

Application of the Pascua Yaqui Tribe
VAWA Pilot Project
Questionnaire on Tribal Criminal Jurisdiction

Submitted December 30, 2013

Via email to: OTJ@usdoj.gov

THE RIGHT TO TRIAL BY AN IMPARTIAL JURY

1. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe provide to the defendant the right to a trial by an impartial jury that is drawn from sources that reflect a fair cross section of the community and do not systematically exclude any distinctive group in the community, including non-Indians?

Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

Yes

No

References:

See 3 PYTC §2-1-160 copied below and publicly available at http://www.pascuayaqui-nsn.gov/static_pages/tribalcodes/

Section 160 Jury Trials; Jury Selection (3 PYTC 2-1-160 – Former 3 PYT R.Civ.P. Rule 16)

- (A) A jury trial shall be held if requested by either party to the case at least 30 days before the trial.
- (1) The party who requests a jury trial shall pay to the court a jury fee established by Rule of Court.
 - (2) Payment of the jury fee may be waived by the chief judge upon the request of a party if payment of the fee would result in severe hardship to the party.
 - (3) The party who requests a jury trial or a visiting judge who fails to provide at least five days notice by a written motion to continue shall be liable for the payment of jury fees and fees payable to the visiting judge at the discretion of the judge presiding over the trial.
- (B) To be eligible to serve as a juror, a person must be a tribal member, a spouse of a tribal member, an employee of the Pascua Yaqui Tribe or its enterprises, and/or a permanent resident of the Pascua Yaqui Reservation. A juror must be 18 years of age or older, never have been convicted in any court of a felony, and must not at the time the list is made, or at the time of trial, be holding the office of tribal judge, tribal police officer, or Tribal Council member, nor be a witness or a party in the matter before the court.
- (1) **Permanent Resident:** A permanent resident of the reservation is person who rents, owns, or otherwise resides in a dwelling place on the reservation and who resides in that dwelling place other than seasonally or periodically, , and who intends to make the reservation his or her permanent home for the indefinite future, and who does not claim residence in any other location for any purpose. A non-member may be a permanent resident of the reservation for the purposes of this section.

- (2) Tribal Member: Tribal members must meet the qualifications in section (B) above, and be residents of the State of Arizona, with preference given to residents of Pima, Pinal, Santa Cruz and Maricopa Counties. Tribal members residing outside those counties or outside Arizona may be qualified for jury duty. The tribal members who reside outside the geographic area described above may serve jury duty by filing a statement of juror eligibility.
- (3) Non-member Spouse of a Tribal Member: A spouse of Tribal Member is a person who is married to a Pascua Yaqui Tribal member and otherwise meets the juror qualifications found in this section (B).
- (4) Employee of the Pascua Yaqui Tribe or its Enterprises: An employee of the Pascua Yaqui Tribe or its enterprises shall be a full-time employee of the Tribe or its Enterprises who has completed his or her probationary period and meets the jury qualifications found in this section (B).
- (C) Jurors for trial shall be selected from a list of eligible jurors prepared from the Pascua Yaqui Tribal Census Roll and non-member and employee statistics.
 - (1) The list of eligible jurors will be provided by Tribal Council, or a designee thereof, and submitted to the Tribal Court no later than July 20th of each year.
 - (2) The clerk of the court shall eliminate those persons who do not meet the qualifications set forth above in subparagraphs (B) (1) and (B) (2).
- (D) Selections of panel; jury summons; failure to appear; excuse from jury duty.
 - (1) Not less than 20 days before the date set for the beginning of a jury trial, the chief judge shall draw from the master jury list, at random, the number of names specified by Rule of Court for a civil jury trial of the type scheduled. The clerk of the court shall then issue and cause to be served upon each person who was selected a jury duty summons.
 - (2) The jury summons shall notify the person being summoned to appear in court on the date set for the beginning of the trial, one hour before the time set for the trial.
 - (3) Failure of a person served with a jury summons to appear shall constitute contempt of court and the summons shall contain a warning to that effect.
 - (4) Any person for whom jury service would be a severe hardship may be excused from service by the judge, but such excuse from jury duty shall be disfavored. Severe hardship may include, but is not limited to:
 - (a) Having to travel more than 150 miles one-way,
 - (b) Having to stay overnight in order to serve upon a jury, when such has not been ordered by the court or presiding judge as a condition of sequestering the jury,
 - (c) Interference with work which would cause severe financial hardship on the person, and
 - (d) Interference with other duties to another court of law.
- (E) On the day of the trial, the clerk shall deposit in a ballot box ballots containing the names of each of the summoned potential jurors who have appeared by the time set for their appearance. Those persons whose names are in the ballot box shall be known as the jury panel. After the judge calls the court to order, the names of 14 members of the jury panel, shall be drawn from the ballot box, at random, who shall then be seated in the jury area. The clerk shall make a list of the names in the order in which they are called.
- (F) Removal for cause; examination by court, parties.

