



Pascua Yaqui Tribe VAWA Implementation

Thank you for the opportunity for the Pascua Yaqui Tribe to contribute to the discourse on the implementation of the Violence Against Women Reauthorization Act of 2013 (VAWA 2013). We begin by thanking the United States Congress, the Obama Administration, the Department of Justice (DOJ), the National Congress of American Indians (NCAI), the Tribal Law & Policy Institute (TLPI), and the National Council of Juvenile & Family Court Judges (NCJFCJ)¹ for their leadership and assistance during the past year.

Pascua Yaqui VAWA cases quick summary:

18 total cases. 15 defendants (3 who reoffended), 18 victims and 18 children involved.

4 – Convictions by plea agreement

1 – Pending Jury Trial set for April 28, 2015

1 – Jury Trial November 2014 (same sex case) mixed jury of tribal members & non-Indians found insufficient evidence of dating relationship, thus no jurisdiction/acquittal. Defendant extradited to Oklahoma on a felony armed robbery warrant.

1 case referred and prosecuted federally (Griffith) 4 cases in total were referred for federal prosecution.

1 – Defendant on Warrant status

10 – Matters were dismissed/declined for jurisdictional (U.S. Supreme Court *Castleman* case issues), investigative, or witness related problems.

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Summary describing the importance of VAWA to the Pascua Yaqui Tribe.

Pursuant to the Violence Against Women Reauthorization Act of 2013 (VAWA 2013), on February 20, 2014, the Pascua Yaqui Tribe began exercising Special Domestic Violence Criminal Jurisdiction (SDVCJ) over non-Indian perpetrators of domestic violence committed on the Pascua Yaqui Reservation. On July 2, 2014, for the first time since the U.S. Supreme Court stripped tribal governments of their criminal authority over non-Indians in *Oliphant v. Suquamish Indian Tribe* (1978), the tribe obtained the first conviction of a non-Indian, a twenty-six year old Hispanic male for the crime of domestic violence, assault. This represents a historic step for law and order in Indian Country and it is a strong example of tribal sovereignty and self-determination.

The Pascua Yaqui Tribe joined Phase One of the VAWA 2013 Pilot Project in July 2013, and on February 20, 2014 began exercising Special Domestic Violence Criminal Jurisdiction (SDVCJ). The impact over the last year has been substantial both on protecting the immediate tribal victims of domestic violence and the children who witnessed the violence. Over the period of the pilot project, the 18 incidents involving non-Indian offenders constituted 25 percent of the Tribe's domestic violence case load; if we only extrapolated this number of incidents across the approximately 300 tribes with tribal courts, that would equal at least 5,000 incidents and 10,000 victims who could have received tribal protection across the United States.

The concerns, problems, and challenges that VAWA implementation addresses:

The VAWA Pilot Project fills the jurisdictional void created by the Supreme Court's decision in *Oliphant v. Suquamish*, by returning power to the tribe to prosecute those who commit domestic violence against our people. Pascua Yaqui was the first tribe in almost 40 years to arrest and convict a non-Indian. Pascua Yaqui's location and demographics made it an ideal location for the Pilot Project. The Reservation is approximately 60 miles north of the United States-Mexico International Border. The Tribe is located near a major metropolitan city, and while this is a positive for business ventures, it can have a negative effect on crime that occurs on the reservation. Approximately 4000-5000 people reside on the 2,200 acre Reservation, located in Pima County, Arizona, near the City of Tucson. 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 non-Indians and a small number of individuals who are members of other tribes.

Social conditions that contributed to domestic violence are prevalent on the reservation. For example, 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. Single mothers account for the reservation's most vulnerable population to domestic violence. Domestic violence is and has been the most pressing criminal justice challenge facing the Tribe. Domestic violence charges account for a significant majority of all criminal case

filings, including aggravated assault, assault, disorderly conduct, and trespass cases in which domestic violence is a factor. Additionally, approximately 800 Non-Indians work for the Tribal government, work for Tribal casino enterprises, or attend school on the Reservation.

In the four year period prior to the implementation of the VAWA Pilot Project and during the project period, the 15 non-Indian defendants charged under SDVCJ had over 80 documented tribal police contacts, arrests, or reports attributed to them. All of the incidents occurred on the Pascua Yaqui reservation. Due to previous restrictions mentioned, the Tribe was not able to prosecute these cases. The Federal government may have had authority to investigate and prosecute some of the cases, but generally declined to pursue them. The VAWA Pilot Project has demonstrated how necessary Tribal jurisdiction is over non-Indian perpetrators of domestic violence.

