

**PETER S. YUCUPICIO
CHAIRMAN
PASCUA YAQUI TRIBE**

TESTIMONY OF PETER S. YUCUPICIO, CHAIRMAN OF THE PASCUA YAQUI TRIBE OF ARIZONA BEFORE THE SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS IN SUPPORT OF H.R. 3319, A BILL TO ALLOW THE PASCUA YAQUI TRIBE TO DETERMINE THE REQUIREMENTS FOR MEMBERSHIP IN THAT TRIBE.

July 24, 2012

Good afternoon Mr. Chairman, honorable members of the House Subcommittee on Indian and Alaska Native Affairs. My name is Peter Yucupicio and I am accompanied by Marisela Nuñez, an enrolled member of the Pascua Yaqui Tribe and the Tribe's Enrollment Director. Her Statement is attached hereto as Exhibit A. I am a member of the Pascua Yaqui Tribe of Arizona, located near Tucson in Pima County, Arizona. For the past five years I have served as the Chairman of the Tribe, before that I served as the Tribe's Vice-Chairman for three years and its treasurer for four years. The matter under consideration today has been a concern for the Tribe since before my first term on the Tribal Council.

H.R. 3319 is a bill that will allow the Tribe a very important right—the right to determine its own membership without parameters and restrictions imposed by the federal government. As this Congress has recognized, tribes are distinct political and cultural entities. In recognizing tribes as distinct separate sovereigns, Congress has ended the destructive policies of the past—assimilation and termination, and has encouraged tribes to take up the mantle of self-government. Central to self-government is the right of tribes to determine our own membership. This right has been recognized time and again by the Federal Courts. In *United States v. Montana*, 450 U.S. 544, 564 (1981), the Supreme Court recognized the inherent right of Indian tribes to “determine membership.” The Supreme Court noted that “A tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community.” See *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). H.R. 3319 would rid the Pascua Yaqui Tribe of the membership limitations currently imposed upon it by federal law, and allow the Tribe to make its own membership decisions, consistent with current federal policy.

Our Yaqui ancestors walked the earth by the grace of the creator, as we still do today. Yaqui ancestors were indigenous and roamed aboriginal territory from Durango in Southern Mexico, north to Colorado, and west to California. The Tribe settled, prospered, and endured in the Rio Yaqui homeland since time immemorial. Authority was inherent and derived in part by our elders' ability to protect and provide for the needs of the Yaqui people. The Yaqui people fought the Spanish from earliest contact in the 1530s, and later fought the Mexican government for the

protection and control of their homelands.¹ Our ancestors established trade with other Arizona tribes, and lived and worked at missions and in settlements in Arizona.²

Today, the Pascua Yaqui people live in communities from South Tucson to Scottsdale. In 1964, Congressman Morris K. Udall introduced a bill in Congress authorizing the transfer of 202 acres of federal desert land to our Yaqui elders. This became the Tribe's reservation. On September 18, 1978, Public Law 95-375 recognized the Tribe as a United States Indian tribe. Fundamentally, the last 400 years have only superficially changed the Yaqui Nation. Our culture endures. Many Yaqui people live in our traditional villages and practice the Tribe's culture and religion. On January 26, 1988, the Tribe voted and ratified the Pascua Yaqui Tribe's Constitution. Although, now partly settled on our reservation Southwest of Tucson, Arizona, the obligations to the people passed down by our elders and our sovereign autonomous spirit has never changed. The Pascua Yaqui Tribe, as a historical Indian tribe, has inherent jurisdictional power over most matters occurring within our territory.

In the 1978 Congressional bill recognizing the Pascua Tribe, Congress stated that membership would be limited to "all those persons of Yaqui blood who are citizens of the United States and who, within two years from September 18, 1978, apply for enrollment in the Pascua Yaqui Tribe...", 25 U.S.C. 1300f-2. In 1994, Congress passed an amendment to the Pascua Yaqui Recognition Act that added language allowing persons of Yaqui blood to apply for enrollment within three years of October 14, 1994, 25 U.S.C. 1300f-2. The Tribe refers to this as the open enrollment period. Even though in 1978 a two year period of enrollment began which was expanded by the 1994 open enrollment period to allow another three years of application, there are still Yaqui people who were not able, or not aware of the requirement for application. Those people cannot be enrolled today. They may be members of our community, live on our reservation, participate in our ceremonies, and identify in every way as Pascua Yaqui, but they cannot enroll in the Pascua Yaqui Tribe, nor can their descendants because of the limitations imposed by the federal recognition act. Limitations of these kinds do not exist for most other Indian tribes.

