Yaqui cultural in the criminal code.

The tribe employs Arizona State Certified police officers and investigators pursuant to A.R.S. 13-3874 and AZPOST.<sup>27</sup> The officers also have their federal Special Law Enforcement Commission (SLEC), pursuant to the Tribal Law and Order Act (TLOA). PYT officers investigate non-Indian crimes that happen on our reservation and are authorized to enforce state, tribal, and federal law.<sup>28</sup> The Tribe also works closely with the Federal Bureau of Investigation (F.B.I.) and employs Special Assistant U.S. Attorneys in our Prosecutors Office. This carefully developed tribal government policy established a strong coordinated and codified Tribal/Federal criminal regime and domestic violence prevention initiative on the Pascua Yaqui Tribe's reservation. The protection of our community is an essential aspect of the Tribe's sovereignty and self-governance.<sup>29</sup> The non-Indian domestic violence cases investigated and prosecuted by the Pascua Yaqui Tribe are significant because they highlight crimes that were never prosecuted before the implementation of VAWA 2013. They are not intra-racial crimes; they are crimes committed by non-Native perpetrators and the cases provide evidence of a serious jurisdictional gap that still exists in Arizona and across Indian Country. The Tribe is committed to collaborating with its state, county, and federal partners to ensure the public safety of its community through restored jurisdiction and intergovernmental agreements. VAWA 2013 Special Domestic Violence Criminal Jurisdiction was a positive step forward to ensuring the safety of our community, but additional tools are necessary to ensure that there are no safe havens for wrongdoers.<sup>30</sup>

## **Department of Justice and Department of Interior Listening Session Questions:**

### **1. What is the impact of this Supreme Court decision on your law enforcement or justice systems?**

The Supreme Court's decision is an attack on tribal sovereignty and an impediment to the progress of the Pascua Yaqui Tribe to exercise our inherent sovereignty over our own territory and intrudes

---

<sup>27</sup> Tribes "may employ police officers to aid in the enforcement of tribal law and in the exercise of tribal power." *Ortiz-Barraza v. United States*, 512 F.2d 1176, 1179 (9th Cir.1975)

<sup>28</sup> On June 1, 2021, the Supreme Court unanimously found in *United States v. Cooley* that a Crow tribal police officer had the authority to detain and search a non-Native suspected of committing a crime on a highway crossing through the Crow Reservation. A tribal police officer has authority to detain temporarily and to search non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law. Tribes retains inherent authority over the conduct of non-Indians "when that conduct threatens or has some direct effect on . . . the health or welfare of the tribe. "Tribes "have inherent sovereignty independent of th[e] authority arising from their power to exclude..." *Brendale v. Confederated Tribes and Bands of Yakima Nation*, 492 U. S. 408, 425.

<sup>29</sup> See *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980).

<sup>30</sup> If all 22 Tribes in Arizona had exercised VAWA Jurisdiction for 5 years, and each averaged only 20 cases, a conservative estimate of 400-500 cases of non-Indian domestic violence cases could of likely been prosecuted, where victims and their families would have been protected.



upon Congress's plenary and exclusive authority to legislate on Indian affairs.<sup>31</sup> Apart from the judicial granting of state authority to prosecute non-Indians for crimes committed against Indians in Indian country, the immediate impact is confusion and uncertainty, the long-term impact of the *Castro-Huerta* decision is unclear at this time. However, we can't wait to address this important public safety matter. Any uncoordinated exercise of state authority under this ruling could infringe on the Tribe's right to self-government, could disrupt the ongoing prosecution of non-Indian criminal cases, and could cause additional jurisdictional uncertainty.<sup>32</sup> For example, how will a state obtain proof of enrollment records to support exercising jurisdiction? Via the domestication of a tribal court of a state subpoena seeking such records. How, and by what mechanism will this be facilitated by, if not by tribal justice authorities through an agreement, court order, or codified process? *Castro-Huerta* could create a situation where reservation residents, Indian and non-Indian, may be exposed to harm and injury where no agency responds to an emergency call. Pascua Yaqui residents could face greater exposure to harm where there is a poor emergency response that would be different than similarly situated persons near our reservation. Any uncoordinated exercise of jurisdiction would clearly interfere with rights essential to Pascua Yaqui's self-government and infringe on our right to make our own laws and be ruled by them. The Pascua Yaqui Tribe was subjected to state jurisdiction between 1978 and 1985, and the Tribe decided to operate its own justice system because it was our sovereign right, more efficient, and healthier for our community. The Pascua Yaqui Tribe is a separate sovereign government, and the best justice is local justice delivered through a structured and coordinated process. The jurisdiction the Tribe currently exercises is tethered by federal law through coordination with the U.S. Attorney General, the Bureau of Indian Affairs, the F.B.I., and the U.S. Department of Justice.