Pascua Yaqui VAWA Implementation responds and addresses the problem of Non-Indian violence against tribal women.

For hundreds of years Pascua Yaqui ancestors fought to preserve the territorial integrity of their homeland and to protect their people. The recent 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 it had already built the necessary infrastructure required by federal prerequisites.

Historically, the Yaqui people have always had some form of law enforcement and dispute resolution, most notably through our ceremonial societies. In 1988, unsatisfied with the services provided by the BIA, the Tribe took over the judicial system through a 638 contract. The Tribe currently employs twenty-six uniformed patrol officers who are certified by Arizona as state officers and most are federal Special Law Enforcement Commissioned officers. The Tribe has agreements with various state and federal agencies for access to criminal information databases, evidence processing, and emergency service communications.

The Pascua Yaqui Police responds to approximately 12,000 calls for service a year. A percentage of the criminal calls are referred to the Prosecutor's office for possible prosecution. The incidents referred are evaluated and most of them are independently charged into tribal court. Our Prosecutor's Office also routinely handles criminal extradition cases.

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. The Pascua Yaqui justice system includes Victim Services, Probation, and Pre-Trial Services Departments.

The Pascua Yaqui tribal court provides all defendants with the same rights in tribal court as they would have in any state or municipal court. The tribe funds a full-fledged Public Defenders Office, (originally opened in 1995) with four licensed defense attorneys and funds four private contracted defense attorneys for conflict situations. The Tribe also guarantees the selection of diverse and objective jurors from a fair cross-section of the community and provides a State bar-

certified judge.

Adult Tribal inmates, including Non-Indian VAWA defendants, are transported to a regional, B.I.A. contracted detention facility in San Luis, Arizona. The contracted facility is close to the tribal Reservation and is sensitive to tribal detainee needs. The Tribe employs detention officers for short-term tribal detention, booking, transportation, and pre-trial detention needs.

Although the investments in our system were costly, no cost is greater than the harm and shame that was being borne by our women and children. The new program is consistent with Yaqui tradition and culture, namely protecting our people and providing fairness to the accused.

Since February 26, 2014 (the date of the first arrest of a non-Indian defendant), the Tribe has had 72 DV cases, 54 of which involved Indian defendants and 18 (or 25%) involving non-Indians. Most of the VAWA perpetrators have criminal records in the State of Arizona. Two had active warrants for their arrests, one for armed robbery out of the State of Oklahoma. Two offenders are felons, both having been convicted for Burglary in Arizona. Four VAWA cases were serious enough to warrant referrals for federal prosecution (strangulation, aggravated assault, hair dragging). Eleven of the cases involved eighteen children, all under the age of eleven. In many of our cases, children who were exposed to violence, were victims, or reported the crime while it was in progress. One Defendant, while being arrested stated, “You can’t do anything to me anyway.”

Domestic violence crimes are considered serious crimes against Yaqui society. The Tribe, in enacting the SDVCJ, now provides victims of domestic violence the maximum protection that the law can provide. The strength of the Pascua Yaqui Tribe is family and the safety of victims of domestic violence, especially children, is now closer to being ensured. Our response to domestic violence stresses the enforcement of laws to protect the victim and to hold the perpetrator accountable, which in turn communicates the Tribe’s policy that violent behavior against intimate partners or family members will not be excused or tolerated.

VAWA implementation has also helped to raise awareness of domestic violence in our community. The Tribe conducted interviews, sent out press releases, and met with several news outlets to include, the Arizona Daily Star, the Seattle Times, the L.A. Times, and the Washington Post.² Recently, after the Tribe started to exercise 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. 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.

² 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

The data and information collected will help the Tribe develop targeted efforts to help identify our most vulnerable citizens and help the Tribe develop a comprehensive prevention program.

Significance to Sovereignty

Sovereignty is more than a right, it is a responsibility. In the words of Peter Yucupicio, Chairman of the Pascua Yaqui Tribe, “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.” Protecting our people comes first and it is absolutely necessary to any further exercise of sovereignty.

Cultural Relevance & Transferability.

The right to counsel and due process that appear to be products of American jurisprudence is 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. Protecting both our people and the rights of people accused of crimes are fundamental to Yaqui culture, and these are also the twin aims of the Violence Against Women Act’s tribal provisions.

