

PASCUA YAQUI TRIBE

OFFICE OF THE ATTORNEY GENERAL UNITED STATES SENTENCING COMMISSION-TRIBAL ISSUES ADVISORY GROUP

REVIEW OF THE IMPACT OF SENTENCING GUIDELINES ON TRIBAL COMMUNITIES

PASCUA YAQUI VISIT February 24th 2016

Comments provided by the Pascua Yaqui Office of the Attorney General



Early in my career as a Prosecutor for the Pascua Yaqui Tribe, I had to tell a room full of shocked tribal family members that the person who sexually molested their young daughter would only receive a two year sentence in Tribal Court. The family was horrified, I was ashamed, and we had no answers for them. It was a strong case that included a confession, strong victim testimony, DNA evidence, and eyewitness testimony. I later worked with the U.S. Attorney and tribal investigators to make sure he was charged with a federal offense. He was indicted and eventually sentenced to an eight year concurrent term. Given the nature of the offense, the victim would have probably received a more just outcome if the case was heard in State court. I often think about that case, the victim, the family, and the other serious major crime cases that have been investigated or prosecuted on the Pascua Yaqui Reservation.

~Alfred Urbina, Attorney General Pascua Yaqui Tribe

PASCUA YAQUI JUSTICE SYSTEM

Historically, the Yaqui people have always had some form of law enforcement and dispute resolution, most notably through our ceremonial societies. In 1982, the Tribe adopted a Criminal Code, some parts of our Civil Code, and adopted our Constitution in 1988, all of which helps spell out current Yaqui Law. In addition to our Constitution, our elders, chose to create a Tribal Court system as the arbiter of Yaqui justice and our forum for the resolution of disputes. Our official

justice system has been operating in one form or another, for more than 25 years. Pursuant to its sovereign authority, our Tribal Council also created a law enforcement department and a tribal prosecutor's office as the representatives of the tribe in matters both criminal and civil in nature. The various functions performed by the Office of the Prosecutor, law enforcement, and the Tribal Court, are instrumental in ensuring that the Tribal Council can help guarantee the safety and protection of our people. A sustainable future for our government and people is largely dependent on a robust judiciary and a strong executive arm to enforce the mandates of our Constitution, ensure the protection of the people, and defend individual rights guaranteed by our laws and Constitution.

In 1978, the Tribe was originally subject to Arizona State jurisdiction under 25 U.S.C. § 1300f(c) and PL280. In 1985, the State of Arizona retroceded criminal & civil jurisdiction.¹ Between 1985 and 1988, the Department of Interior operated the tribal court system through a "Court of Indian Offenses," a "CFR" Court operated by the Bureau of Indian Affairs, (B.I.A.). In 1988, the Tribe took over the judicial system from the B.I.A. through a 638 contract. The Bureau of Indian Affairs police patrolled the Reservation exclusively until 1991. In 1991, the Tribe hired three Tribal police officers who served alongside B.I.A. officers. In 1998, The Tribe signed a 638 agreement with the B.I.A. to direct its own law enforcement services. In 1997, the Tribe started the Pascua Yaqui Victim Services program. Currently, the Tribe employs twenty-six uniformed patrol officers who are certified by Arizona P.O.S.T as State certified officers and most are federal Special Law Enforcement Commissioned (SLEC) certified officers. Three of the officers are Criminal Investigators. The Tribe also employs a number of Victim advocates.

¹ 50 Fed. Reg. 34,555 (Aug.26, 1985)

The Tribal people are also served by the Federal Bureau of Investigation (F.B.I.) (Phoenix Division), for assistance with major criminal investigations. In 1993, the Tribe entered into a User Agreement with the Arizona Department of Public Safety (DPS) for NCIC and ACIC criminal information access. In 2006, the Tribe approved an Intergovernmental Agreement with Arizona DPS for crime laboratory services for the purpose 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 for better access to ACIC, 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 (PCWIN). PCWIN will provide improved public emergency services and regionally coordinated mutual aid. In 2011, through the American Reinvestment Recovery Act (ARRA), the Tribe constructed a \$21 Million dollar, state-of-the-art multi-purpose justice/court complex. In May of 2012, the Tribe began operating the Pre-Trial Services (PTS) Division of the Tribal Court. Pre-Trial Services has effectively reduced the number of Yaqui defendants being held for pre-trial detention, kept some offenders employed, and monitor offenders in the community who are released during the pre-trial phase of their case. In 2011, the Tribe, in partnership with the DOJ and the U.S. Attorney's Office appointed tribal prosecutors as federal Special Assistant United States Attorneys (SAUSA). The Tribe was also certified by the DOJ as substantially implementing the Sex Offender Registration and Notification Act (SORNA).

Adult and Juvenile Detention Services are mostly handled by the Bureau of Indian Affairs, (B.I.A.). Adult Tribal inmates, including Non-Indian VAWA defendants, are transported to a private regional B.I.A. contracted detention facility in San Luis, Arizona. On Dec 20, 2013, the BIA began delivering Tribal inmates to the B.I.A. detention Pilot program at Emerald Corporation

in San Luis, Arizona. The contracted facility is close to the tribal Reservation & is sensitive to tribal detainee needs. The Tribe employs detention officers for short-term tribal detention, booking, transportation, and pre-trial detention needs.

DUE PROCESS

In 1995, the Tribe opened the Pascua Yaqui Public Defenders Office to provide public defense services to indigent tribal members. In 2010, the Tribal Council amended the Pascua Yaqui Court Rules to implement federal amendments to the Indian Civil Rights Act (ICRA), which was modified by the 2010 Tribal Law & Order Act (TLOA). The 2010 amendment guaranteed tribal members, (including Indians from other tribes) the right to defense counsel at the Tribe's expense if the Tribe seeks any amount of jail time in their criminal cases. On Dec 18, 2013, the Tribal Council passed Ordinance 20-13, the Court Rules Amendments of 2013 to comply with VAWA 2013 implementation requirements. Ordinance 20-13 changed the Tribe's jurisdiction, ensured defense counsel for indigent non-Indian defendants, and changed the composition of the Tribe's jury pool.

