

PLENARY SESSION

Proactive Approaches to Avoiding Habeas Corpus Petitions

- Honorable David Eisenberg, Tribal Court Judge, Taos Pueblo Tribal Court
- Barbara Creel, Professor of Law, Director, Southwest Indian Law Clinic, UNM School of Law
- OJ Flores, Chief Prosecutor, Pascua Yaqui Prosecutor's Office
- Rosalie Chavez, Attorney at Law

The Indian Civil Rights Act of 1968 (ICRA) makes many, but not all, of the guarantees of the U.S. Constitution's Bill of Rights applicable to American Indian Tribes. As part of this federal law, individuals being prosecuted by tribal courts must be provided the right to due process. The Tribal Law and Order Act of 2010 amended portions of the ICRA to allow Tribes to increase criminal sentences, but in order to do so, Tribes must meet specific due process requirements. Further, the reauthorization of the Violence Against Women Act of 2013 restored tribal criminal jurisdiction over certain non-Indian domestic violence offenders, if the Tribe complies with these statutory due process requirements. Given the complex structure of these laws, this session will provide a review of the requirements under each law, and discuss the potential issues and challenges faced by Tribes and Tribal Courts in guaranteeing that due process is provided in criminal proceedings to avoid habeas corpus petitions that criminal defendants may file related to alleged violations of their civil rights.