- (1) After the first 14 members of the jury panel have been seated, the judge shall examine each of them as to their qualifications, and excuse any who appear to him or her to be biased, prejudiced, unable to fairly and effectively perform the duties of a juror or otherwise not qualified to serve as a juror. The judge shall permit the parties or their counsel to similarly examine and ask for the removal of jurors for cause, without any limit to the number of jurors so challenged or removed, except that all such challenges must be made in good faith. The judge shall excuse any juror he or she believes to be unqualified, directing him or her to leave the jury area. The names of such persons shall be crossed off the list by the clerk.
- (2) After all disqualified jurors have been excused from the jury area; enough additional ballots shall be drawn by the clerk to replace the disqualified persons with members of the jury panel. The clerk shall add their names to the list in the order in which they were called. The procedure for challenge for cause shall continue until 14 qualified persons are seated in the jury area.
- (G) After the 14 qualified persons have been seated in the jury area, each party shall have the right to remove any three persons from the jury without stating any reason. The parties shall alternately remove jurors, or waive their turn to do so, until they have exhausted their preemptory challenges.
- (H) The clerk of the court shall then read aloud the first seven names on the list and those persons shall be jurors for the trial. The clerk shall also read aloud the eighth name on the list, and that person shall be an alternate juror for the trial. The alternate juror shall act in all respects as a juror, except that he or she shall not participate nor vote during jury deliberation unless one of the other jurors has been excused by the judge during the course of the trial.
- (I) The list of eligible jurors shall be provided to the Tribal Court by the Tribal Council or a designee thereof, and shall not be released to any other person.
- (J) The list of jurors called for jury duty at any particular time shall remain confidential and shall not be released to anyone except the parties or their counsel, but only on the day that trial is to begin, and only for the purposes of selecting a jury.
- (K) The clerk of the court shall secure the list of eligible jurors and the list of jurors summoned for jury duty in a safe or other secure place to which no one else has access.

Further Discussion:

1. The juror list will be compiled from the records of Human Resources, the Enrollment Department, and the Housing Department. This will fulfill the requirements of VAWA 2013 and the code provisions above.
2. The Tribal Court has not established jury or visiting judge fees, and does not and will not assess defendants fees for a jury trial or visiting judge. (See 3 PYTC §2-1-160(A)).
3. A defendant has the right to a jury trial upon request for any crime for which imprisonment is a *possibility*. The right exists regardless of whether a sentence or a fine or both are ultimately imposed. (See 3 2-2-440(A)).
4. A jury verdict shall be unanimous. (See 3 PYTC §2-2-440(D)).

THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

2. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution?

Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

Yes

No

References:

See 3 PYTC §2-2-310 copied below and publicly available at http://www.pascuayaquinsn.gov/static_pages/tribalcodes/

Section 310 Right to Counsel (3 PYTC § 2-2-310 – Former 3 PYT R.Crim.P. Rule 31)

- (A) At the initial appearance the defendant shall be informed of his right to be represented by counsel in any criminal proceeding at his own expense, except in those petty offenses such as traffic violations where there is no prospect of imprisonment or confinement after a judgment of guilty. The right to be represented shall include the right to consult with counsel as soon as feasible after a defendant is taken into custody, at reasonable times thereafter and sufficiently in advance of a proceeding to allow adequate preparation therefore.
- (B) An indigent defendant shall be entitled to have an attorney or a tribal court advocate appointed to represent him or her at the Tribe’s expense in any criminal proceeding in which the Tribe is seeking punishment by loss of liberty. At the initial appearance, the Tribe shall inform the Court whether or not the Tribe seeks punishment by loss of liberty. If the Tribe elects to seek punishment by loss of liberty at any time subsequent to the initial appearance, the Tribe shall notify the Court not later than thirty days before trial, and counsel shall be appointed by the Court.
- (C) If the charges facing an defendant could result in loss of liberty of one year or more or a fine of greater than \$5,000, or the defendant is facing any length of imprisonment and is charged under the Special Domestic Violence Criminal Jurisdiction defined at 25 U.S.C. §1304, then the defendant shall have the right to an attorney licensed to practice law in both the Pascua Yaqui Tribal Courts and in any jurisdiction

in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.