The United States Congress and Department of Justice have a responsibility to invoke its trust relationship with the Pascua Yaqui Tribe to prevent any unconsented state interference with tribal laws, jurisdiction, and policies. Pascua Yaqui tribal members and other reservation residents are American citizens, entitled to equal protection of the law. The federal government has a trust and treaty responsibility to keep Native American communities safe, and the federal government is currently not meeting that obligation. These problems existed before *McGirt* and *Castro-Huerta*. A "culture of lawfulness" can only exist when the tribal community culture, ethos, and beliefs support the fair and even application of laws to tribal activities. Laws must be applied without regard to an individual's family, ethnicity, race, gender, political, or citizenship status. The uneven application of the rule of law is a civil rights, racial justice, and gender equality issue.

The United States Congress and federal agencies should work to address these issues comprehensively through the full restoration of inherent tribal civil and criminal jurisdiction and

---

<sup>31</sup> *United States v. Lara*, 541 U.S. 193, 200 (2004).

<sup>32</sup> Normally, if a state sought to regulate non-Indian activity on a reservation, there would be an inquiry into the nature of the state, federal, and tribal interests at stake to determine whether the exercise of state authority would conflict with federal law or infringe on the right of the tribe to make its own laws and be ruled by them. There would be a balancing of Tribal sovereignty and the congressional goal of Indian self-government, versus the claim that state regulation and enforcement was necessary to prevent crime. See *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983); *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987); *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 144 (1980).

by providing the necessary resources to tribal governments and tribal justice systems.<sup>33</sup> The administration should support and reaffirm tribal criminal jurisdiction over all perpetrators for all federally recognized Indian tribes who wish to exercise such jurisdiction. Now that tribes guarantee all aspects of due process, there is no reason why criminal jurisdiction over non-Indian offenders should be limited to only a small subset of crimes. *Castro-Huerta* is a direct result of ambiguous and confusing federal laws. Under human rights norms, the sovereign U.S. federal government has a legal duty and the primary responsibility for protecting the safety and lives of all its citizens to promote their health and welfare, and to maintain peace and security. Political authorities are responsible for their acts of commission and omission and have an obligation to prevent violence by addressing both the root causes and direct causes of man-made Indian Country predicaments that put our population at risk.

However, the decision also means that tribal law enforcement officers and prosecutors, through negotiated intergovernmental agreements, may be able work collaboratively with the state to investigate, arrest, and prosecute state criminal matters where the Tribe lacks VAWA criminal jurisdiction. On one hand, *Castro-Huerta* was an abysmal affront to Indian law and settled precedent and does nothing to further jurisdictional certainty. On the other hand, *Castro-Huerta* may provide an opportunity for the Pascua Yaqui Tribe to maximize tribal criminal jurisdiction and develop overdue agreements with state and federal law enforcement partners. Tribal legislative bodies are enacting legislation to restore and increase tribal jurisdiction and sovereignty. Responsible changes will help reduce regional and violent crime over time as enforcement increases and the Tribe informs state and federal prosecutions.

## **2. Does this decision impact standing cooperative agreements or processes with state or federal agencies? If so, how?**

The Pascua Yaqui Tribe works well with state and federal partners and has laws and intergovernmental agreements that strengthen and inform those relationships. However, the unauthorized or uncoordinated exercise of criminal jurisdiction could add uncertainty and threatens the ability of tribes to continue to work collaboratively with state and federal agencies.

