

PASCUA YAQUI TRIBE

ADDENDUM MATERIAL

OFFICE OF THE CHAIRMAN

DATE 11/15/22

ITEM NO. A006

October 12, 2022



Honorable Rex Scott
Pima County, Arizona
District 1
130 W. Congress St., 11th Floor
Tucson, AZ 85701

Honorable Steve Christy
Pima County, Arizona
District 4
130 W. Congress St., 11th Floor
Tucson, AZ 85701

Honorable Matt Heinz
Pima County, Arizona
District 2
130 W. Congress St., 11th Floor
Tucson, AZ 85701

Honorable Adelita Grijalva
Pima County, Arizona
District 5
130 W. Congress St., 11th Floor
Tucson, AZ 85701

Honorable Sharon Bronson
Pima County, Arizona
District 3
130 W. Congress St., 11th Floor
Tucson, AZ 85701

Re: Intergovernmental Agreement: Special Deputy County Attorneys

Dear Mr. Heinz, Mr. Scott, Chair Bronson, Mr. Christy, and Vice-Chair Grijalva:

First, on behalf of the Pascua Yaqui Tribal Council, I humbly express our appreciation and thanks for your leadership and ongoing support and partnership with the Pascua Yaqui Tribe. Recently, the Supreme Court in an Indian Country criminal jurisdiction case, *Oklahoma v. Castro-Huerta*,¹ 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.² *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. On review, the ruling may apply to the Pascua Yaqui Reservation and the short-term impact could cause confusion and uncertainty. However, it also provides an opportunity for increased safety, cooperation, and coordination through a formal negotiated intergovernmental agreement. The purpose of the proposed 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 and to help coordinate and clarify the responsibilities of the Pascua Yaqui Tribe and Pima County government for crimes committed on our Reservation.

¹ *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022).

² See *Oklahoma v. Castro-Huerta*, 597 U.S. (2022), slip op. at 24 n.9.

NOV 17 2022 09:20 AM

AM

The proposed IGA 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. The IGA will address jurisdictional uncertainty, help reduce regional crime, decrease the prevalence of violent crime, combat sexual and domestic violence against American Indian men and women, and help combat Missing and Murdered Indigenous Persons (MMIP). The proposed agreement will also help increase coordination and communication among state, tribal, federal, and local law enforcement agencies.

Pima County and the Pascua Yaqui Tribe have entered into many IGAs over the years, to include public safety, mutual aid, and wastewater agreements. In 2005, the Tribe entered an IGA with Pima County to participate in the Pima County Regional Special Weapons and Tactics (SWAT) Team program for police SWAT services. In 2009, the Tribe entered an 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 criminal justice databases. In 2010, the Tribe entered an IGA with Pima County to take part in the Pima County Wireless Integrated Network (PCWIN). PCWIN provides improved public emergency services and regionally coordinated mutual aid. Since 2014, utilizing A.R.S. 13-3869, the Tribe also worked cooperatively with Pima County on regional public safety in 65 criminal matters to extradite state and tribal offenders to and from the Reservation.

The Pascua Yaqui Tribe was federally recognized in 1978 as a "PL-280"³ Tribe, where the State of Arizona had civil and criminal jurisdiction on our Reservation. For many reasons, state jurisdiction did not work well for our community. In 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.⁴ 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. Over the course of nearly four decades, the Pascua Yaqui Tribe worked with our federal partners and the U.S. Federal District Court to prosecute crimes, including crimes involving non-Indian offenders.

On March 15, 2022, President Biden signed the Violence Against Women Act Reauthorization (VAWA 2022), which further expanded Tribal criminal jurisdiction. Due to the success of VAWA 2013 and the need to address additional non-Indian related crime, Congress restored additional jurisdiction of tribal courts over non-Native perpetrators of sexual assault, child abuse, stalking, sex trafficking, obstruction of justice, and assaults on tribal law enforcement officers.⁵ The Tribe has been exercising VAWA Special Domestic Violence Criminal Jurisdiction (SDVCJ), since 2014. The tribe has investigated over 100 criminal matters perpetrated by non-Indian offenders in SDVCJ cases, many of those cases were violent crimes, and importantly, they were cases that weren't being prosecuted by the state or the federal

³ Public Law 83-280(PL 280)18 U.S.C. § 1162(a); 28 U.S.C. § 1360(a).

⁴ 50 Fed. Reg. 34, 555.

⁵ 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).

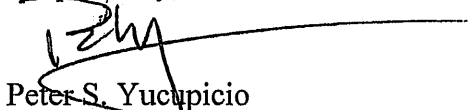
government. Under *Castro-Huerta*, the state would have concurrent jurisdiction over these cases. On July 27, 2022, to control our internal relations, help preserve our customs, and to keep our community safe, the Tribal Council adopted resolutions amending the Tribe's criminal code to exercise VAWA's additional restored authority and empowered the Pascua Yaqui Prosecutor's Office to operate a Tribal Special Deputy County Attorney program.⁶ The Special Tribal Criminal Jurisdiction provisions of VAWA 2022 went into effect on October 1, 2022.

An IGA is a common-sense step in a concurrent jurisdiction environment. 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 program will be staffed primarily with experienced state-licensed, tribal prosecutors who are appointed by the Pima County Attorney. The Pima County Attorney has the power to appoint "special deputy county attorneys," "[w]ith consent of the board of supervisors."⁷ 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 Council, authorized 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).

Crime is local but not restrained by porous boundaries. In the wake of the *Castro-Huerta* decision, augmenting our justice systems, with a Tribal Special Deputy County Attorney (SDCA) Program will enhance justice on tribal land and promote cooperation in Indian Country. The proposed 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 respects the sovereignty and political integrity of Pima County's government and the values and culture represented by our sister jurisdiction, and we desire an agreement that reflects our historic government-to-government relationship. Importantly, the program will foster increased inter-jurisdictional understanding, trust, and respect, and will ensure that decisions about the tribe's property and citizens are made with the tribe's participation.

Lios enchi hiokoe ut'tesia, thank you for the opportunity to provide the Tribe's views. We look forward to working with Pima County to provide solutions and strengthen public safety within the boundaries of Yaqui Indian Country. Thank you for your consideration.

Respectfully,



Peter S. Yucupicio
Chairman of the Pascua Yaqui Tribe

⁶ 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.

⁷ Ariz. Rev. Stat. § 11-403(B)(1).