



Honoring Our Sisters: Tribal Jurisdiction in the MMIW Era

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Mark A. Vezzola, Esq.

Directing Attorney/California Indian Legal Services

Tribal Court Judge



Acknowledgement

As I give this presentation from my office in Escondido, I wish to acknowledge the area's first people, the Luiseño, who remain a vibrant and active part of the community.

- La Jolla Band
- Pala Band of Mission Indians
- Pauma Band of Luiseno Indians
- Pechanga Band of Luiseno Indians
- Rincon Band of Luiseño Indians
- San Luis Rey band of Luiseno Indians
- Soboba Band of Luiseño Indians

Startling Statistics

5,712

The number of known incidents of missing & murdered Native American women in 2016.

SOURCE: National Crime Information Center

#NotInvisible

84%

OF

**NATIVE
WOMEN**

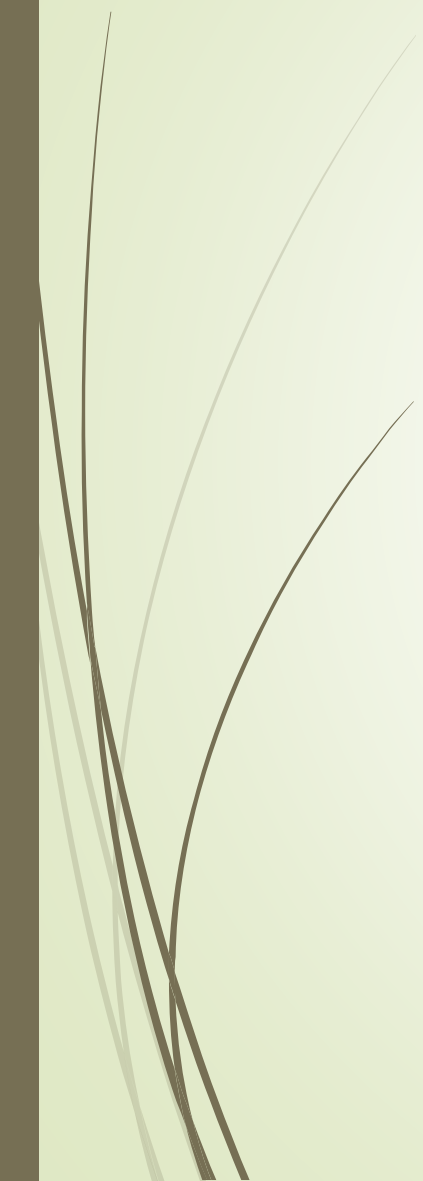
have experienced violence in their lifetime.

SOURCE: National Institute of Justice

#NotInvisible



Keep in Mind...



While the MMIW movement seeks to draw attention to the alarming number of missing and murdered indigenous women, indigenous men and transgender persons also experience domestic violence, sexual assault, and human trafficking. Such incidents are often underreported.



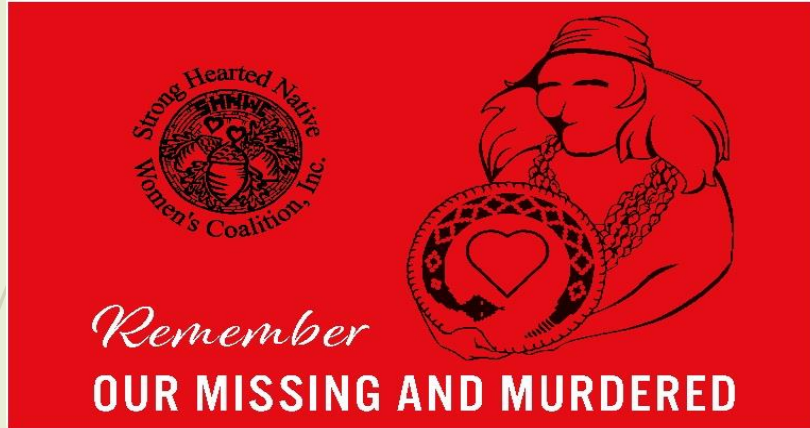
Highest MMIW Numbers by City

1. Seattle WA (45)
2. Albuquerque NM (37)
3. Anchorage AK (31)
4. Tucson AZ (31)
5. Billings MT (29)
6. Gallup NM (25)
7. Tacoma WA (25)
8. Omaha NE (24)
9. Salt Lake City UT (24)
10. San Francisco CA (17)