Pima County and the Pascua Yaqui Tribe have entered into many intergovernmental agreements, to include public safety, mutual aid, and wastewater agreements. In 1993, the Tribe entered into a User Agreement with the Arizona Department of Public Safety for NCIC and ACIC criminal information access via Tribal Resolution. In 2005, the Tribe entered into an Intergovernmental Agreement with Pima County to participate in the Pima County Regional Special Weapons and Tactics (SWAT) Team program for police SWAT services. In 2006, the Tribe approved an Intergovernmental Agreement with the State of Arizona Department of Public Safety for Crime Laboratory Services for purposes of processing evidence. In 2009, the Tribe entered into an Intergovernmental Agreement (IGA) with the Pima County Sheriff's Department for participation in the Spillman Records Management System and Computer Aided Dispatch System to enhance limited access to ACJIS, NCIC, ALETS, NLETS, and MVD databases. In 2010, the Tribe entered into an IGA with Pima County to take part in the Pima County Wireless Integrated Network

---

<sup>33</sup> See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978) (tribes may not exercise criminal jurisdiction over non-Indians, unless or until Congress acts to restore that jurisdiction).

(PCWIN). PCWIN provides improved public emergency services and regionally coordinated mutual aid. Since 2014, the Tribe has worked cooperatively with Pima County in 65 criminal matters to extradite state and tribal offenders to and from the Reservation. Utilizing A.R.S. 13-3869,<sup>34</sup>Pascua Yaqui is one of only a few tribes extraditing offenders from the State in Pima County to the Tribe on tribal warrants. Extraditions occur of persons to and from the Reservation.

**Special Assistant United States Attorney (SAUSA) Program.** In 2010, the Tribal Law and Order Act (TLOA) was passed, which allows tribes to impose sentences greater than one year for any one criminal offense. Within the same legislation was a provision for the SAUSA program. This program was created to improve the response to crime on reservations. This program enables tribal prosecutors to receive training on federal law and US Attorney practice. The program allows tribal prosecutors to bring cases into federal court for prosecution. This process allows tribal consideration throughout the criminal justice process and helps maintains a greater dialogue with federal prosecutors. Through an agreement with the U.S. Attorney's Office in Arizona, the Pascua Yaqui Office of the Prosecutor has four SAUSA's who help coordinate and improve federal prosecutions of major crimes. Our SAUSA's meet with the US Attorney's Office monthly at multi-disciplinary team (MDT) meeting to discuss crimes involving children as well as other major crimes. This process has strengthened and improved our relationship with our US Attorney's Office and enabled an improved response to our community's criminal justice needs.

**D.O.J. Tribal Access Program (TAP).** In August 2015, the U.S. Department of Justice (DOJ) launched the Tribal Access Program for National Crime Information (TAP), to provide tribes access to national crime information systems for both civil and criminal purposes. TAP allows tribes to serve and protect their community by ensuring the exchange of critical data across the Criminal Justice Information Services (CJIS) systems and other national crime information systems more effectively. In November 2015, it was announced that Pascua Yaqui Tribe was selected as a pilot tribe. The DOJ came out to the reservation and trained all users on CJIS/NCIC access. The Tribe is one of the first in the Nation to receive access to NCIC, through the F.B.I. The Tribe currently prosecutes crimes committed by non-Indians in domestic violence cases on the reservation through the exercise of Special Domestic Violence Criminal Jurisdiction (SDVCJ). The exercise of SDVCJ authority has exposed many gaps in justice information access and sharing

---

<sup>34</sup> 13-3869. Extradition of persons to and from Indian jurisdiction

A. If this state seeks the extradition of an Indian from within the jurisdiction of an Indian tribe in this state, this state shall comply with any applicable requirements of tribal extradition law.

B. An Indian tribe that permits extradition by this state of Indians from a tribal jurisdiction may request the extradition of Indians from state jurisdiction pursuant to this section.

C. An Indian tribe shall direct a demand for extradition to the county attorney of the county in which the person demanded is thought to be located, or if the location of the person is unknown, to the attorney general.

D. A written demand for extradition by an Indian tribe shall be recognized if the demand is accompanied by both:

1. A copy of a warrant issued for the person.

2. A criminal complaint or sworn statement made before a tribal judge substantially charging the person demanded with the commission of a crime under tribal law, with escape from confinement or with a violation of probation or parole.