- (D) If a defendant facing charges under section (C) above is determined to be indigent, then the Court will appoint an attorney licensed to practice law in both the Pascua Yaqui Tribal Courts and in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys at the Tribe's expense.
- (E) A defendant may waive his or her rights to counsel in writing, after the court has determined that he or she knowingly, intelligently and voluntarily desires to forego them. A defendant may withdraw a waiver of the right to counsel at any time, but will not be allowed to repeat any proceeding already held solely on the grounds of the waiver and consequent lack of counsel.

THE RIGHT TO INDIGENT DEFENSE COUNSEL

3. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to each indigent defendant, at no cost to the defendant, the right to the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys?

Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

Yes

No

4. For each licensed defense attorney that the Tribe anticipates will be appointed to represent an indigent defendant in a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot Project (i.e., prior to March 7, 2015) and in which a term of imprisonment of any length may be imposed, please provide a list of all jurisdictions for each attorney.

References:

See 3 PYTC §2-2-310 copied below and publicly available at http://www.pascuayaqui-nsn.gov/static_pages/tribalcodes/

Section 310 Right to Counsel (3 PYTC § 2-2-310 – Former 3 PYT R.Crim.P. Rule 31)

- (A) At the initial appearance the defendant shall be informed of his right to be represented by counsel in any criminal proceeding at his own expense, except in those petty offenses such as traffic violations where there is no prospect of imprisonment or confinement after a judgment of guilty. The right to be represented shall include the right to consult with counsel as soon as feasible after a defendant is taken into custody, at reasonable times thereafter and sufficiently in advance of a proceeding to allow adequate preparation therefore.
- (B) An indigent defendant shall be entitled to have an attorney or a tribal court advocate appointed to represent him or her at the Tribe’s expense in any criminal proceeding in which the Tribe is seeking punishment by loss of liberty. At the initial appearance, the Tribe shall inform the Court whether or not the Tribe seeks punishment by loss of liberty. If the Tribe elects to seek punishment by loss of liberty at any time

subsequent to the initial appearance, the Tribe shall notify the Court not later than thirty days before trial, and counsel shall be appointed by the Court.

- (C) If the charges facing an defendant could result in loss of liberty of one year or more or a fine of greater than \$5,000, or the defendant is facing any length of imprisonment and is charged under the Special Domestic Violence Criminal Jurisdiction defined at 25 U.S.C. §1304, then the defendant shall have the right to an attorney licensed to practice law in both the Pascua Yaqui Tribal Courts and in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.
- (D) If a defendant facing charges under section (C) above is determined to be indigent, then the Court will appoint an attorney licensed to practice law in both the Pascua Yaqui Tribal Courts and in any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys at the Tribe's expense.
- (E) A defendant may waive his or her rights to counsel in writing, after the court has determined that he or she knowingly, intelligently and voluntarily desires to forego them. A defendant may withdraw a waiver of the right to counsel at any time, but will not be allowed to repeat any proceeding already held solely on the grounds of the waiver and consequent lack of counsel.

Question #4:

Melissa Acosta: Arizona, California, and the Pascua Yaqui

Patricia Leon-Enriquez: Arizona and the Pascua Yaqui

Jessica Turk: Arizona, Hawaii, and the Pascua Yaqui

Samuel Washington: Arizona, Pascua Yaqui, United States District Court (AZ)

Jacob Amaru: Arizona, Pascua Yaqui

Maria Davila: Arizona, Pascua Yaqui, United States District Court (AZ), United States Court of Appeals (9th Circuit)

Sara Dent: Arizona, Pascua Yaqui

Further Discussion:

1. The determination of indigence is made when the Court reviews a form that has been filled out by the defendant. The form requests financial information from the defendant and the determination is made using Federal poverty guidelines.
2. The Tribe does not distinguish between Indian and non-Indian defendants in the Tribal Court's determination of an indigent right to counsel. So, where the right to court appointed counsel exists, it applies with equal force to Indian and non-Indian defendants.
3. The Tribal Code does not classify crimes between felony and misdemeanor categories. The Tribe provides the right to court appointed counsel in all cases where imprisonment is requested by the Tribe. Where the Tribe does not request imprisonment in SDVJ cases, court appointed indigent defense counsel will be appointed.