Source: 2016 Urban Indian Health Institute Report

Images of MMIW

Strong Hearted Native Women's Coalition



Global Indigenous Council – MMIW Campaign

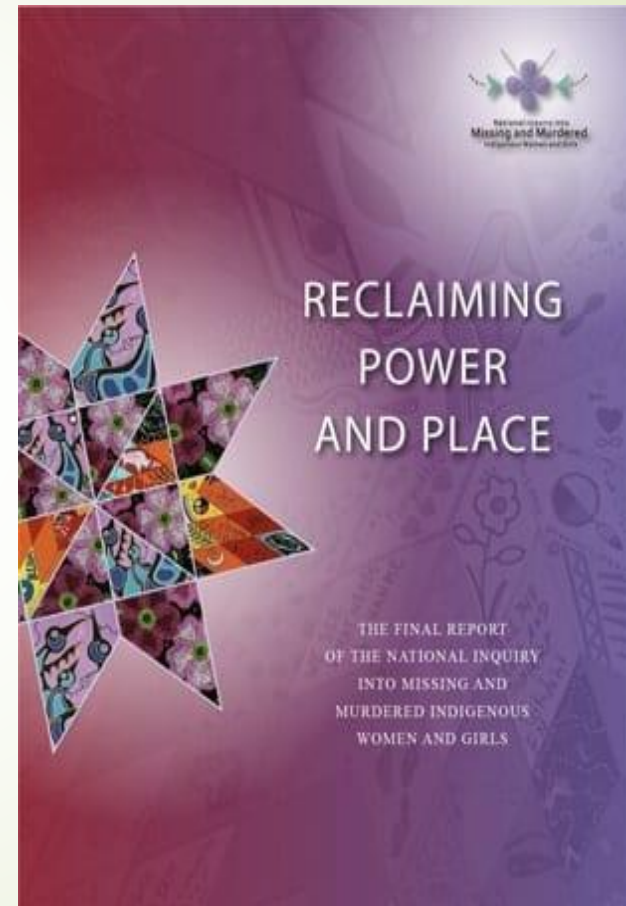


MMIW Variations

- ▶ MMIW = Missing and Murdered Indigenous Women
- ▶ MMIWG = Missing and Murdered Indigenous Women and Girls
- ▶ MMIP = Missing and Murdered Indigenous People
- ▶ MMIR = Missing and Murdered Indigenous Relatives or Relations
- ▶ MMIWG2S = Missing and Murdered Indigenous Women, Girls and **Two-Spirit** People

Reclaiming Power and Place

- Two years of evidence gathering by Canada included the truths of over 2,380 family members, survivors of violence, experts and Knowledge Keepers
- Report makes 231 Calls for Justice directed at governments, institutions, social service providers, industries and all Canadians




Criminal Jurisdiction in Indian Country

- Originally, Tribal communities possessed authority to punish wrongdoers within their land, regardless of whether they were Indian.

But then...

- General Crimes Act (1817) brought non-Indians who commit crimes against Indians in Indian country under federal jurisdiction.
- Major Crimes Act (1885) brought Indians who commit major crimes against anyone in Indian country under federal jurisdiction.
- Public Law 280 (1953) amended the Major Crimes Act so certain states, including California, acquired criminal jurisdiction over crimes in Indian country (SCOTUS found Tribes still have concurrent jurisdiction over their members and other Indians but do not always exercise it)
- Indian country defined by statute (18 U.S. 1151) as land within reservation boundaries, dependent Indian communities, and allotments.

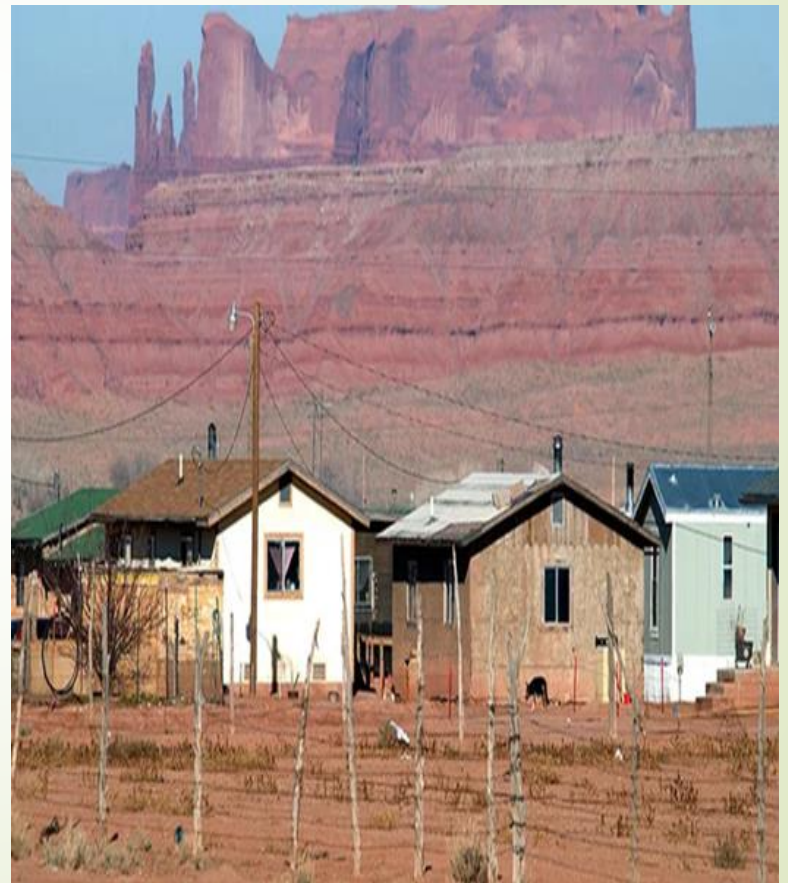


Tribal Criminal Jurisdiction of Non-Indians DOES NOT EXIST (IN MOST CASES)

