



# MESCALERO APACHE TRIBE JUSTICE SYSTEM

**COURTS, CORRECTIONS, & JUSTICE COMMITTEE  
NEW MEXICO STATE LEGISLATURE**

**JULY 17, 2023,  
INN OF THE MOUNTAIN GODS**

# **PRESENTATION OUTLINE**

Introduction

Tribal Courts

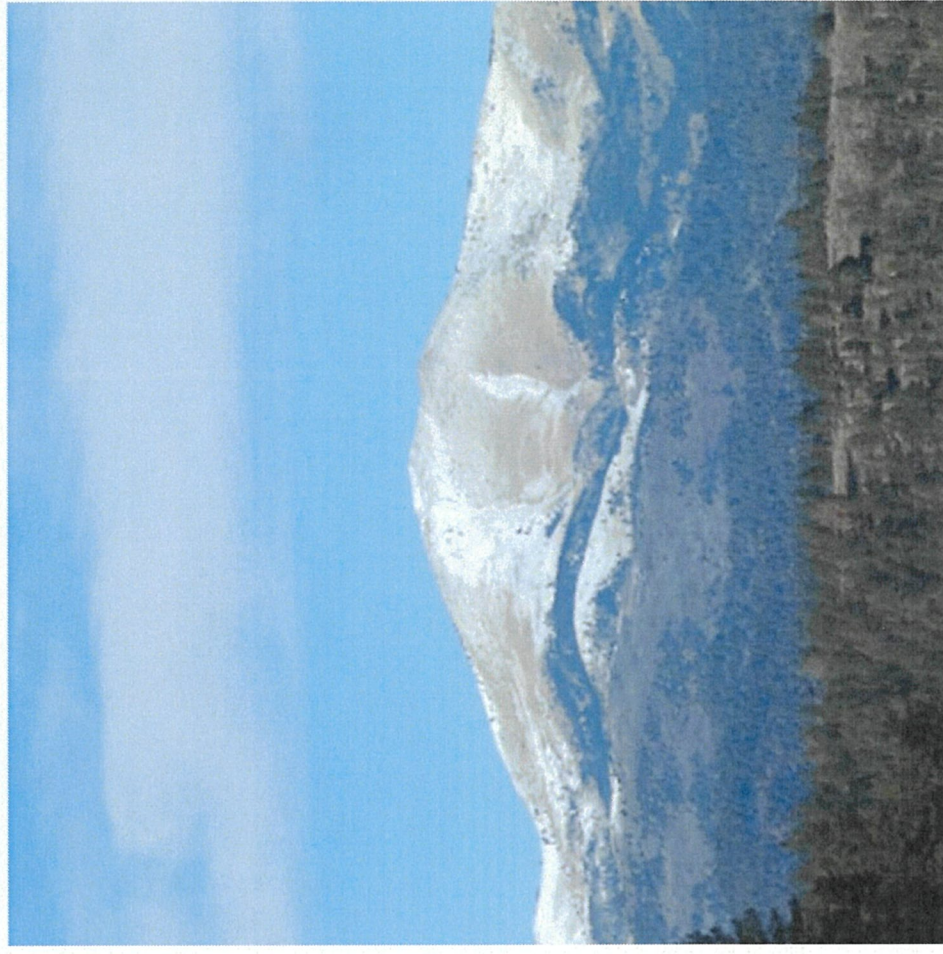
BIA-OJS Law Enforcement

Conservation Law Enforcement

Jurisdictional Issues & Cross-Commissioning

New Detention Facility

The Future



## TRIBAL JUSTICE SYSTEMS ARE A MEANS TO PROTECT TRIBAL SOVEREIGNTY

Sovereignty is “the absolute and independent right to make one’s own laws, rules or regulations and to be governed by the same. Black’s Law Dictionary, “Sovereignty,” p. 1398 (1990) (6<sup>th</sup> ed).

### **“Tribal Courts protect and preserve sovereignty by:**

- Providing a forum for the interpretation of tribal laws, rules and regulations in a manner that is consistent with the values, customs and traditions of the tribe;
- Circumventing the need for involvement of federal or state courts in the tribal dispute resolution process for those causes of action arising within the tribal community; and
- Providing a forum for the enforcement of orders from outside jurisdictions as part of the larger legal landscape in the United States.”