Pascua Yaqui’s experiences with implementing VAWA 2013 demonstrate that while the statute can be extraordinarily effective, it may not be appropriate for all tribes. Tribes with a smaller homogenous population or without the necessary resources to build the required infrastructure may find that the cost and complexity of VAWA prohibitive. For many tribes, however, this would be a very valuable power to exercise. Alfred Urbina, Pascua Yaqui’s Attorney General, and Professor Melissa Tatum of the University of Arizona, have co-authored a draft guidebook for tribes considering implementing VAWA 2013 and the Tribal Law and Order Act that walks tribes through the factors in the decision making process.

Sustainability.

Pascua Yaqui applied for the pilot project as a result of the investment it has made in its criminal justice infrastructure, the strength of that infrastructure, and the emphasis it places on justice and protecting its people. With a self-reported 500 non-Indians living on the Reservation (U.S. Census) and approximately 800 Non-Indians working on the Reservation, the probability that additional cases will arise in the future is highly likely. The Tribe will not sit idly by while our women and children are victimized. The bottom line is that VAWA SDVCJ must be sustained and expanded to cover additional crimes and child victims, justice has been demanding no less for nearly 40 years. VAWA implementing Tribes must also receive necessary supplemental funding contemplated by VAWA.

Challenges to VAWA Implementation:

Castleman Issue

There have been challenges during Pascua Yaqui's VAWA SDVCJ implementation. For example, on March 26, 2014, the Supreme Court decided *U.S. v. Castleman*.³ *Castleman* had an immediate impact on the Tribe's criminal charging decisions when evaluating misdemeanor arrests under SDVCJ authority. In the *Castleman* case, James Castleman moved to dismiss his 2008 federal indictment under 18 U. S. C. §922(g)(9), which forbids the possession of firearms by anyone convicted of a "misdemeanor crime of domestic violence." He argued that his 2001 conviction in Tennessee did not qualify as a "misdemeanor crime of domestic violence" because it did not involve "the use or attempted use of physical force," required by 18 U. S. C. §921(a)(33)(A)(ii). The Court held that the use of physical force was "satisfied by even the slightest offensive touching." What is problematic for new SDVCJ cases is that the VAWA defines the term domestic violence as "violence" committed by a current or former spouse or intimate partner of the victim..." 25 U.S. Code § 1304 (a)(2). The federal definition of a "misdemeanor crime of domestic violence" used to determine *Castleman*, will likely be used by federal and tribal courts to establish the charging boundaries under VAWA. The Tribe, like many other jurisdictions commonly charge crimes that arise early in the cycle of domestic violence relationships that may not include an "offensive touching" as an element to the crime, but nonetheless, they are violent and dangerous. These crimes can include Trespassing, Threatening and Intimidation, Tampering with Communications, Burglary, Breaking & Entering, Stalking, Disorderly Conduct, Unlawful Imprisonment, Harassment, Endangerment, Custodial Interference, and Malicious Mischief.

The dynamics and cycle of intimate partner violence is that offenders, in order to maintain power and control, will use escalating abusive and violent behavior against their partner. Over the life of a relationship, aggressive and hostile behavior increases in both frequency and severity. The cycle may end in the eventual separation of the couple, harm to the victim, or even the death of the victim. The Tribe's ability to address and prevent violent encounters through the limited authority of VAWA SDVCJ appears to be further restricted by the holding in *Castleman*.

Proposed Amendment/Clarification:

Congress should determine if and how a Tribal domestic violence case is restricted by the U.S. Supreme Court holding in *U.S. v. Castleman* under the current law. If necessary, Congress should then confirm that violent force is not required for a DV incident to qualify as a VAWA SDVCJ offense and allow tribes to delineate additional offenses. This may require changing the definition of "Domestic Violence" under VAWA. The Pascua Yaqui Tribe respectfully proposes that Congress amend the definition of the term "domestic violence" in the VAWA. "Domestic violence" in the context of the VAWA could be expanded to include specific crimes that do not require an element of "offensive touching." (Threatening & Intimidation, Criminal Damage of

³ No. 12-1371 (U.S. Mar. 26, 2014). slip opinion (available at http://www.supremecourt.gov/opinions/13pdf/12-1371_6b35.pdf).

Property, Trespassing, Disorderly Conduct, Child Abuse, etc.), and expand the range of victims covered, specifically to include child and vulnerable adult victims.