E. The provisions of this article relating to extradition from a state that are not inconsistent with this section apply to extradition by an Indian tribe under this section. The public officer who receives the written demand under this section shall perform the functions of the governor under this article.

for tribes and off-reservation state agencies. TAP helps to remedy these gaps. PYT received access on August 2, 2016. The TAP allows the tribe to enter tribal orders of protection to the National Criminal Information Center (NCIC), which provides off-reservation law enforcement agencies electronic access to enforce our orders of protection if violated off-reservation. The tribe is also able to enter tribal domestic violence criminal convictions into NCIC. This provides law enforcement agencies and licensed firearms dealers, regardless of location, the ability to halt a transfer of a firearm to an individual prohibited from possessing firearms, including those prohibited from possessing firearms because of a tribal order of protection. Finally, cases prosecuted under special domestic violence criminal jurisdiction may result in a warrant issued for individuals who flee the reservation boundaries to avoid prosecution in tribal court. TAP assists in the extradition of these individuals back to tribal court to face justice for acts committed on the reservation.

**D.O.J. SORNA.** Sex offender registry obligations: The Pascua Yaqui Tribe Police Department currently operates and implemented the Adam Walsh Child Safety and Protection Act of 2006 (AWCSPA) and the “Pascua Yaqui Sex Offender Registration and Notification Ordinance of 2009.” The Pascua Yaqui Tribe has elected to function as a registration jurisdiction, to protect the Tribe’s sovereignty. The main objective for this program is to enhance community awareness and to implement a formal process for registration of sex offenders and make timely notification to the community and other jurisdictional agencies.

### **3. What has been the reaction to the *Castro-Huerta* decision in your Tribe? Do you have views about concurrent state criminal jurisdiction in Indian country?**

The reaction to the unfortunate *Castro-Huerta* decision has spurred the Tribe to action. On July 27, 2022, to control our internal relations, help preserve our tribal customs, and keep our community safe, the Pascua Yaqui Tribal Council adopted resolutions amending the Tribe’s criminal code to exercise VAWA 2022 additional restored criminal authority and empowered the Pascua Yaqui Prosecutor’s Office to operate a Tribal Special Deputy County Attorney program.<sup>35</sup> The Special Tribal Criminal Jurisdiction provisions of VAWA 2022 go into effect on October 1, 2022.<sup>36</sup> The Tribe has historically and aggressively sought to promote an enhanced coordinated response to crime on our reservation. This has led directly to a sharp increase in tribal, federal, and state prosecutions for crimes that occur in our community. The Tribe coordinates the prosecution of cases through a federal-tribal Multidisciplinary Team (MDT) to advance the timeline for presentation of cases for federal prosecution and improve coordination and management of cases between Tribal and Federal authorities. Special attention is given to cases involving violent crimes, sex crimes, habitual domestic violence offenders, and in cases where the Defendant is non-Indian.

---

<sup>35</sup> Resolution No. C07-219-22 (Ord. 50-22); Resolution of the Pascua Yaqui Tribe Approving an Ordinance Comprehensively Revising the Criminal Code to Fully Exercise and Implement Special Tribal Criminal Jurisdiction as Authorized in the Violence Against Women Act Reauthorization Bill of 2022 and Enhanced Sentencing Authority as Authorized in the Tribal Law and Order Act of 2010; Resolution No. C07-226-22; Resolution of the Pascua Yaqui Tribe Amending Title 2, Part II, Chapter 2-17 of the Pascua Yaqui Code; <https://www.pascuayaqui-nsn.gov/tribal-code-v1/>

<sup>36</sup> Recent reforms amended criminal offenses, the rules of criminal procedure and rules of evidence, and the development of a new criminal sentencing structure.

With the enactment of VAWA 2022 STCJ provisions, the Pascua Yaqui Tribe is empowered with additional tools to prosecute dangerous offenders and protect our community. Tribal governments, police, prosecutors, and courts are essential to the response to crimes that occur on tribal lands. Our tribal cases will likely double, and our convictions will likely do the same. Through the implementation of VAWA 2022 and strategic intergovernmental agreements, we will expand our criminal jurisdiction to grow our public safety initiatives.

The view of the Pascua Yaqui Tribe is that the exercise of uncoordinated concurrent state jurisdiction is not congruent with the notions of tribal sovereignty, settled principles of Indian Law, and the policy of tribal self-determination. A tribal court resolution will best benefit tribal victims who reside on our Reservation. For the Pascua Yaqui Tribe, the past application of state law to our community and neighborhoods was not successful. State concurrent jurisdiction is inconsistent and lacks a connection to tribal customs, history, and Yaqui community norms. Justice connected to Yaqui tribal culture tends to be restorative, rather than punitive, in nature. The aim of resolving crime is generally to correct the disruption of the social order and allow the community to live in harmony. Organized crime, drug trafficking, firearms, and domestic violence committed by non-Indians is not consistent with Yaqui culture and some perpetrators may not consider themselves bound by community cultural norms if an action is brought through uncoordinated state concurrent jurisdiction. Policymakers should consider the unique nature of each tribe and each federal district. The District of Arizona is different than the District of South Dakota, or Eastern Oklahoma. Likewise, the Pascua Yaqui Tribe differs from the Navajo Nation and any other Tribe in Arizona. Although tribes face some of the same realities, crime is different, laws are different, and approaches to justice, punishment, restoration, and sentencing are different.