The Pascua Yaqui tribal court provides all defendants with the same rights in tribal court as they would have in state or federal court. The original Pascua Yaqui Constitution expressly incorporated the language of the Indian Civil Rights Act (ICRA), for the Tribe's own Bill of Rights. The tribe funds a full-fledged Public Defenders Office with four licensed defense attorneys who represent those accused of crimes. The Tribe also funds four private contracted defense attorneys for those cases where a conflict of interest exists. Defendants are guaranteed all protections, including an indigent defendant's right to appointed counsel at the expense of the tribe. Our Tribal Court enforces the Indian Civil Rights Act (ICRA), fundamental due process, Tribal Common Law, U.S. Supreme Court case law, and fundamental human rights. The Pascua

Yaqui Tribe also guarantees the selection of diverse and objective jurors from our community. VAWA contains explicit language that tribes exercising authority under these new provisions must draw from jury pools that reflect a fair cross-section of the community and do not systematically exclude any distinct group of people, including non-Indians.

The right to counsel and due process that are products of American jurisprudence are deeply rooted in Yaqui indigenous tradition and practice. Our Tribal culture and history supports the right of having a person speak on behalf of the accused. These concepts, teachings, and traditions pre-date the U.S. Constitution and the Bill of Rights and are rooted in beliefs that are arguably as old as English Common Law. As early as 1918, in the United States, the Yaqui formed a quasi-governmental body in charge of the “Yaqui Nation” within the United States, presided over by a “commandante-general” (captain) which is equated to a war chief, (wikoijaut) of a Yaqui Pueblo in present day Sonora, Mexico (it can also be equated to the executive branch of government).² The Captain was responsible for maintaining order, recruiting a police force, preside over trial courts, and administering punishments. The Yaqui Nation also had a Kovanau, or, in Spanish, gobernador, (governor). The ‘kovanau’s duty was first, to administer the land of the pueblo, and, second, to concern himself in all disputes and difficulties that arose. The war chief presided over “trials” and the ‘Kovanau gathered witnesses for defense and tried to uncover extenuating circumstances.³ While courts generally enforce individual responsibility for crime and enforce individual rights, Pascua Yaqui historical cultural practices revolve around the principle of collective responsibility arising from a foundational social kinship system. Some concepts of traditional practices and norms include, “Lutu’uria,” which translates as “truth,” the phrase “yo’ora

² Spicer, Edward. Pascua: A Yaqui Village in Arizona, University of Chicago Press, 1940. Reprint: University of Arizona Press, 1984.

³ *Id.*

lutu'uria" refers to "elders truth," and the notion of senu noka (one word) is used to describe historical decisions (precedent). The concern for not just majority but a collective decision beyond individualism is prominent.⁴

DEMOGRAPHICS & STATISTICS

Approximately 4-5000 people reside on the 2,200 acre Pascua Yaqui Reservation, located in Pima County, Arizona, near the southwestern edge of the City of Tucson. The Reservation is approximately 90 miles north of the United States-Mexico International Border. The Tribe is located near a major metropolitan city. While this is a positive for business ventures, it can have a negative impact on crime that occurs 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 effects the safety of our community and strains our criminal justice system. Tribal members are at risk of being exposed to drug smuggling, drug cartels armed with military grade weapons, human traffickers, and ex-prison gang members. The most recent murder of a tribal member to occur on the Pascua Yaqui Reservation was a shooting that was committed by a non-Indian, Hispanic male. According to U.S. Census data, Pascua Yaqui Reservation residents include non-Indians and a small number of individuals who are members of other tribes. Nearly 43 percent of all Pascua Yaqui households consist of a mother and children with no father present, making single mother households the most common type of household on the reservation. Approximately 800 Non-Indians work for the Tribal Government, work for Tribal Casino Enterprises, or attend school on the Reservation. The 2010 U.S. Census, estimates that a large percentage of Tribal members on the Reservation live in poverty. Per capita income on the reservation is \$9,039, a third of Pima

⁴ Via email, Dr. David Delgado Shorter.

County (\$25,093) and the State of Arizona (\$25,680). Pascua Yaqui households are four times more likely to receive Food Stamps (49 percent) and eight times more likely to receive public assistance than are residents of the county or state. Nearly forty percent of Pascua Yaqui adults, and forty-two percent of children, live at or below the federal poverty level, more than twice the county and state rates.

The Pascua Yaqui Police responds to approximately 6000 calls for service a year. A percentage of the criminal cases are referred to the Prosecutor's office for possible prosecution. The cases referred are evaluated and most of the cases are independently charged into tribal court.

- In FY 2011-2012, the Tribal Prosecutor's Office filed a total of 684 cases. Of those, 650 were criminal and 267 were domestic violence cases. 121 cases were declined.
- In FY 2012-2013, the Tribal Prosecutor's Office filed a total of 698 cases. Of those, 600 were criminal matters and 155 cases were declined. A large percentage of the cases involved alcohol and domestic violence.
- In FY 2013-2014, the Tribal Prosecutor's Office filed a total of 934 cases. Of those, 610 were adult criminal matters and 176 cases were declined, (including 3 potential VAWA cases). A large percentage of the cases have been related to alcohol and domestic violence. Our recent VAWA cases have increased the number of adult criminal cases filed by 5%.

Our Prosecutor's Office also routinely handles criminal extradition cases. In the past few years, the office has extradited murder suspects, sex offenders, burglary suspects, witnesses, and people who were evading justice in other jurisdictions by hiding on our reservation. The Tribe has conducted 30 criminal extraditions in the past few years. Over all we have conducted a total of 65

criminal extraditions, mostly to the State of Arizona through The Pima County Prosecutor's Office, and the Tucson Police Department.

CRIMINAL JURISDICTION

The Pascua Yaqui Pueblo's criminal jurisdiction is divided into three separate prongs: tribal jurisdiction, federal jurisdiction, and state jurisdiction. The court system where a person is prosecuted depends on the accused person's citizenship status, status as an "Indian," and the status of any victims. The determination can be complex. Roughly speaking, the Tribe has jurisdiction over all Indians who commit crimes within the reservation boundaries. The federal government also has jurisdiction over major crimes committed by Indians in our community. The federal government and the State of Arizona, by and large retain jurisdiction over crimes committed by non-Indians on the reservation. However, the Tribe now has criminal jurisdiction pursuant to VAWA 2013 over non-Indians in crimes of domestic violence committed on our Reservation. In the near future, the Pascua Yaqui Tribe hopes to better coordinate all three prosecution prongs from the reservation. This coordination will ensure that the Tribe can seek better outcomes for victims and be more accountable to the members of our community. For example, four Pascua Yaqui tribal prosecutors now have the opportunity to prosecute reservation based crimes in federal court as Special Assistant United States Attorneys, (SAUSAs). The Tribal Council recently signed a historic agreement with the Arizona U.S. Attorney's Office that allows this to occur.