Reasons: Domestic violence is generally a pattern of abusive behavior in a relationship that is used by one partner to gain or maintain power and control over an intimate partner or family member. Domestic violence can be physical, sexual, emotional, economic, psychological acts, or threats of actions that influence another person. This includes behaviors that intimidate, manipulate, humiliate, isolate, frighten, terrorize, coerce, threaten, blame, hurt, injure, or wound someone, including physical abuse, sexual abuse, psychological abuse, economic abuse, and abuse targeted at children, pets, and family members.

Violence Against Women Act (VAWA) Implementation funding:

The Pascua Yaqui Tribe is requesting that Congress make available funds to properly implement VAWA, SORNA, and the Tribal Law and Order Act (TOLA). During and beyond the implementation phase, Tribes need permanent funding and access to resources and services that are available to state, county, and municipal governments.

Within VAWA 2013, there is an authorization for appropriations of up to \$5,000,000 for each of fiscal years 2014 through 2018 for participating tribes that are exercising SDVCJ. The Pascua Yaqui Tribe is requesting a proportional share of the funding for the 2015-2018 fiscal years, in order that we may carry out all of the many responsibilities that we have as a VAWA Pilot Project Tribe.

Section 904 of VAWA 2013, Public Law 113-4(2013) as codified in 25 U.S.C. 1304(f) allows the Attorney General to award grants to Indian Tribes for the following purposes:

(f) Grants to tribal governments

The Attorney General may award grants to the governments of Indian tribes (or to authorized designees of those governments)—

(1) to strengthen tribal criminal justice systems to assist Indian tribes in exercising special domestic violence criminal jurisdiction, including—

(A) law enforcement (including the capacity of law enforcement or court personnel to enter information into and obtain information from national crime information databases);

(B) prosecution;

(C) trial and appellate courts;

(D) probation systems;

(E) detention and correctional facilities;

(F) alternative rehabilitation centers;

(G) culturally appropriate services and assistance for victims and their families; and

(H) criminal codes and rules of criminal procedure, appellate procedure, and evidence;

(2) to provide indigent criminal defendants with the effective assistance of licensed defense counsel, at no cost to the defendant, in criminal proceedings in

which a participating tribe prosecutes a crime of domestic violence or dating violence or a criminal violation of a protection order;

(3) to ensure that, in criminal proceedings in which a participating tribe exercises special domestic violence criminal jurisdiction, jurors are summoned, selected, and instructed in a manner consistent with all applicable requirements; and

(4) to accord victims of domestic violence, dating violence, and violations of protection orders rights that are similar to the rights of a crime victim described in section 3771(A) of title 18, consistent with tribal law and custom.

The Pascua Yaqui Tribe currently expends considerable resources on all of the above programs, through both federal grants as well as significant sums of tribal dollars. The Tribe had two cases arise that implicated SDVCJ within the first two weeks of implementation and a total of 18 cases. Significant resources have been dedicated to the Pilot Project cases. The Tribe would be better able to fund these programs as well as additional programs going forward if monies are appropriated under VAWA 2013, which are intended, pursuant to 25 USC 1304(g) to “supplement and not supplant any other Federal, State, tribal, or local government amounts made available to carry out activities described in this section.” A possible mechanism would be for the Department of Justice VAWA Office to develop a Tribal Funding Plan and distribute the funds as tribal set-aside funding which could be added to our existing 638 Contract as a modification. This method would allow the funding to be easily transferred to the Tribe.

As such, we respectfully request that Congress or the Department of Justice provide a mechanism for disbursement of the funding provided for in VAWA 2013.

Conclusion:

For several different reasons, the challenges facing law enforcement and the justice systems in Indian Country are substantial. However, a window of opportunity exists to revolutionize and strengthen our systems of justice. The Pascua Yaqui Tribal Council, Law Enforcement, our Tribal Court, the Prosecutor’s Office, and our federal partners 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 implement the new law.

The new VAWA law makes a number of important changes to federal law that we have implemented and use on a daily basis to protect our community and that affect the rights of criminal defendants. The continual educating of community members, tribal law enforcement officers, prosecutors, judges, defense counsel and other officials will be important. VAWA will require a significant amount of interagency coordination and it will be important to establish a strong framework or process for follow through.

VAWA SDVCJ authority 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 and children, but we are also able to do this while guaranteeing the civil rights of the accused.

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