4. The Tribe extends the right to Court appointed counsel to all indigent defendants to pursue a tribal appeal of a criminal conviction arising out of the tribe's exercise of SDVJ as well as in any criminal case, including non-SVDJ cases.

THE RIGHT TO A LAW-TRAINED, LISCENSED JUDGE

5. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe provide to the defendant the right to a criminal proceeding presided over by a judge who has sufficient legal training to preside over criminal proceedings and is licensed to practice law by any jurisdiction in the United States?

Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

Yes

No

6. For each judge that the Tribe anticipates will be appointed to represent an indigent defendant in a criminal proceeding in which the Tribe will exercise SDVCJ during the Pilot Project (i.e., prior to March 7, 2015) and in which a term of imprisonment of any length may be imposed, please provide a brief description of the judge’s legal training to preside over criminal proceedings, and (b) a list of all jurisdictions that judge is licensed to practice law.

References:

See 3 PYTC §2-2-313 copied below and publicly available at http://www.pascuayaqui-nasn.gov/static_pages/tribalcodes/
Section 313 Judges

In a criminal proceeding in which a defendant faces charges which could result in loss of liberty of one year or more or a fine greater than \$5,000, or in which the defendant faces any length of imprisonment and is charged under the Special Domestic Violence Criminal Jurisdiction defined at 25 U.S.C. §1304, the criminal proceeding shall be presided over by a judge who has sufficient legal training to preside over criminal proceedings and is licensed to practice law by any jurisdiction in the United States.

Question 6:

Melvin Stoof: Texas, U.S. District Court, Texas, New Mexico, U.S. District Court, New Mexico, 5th Circuit Court of Appeals, Santa Ana Pueblo, Jicarilla Apache Tribal Court, Sandia Tribal Court, Islet Pueblo Court, San Juan Pueblo Court, Laguna Pueblo.

THE RIGHT TO PUBLICLY AVAILABLE LAWS AND RULES

7. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe, prior to charging the defendant, make publicly available the criminal laws (including regulations and interpretative documents), rules of evidence, and rules of criminal procedure (including rules governing the recusal of judges in appropriate circumstances) of the tribal government?

Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

Yes

No

References:

See 1 PYTC §4-70 copied below and publicly available at http://www.pascuayaqui-nsn.gov/_static_pages/tribalcodes/

Section 70 Publication and Distribution (1 PYTC § 4-70)

(A) The Code Reviser shall, on a monthly basis beginning on the date on which the Revised Tribal Code is adopted, update the Tribal Code and post an electronic version of the updated Tribal Code on the Pascua Yaqui Tribe official web site and internal intranet website.

(B) The Code Reviser shall, on a semi-annual basis beginning on the date on which the Revised Tribal Code is adopted, prepare, arrange, and collate for publication a hardcopy version of the Tribal Code.

(C) Upon publication, the updated Tribal Code shall be distributed to those depositories designated in Section 30(B). Distribution of the updated Tribal Code other than to the depositories designated shall be at the discretion of the Code Reviser and at a cost established by the Code Reviser.

THE RIGHT TO RECORDS OF THE CRIMINAL PROCEEDING

8. In a criminal proceeding in which the Tribe will exercise SDVCJ and in which a term of imprisonment of any length may be imposed, will the Tribe maintain a record of the criminal proceeding, including an audio or other recording of the trial proceeding?

Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

Yes

No

The Pascua Yaqui Tribe maintains a digital recording of each court proceeding. The tribe utilizes a high-quality recording system. Digital microphones are present at counsel tables, the bench, the witness box, and various other spots in the court room. All hearings are recorded and can be transcribed and made available upon request of defendant. Because recordings are kept electronically until a transcript is requested, they are being kept indefinitely, the Court having no plans to destroy such records. Upon request, the Tribe will provide indigent defendants with transcripts of proceedings for the purpose of appeal and habeas proceedings.

