



**Written Testimony of Governor J. Michael Chavarria  
Pueblo of Santa Clara, New Mexico**

**"Oversight Hearing on Restoring Justice:  
Addressing Violence in Native Communities through VAWA Title IX Special Jurisdiction"  
Before the Senate Committee on Indian Affairs  
December 8, 2021**

**Introduction.** Thank you Chairman Schatz, Ranking Member Murkowski, and Members of the Committee for holding this important oversight hearing on Addressing Violence in Native Communities through VAWA Title IX Special Jurisdiction. My name is J. Michael Chavarria and I am the Governor of the Pueblo of Santa Clara, also serving in the capacity of the Chairman for the Eight Northern Indian Pueblos Council and on the All Pueblo Council of Governors (APCG), which is comprised of the leaders of the nineteen Pueblos of New Mexico and Ysleta del Sur Pueblo in Texas. Together and individually, our communities are dedicated to improving the safety and welfare of our tribal citizens. I testify today in my capacity as the Santa Clara Governor.

**I. Background on the Violence Against Women Act and Indian Country**

Native women, men, and children living in Pueblo and Indian Country face almost daily challenges to their physical safety and mental well-being. The threats begin in the womb in the form of restricted access to maternal healthcare services, safe housing, and inadequate nutrition for fetal development, and continue into adolescence and adulthood in high rates of physical, emotional, and sexual violence, human trafficking, substance/mental abuse and suicide. When coupled with the jurisdictional issues that further complicate the delivery of limited public safety and victim services on tribal lands, particularly in regards to the Violence Against Women Act (VAWA), it becomes clear that additional resources and targeted political actions are urgently needed to protect our tribal citizens.

In the United States, the Federal Government has exclusive jurisdiction over cases of murder, sexual abuse, kidnapping, serious bodily assault, and certain other crimes committed in Indian Country pursuant to the Major Crimes Act, 18 U.S.C. § 1153. VAWA authorized tribal courts to exercise criminal jurisdiction over non-Native offenders who commit domestic or dating violence

against Native victims on tribal lands—crimes that have been historically under-prosecuted in the United States. VAWA's Special Domestic Violence Criminal Jurisdiction is critical to ensuring that dangerous jurisdictional gaps are closed by allowing tribal law enforcement to exercise jurisdiction over non-indigenous offenders who commit certain crimes on tribal lands. VAWA has enabled tribal nations to further justice in such cases by removing cumbersome jurisdictional barriers from tribal courts. This special jurisdiction also honors our tribal sovereignty by helping us to build our internal justice capacities.

VAWA authorization expired in February 2019. It is the position of our Pueblo that any reauthorization should include expanded tribal jurisdiction over crimes against children, law enforcement personnel, or sexual assault crimes committed by strangers to provide increased safety and access to justice services for Native victims of crime. A strong, dependable local law enforcement is critical for victims of crime to feel like they have support and an opportunity to attain justice. A permanent reauthorization of VAWA is vital to continuing these efforts.

## **II. Permanently Reauthorize the Violence Against Women Act with Expanded Tribal Jurisdiction over Non-Indian Offenders to Protect Native Youth and Tribal Officers**

VAWA has directly contributed to the increased safety and access to justice services for victims of crime in Indian Country. The Act authorized tribal courts to exercise criminal jurisdiction over non-Indian offenders who committed domestic or dating violence against Indian victims on tribal lands – crimes that have been historically under-prosecuted in Indian Country. These protections apply to equally to Native women and men. According to the National Congress of American Indians' "Special Domestic Violence Criminal Jurisdiction Five-Year Report," approximately 43% of Native men and 55% of Native women experience physical abuse from an intimate partner in their lifetime.<sup>1</sup> VAWA has enabled tribal nations to further justice in such cases by removing cumbersome jurisdictional barriers from tribal courts. Unfortunately, VAWA reauthorization lapsed almost three years ago and still has not been renewed.

VAWA marked an historic step forward for tribal nations in protecting Indian victims from non-Indian offenders in cases of domestic violence on tribal lands. Tragically, the existing law does not cover crimes against children, law enforcement personnel, or sexual assault crimes committed by strangers. As a result, some of the most vulnerable members of our communities and those who serve to protect them are unable to enforce their rights in tribal courts. Intimate partner violence is a scourge that VAWA has helped to address but much remains to be done to protect our people. The next reauthorization of the Act should be permanent and include expanded tribal jurisdiction over these crimes to provide increased safety and access to justice services for victims of crime, specifically by closing existing loopholes in the law to protect our Native youth and tribal law enforcement personnel.

## **III. Pueblo of Santa Clara's Experience with Exercising VAWA Special Domestic Violence Criminal Jurisdiction (SDVCJ)**

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<sup>1</sup> National Congress of American Indians, Special Domestic Violence Criminal Jurisdiction Five-Year Report at 1 (March 20, 2018), available at [http://www.ncai.org/resources/ncai-publications/SDVCJ\\_5\\_Year\\_Report.pdf](http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf).