- ▶ *Oliphant v. Suquamish*, 435 U.S. 191 (1978) - U.S. Supreme Court held there is a historical presumption that Indian tribes lack criminal jurisdiction over non-Indians in Indian country without congressional authorization.
- ▶ Violence Against Women Act (2013) – With the reauthorization of VAWA, for the first time in decades conferred criminal jurisdiction to Tribal courts over non-Indians charged with domestic violence against an Indian provided they offer certain minimum due process protections:
 - ▶ Law trained judge
 - ▶ Laws available to the public
 - ▶ Court appointed counsel for low income defendants
 - ▶ Recorded proceedings
 - ▶ Juries representing a cross-section of the community

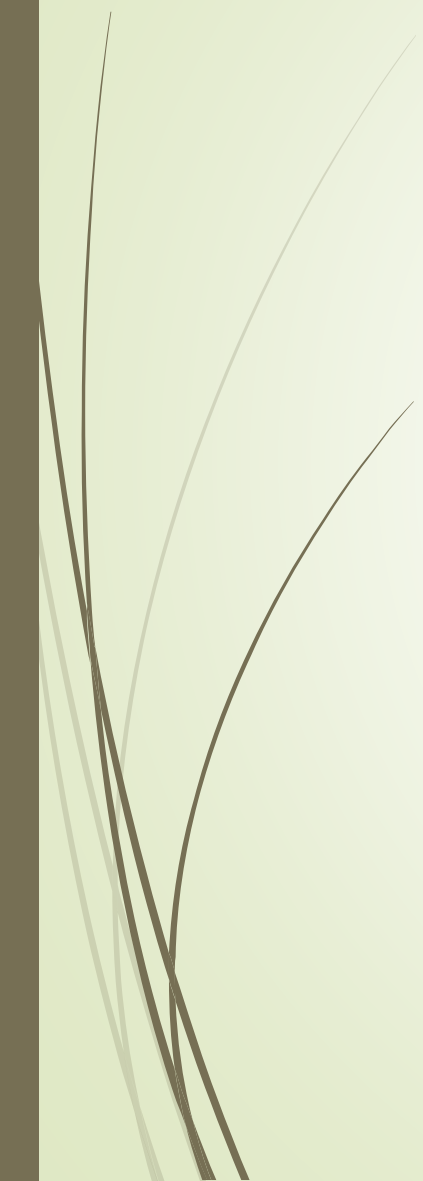
Why Does Tribal Criminal Jurisdiction Over Non-Indians Matter?

- Tribes have an interest in protecting their people and communities
- The inability to prosecute wrongdoers on Tribal land hampers their sovereignty
- Many non-Indians live in or visit Indian country (e.g. spouses, partners, children of Tribal members, guests, as well as owners of fee land)
- Exclusion from Tribal land is an imperfect remedy





What Do Tribes Have Jurisdiction Over?

- Peace and security
 - Family law
 - Civil disputes
 - Housing and land use
 - Child welfare
 - Domestic Violence *(as stated above)
 - Natural and cultural resources
 - Internal governance (e.g., elections, exclusions)
- 



What is being done to protect to address MMIW?

- ▶ Secretary of Interior Deb Haaland, an enrolled citizen of the Laguna Pueblo and the first Native person to hold the position, created a murdered and missing unit in the BIA to prevent cases and investigations from going cold
- ▶ Not Invisible Act, which among other things, established a commission led by the Departments of Justice and Interior to reduce violent crime against indigenous people

Resources

- ▶ California Indian Legal Services' DV Unit: 760-746-8941, Ext. 106 or visit <https://www.calindian.org/help/>
- ▶ Strong Hearted Native Women's Coalition: 760-644-4781 or visit <https://www.facebook.com/SHNWCInc>
- ▶ Rape Abuse Incest National Network: 1-800-656-4673 (HOPE)
- ▶ National Domestic Violence Hotline: 1-800-799-7233
- ▶ National Human Trafficking Hotline: 1-888-373-7888/text 233733
- ▶ Native Justice Coalition: www.nativejustice.org
- ▶ Global Indigenous Council: www.globalindigenouscouncil.com