VAWA IMPLEMENTATION:

On February 20, 2014, pursuant to the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), the Pascua Yaqui Tribe was one of only three Tribes across the United States to begin exercising Special Domestic Violence Criminal Jurisdiction (SDVCJ) over non-Indian

perpetrators of domestic violence. On July 2, 2014, for the first time since 1978 when the U.S. Supreme Court stripped tribal governments of their criminal authority over non-Indians in *Oliphant v. Suquamish Indian Tribe* (1978), our tribe obtained the first conviction of a non-Indian, a twenty-six year old Hispanic male, for the crime of domestic violence assault committed on the Pascua Yaqui Reservation.

The first responsibility of any government, tribal or otherwise, is the safety and protection of its people, for there can be no security or freedom for all, if there is insecurity and fear for any of us. Pascua Yaqui tribal officials no longer have to simply stand by and watch their women be victimized with no recourse. Although long overdue, this authority represents a historic first step for law and order in Indian Country and it is a strong example of tribal sovereignty and self-determination.

On Mar 7, 2013, VAWA 2013 was signed into law by President Obama. On Jun 26, 2013, the U.S. Attorney for the District of Arizona, John Leonardo, visited the Pascua Yaqui Tribe and toured our court facility. The Tribe expressed an interest in the implementation of Special Domestic Violence Criminal Jurisdiction. On July 09, 2013, the Tribal Chairman submitted a letter to the Department of Justice's, Mr. Tracy Toulou, as a preliminary expression of interest in exercising SDVCJ and asked to be designated as a participating Tribe. On July 15, 2013, the Pascua Yaqui Tribe was one of approximately 27 federally recognized Indian tribes that timely sent "preliminary expressions of interest" in participating in the Pilot Project. By doing so, tribes expressed an interest in participating in both Phase One and Phase Two of the Pilot Project.

The Department of Justice launched the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction (ITWG), as part of Phase One of the Pilot Project. The ITWG is a voluntary working group of designated tribal representatives who

exchange views, information, and advice, peer to peer, about how tribes may best exercise SDVCJ, combat domestic violence, recognize victims' rights and safety needs, and safeguard defendants' rights. Between July, 2013 and December 2013, Tribal representatives participated in a series of teleconferences, participated as panelists, and participated in ITWG in-person meetings.

On December 30, 2013, the Tribe submitted an extensive application to the DOJ to be designated a Pilot Tribe and to start exercising SDVCJ (Phase II). On February 6, 2014, the Tribe received official notice that the Tribe was designated a participating Pilot Tribe authorized to exercise SDVCJ.⁵ The Pascua Yaqui Tribe SDVCJ Pilot status story was picked up and released locally, statewide, and nationally, via press release by the White House.⁶ On February 12, 2014, VAWA Pilot information was posted for notice in the Federal Register by the Department of Justice.⁷ Official Tribal notice was sent out via Global e-mail to all tribal and casino employees, as well as being posted on the official Pascua Yaqui Tribal Internet site on February 6th, 2014.⁸ On February 10th, 2014, the Arizona Daily Star ran a front page story that circulated to 238,000 readers in Southern Arizona, including the City of Tucson. The story was also posted on their online news site. The online AZSTARNET has a reach of 1 million independent views per month

⁵ <http://www.justice.gov/tribal/docs/letter-to-pascua-yaqui.pdf>

⁶ (<http://www.whitehouse.gov/blog/2014/02/06/moving-forward-protect-native-american-women-justice-department-announces-vaawa-2013->), Department of Justice (Attorney General) (<http://www.justice.gov/opa/pr/2014/February/14-ag-126.html>), the U.S. Attorney for the District of Arizona, http://www.justice.gov/usao/az/press_releases/2014/PR_02062014_Vawa.html), and a Pascua Yaqui press release, that was sent to the following Southern Arizona news organizations: Television Stations: KOLD, KVOA, FOX, and KGUN; Newspaper: AZ Daily Star, Explorer News, Wick Publications, and the Tucson Weekly. http://www.pascuayaqui-nsn.gov/index.php?option=com_content&view=article&id=144:pascua-yaqui-tribe-asserts-authority-to-prosecute-all-persons-including-non-indians-for-domestic-violence&catid=12:newa

There was also some television coverage in Phoenix via a news video segment available at <http://www.azcentral.com/news/free/20140206tribes-authority-non-indians.html>

⁷ 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)

⁸ (<http://www.pascuayaqui-nsn.gov/>).

and has approximately 12 million page views per month.⁹ The Pascua Yaqui press release was shared online through a leading internet Indian Country legal news blog called “Turtle Talk,” it was posted on February 7, 2014.¹⁰

The Tribe conducted interviews with several news outlets to include, the Arizona Daily Star, the Seattle Times, the L.A. Times, Washington Post, Tucson KVOA television news, Colorlines, Aljazeera, NPR, 91.5 KJZZ, MintPress, the Arizona Daily Wildcat, and Cronkite News.¹¹ The Tucson area news story by KVOA ran on the nightly news on February 23, 2014 and on the morning of February 24, 2014, and was broadcast in the greater Southern Arizona area, to include the City of Tucson and the Pascua Yaqui Reservation.

VAWA CASES:

Since February 20th, 2014, our tribe has prosecuted a total of seventeen non-Indian males and one non-Indian female involved in twenty-five SDVCJ incidents. SDVCJ cases include crimes of domestic violence and violations of protection orders where fourteen tribal females and one

⁹ See (http://azstarnet.com/news/local/pascua-yaqui-gain-added-power-to-prosecute-some-non-indians/article_3417ac6e-c683-50d4-9a55-cc386524c468.html)

¹⁰ (<http://turtletalk.wordpress.com/2014/02/07/pascua-yaqui-press-release-re-vawa-pilot-program-selection/>)