The current era of Indian policy has been described as the self-determination era. It centers on autonomy through self-governance, economic self-sufficiency, and the preservation of tribal culture. When Tribes lack jurisdiction to comprehensively address problems caused by non-Indian state perpetrators of domestic violence and other crimes, social breakdown is accelerated and gets worse. How do we know about this link? Through our recent implementation of piecemeal federal programs: VAWA, TLOA, SORNA, and the DOJ TAP system. The answer to our current jurisdictional crisis is not more of the same uncertainty of the past. Although federal or state prosecution is not the ultimate answer to social problems in tribal communities, our Tribe recognizes the importance of working with federal and state partners to develop a coordinated crime control policy for our community.

### **Maximizing Tribal Jurisdiction Tools to Address Violence, in a Post *Castro-Huerta* World**

The Current system is not broken, it is doing exactly what the laws were designed to do. The long-term trauma associated with the lack of justice has severely impacted the public health, welfare, and vitality of Arizona Reservation communities. When a resident of one State crosses the border to visit another, that individual is subject to the criminal jurisdiction of the State he or she is visiting, even though he or she cannot vote or serve on a jury there, his external criminal history may also be considered. Likewise, noncitizens visiting or residing in the United States are also subject to federal and State criminal jurisdiction despite their exclusion from the U.S. political

process. Similarly, crime in Arizona spills on and off Reservation communities. Solid solutions and partnerships should be developed to properly understand the scope of the problem and to address it comprehensively.

Over the past 10 years, tribes have developed internal and external tools that are helping to expand and strengthen tribal jurisdiction (criminal and civil), to keep their citizens safe. Tribes are investing in court systems and enforcement mechanisms and using their inherent sovereign authority to develop bilateral relationships with states or counties via agreements and MOUs. Where sovereignty was commonly used defensively to protect tribal interests, tribes are now using their sovereign power cooperatively through the exercise of criminal and civil jurisdiction, notably, by prosecuting non-Indian DV offenders and through Child Welfare and ICWA cases. Systemic “workarounds” add to public safety and the accumulation of these “fixes” maximize safety and helps patch jurisdictional gaps.

### **Draft Intergovernmental Agreement Between the Pascua Yaqui Tribe & Pima County: Tribal Special Deputy County Attorney (SCDA) Program**

The purpose of the draft 2022 Intergovernmental Agreement (“IGA”) between the Pascua Yaqui Tribe and Pima County is to authorize the appointment of qualified tribal prosecutors to assist in prosecuting state offenses committed in Pascua Yaqui Indian Country<sup>37</sup> to help coordinate and clarify the responsibilities of the Pascua Yaqui Tribe and Pima County government for crimes committed in Pascua Yaqui’s Indian Country. The goals are to help address jurisdictional uncertainty, reduce regional crime, decrease the prevalence of violent crime, combat sexual and domestic violence against American Indian men and women on the Pascua Yaqui Reservation, and help combat Missing and Murdered Indigenous Persons (MMIP). The agreement will help to increase coordination and communication among state, tribal, federal, and local law enforcement agencies and empower the Pascua Yaqui Tribe’s Prosecutor’s Office with the authority and information necessary to help provide public safety promptly and effectively in Indian Country.

An IGA will facilitate a cooperative approach to law enforcement to enhance public safety and justice for all persons and property within the Tribe’s reservation and Pima County. The Tribe and the County respect the sovereignty and political integrity of their respective governments and the values and culture represented by the Tribe and each desire to have an agreement reflecting a full government-to-government relationship regarding enforcement of court orders on the Reservation by the Tribe and those issued off the Reservation by the County, and the enforcement of criminal prosecutions of non-Indians and Indians on the Reservation. Importantly, the program would foster increased inter-jurisdictional understanding, trust, and respect, and ensure that decisions about the tribe’s property and citizens are made with the tribe’s participation and consent.<sup>38</sup> Crime is local but is not restrained by porous jurisdictional borders. Knowledge and familiarity with tribal communities is imperative. A Tribal Special Deputy County Attorney program will send a strong

---

<sup>37</sup> The term Indian country is codified at 18 U.S.C. 1151. The Code provides, “The term ‘Indian country,’ as used in this chapter, means, (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government...”