*Michelle Rivard Parks, Tribal Judicial Institute, UND School of Law, Protecting Sovereignty: The Role of Tribal Courts, 2010.*



# Mescalero Tribal Court – Mix of Modern & Traditional

Separate judicial branch with trial & appellate courts

Tribal Council sits as the Supreme Court

Civil & criminal cases

Limited to 1 year and/or \$5,000 fine

Tribal Code & policies and procedures adopted by Tribal Council but court sessions are very informal

Chief Judge and 2 associate judges appointed by the President and confirmed by the Tribal Council

2 alternate pro temp judges to hear cases where other judges are recused & for appeal cases

Judges must be “Indian” (1/4 degree; federally recognized tribe), 35 years of age, never convicted of a felony or a misdemeanor in last year

No professional attorneys in civil cases





## **BUREAU OF INDIAN AFFAIRS – OFFICE OF JUSTICE SERVICES**

**Mescalero is a direct service tribe – BIA-OJS is responsible for law enforcement on the Reservation.**

- Understaffed & underpaid
- Lack of housing options
- Large Reservation/remote housing areas leads to long response times
- Many are unfamiliar with Reservation

**2 Federal agents stationed in Mescalero & 2 FBI agents stationed in Las Cruces**

**U.S. Attorneys Office, Las Cruces Branch Office**

- Concern that Mescalero will not be a priority given immigration & drug issues
- Working on communication issues
- Committed to sharing declination information



## CONSERVATION LAW ENFORCEMENT

- Commissioned by the Tribe to enforce all Tribal laws
- Federal Law Enforcement Training Center in Artesia
- Primary focus is on natural resource conservation – hunting, fishing, poaching, illegal grazing, branding of livestock, trespass, taking wood without a permit, regulation of elk shed harvesting, animal control, etc.
- Lack of staffing in BIA Law Enforcement means that Conservation must respond to non-natural resource calls
- No funding mechanism to reimburse the tribe when Conservation responds to these types of calls





## OTHER COMPONENTS OF THE TRIBE'S JUSTICE SYSTEM

Prosecutor's Office

Office of the Public Defender

Tribal Probation

East Mountain Resources Center  
(f/k/a VAWA Office)

Four Directions Treatment and  
Rehabilitation Center

Tribal Social Services

Mescalero Apache Tribal Child Support  
Enforcement



Former Director of VAWA, Lola Ahidley, receiving FBI's Community Leadership Award on behalf of the Tribe.

## JURISDICTION IN INDIAN COUNTRY

<i>Indian Status</i>	<i>Type of Crime</i> <i>Major Crime</i> <i>(as defined by Major Crimes Act)</i>	<i>All Other Crimes</i>
Indian perpetrator, Indian victim	Federal (under MCA) and tribal jurisdiction	Tribal jurisdiction
Indian perpetrator, non-Indian victim	Federal (under MCA) and tribal jurisdiction	Federal (under General Crimes Act) and tribal jurisdiction
Non-Indian perpetrator, Indian victim	Federal jurisdiction (under General Crimes Act)	Federal (under General Crimes Act) jurisdiction
Non-Indian perpetrator, non-Indian victim	State jurisdiction	State jurisdiction



## CIVIL REGULATORY JURISDICTION

*New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983)

New Mexico claimed concurrent jurisdiction to regulate hunting and fishing by non-Indians on the Reservation. The U.S. Supreme Court:

Reasoned that concurrent jurisdiction by both the State and Tribe would interfere with the comprehensive tribal regulatory scheme and threaten Congress' commitment to the encouragement of tribal self-sufficiency and economic development.

Recognized "the Tribe's unquestioned authority to regulate the use of its resources by members and nonmembers . . . ."




## **CHALLENGES OF WORKING WITH STATE & LOCAL JURISDICTIONS**

Highways 70 and 244 – lack of understanding of jurisdiction for traffic violations on state right of ways running through the reservation & lack of officers statewide

Slow or zero response to incidents at Inn of the Mountain Gods & recreation areas

Even though the state has jurisdiction in some cases, state law enforcement cannot come on to the Reservation without permission of the Tribe. The Tribe will require a BIA police escort.