¹¹ (<http://www.kvoa.com/news/domestic-violence-not-tolerated-by-pascua-yaqui-tribe/>), (http://colorlines.com/archives/2014/02/a_small_victory_for_native_women.html), (<http://america.aljazeera.com/watch/shows/the-stream/the-stream-officialblog/2014/2/21/native-american-tribesbeginpilotprogramtoprosecutedomesticviolence.html>), (<http://n.pr/Nei2Mx>), (<http://www.nativeamericacalling.com/>), (<http://kjzz.org/content/24088/pascua-yaqui-begins-prosecuting-non-natives-under-vawa>), (http://www.washingtonpost.com/national/arizona-tribe-set-to-prosecute-first-non-indian-under-a-new-law/2014/04/18/127a202a-bf20-11e3-bcec-b71ee10e9bc3_story.html), (<http://uanews.org/story/ua-alums-involved-in-effort-to-legally-prosecute-non-indians-on-pascua-yaqui-tribe>), (<http://america.aljazeera.com/articles/2014/4/23/for-one-arizona-tribeachanceforjusticeafterdecadesoflegalimbo.html>), (<http://www.wildcat.arizona.edu/article/2014/04/ua-alum-aides-american-indian-tribe-in-suing-non-indians>), (<http://cronkitenewsonline.com/2014/10/pascua-yaqui-begin-prosecuting-non-tribal-members-for-domestic-violence/>)

tribal male were victims. Most of the VAWA perpetrators have extensive criminal records in the State of Arizona. Two offenders had active warrants for their arrests, one for armed robbery out of the State of Oklahoma. Four of the cases were serious enough to warrant referrals for federal prosecution (strangulation, aggravated assault). On average, VAWA offenders were contacted by Tribal police at least six times before SDVCJ authority existed on the Pascua Yaqui Reservation. VAWA offenders have been involved in close to ninety Pascua Yaqui police incidents, (reports pre and post VAWA). Often, the victim in those cases was the same person involved in our new VAWA crimes. Eleven of the cases involved children in the home, seventeen children all under the age of eleven. (In four incidents the children belonged to the non-Indian offender). In many of our cases, children were exposed to violence, were victims, or reported the crime while it was in progress. Three of the VAWA offenders have already reoffended with the same victim, demonstrating a pattern of abusive behavior that we know can be a part of DV relationship dynamics.

At least nine offenders were living on the Reservation in Tribal housing; the others were staying intermittently for short periods of time. The majority of the incidents occurred in our low-income tribal rental units. Eleven of fourteen incidents involved single tribal females (two couples married). Seven offenders are of Hispanic descent, two are “Legal Permanent Residents” from Mexico. Two offenders are White males, three are African-Americans, and one is of Asian descent. Six of the incidents involved alcohol. One of the incidents involved a same sex couple. Most of the offenders and victims appear to be unemployed. Only two offenders did not have a criminal record in the State of Arizona. Seven out of ten offenders had been arrested for violent crimes, weapons, or threats in the State of Arizona (threats, weapon misconduct, assaults, trespassing, and domestic violence). Two offenders are felons, both having been convicted for Burglary in the State

of Arizona. Ten of the offenders have been previously arrested for cases involving drug use/possession/DUI or alcohol.

Currently, SDVCJ under VAWA 2013 is limited to only crimes of domestic violence, dating violence, or violations of an order of protection committed in Indian country, where the defendant is a spouse or intimate partner of a tribal member. VAWA does not permit tribal prosecutions unless the defendant has “sufficient ties to the Indian tribe,” meaning he/she must either reside in the Indian country of the prosecuting tribe, be employed in the Indian country of the prosecuting tribe, or be the spouse or intimate partner of a member of the prosecuting tribe.

Recently, after the Tribe started to exercise VAWA SDVCJ, a survey was administered by the Prosecutor’s Office. 220 surveys were filled out by community members about VAWA and the Tribe’s implementation. Of the 220 people surveyed, 130 respondents thought that DV/family disputes were a big problem. Thirty-six people knew someone who was a victim of domestic violence and the perpetrator was a non-Indian. An additional twenty-seven were the victims of DV and the perpetrator was Indian. An additional thirty-six knew someone who was a victim of DV and the ethnicity of the perpetrator was unknown. Twenty-five had been an actual victim of DV, of those, six were victims of non-Indian perpetrators. 140 respondents had heard of VAWA and 155 had heard of the tribe having VAWA jurisdiction.

With a self-reported 500 non-Indians living on the Reservation and approximately 800 Non-Indians working or attending school on the Reservation, the probability that additional SDVCJ cases will arise is highly likely. Hypothetically, given the 20 incidents that occurred at Pascua Yaqui in six months, if 500 other federally recognized Indian Tribes had the same authority and averaged 20 incidents, then at least 10,000 crimes of domestic violence across Indian Country could have been investigated and or prosecuted.

Challenges:

Costs: The implementation of some of the provisions of the Tribal Law & Order Act, and the Violence Against Women Act, have raised costs that have been fully covered by the Tribe, with virtually no additional federal assistance. Through the Office of the Public Defender and contracted defense attorneys, the Pascua Yaqui Tribe now provides free legal representation to over 95% of all persons arrested on the reservation. All VAWA defendants who have been prosecuted have had a public defender or contracted defense attorney appointed at the Tribes expense in their cases to assist them.

TRIBAL CONTROL IS THE KEY:

VAWA Special Domestic Violence Criminal Jurisdiction is about fairness, justice, and dignity. The starting place to reverse historical jurisdictional problems and injustices in Indian Country is with strong tribal justice systems. Criminal investigations occur at the local level. Local government is the best government to protect Indian Country's mothers, daughters, sisters and wives from jurisdictional gaps, or safe havens for criminals.

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 criminal history may also be considered). Noncitizens visiting or residing in the United States are also subject to federal and State criminal jurisdiction despite their exclusion from the political process. Full restoration of criminal jurisdictional authority for Tribal governments should be the next step when we consider VAWA Reauthorization in the context of a tribe's sovereign authority when compared to State governments. While it is true that the U.S. has a federal trust responsibility to assist tribal governments in safeguarding the lives of Indian

women and children, tribal governments have the same trust obligation to the people they represent and to all people who enter their boundaries. Thus, full restoration of civil and criminal jurisdiction to local tribes would help ensure fairness, safeguard tribal communities, and help clear up long standing jurisdictional problems.

Tribal Law & Order Act:

On September 22, 2010, the Pascua Yaqui Tribal Council amended the Pascua Yaqui Rules of Criminal Procedure and Criminal Court Rules to implement the federal amendment to the Indian Civil Rights Act (ICRA) and to implement and benefit from the changes to Indian Country criminal justice by the Tribal Law & Order Act, (TLOA). Prior to the signing of the Act, the Tribal Council and the Office of the Attorney General were actively involved in shaping the federal language and urging our federal representatives to pass the law. For years, the Pascua Yaqui Tribal Council worked to change the status quo and advise Congress and federal officials about our struggles with crime control, safety, and security.