THE RIGHT TO TIMELY NOTICE OF FEDERAL HABEAS CORPUS RIGHTS AND PRIVILEGES

9. Will the Tribe provide to each person detained by order of the Tribe timely notice of the person's rights and privileges to file in a court of the United States a petition for a writ of habeas corpus under **25 U.S.C. 1303** and a petition to stay further detention under **25 U.S.C. 1304(e)**?

Yes

No

References:

See 3 PYTC §2-2-180 copied below and publicly available at http://www.pascuayaqui-nsn.gov/static_pages/tribalcodes/

Section 180 Initial Appearance (3 PYTC § 2-2-180 – Former 3 PYT R.Crim.P. Rule 18)

- (A) At the initial appearance of any person who was arrested without a warrant and against whom no verified complaints have been filed, the court shall, after informing the accused of his or her rights, as outlined below, first determine whether or not probable cause exists to continue to detain and prosecute the accused, and if not, shall order the accused released from custody immediately.
- (B) At defendant's initial appearance pursuant to an arrest warrant and/or against whom complaints have been filed, the judge shall inform the defendant of his or her rights and:
- (1) Determine the defendant's true name and address and, if necessary, amend the formal charges, if filed, to reflect it, instructing the defendant to notify the court promptly of any change of address;
 - (2) Inform the defendant of the charges against him or her;
 - (3) Inquire of the Tribe whether they seek loss of liberty as punishment to determine whether the provisions 3PYTC2-2-310(B) apply
 - (4) Provide timely notice to any person detained by order of the Tribe pursuant to 25 U.S.C. 1304 of his or her right to file in a court of the United States a petition for a writ of habeas corpus and a petition to stay his or her further detention.

References:

See 3 PYTC §2-2-310 copied below and publicly available at http://www.pascuayaqui-nsn.gov/static_pages/tribalcodes/

Section 310 Defendant's Rights in a Criminal Proceeding

- (A) Unless otherwise set forth in this Chapter, a defendant shall be present at all stages of the

proceedings. The Court in its discretion may allow the defendant to appear through counsel.

(B) In all criminal proceedings, the defendant shall have the following rights:

- (1) To be free from excessive bail and cruel or unusual punishment;
- (2) To a defense in person or by counsel;
- (3) To be informed of the nature of the charges against him or her and to have a written copy of those charges;
- (4) To confront and cross-examine all prosecution or hostile witnesses;
- (5) To compel by subpoena;
 - (a) The attendance of any witnesses necessary to defend against the charges; and
 - (b) The production of any books, records, documents, or other things necessary to defend against the charges;
- (6) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- (7) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and
- (8) To petition for a writ of habeas corpus.

Further Discussion:

1. The Tribe provides to all defendants notice of the right to petition for a writ of habeas corpus. Defendants rights are outlined at 3 PYTC §2-2-310. At the initial appearance, the judge informs any defendant against whom charges have been filed of his or her rights.

OTHER RIGHTS PROTECTED BY THE INDIAN CIVIL RIGHTS ACT OF 1968

10. In a criminal proceeding in which the Tribe will exercise SDVCJ will the Tribe provide to the defendant all applicable rights under the Indian Civil Rights Act of 1968, as amended, including but not limited to (a) the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, and not to be subjected to a warrant unless it was issued upon probable cause, was supported by oath or affirmation, and particularly described the place to be searched and the person or thing to be seized; (b) the right not to be twice put in jeopardy for the same offense; (c) the right not to be compelled to be a witness against himself; (d) the right to a speedy and public trial; (e) the right to be informed of the nature and cause of the accusation; (f) the right to be confronted with the witnesses against him; (g) the right to have compulsory process for obtaining witnesses in his favor; (h) the right to be free from excessive bail; (i) the right to be free from excessive fines; (j) the right against cruel and unusual punishments; (k) the right to the equal protection of the Tribe's laws; (l) the right not to be deprived of liberty or property without due process of law; (m) the right not to be subjected to an ex post facto law; and (n) the right to a trial by jury of not less than six persons?