<sup>38</sup> *Worcester v. the State of Georgia*, 31 U.S. 515, 561 (1832). (Holding that “the laws of [a State] can have no force” within reservation boundaries)

message that Pima County and the Pascua Yaqui Tribe care and are serious about their commitment to justice and their shared and symbiotic responsibilities, while respecting that Pascua Yaqui is a federally recognized tribe, entitled to receive federal trust services and protections because of their government-to-government relationship with the United States. Jurisdictional boundaries are geographic guides, but they can also be pathways to facilitate cooperation.

The parties are working to implement a Tribal Special Deputy County Attorney program through an Intergovernmental Agreement (IGA) to coordinate the prompt processing, execution, and enforcement of state or tribal warrants, demands for extradition, enforcement of protection orders, and to authorize the appointment of tribal prosecutors as Special Deputy County Attorneys. In Pima County, Arizona, the County may contract for services and enter into agreements with Indian tribes for joint or cooperative action pursuant to A.R.S. § 11-951 et seq., and the Pascua Yaqui Tribe may contract for services and enter into agreements for joint or cooperative action pursuant to Article VI, Section 1(a) and (t) of the Constitution of the Pascua Yaqui Tribe. The Pima County Attorney has the power to appoint “special deputy county attorneys,” “[w]ith consent of the board of supervisors.”<sup>39</sup> “The appointments shall be in writing,” and filed in the office of the county recorder.<sup>40</sup>

The Pascua Yaqui Tribe’s peace officers are certified by Arizona’s Peace Officer Standards and Training (hereinafter “POST”), have Special Law Enforcement Commission (hereinafter “SLEC”) status under federal law, and are authorized to act as general authority Arizona peace officers under certain conditions, thereby giving Tribal peace officers the same powers as any other general authority Arizona peace officer to enforce state laws in Arizona, including the power to make arrests for violations of state law, and book state offenders into the Pima County jail. The Prosecuting attorneys for the Pascua Yaqui Tribe are experienced state-licensed officers of the Arizona Bar, hired for purposes of prosecuting criminal offenses that occur on the Tribe’s Reservation. Tribal Prosecutors are appointed by the Pascua Yaqui Tribal Council, authorized pursuant to 3 PYTC § 1-4-30, to prosecute all criminal proceedings in the Pascua Yaqui Tribal courts and appear in court proceedings on behalf of the Tribe. The Tribal Prosecutors are also cross designated as Special Assistant United States Attorneys (SAUSA).

It is the sense of the parties to a proposed agreement that the appointment of qualified tribal prosecuting attorneys to serve as special Deputy County Attorneys (SCDA) in Pascua Yaqui Indian Country will enhance the prosecution of minor crimes, violent crimes, and sexual and domestic violence crimes committed against American Indian men, women, and children on the Pascua Yaqui Reservation, and act as a justice force multiplier. The program will help to coordinate with applicable County courts and law enforcement agencies regarding scheduling of Indian country matters and holding trials or other proceedings pertaining to Indian country criminal matters, as appropriate. The SCDAs have appropriate training, supervision, and staff support and they will provide technical and training assistance to state and tribal law enforcement agencies, state County governments, and tribal court systems to ensure that the goals of this agreement are achieved.

---

<sup>39</sup> Ariz. Rev. Stat. § 11-403(B)(1).

<sup>40</sup> A.R.S. § 11-409 (2001).