Beginning on October 1, 2010, any Indian accused of a crime, including Indians from other tribes, have had the right to defense counsel at the Tribe's expense, if the Tribe will seek *any* amount of jail time in their criminal cases. Soon, the Tribe will also be able to take advantage of additional authority to sentence criminals up to three years of incarceration per offense, up to a maximum total of nine years. At the time, TLOA was the most significant change in federal law affecting Indian Country and the Pascua Yaqui Tribe in close to 40 years. However, in order to benefit from the additional sentencing authority, the Pascua Yaqui Tribe had to amend our tribal Constitution. The Pascua Yaqui Constitution of 1988 adopted the provisions of the Indian Civil Rights Act, and incorporated the provisions as our "Bill of Rights." Pascua Yaqui Constitution, Art. 1, Section 1(g). Our Constitution limited punishment to one (1) year per offense. In June of

2014, the Tribe held an election and removed the sentencing restrictions. In a few months, the Tribal Council will vote to consider changes to the criminal code that will adopt the enhanced sentencing authority found in TLOA.

Tribal Law & Order Act Implementation:

The Tribal Prosecutor's Office and the Office of the Attorney General took lead roles in providing input to federal authorities as they revised the ICRA. The Prosecutor's office sent a representative to Washington D.C. and Minneapolis, Minnesota, to speak to lawmakers and the U.S. Attorney General to advocate for changes to tribal criminal justice. The Prosecutor's office also worked closely with the U.S. Attorney's Office for Arizona to help create an Indian Country framework that was put into practice by the U.S. Attorney to combat crime on Arizona reservations. The Tribe aggressively sought to promote an enhanced coordinated response to crime on reservations. This led directly to a sharp increase in tribal, federal, and state prosecutions for crimes that occur on our reservation. This policy and work will continue and it will hopefully increase the federal prosecution and convictions of those who commit major crimes and prey on our people.

Effects:

1. **Costs:** The implementation of some of the provisions of the Tribal Law & Order Act, namely, Title III, Section 304, has cost the Tribe approximately \$300,000-\$400,000 a year in additional attorney salaries and benefits by the hiring of 4 full time attorneys (2 prosecutors and 2 defense attorneys), and 4 defense conflict (contract) attorneys.
2. **Representation:** Through the office of the Public Defender and contracted defense attorneys, the Pascua Yaqui Tribe now provides free legal representation to 95% of all Indians and non-Indians arrested on the reservation. Approximately 2.5% of individuals arrested do not qualify for free legal representation and approximately 2.5% waive representation.
3. **Resources and Complexity:** The majority of Pascua Yaqui criminal cases are appointed to the Pascua Yaqui Public Defender's Office. Although the Tribe has hired additional attorneys, there is still a deficiency in resources when considering

the resulting complexity of a full adversarial system. For example, the process has spurned additional appeals, evidentiary hearings, additional scientific evidentiary analysis, expert testimony, competency evaluations, and an increase in criminal trials.

Tribal SAUSA Program:

Between October 31, 2011 through November 4, 2011, the United States Attorney's Office for the District of Arizona held a week-long course to train prosecutors from several of Arizona's tribal governments so they could participate in the federal prosecution of offenders from their communities. The training kicked off the U.S. Attorney's Office Tribal Special Assistant United States Attorney (SAUSA) program. This cross-commissioning is encouraged by the Tribal Law and Order Act and mandated by the District of Arizona's Operational Plan for Public Safety in Indian Country. The goal of the Tribal SAUSA program is to train eligible tribal prosecutors in federal law, procedure and investigative techniques to increase the likelihood that every viable criminal offense is prosecuted in tribal court, federal court, or both if necessary. The program also allows the tribal prosecutors to co-counsel with federal prosecutors on felony investigations and prosecutions of offenses arising out of their respective tribal communities. After completing training, each tribal SAUSA is mentored by an experienced federal prosecutor assigned to the District of Arizona's Violent Crime Section.

SAUSA Program Implementation:

The early phase of implementing the SAUSA program has focused on coordination of cases through federal/tribal Multidisciplinary Team Meetings (MDT), advancing the timeline for presentation of cases for federal prosecution, and improving coordination and management of cases between Tribal and Federal authorities. Special attention is given to cases involving violent crimes, sex crimes, and habitual domestic violence offenders, especially if the Defendant is non-Indian. The program has been in operation for a few years. The U.S. Attorney's Office has been

diligent in working cooperatively with the assigned SAUSA and the Tribal Prosecutor's Office. The primary challenge is coordinating time and scheduling. The Tribal SAUSA has a full criminal case load with the Pascua Yaqui Prosecutor's Office in addition to the training, follow-up and assisting with the prosecution of cases at the federal level. As the program proceeds it may be helpful for the SAUSAs to have dedicated support staff to help with logistics, coordination of calendars, and case management. Communication, coordination, and cooperation has been enhanced with several different agencies responsible for law enforcement on the Pascua Yaqui Reservation, to include, the U.S. Attorney's Office (Tucson), the F.B.I., tribal Law Enforcement, and federal victim services. Cases are being filed, reopened, and appropriate cases are being declined after thorough review and coordinated follow-up investigations. Tribal criminal investigators, F.B.I. agents, and crime labs are working closely together to bring strong tribal and federal investigations. Defendants are being transferred and transported to tribal court and federal court via writ and arrest warrants. The charging and prosecution of federal crimes committed on the Pascua Yaqui Reservation has increased exponentially due to the SAUSA program and enhanced local MDT meetings. Although it is not the ultimate answer to social problems in our community, the Pascua Yaqui Tribe will continue to work with our federal partners to develop a coordinated crime control policy for our community.

Adam Walsh Sex Offender Registration and Notification Act (SORNA):

The Tribe has recently enacted the Adam Walsh Sex Offender Registration and Notification Act (SORNA). The Prosecutor's Office is working with the Tribal Council, Attorney General, and Law Enforcement to completely implement the new law. SORNA provides a comprehensive set of minimum standards for sex offender registration and notification to the Tribal community. SORNA aims to close potential gaps and loopholes that existed under prior law

and strengthens the nationwide network of sex offender registration and notification programs. The Pascua Yaqui Tribe has substantially implemented SORNA, is registering, monitoring, and informing the community about the presence of sex offenders who are living on the Reservation.