In addition, the Tribe lacks the benefit of jurisdiction over these individuals. They live and interact with Tribal members every day, are related to them by blood, and their actions affect the community in both good and bad ways. However, because they lack the status of tribal members, they are not subject to the jurisdiction of the Tribe. This lack of jurisdiction can and does have a negative impact upon our community. When the Tribe lacks jurisdiction over these individuals, the Tribe fails to protect its members, and adds to the uncertainty and mistrust experienced by victims and the community alike.

The Pascua Yaqui Tribe is always moving forward, and we are conscious of our members and our community. Currently, the Tribe's governing document, its Constitution, limits membership to those who possess one-quarter degree Yaqui blood, but the Tribe could choose to lessen that requirement at some time in the future. Art III § 1(b) PYT Const. H.R. 3319 replaces the requirement in Tribe's recognition act that requires descendency from someone who enrolled in the tribe during one of the enrollment periods with the simple requirement that the membership

1 Edward H. Spicer, *Cycles of Conquest*, (University of Arizona, 1962) p. 46.

2 See 74 FR 34775, pp. 34775-34776. Notice from National Park Service to the Pascua Yaqui Tribe of human remains and associated funerary objects found at Tumacacori National Historic Site in Tumacacori, Arizona.

of the Tribe will consist of those persons of Pascua Yaqui blood enrolled by the Tribe. There is no mention of any blood quantum amount. This puts the determination of membership back where it should be, in the hands of the Pascua Yaqui people.

Expeditious passage of H.R. 3319 frees the Pascua Yaqui people to determine our own membership, consistent with recent Congressional policy. I respectfully request your support and passage of H.R. 3319. Thank you.

“Exhibit A”

TESTIMONY OF MARISELA C. NUÑEZ, ENROLLMENT DIRECTOR OF THE PASCUA YAQUI TRIBE OF ARIZONA BEFORE THE SUBCOMMITTEE ON INDIAN AND ALASKA NATIVE AFFAIRS IN SUPPORT OF H.R. 3319, A BILL TO ALLOW THE PASCUA YAQUI TRIBE TO DETERMINE THE REQUIREMENTS FOR MEMBERSHIP IN THAT TRIBE.

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My name is Marisela C. Nuñez, I am a member of the Pascua Yaqui Tribe and have had the honor and privilege to serve my people in the official capacity of tribe’s enrollment director. Holding this position for the last 17 years has brought many responsibilities and a great burden of directing decisions that brings me immense regret when I have to deny an individual who possesses Yaqui blood his or her right to membership in the Tribe.

Our current membership requirements are governed by our Tribal Constitution and Membership Ordinance, as well as federal law. Those seeking membership must meet the criteria of possessing (1/4) one-quarter Pascua Yaqui Indian blood, be a child (a direct lineal descendant) from our original base roll or have applied and been approved for membership under the Open Enrollment period of (Public Law 103-357, 1994 Act) and appear on our current tribal roll.

According to our official enrollment records over 800 of our Yaqui people are seeking membership today, and are being denied their membership rights for the reasons of these imposed deadlines for application (all of which have now passed) and the fact that their ancestors are absent from our tribal rolls which were created during the enrollment periods established by our recognition act and amendment, 25 U.S.C. 1300f-2. The direct lineal descendant requirement raises countless issues precluding our Yaqui people to membership into the tribe who have lateral blood relations to our tribal roll. They are the brothers, sisters, cousins, aunts, and uncles. They live and are the heart of our Yaqui communities, learn and speak the Yaqui language, carry on our traditions and customs and are of the essence to the preservation of our Yaqui people and our way of life.

These government restrictions deny them acceptance into their own tribe send a disconcerting message when having to explain the criteria the federal government has imposed. A sense of uncertainty, unfairness and discrimination is being inflicted on our Yaqui People that is resulting

in a negative social impact. Our self-determination from restrictive policies and the right for our tribe to determine our membership is imperative to our preservation as a people and to our communities.

Example: An example is the enrollment status of Jose Antonio Valenzuela. Mr. Valenzuela is an adult who is seeking membership in the Tribe. Mr. Valenzuela's family (roots) dates back to the early 1900s in settlement of one of our traditional Yaqui communities of Guadalupe. He does not qualify for membership for the reason that he missed both the September 18, 1980 and October 14, 1997 application deadlines. Mr. Valenzuela's ancestors are absent from the tribal rolls. Although he is recognized as a full-blooded Yaqui Indian and has siblings who are enrolled, he does not meet the direct lineal descendant requirement for membership into the tribe, nor will any of his descendants. This disqualifies an entire family blood line that is Yaqui by both blood and cultural affiliation.