The Pueblo of Santa Clara has long fought to protect our members through the exercise of criminal jurisdiction on our lands. It has been a process of over seven years for our Pueblo to progress from planning, to meeting federal standards, to implementation of SDVCJ. To illuminate our work in this area, I would like to share the following history with the Committee.

On February 11, 2013, while living within the household of a Santa Clara Pueblo member, a non-Indian individual allegedly assaulted his live-in partner and then assaulted the Tribal Police officer who responded to the domestic violence emergency call. Neither the State of New Mexico nor federal law enforcement authorities prosecuted the domestic violence case against the Tribal Police officer. Incidents of domestic violence are among the most volatile situations that a tribal police officer can respond to. The inability of our tribal justice systems to prosecute crimes against officers is a matter of grave public safety concern.

In March 2013, shortly after the above domestic violence incident, President Barack Obama signed the Violence Against Women Act Reauthorization Act of 2013. Our Tribal Council viewed Title IX of the law on "Safety for Indian Women" as a means to accomplish the goals of protecting the community from domestic violence with its affirmation of the Pueblo's inherent power to exercise criminal jurisdiction over all persons. Through a series of resolutions, Tribal Council approved full implementation of VAWA on Pueblo lands as soon as federal funding could be secured. We raised our strong desire to exercise SDVCJ with the President, our New Mexico congressional delegation, and federal agencies involved in public safety in Indian Country, such as the Departments of Interior and Justice. Ultimately, our Pueblo joined the VAWA Pilot Project, a Department of Justice funded program to help interested tribal nations implement SDVCJ.

In November 2013, our Tribal Council adopted Resolution No. 2013-60 allowing for emergency exclusions of non-members with due process to reduce crime on Pueblo lands, including incidences of domestic violence. Our Pueblo also had to adopt certain measures and take concrete actions to meet federal standards for implementation of VAWA. These were administratively burdensome and, in many instances, costly to undertake. Yet, for our Pueblo the time and financial expenditures were challenges that we necessarily took on to advance our public safety.

One example of the costs of meeting federal implementation standards is in facilities. The infrastructure for justice services must satisfy certain requirements as part of demonstrating the adequacy of our tribal justice systems to carry out VAWA responsibilities. We applied for and were awarded \$1,998,406 (2016-IP-BX-0013) through the Department of Justice's Office of Tribal Justice and the Bureau of Justice Administration for the renovation and expansion of our courthouse. Facilities standards we had to meet included: a secure, healthy facility with closed files; a detention room for alleged offenders; expanded public seating; a community education room; a jury box; jury deliberation room; modern recording devices; fire and safety upgrades; and disability accessibility.

Within the courthouse, we are required to maintain federal services standards. Through the Office on Violence Against Women (OVW) we were awarded \$239,074 in funding (2016-SD-AX-K001) to meet applicable requirements. We used the funds, in part, to draft our SDVCJ Domestic

Violence Code, which was approved by the Departments of Justice and the Interior on July 9, 2020. The funds could also be used to meet federal standards for VAWA training and hiring of contract prosecutors and defense attorneys; travel for covered purposes; training of courthouse staff; juror fees; juror education; and education sessions for the public.

It took us approximately seven years from the initial planning to full implementation of the federal standards to exercise SDVCJ on our lands. However, that being said, our Pueblo has not met all of its goals nor spent its budget as it relates to domestic violence prevention and prosecution under VAWA. This is due in substantial part to the outbreak of the COVID-19 pandemic. Our Pueblo entered a 20-month lockdown, which has had the side effect of greatly reducing crime within our exterior boundaries. Only members or those with a license to live on Pueblo lands are being allowed into the community at this time.

On July 30, 2020, a Tribal Police officer responded to a domestic violence disturbance within the Pueblo. The case involved a 19 month old child in the care of the grandmother and mother. The grandmother alleged that the mother had assaulted and strangled her over a dispute regarding the care of the child. It was eventually verified by the officer that the mother of the child was Indian. It was also confirmed that, if the mother had been non-Indian, the child would not have been protected by SDVCJ as the child would not qualify as being in an intimate relationship as defined by VAWA Title IX Special Jurisdiction. The definition of domestic violence victims in VAWA Title IX Special Jurisdiction must be expanded to close this dangerous gap and cover our children.

The National Congress of American Indians reported in its March 7, 2019, testimony to the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security that:

The tribes implementing SDVCJ report that children have been involved as victims or witnesses in SDVCJ cases nearly 60% of the time. These children have been assaulted or have faced physical intimidation and threats, are living in fear, and are at risk for developing school-related problems, medical illnesses, post-traumatic stress disorder, and other impairments. However, federal law currently limits SDVCJ to crimes committed only against intimate partners or persons covered by a qualifying protection order. The common scenario reported by tribes is that they are only able to charge a non-Indian batterer for violence against the mother, and can do nothing about violence against the children. Instead, tribes are only able to refer these cases to state or federal authorities, who may or may not pursue them.