## CHALLENGES (CON'T)

***Oklahoma v. Castro-Huerta*, 597 U.S. \_\_\_\_ (2022)**

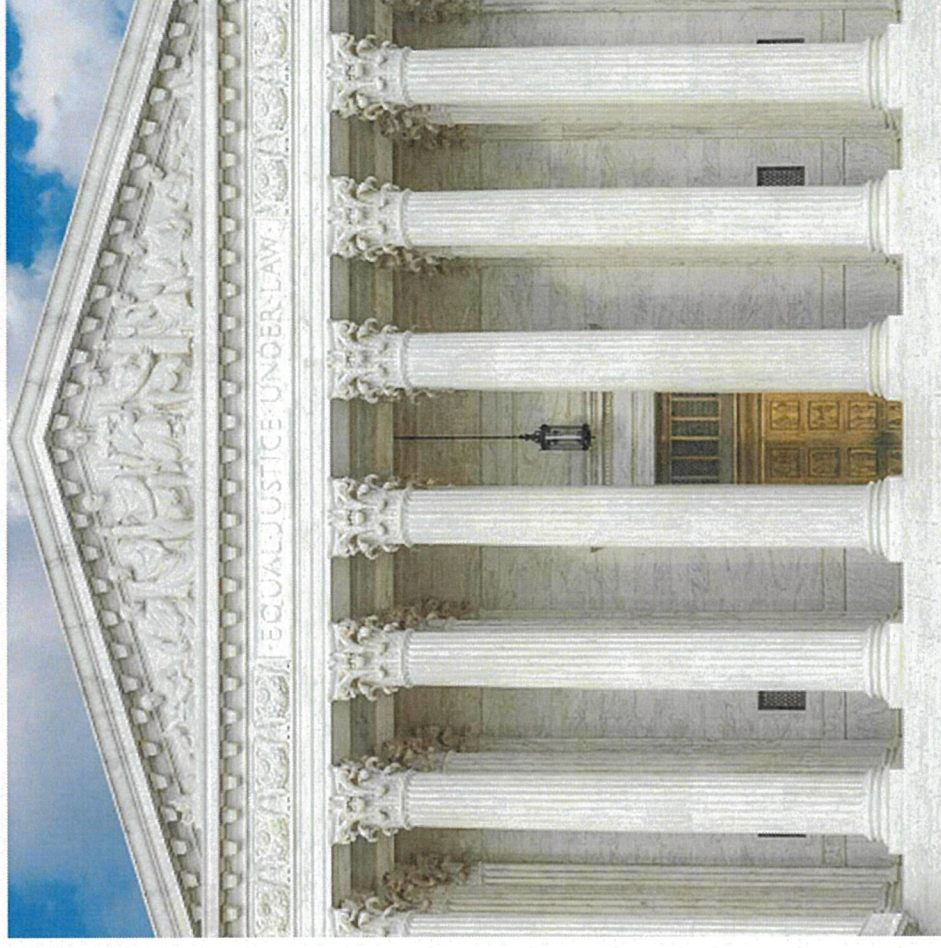
Holding: federal government & state have concurrent jurisdiction

Gives the State jurisdiction where it never had jurisdiction; before: non-Indian perpetrator, indian victim = federal jurisdiction

Language of the case ignored decades of Indian law cases that recognized tribal sovereignty

Fear that federal agencies would absolve themselves of their trust responsibility and fail to provide law enforcement and if that were to occur, that local agencies would not enforce either

Luckily, BIA-OJS & U.S. Attorneys have stated that they will not rely on Castro-Huerta







## CROSS-COMMISSIONING

Necessary to prevent jurisdictional gaps

County sheriffs departments will not issue commissions due to liability concerns

There is no relationship between the District Attorney for the 12<sup>th</sup> Judicial District Court & Mescalero

BIA-OJS cannot afford to send officers to State Academy

Negotiating an MOU is a long process for BIA-OJS



## DETENTION ISSUES

In 1994, prior BIA-run detention facility was shut down because of health and safety hazards. BIA promised to build a new facility. This never happened.

Over the last two decades, Mescalero detainees have been transported to Lincoln County Detention Center (LCDC) – a 45-minute drive one-way.

BIA failed to renew the lease when it expired earlier this year and detainees were transported to the Chief Ignacio Justice Center in Towaoc, Colorado (7 hours away) and the Woodward County Jail in Woodward, Oklahoma. Towaoc (7.5 hours away)

Recently, transport officers were told that they could not transport detainees from arrest to LCDC. This means regular officers have to leave the Reservation to transport arrestees.

Huge increases in “cite and releases,” including offenses like: DUI, drug offenses, assault and battery, domestic violence, etc.



## New Detention Facility

In 2012, the Tribe began to lobby for funding to build its own facility to lease to the BIA.

In 2018, the Tribe successfully lobbied Congress and \$6.2 million was set aside for a modular facility pilot project (now “stick built”)

40 beds facility, 30 male/10 female

BIA will operate the facility and lease the building from the Tribe

Access to services – across the street from 4 Directions

Cost of project is now \$26 million – fully funded by the BIA

Downside - will not house juveniles



## STEPS TO IMPROVE

- Tribal Law & Order Act – Partial implementation
  - Emphasis on addressing the problem of MMIW
  - Enhanced sentencing - 5 years & \$10,000) where certain conditions are met (public defender & “law trained” judges)
- Tribal Access Program – Mescalero Conservation has access to national criminal information systems & the Tribe can share restraining orders/missing persons/warrants and other information
  - Tribes can use federal prisons
- Violence Against Women Act
  - Expanded tribal jurisdiction to non-tribal member perpetrators of domestic violence
- Indian Highway Safety funding
- NM Senate Bill 33



# QUESTIONS?