Please answer "Yes" or "No." Please provide relevant legal materials detailing the safeguards that the Tribe's criminal justice system has in place to protect this right.

Yes

No

References:

See 3 PYTC §2-2-310 copied below and publicly available at http://www.pascuayaqui-nasn.gov/static_pages/tribalcodes/

Section 310 Defendant's Rights in a Criminal Proceeding

- (A) Unless otherwise set forth in this Chapter, a defendant shall be present at all stages of the proceedings. The Court in its discretion may allow the defendant to appear through counsel.
- (B) In all criminal proceedings, the defendant shall have the following rights:

- (1) To be free from excessive bail and cruel or unusual punishment;
- (2) To a defense in person or by counsel;
- (3) To be informed of the nature of the charges against him or her and to have a written copy of those charges;
- (4) To confront and cross-examine all prosecution or hostile witnesses;
- (5) To compel by subpoena;
 - (a) The attendance of any witnesses necessary to defend against the charges; and
 - (b) The production of any books, records, documents, or other things necessary to defend against the charges;
- (6) To have a speedy and public trial by Judge or a jury, unless the right to a speedy trial is waived or the right to a jury trial is waived by the defendant;
- (7) Not to be required to testify, and no inference may be drawn from a defendant's exercise of the right not to testify; and
- (8) To petition for a writ of habeas corpus.

See also: Constitution of the Pascua Yaqui Tribe

ARTICLE I - BILL OF RIGHTS

Section 1. Consistent with the provisions of this Constitution, the Pascua Yaqui Tribe in exercising its powers of self-government shall not:

- a. Make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition for redress of grievances.
- b. Violate the right of the people to be secure in their persons, houses, papers, and effects against unreasonable search and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized.
- c. Subject any person for the same offense to be twice put in jeopardy.
- d. Compel any person in any criminal case to be a witness against himself/herself.
- e. Take any private property for public use without just compensation.
- f. Deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against them, to have compulsory process for obtaining witnesses in their favor, and at their own expense to have the assistance of counsel for their defense.
- g. Require excessive bail, impose excessive fines, inflict cruel and unusual punishment, and in no event impose for conviction of one (1) offense any penalty or punishment greater than imprisonment for a term of one (1) year or a fine of \$5,000 or both.
- h. Deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.
- i. Pass any bill of attainder or *ex post facto* law.
- j. Deny to any person accused of any offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six (6) persons.

Section 2. The privilege of the writ of habeas corpus shall be available to any person in a court of the United States to test the legality of their detention by order of the Pascua Yaqui Tribe.

TRIBAL CRIMINAL JURISDICTION

11. Will the Tribe exercise SDVCJ over a defendant only for criminal conduct constituting, within the meaning of **25 U.S.C. 1304**, either (a) an act of domestic violence or dating violence that occurs in the Indian country of the Tribe, or (b) an act that occurs in the Indian Country of the Tribe and violates the portion of a protection order that (1) prohibits or provides protection against violent or threatening acts or harassment against, sexual violence against, contact or communication with, or physical proximity to, another person; (2) was issued against the defendant; (3) is enforceable by the Tribe; and (4) is consistent with **18 U.S.C. 2265(b)**?

Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

Yes

No

12. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe convict a non-Indian defendant at trial only if the Tribe proves that the alleged victim is an Indian?

Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

Yes

No

13. In a criminal proceeding in which the Tribe will exercise SDVCJ, will the Tribe convict a defendant at trial only if the Tribe proves that the defendant resides in the Indian country of the Tribe; is employed in the Indian country of the Tribe; or is a spouse, intimate partner, or dating partner either of a member of the Tribe or of an Indian who resides in the Indian country of the Tribe?

Please answer “Yes” or “No.” Please provide relevant legal materials detailing the safeguards that the Tribe’s criminal justice system has in place to protect this right.

Yes

No

References:

See 3 PYTC §1-1-20 copied below and publicly available at http://www.pascuayaqui-nsn.gov/_static_pages/tribalcodes/

Section 20 Jurisdiction (3 PYTC § 1-1-20)

(A) Except where limited by Federal Law or Pascua Yaqui Law, the jurisdiction of the Pascua Yaqui Tribal Courts shall extend to:

- (1) all persons natural and legal of any kind; and to
- (2) all subject matters which, now and in the future, are permitted to be within the jurisdiction of any Tribal Court of any Indian tribe recognized by the United States of America.