Office of the Prosecutor

The Prosecutor's Office performs several different functions for the Pascua Yaqui Tribe. The Office is responsible for representing our government in Tribal Court in all misdemeanor and felony type criminal matters, including adult and juvenile crimes. The Pascua Yaqui Police respond to approximately 6000 calls for service a year. A large percentage of the criminal calls are referred to the Prosecutor's office for possible prosecution. The cases are evaluated and many are independently charged into tribal court. The Tribal Prosecutor also represents the tribe in civil related matters, to include civil forfeiture of property used in the transportation or sale of narcotics. The Office handles all civil Child Welfare/Child Dependency matters that originate on the Reservation and any child welfare (ICWA) matters transferred from state courts. The Prosecutor's office advises, coordinates, and collaborates with Pascua Yaqui Law Enforcement, Pre-Trial Services, Probation, Victim Services, Centered Spirit, Education, and Social Services. The Tribal Prosecutor's Office also handles victim notification in criminal cases. Victims are notified about the status of their case, the release conditions involving the defendant, plea agreements, provide transportation if needed, and advised of the terms of any sentence imposed by the court.

Indian Country Legal Fellow:

On Thursday, December 4, 2014, the Department of Justice selected the First ever Indian Country Justice fellow Charisse Arce, of Bristol Bay, Alaska, to serve in the District of Arizona. Arce will also serve a portion of her appointment in the Pascua Yaqui tribal prosecutor's office. This is the first Gaye L. Tenoso Indian Country Fellowship within the Attorney General's Honors

Program, and it is awarded to an extraordinarily well-qualified new attorney with a deep interest in and enthusiasm for improving public safety in tribal communities.

“The Pascua Yaqui Tribe is pleased to have the opportunity to partner with the District of Arizona U.S. Attorney’s Office and the Attorney General’s Honors Program, through the Gaye L. Tenoso Indian Country Fellowship,” said Pascua Yaqui Tribal Chairman Peter Yucupicio. “We welcome the new Department of Justice fellow and look forward to a productive partnership as we fight violent crime, work to keep our community safe, and continue to implement the Violence Against Women Act (VAWA), and Special Domestic Violence Criminal Jurisdiction (SDVCJ).”

Due Process:

In 1995, the Tribe opened the Pascua Yaqui Public Defenders Office to provide public defense services to indigent tribal members. The Pascua Yaqui tribal court provides all defendants, Indian or Non-Indian, with the same rights in tribal court as they would have in any state or municipal court. The tribe, without federal support, funds a full-fledged Public Defenders Office, staffed with four licensed defense attorneys. The Tribe also funds four private contracted defense attorneys for those cases where a conflict of interest exists. The right to counsel and due process that are products of American jurisprudence is also deeply rooted in Yaqui indigenous tradition and practice. Our Tribal culture and history supports the right of having a person speak on a defendant’s behalf.

Domestic Violence:

Domestic violence and family violence are serious crimes that are committed against society, the Pascua Yaqui Tribe, and our families. The Tribe, in enacting several criminal justice measures, sought to provide the victims of domestic violence the maximum protection from further violence that our laws can provide. The strength of the Pascua Yaqui Tribe is family, and the safety

of victims of domestic violence, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services. Our response to domestic violence stresses the enforcement of laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribe's policy that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated.

Problems Persist:

Recent and important Tribal justice measures presented some Indian Nations with an opportunity to restore and exercise selected authority to protect their people from crime and violence. However, notwithstanding VAWA, recent federal legislation, and crime fighting efforts of tribes, there still exists a super storm of injustice that has darkened Indian Country for decades. Today, in 2015, a public safety and public health crisis is still present on most Native American reservations and communities, especially for the villages of our relatives in Alaska. The long-term lack of security for women and children has brought on a "crisis of confidence" in both tribal and federal justice systems. The restoration of authority and the coordination with federal authorities represents a new dawn on the Pascua Yaqui Reservation. Not only are we now able to address human rights abuses perpetuated for decades upon women, but we are also able to do this while guaranteeing the civil rights of the accused. On the other hand, just like when a major storm passes, our community will have to take time to survey the damage, reconcile with victims and families, and rebuild the trust that has been lost. There are shattered homes across our Reservation and across Indian Country. Many men, women, and children will continue to suffer through this storm of injustice. The new legal and jurisdictional framework, while changed, will not work absent the proper funding for tribal courts, victims, and support services. The majority of tribes simply do

not have the resources to provide comprehensive changes in their system or guarantee suitable services for victims and their families. The Pascua Yaqui Tribe will continue to work with out federal partners to try and help guarantee just outcomes for crime victims.

Additional Tribal Support and Empowerment is key:

Protecting victims of violent crime, domestic violence, and sexual assault is about justice and safety, but it is also about fairness, and dignity. The starting place to reverse historical jurisdictional problems and injustices in Indian Country is with strong tribal justice systems that are supported with the required resources. Criminal investigations occur at the local level. Along with strong and meaningful federal prosecutions, our local government and court system is the best vehicle to protect Pascua Yaqui victims, mothers, and children from violent perpetrators. The recent Pascua Yaqui VAWA and TLOA implementation process bear those beliefs out. However, without the resources to fund robust court and victim services, the gains will only lead to the same revolving door of repeat violence and ineffective criminal prosecutions that we are all too familiar with. The Tribal Law & Order Act, the amendment to the Indian Civil Rights Act, the Adam Walsh Act, VAWA, and changes to the Pascua Yaqui's code will enhance the safety and security of our community as the laws are implemented, followed, and properly enforced. The missing piece of the puzzle is the ability to comprehensively support, protect, heal, and restore our families and our children who are exposed to violence.

For several different reasons, the challenges facing law enforcement and the justice system in our community are substantial. However, a window of opportunity exists to revolutionize and strengthen our court system. The Pascua Yaqui Tribal Council, law enforcement, the Tribal Court, the Prosecutor's office, technical assistance providers, and our federal partners have recognized our current needs and have taken the opportunity to work together to effect change. In short, the

Tribe has taken significant steps to protect our community, dedicated significant resources, and spent countless hours to see these changes through. However, it will take additional hard work, resources, and dedication to continue to fully and effectively protect and support our victims who have been impacted by violence. Additional support for local Tribal Court systems will also further the current federal strategy that promotes longstanding policies of Indian self-determination, tribal self-governance, and tribal self-sufficiency.