This is unacceptable and must be addressed by an expansion of VAWA Title IX Special Jurisdiction pursuant to broadened definitions that account for children in domestic violence situations.

We have used the time during the pandemic to assess successes and gaps in VAWA SDVCJ implementation, as well as review our operational costs and plan for the future. A need that clearly emerged is for additional federal support for our Pueblo in exercising SDVCJ. Specifically in covering the costs of appellate proceedings, incarceration, and medical care. We applied for

additional funds to advance these activities under the OVW FY 2022 Support for Tribes Exercising SDVCJ Initiative in November 2021. Even with our success at implementing SDVCJ much more work remains to be done.

#### **IV. Additional Federal Support Needed for Tribal Governments to Exercise Special Domestic Violence Criminal Jurisdiction**

We believe that all tribal nations should have the opportunity to enhance the safety of their tribal members by exercising the SDVCJ authorized under VAWA. Too many tribal nations, however, lack the resources, infrastructure, personnel, and training to carry out these activities on their own. Additional federal funding and resources are urgently needed particularly as the desire to participate in VAWA's SDVCJ and related support services is strong and only growing.

Additional federal funds are also needed to supplement the budget for the OVW tribal program with the area of greatest unmet need. Effectively addressing the public safety crisis in Indian Country requires a holistic approach. We must address tribal court jurisdiction over non-Indian offenders *and* the lack of economic opportunities that contribute to social despair and interpersonal violence. We must address the lack of a quality and structurally sound educational infrastructure in many tribal communities *and* the high rates of substance abuse among Native youth. We must address under-resourcing of tribal law enforcement entities *and* the rise in major crimes across Indian Country. Each of these issues influences the others and shapes the public safety landscape of a tribal community. We, therefore, recommend that additional federal resources be allocated to areas of greatest need to advance the interests of Indian Country.

Our tribal citizens need to be safe in their home communities, and our tribal governments are the best situated to provide the necessary services. Accessing the necessary resources, however, continues to present challenges. Many tribal nations are daunted by the application process and the perquisites needed to qualify for the program. Others are uncertain about how to engage in the infrastructure building process to carry out their VAWA responsibilities. As a result, the OVW has encountered the distressing situation in which there is a documented need for assistance, readily available federal funds, but low applicant participation.

Relatedly, on an administrative note, we recommend that the OVW streamline the application process so that it is more responsive to the internal capabilities of each tribal nation. Reduced and/or more flexible application requirements would help lighten the administrative burden on all tribal nations while also making the program more accessible to smaller and financially restricted tribal governments. This should be accompanied by a reissuance of solicitation the OVW solicitation to exercise this jurisdiction would enable more tribal nations to receive support for these critical services. To the extent permitted by law, the reissuance of the solicitation should include targeted education and outreach to geographic regions that have thus far been unrepresented in the application process.

#### **V. Create a Line Item for the Establishment of New Tribal Justice Departments**

The Pueblo of Santa Clara has a robust tribal justice department and Tribal Court system. We have invested significant tribal funds in the establishment and continued development of our tribal justice services. We are also grateful for the federal funds that have enabled us to expand in recent years in relation to VAWA, as described herein. With the additional resources made possible by these federal dollars, we have been able to enrich the exercise of our statutory and sovereign jurisdiction over non-Indians who commit crimes of domestic violence against Indians on our land.

Many tribal nations, however, do not have tribal justice departments and lack the resources to establish programs on their own. While a plethora of federal resources exist to assist tribal nations that have established law enforcement agencies or a tribal court, very few—if any—federal funds are available to facilitate the start-up process. This is particularly true in the Department of Justice where existing tribal justice services are a prerequisite to qualify for both strategic planning and competitive grants. Having experienced the benefits of operating our own tribal justice department and tribal court system, we stand with other tribal nations who wish to exercise this fundamental aspect of tribal sovereignty but lack the immediate resources to accomplish their goals. We, thus, recommend as an ancillary factor to the successful expansion and implementation of VAWA Title IX that a line item within the Department of Justice to create a special program to assist tribal nations in the establishment and development of new tribal courts and justice services, including law enforcement departments be advanced in the FY 2022 budget and going forward.

**Conclusion.** Thank you for the opportunity to testify on VAWA Title IX Special Jurisdiction and its role in addressing violence in tribal communities. Title IX Special Jurisdiction is a vital authority to exercising tribal sovereignty and restoring justice on tribal lands in cases of domestic violence. Yet, over the years of its initial implementation hard lessons are being learned that this Congress is now tasked with remedying. Top among these is the fact that gaps in VAWA jurisdiction continue to leave our tribal police officers and children exposed. Title IX Special Jurisdiction must be broadened to close these points of exposure and strengthen public safety in Indian Country—the welfare of our most vulnerable members and communities depends on it. On behalf of the Pueblo of Santa Clara, kuunda and thank you.