Explanation:

The Tribal Court's jurisdiction is limited to that which is permitted by Federal law. Since VAWA 2013 limits the Tribe's jurisdiction to the instances outlined above in questions 11-13, the Tribe's is limited to cases where the circumstances meet those requirements.

CERTIFICATION OF THE TRIBE'S CHIEF EXECUTIVE OFFICER

1. I am the chief executive officer of the Pascua Yaqui Tribe ("the Tribe").
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the "Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence" published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect the defendants' rights, consistent with 25 U.S.C. 1304.

Signature: _____

Date: December 30, 2013

Name: Peter S. Yucupicio

Title: Chairman, Pascua Yaqui Tribe

Address: 7474 S. Camino de Oeste, Tucson, AZ 85757

Phone: 520-883-5007

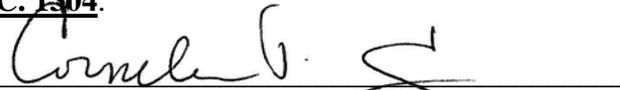
FAX: 520-883-5084

Email: peter.s.yucupicio@pascuayaqui-nsn.gov

CERTIFICATION OF THE TRIBE'S CHIEF JUDICIAL OFFICER

1. I am the chief judicial officer of the Pascua Yaqui Tribe (“the Tribe”).
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the “Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence” published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect the defendants’ rights, consistent with 25 U.S.C. 1304.

Signature:



Date:

December 30, 2013

Name:

Cornelia Cruz

Title:

Chief Judge, Pascua Yaqui Tribe

Address:

7777 S. Camino Huivisim, Bldg. A, Tucson, AZ 85757

Phone:

520-879-6276

FAX:

520-879-6277

Email:

cornelia.cruz@pascuayaqui-nsn.gov

CERTIFICATION OF THE TRIBE'S CHIEF LEGAL OFFICER

1. I am the chief legal officer of the Pascua Yaqui Tribe (“the Tribe”).
2. I certify that I have read the Indian Civil Rights Act, as amended, **25 U.S.C. 1301-1304**, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the “Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence” published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the criminal justice system of the Tribe has adequate safeguards in place to protect the defendants’ rights, consistent with **25 U.S.C. 1304**.

Signature:



Date:

December 30, 2013

Name:

Amanda Lomayesva

Title:

Attorney General, Pascua Yaqui Tribe

Address:

7777 S. Camino Huivisim, Bldg. C, Tucson, AZ 85757

Phone:

520-883-5119

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Email:

amanda.sampsonlomayesva@pascuayaqui-nsn.gov

CERTIFICATION OF THE TRIBE'S POINT OF CONTACT

1. I have been authorized by the governing body of the Pascua Yaqui Tribe (“the Tribe”) to serve as the Tribe’s point of contact (POC) with the Department of Justice for purposes of the VAWA Pilot Project.
2. I certify that I have read the Indian Civil Rights Act, as amended, 25 U.S.C. 1301-1304, including the amendments made by VAWA 2013.
3. I certify that I have read the final notice on the “Pilot Project for Tribal Jurisdiction over Crimes of Domestic Violence” published by the Department of Justice in the Federal Register on November 29, 2013.
4. I certify that, to the best of my knowledge, information, and belief, formed after an inquiry that is reasonable under the circumstances, the answers to this Application Questionnaire are complete and accurate.
5. I certify that, to assist the Department of Justice in fulfilling its statutory duty to determine whether the criminal justice system of the Tribe has the adequate safeguards in place to protect defendants’ rights, consistent with 25 U.S.C. 1304, I will make best efforts, for the remainder of the Pilot Project’s duration (i.e., prior to March 7, 2015), to promptly answer written or oral questions from the Departments of Justice and the Interior about the Tribe’s criminal justice system; to promptly update any answers to their Application Questionnaire if they become incomplete, inaccurate, or outdated; to promptly fix any omissions in the Application Questionnaire; and to promptly submit to the Department of Justice any additions, deletions, or corrections to the Application Questionnaire.

Signature:



Date:

December 30, 2013

Name:

Amanda Lomayesva

Title:

Attorney General, Pascua Yaqui Tribe

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