Federal Court Sentencing:

Violent crime in Indian Country has created a public safety crisis across the Nation. Although federal sentencing is not the main issue, it is a contributing factor when violent crime is not prosecuted or when sentencing outcomes do not fit the crime. In order to help address this problem, counseled Tribal Court convictions should be recognized, considered, and applied to federal sentencing determinations of persons who commit crimes in Indian Country.

Federal prosecutions of offenders from Pascua Yaqui Indian Country generally consist of dangerous felony level cases. Unfortunately, offenses like murder, manslaughter, aggravated assault, sexual offenses, child abuse, child molestation, gang related crimes, gun related offenses, burglary, home invasions, and arson make up a majority of Pascua Yaqui cases referred for federal prosecution. In Arizona, Tribal borders do not protect Reservations from crimes related to gangs, drug sales, human smuggling, and major drug cartel criminal enterprises. We are on the front line.

The majority of Tribal offenders prosecuted federally have lengthy tribal criminal histories. Their criminal acts and individual crime sprees have harmed tribal families, injured vulnerable children, and have disrupted the livelihood of our tribal community. Partly because Tribal criminal convictions are not included as part of the criminal history determination of the federal sentencing guidelines in our Indian Country cases, (particularly felony-level crimes) sentences only average

approximately 32 months in length (when outliers are removed). Our outcomes are undoubtedly less than a Native or non-Native offender would receive in Arizona State court for similar serious and violent felony crimes. This is generally not a long enough period to properly consider punishment, rehabilitation, justice, job training, or other restorative practices and policies prior to an offender returning home to our Tribal community.

Criminal jurisdiction in Indian Country is evolving and tribal Courts are as sophisticated as their state counterparts. Some of the arguments against recognition and reliance on tribal sentencing outcomes are outdated, paternalistic, do not afford comity and respect for tribal decision making, and do not account for present day reality. There are now a handful of Tribes in Arizona that are exercising either enhanced Special Domestic Violence Criminal Jurisdiction (SDVCJ) under the Violence Against Women Act, (VAWA) or that have implemented the Tribal Law and Order Act. The Pascua Yaqui Tribe is one of those Tribes. The Tribe has charged 25 different cases of Domestic Violence committed by Non-Indians on our Reservation. The cases involved incidents of strangulation, hair-dragging, physical assaults, and conduct that repeatedly victimized whole families. Of those cases, the offenders had close to 90 separate Tribal police contacts, pre and post VAWA implementation. The majority of the offenders also had lengthy state criminal histories that consisted of violent offenses, drug and alcohol related offenses, and weapons related offenses. Three of the offenders were felons. Three offenders had felony warrants, two for burglary and one for armed robbery out of the State of Oklahoma. Two of the offenders were Legal Permanent Residents (LPR) from Mexico. The Tribe has convicted seven of the non-Indian offenders in Tribal court for domestic violence related offenses. Tribal Court convictions of Non-Indians and Indians should be recognized by federal courts. This is the new reality. Jurisdiction is

changing, tribes are fighting hard to protect their community, crime is multi-jurisdictional in nature, and there is no reason the federal court process should not properly account for this.

Moreover, every person arrested and charged in the Pascua Yaqui Tribal Court is guaranteed legal representation if they face a day in jail, that has been the case now for many years. Most of the offenders that will be prosecuted in federal court will have a tribal criminal history and possibly, a State criminal history. The majority of their relevant Tribal court convictions will be counseled, unless they chose to waive legal representation. The actions of major crime offenders are not traditional, they are not cultural, and they are not the norm for our community.

Sentencing guidelines should also consider the unique nature of each tribe and each federal district. The District of Arizona is different than the District of South Dakota. Likewise, the Pascua Yaqui Tribe differs from the Navajo Nation and any other Tribe. Although we may be faced with some of the same realities, crime is different, laws are different, and approaches to justice, punishment, restoration, and sentencing are different. For example, in Arizona, federal priorities and resources are largely spent on immigration related enforcement. Federal courts in Arizona are clogged with immigration reentry cases, drug smuggling matters, and criminal charges centered on the policy of Operation Streamline. The result is that there are less resources devoted to Indian Country crime in Arizona. This means that less cases are investigated, less cases are referred, more cases are declined, and the cases that are referred are more likely to be declined due to inadequate investigations and delayed indictments. We cannot speak about sentencing unless we consider the jurisdictional realities and how each Federal District policy impacts sentencing outcomes. In Arizona, it is generally the policy that the U.S. Attorney does not prosecute Indian Country drug cases. It is hard to recall the last federal drug case prosecuted from the Pascua Yaqui Reservation. Drug use and sales, including marijuana, cocaine, crack, heroine, and methamphetamine have

reached epidemic levels on the Pascua Yaqui Reservation. The Tribe knows that there have been drop houses, drug related shootings, gang violence, drug related violence, and serious crimes related to the drug trade/sales. We know that many of our social problems in our community is directly related to drug use. Often people try to analogize federal “crack” convictions and sentencing to sentences of tribal defendants. The analogy does not fit in the District of Arizona. The reason given for the lack of federal prosecutions of street level sales is that there is a threshold issue concerning “drug mules” who smuggle large quantities of drugs into the Country.

Disparity in sentencing is simply not an issue in Southern Arizona when comparing Indian defendants prosecuted for major violent felony crimes with similarly situated defendants prosecuted in Arizona. Even with the resources and changes listed, it is difficult to operate in a multi-jurisdiction environment and our federal outcomes are still much lower than a similar Arizona state case. Although that may not be the proper benchmark for our community. However, if there is a glaring disparity, it is in the justice received by victims and families. Victims face language, cultural barriers, discrimination & inadequate federal jury representation. Largely, the Pascua Yaqui community and our victims were dissatisfied with our federal court outcomes, and our tribal court outcomes for that matter. Justice was hampered and limited by our Constitution, our code, scarce resources, and decades suffering with federal agencies who were not investigating or prosecuting our major crimes. This helped to create a lawless atmosphere and a situation where the community simply did not trust our justice systems. Tribal Court outcomes should be respected and given as much weight as mitigating factors would have on downward departures. Tribal court history should also play a factor when courts are considering pre-trial release conditions, especially if a court is contemplating release back into the Tribal community.