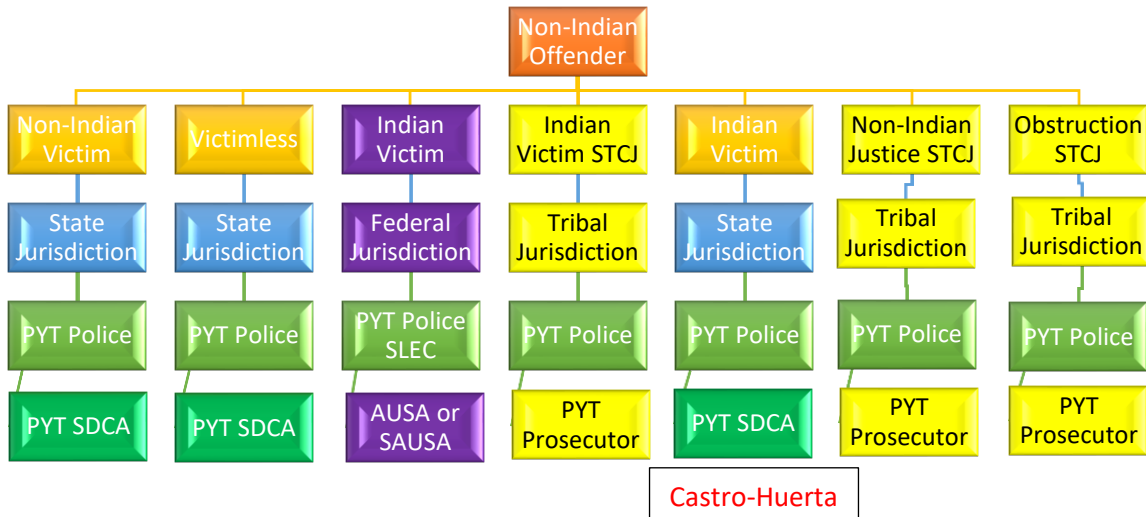
In the wake of the *Castro-Huerta* decision, augmenting Tribal court systems and State County justice systems, with a Tribal Special Deputy County Attorney (SDCA) Program will enhance justice on tribal land and promote cooperation in Indian Country located within or adjacent to state counties. The main objective is to facilitate coordination, communication, and accountability by federal, tribal, and state actors. This program will help address the issue of dual prosecutions, decrease declinations, increase efficiency, promote justice, and enhance the Pascua Yaqui tribe's regulation of criminal matters within the exterior boundaries of the Reservation. The program will be staffed primarily with experienced state-licensed, tribal prosecutors who are appointed by the Pima County Attorney. The set-up would be a cousin to the U.S. Attorney Special Assistant United States Attorney (SAUSA) program.

The Pascua Yaqui SCDA program would enable tribal prosecutors, law enforcement, and federal prosecutors, to review, assess, and channel criminal cases into the proper state, federal, or tribal court forum. Accountability would be achieved through a local and cooperative process. This agreement is a common-sense step in a concurrent jurisdiction environment that currently lacks a working coordinating nucleus. In terms of overarching principles, the program will develop through a 360° model that will ensure prompt law enforcement investigations for all three jurisdictions, state, federal, and tribal, and encourage cooperation and coordination on appropriate charging decisions into the respective court forum. The program would consolidate key actors, centralize decision making, and be supervised and managed jointly by the Pima County Attorney and Chief Tribal Prosecutor. The Tribal Special Deputy County Attorney would take an active and primary role in concurrent and multi-jurisdiction case processing and management. State law, general prosecutorial guidelines, VAWA mandates, tribal law, and the tribe's criminal justice policy priorities would guide decision making and would ensure due process, fairness, and efficiency. The model would decrease miscommunication and limit jurisdictional confusion from hampering the pursuit of justice. The presence of a Tribal Special Deputy County Attorney program will lead to increased training, additional resources, and ensure a measure of accountability and oversight. Declinations would decrease and tribal prosecutors could inform the prosecutions consistent with principles of self-determination and the specific needs of the Pascua Yaqui tribal community. This program will serve two distinct purposes: (1) help manage and control immediate jurisdictional questions in the furtherance of justice in Indian Country; and (2) provide a model for state-tribal cooperative agreements in administering justice through the allocation of Indian Country resources that will enhance justice for victims.

Lios enchi hiokoe ut'tesia, thank you for the opportunity to provide the Tribe's views. The Pascua Yaqui Tribe looks forward to working with federal agencies and Congress to affirm Tribal sovereignty and strengthen public safety within the boundaries of Indian Country.



**VAWA Special Tribal Criminal Jurisdiction  
Tribal Special Deputy County Attorney (SDCA)  
Castro-Huerta**



**INDIAN COUNTRY CRIME MULTIDISCIPLINARY TEAM (ICCMDT) MODEL**