Federal Declinations:

Any discussion of federal sentencing by the Tribal Issues Advisory Group (TIAG) should start with federal declinations. Prosecutions and sentencing must be considered in light of federal declinations and federal resources for law enforcement investigations. Here, the declination rate has actually risen dramatically, but as our Court Administrator can attest to, the federal government told us in 2008 that there was no crime on Pascua. As expected, once the cases started to churn, the declination rate increased, however the rate is not as high as other places in Indian Country. Finally, almost all of the outcomes involve federal plea agreements. The indictment may have contained additional charges and the defendant would have faced a steeper sentence at trial. The same could be said if you compared tribal federal outcomes to State plea outcomes.

For several different reasons, less than half of the major crime incidents reported since 2008 have been officially referred for federal prosecution consideration or indictment. However, in the major crime cases that have been officially referred since 2009, a majority have been indicted by the U.S. Attorney's Office. Most of the cases were investigated and referred by tribal detectives who have their federal Special Law Enforcement Commission (SLEC) and they were assisted by local F.B.I. agents in complex cases. The prosecution process was facilitated by tribal prosecutors who are tabbed as Special Assistant United States Attorneys, (SAUSAs).

Recommendations:

The Office of the Attorney General strongly recommends that the TIAG propose that counseled tribal court convictions be considered in federal sentencing and that the guidelines consider mitigation if the crime was linked to substance/alcohol abuse. We recommend that tribal defendants, as part of their sentence, be required to attend a long term residential treatment

program in lieu of part of their sentence. We also recommend that sentences, release dates, and proper notification occur to Tribal authorities and victims. We strongly recommend other sentencing alternatives, reentry programs, GED courses, and or job related programming, especially if the tribal defendant is going to return to the reservation. Finally, we request that sex offenders be properly assessed prior to release and that they undergo sex offender treatment and that the tribal police be notified so that the person can register in our jurisdiction.

Attached is a recent breakdown of most of our Federal case outcomes from **2009-2014** (taken from federal Sentencing Orders and press releases-public information). The attached spreadsheet notes **thirty-two** federal convictions and **six** revocations. When you remove outliers, the average federal sentence involving Pascua Yaqui defendants is between **32-36** months, with **36** months of federal Supervision. That is fairly low when you compare a federal sentence to a sentence out of the State of Arizona for a comparable crime. Right now, tribal court convictions are not generally considered in the federal sentencing matrix. The Tribe has had approximately **sixty** cases officially referred over this time span. Referred means that a Tribal investigator, tribal police officer, or a federal agent sent an investigation to the U.S. Attorney for prosecution. This is much higher than what was occurring prior to 2008. Approximately **fifteen** cases have been officially Declined, **three** cases were dismissed (Drive by Shooting), **One** person was found not guilty at trial, and **one** case was prosecuted by the State (Brett Smith). Five Non-Indians were prosecuted federally over this time span (**two** for domestic violence incidents). Twenty of these cases were also prosecuted tribally, some were joint prosecutions, and most outcomes were concurrent to each other. The investigation, timing, (Statute of limitations) evidence, and coordination issues impact when, how, and by who a case gets prosecuted by.

There were many potential federal (felony) cases, (probably close to 50 between 2008-2014) that were reported and investigated, but never officially referred, indicted, or prosecuted because the investigation did not yield the proper PC to support charges or there were witness issues and/or a lack of cooperation. The Tribe has been working well with the F.B.I. and the U.S. Attorney's Office and the attached results serve as evidence of overall improved cooperation and great work by police, victim services, and every other support division in our criminal justice system. The Tribe knows that these arrests and convictions have helped to lower the overall crime rate on the Reservation, increased the quality of life, and we hope they also provided a general deterrent, now and in the future.

PREVIOUS & RELEVANT PASCUA YAQUI HABEAS MATTERS

On August 17, 2011, the United States Court of Appeals for the 9th Circuit issued an Opinion in the case of *Miranda v. Anchondo*¹², supporting the Pascua Yaqui Tribe's argument that our Tribal Court has the authority to sentence those convicted of multiple offenses to more than one year in jail. The case had wide ranging implications because it set precedent concerning the issue and affected tribes across the United States.

The Pascua Yaqui Tribal Court convicted Miranda of eight criminal violations. The Honorable Cornelia Cruz sentenced her to two consecutive one-year terms, two consecutive ninety-day terms, and four lesser concurrent terms, for a total term of 910 days imprisonment. While serving her sentence, Miranda, through Chief Public Defender, Nicholas Fontana, appealed her conviction and sentence to the Pascua Yaqui Tribe Court of Appeals, arguing, inter alia, that her 910-day sentence

¹² *Miranda v. Anchondo*, 684 F.3d 844 (9th Cir. 844), cert. denied, 2012 WL 2396988 (U.S. Oct. 1, 2012); *Bustamante v. Valenzuela*, 715 F.Supp.2d 960 (D.Ariz.2010). Tribes are allowed to impose consecutive one year terms for separate offenses charged in a single criminal proceeding.

violated the Indian Civil Rights Act (ICRA), 25 U.S.C. § 1302(7). The tribal appellate court rejected Petitioner's arguments and affirmed her conviction on all counts.

Miranda then sought redress through the federal court system via a writ of habeas corpus. On habeas review, by the U.S. District Court of Arizona, the court concluded that the Indian Civil Rights Act, 25 U.S.C. § 1302(7) prohibited the tribal court from imposing consecutive sentences cumulatively exceeding one year for multiple criminal violations arising from a single criminal transaction and ordered that Miranda be released." The United States, through the U.S. Attorney's Office, and the Pascua Yaqui Tribe, through the Office of the Attorney General, appealed the Arizona District court's order granting Miranda's petition for writ of habeas corpus. The 9th Circuit ultimately disagreed with the district court and held that the Indian Civil Rights Act § 1302(7), unambiguously permits tribal courts to impose up to a one-year term of imprisonment for each discrete criminal violation and reversed the lower court's ruling. "Because § 1302(7) unambiguously permits tribal courts to impose up to a one-year term of imprisonment for each discrete criminal violation, and because it is undisputed that Petitioner committed multiple criminal violations, we reverse the district court's decision to grant Petitioner's amended habeas corpus petition."

Although the *Miranda* case never should have required federal court intervention, it cleared up any lingering doubt that tribal courts and our Tribal Council have the authority to impose punishments that are consistent with the Indian Civil Rights Act (ICRA), due process, and necessary to help keep our community members and visitors safe from harm.