



**CHIHENE NDE NATION OF NEW MEXICO**  
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***Department of Interior***  
***Office of the Assistant Secretary – Indian Affairs***  
***Attention: Office of Federal Acknowledgment***  
***Mail Stop 4071 MIB***  
***1849 C Street NW***  
***Washington, DC 20240***

**Subject: Response to comments Submitted by Mescalero Apache Tribe  
to OFA Petition 404**

The Chihene Nde Nation of New Mexico (CNNNM) wishes to express our heartfelt gratitude to the Mescalero Apache Tribe for their review and input on our Federal Re-acknowledgment petition (#404). We have always considered the Mescalero Apache Tribe our allies and consistently supported them. We are also grateful to the Mescalero Apache Tribal Members and spiritual leaders (*diiyin*), including a former President of Mescalero, the late honorable A. Paul Ortega supported our efforts in the past and participated with our people in our ceremonies over the last two decades.

On August 13, 2024, the Mescalero Apache Tribe submitted comments to the Office of Federal Acknowledgement (OFA) opposing our petition. We offer this letter in response to the comments from the Mescalero Apache Tribe and those of the outside consultants that the Mescalero Apache Tribe retained to evaluate our petition for re-acknowledgment. In our view, paying consultants to evaluate our petition demonstrates how seriously the Mescalero Apache Tribal Council seeks to understand our rightful claim to our sovereign Tribal identity. We note that Mescalero sought the expertise of a non-Native U.S. historian with a decade of experience in the Department of the Interior's Office of Federal Acknowledgment (OFA) process to analyze our petition.

The Chihene Nde Nation has existed as an independent tribe with a distinct cultural and historical identity long before we formally applied for non-profit status in the State of New Mexico. This status, often misunderstood, is an administrative designation for specific legal and organizational purposes. It did not establish our tribal identity, which the United States first acknowledged in treaties dating back to 1853 and 1855. These treaties formally recognized the Mimbres Bands of Gila Apache, also referred to historically as Mimbres,

Gila, Coppermine, and Mogollon, as a sovereign entity, a status rooted in our people's enduring presence and our ancestral heritage. These longstanding treaties affirm our tribe's history and identity, not any recent administrative actions taken for the purposes of organizing to conform to the Indian Reorganization Act guidelines.

### **Who We Are:**

We begin with a statement of who we are and have been because the comments offered by Mescalero and their consultants imply we are other than who we are. Their comments do not address our specific existence as known among our members and as documented in published sources. Although not noted in their official comments to the OFA, Mescalero officials have previously acknowledged the existence of Apache bands who lived off Reservations. In a letter from the Mescalero Apache tribe to the New Mexico State Legislature Indian Affairs Committee on February 7, 2011, opposing a memorial bill on behalf of the Fort Sill Apache tribe, former President Mark Chino concedes that "the entire tribe was not taken into captivity in 1886. Numerous bands of Chiricahua (including some of the Warm Springs Band) remained free, some going deep into Mexico." Of the Chiricahua who did go to Fort Still, two-thirds of those Chiricahua chose to leave to join the Mescalero Apache Indian Reservation, with the other one-third remaining to form the modern Fort Sill Apache Tribe in Oklahoma. Neither Fort Sill nor Mescalero account for the Apache bands former President Chino conceded remained free after 1886. However, our people affirm that we are the descendants of the free Apache bands.

Our name, Chihene (*Chih N'nee*), refers to the people of Gila (*Chi'laa/Xila*), is our preferred political identifier, tying us to our ancestral homelands. In United States treaty documents, U.S. officials have previously acknowledged us as Rio Mimbres and Rio Gila Apache and Mimbres Bands of Gila Apache. Our ancestral name is Chiende, or Red Paint Apache People. We are one of four similar and allied cultural groups along with the Bedonkohe of the Gila region, Nednhi of the southern border region, and Chokonon of the southeastern Arizona Chiricahua Mountains. Spanish officials used topographical identifiers and place names in the colonial period, like "Gileños" and "Mimbrenos," to signify our extended families living in the Gila and Mimbres regions. These names stuck with our people throughout the Spanish and Mexican eras and into the U.S. period.

Our political sovereignty and farming practices have been documented in historical records. Our diplomatic relations with Spanish and Mexican government officials affirmed the sovereignty of our Chiende extended families and created opportunities for Chiende to persist in the larger economic landscape. This acknowledgment of our sovereign identity was carried into the U.S. period and is demonstrated through treaty negotiations and proceedings.

Historically, Chiende leadership entailed an egalitarian model that relied on consensus among extended families. The Mimbres-Chiende and Gila-Chiende rancherias were extended families headed by their leader, the *nantan*, meaning 'chief, leader' (Reuses 2012, 274). Traditionally, the *nantan* had significant influence but not absolute authority.

Historically, our *nantans* came together to provide leadership for our bands. The leaders like our 1852 Treaty signer, Negrito; our 1853 Treaty signers, Ponce, Josécito, José Nuevo, Cuchillo Negro, Sargento, Veinte Reales, Riñon, Delgadito-Largo, and Carrosero;

and our 1855 Treaty signers Delgadito, Ytan, Cuchillo Negro, Riñon, Camosero [Carrosero], Sargento, Veinto Reales, José Nuevo, Pajarito, Elias, Deltané, Apache Soco, Camilio [Camilo], Monica Zher, Refujia, Placeres [Láceris], and Tinajas, desired to preserve their communities and the lives of their people. The various band leaders' decided to confederate as an act of kinship and signed these treaties with the United States to exercise our sovereignty. Their commitment to preserving kinship ties, our identity, and sovereignty has continued to guide us as independent people until now.

The Mescalero consultants failed to analyze our Apache ancestry's specific history and fact pattern. Their chronology and timeline of events deal with people other than our acknowledged leaders and communities. Instead, they analyzed our information based on the experiences of the prisoners of war as referenced in prior commonly accepted history. As stated above, the Mescalero Apache Tribe acknowledged that not all of the people who were later widely referred to as Chiricahua were captured as prisoners of war. They ignore our differences after 1877 and 1886, respectively.

Despite the Petitioner's distinct and sovereign experiences, Mescalero and the consultants argue our sovereign identity is an exclusive representation of a Chiricahua identity. Our tribe intentionally does not use the terms 'Chiricahua' and 'Warm Springs' but Chihene to identify our separate historical experiences. Our people exercised their sovereign decision to confederate into the Mimbres and Gila Apache Bands, memorialized in the 1853 and 1855 Treaties before the Chiricahua Bands were even mentioned in the United States government Southern Apache Agency historical records. The Chiricahua bands existed in Old Mexico at the time of our treaties. They were first mentioned in the Southern Apache Indian Agency records in 1859 after their territory was annexed into the United States after the Gadsden Purchase. Notwithstanding, we refer to those Apache on the Mescalero and Fort Sill reservations as our *shí t'ekende* (relations) and our fellow descendants of the treaty signers as *shí k'is* (brothers/sisters/cousins).

The collective term Chiricahua, popularized during the Apache Wars, identifies another political entity that did not participate in the 1855 Fort Thorn Treaty and was more nomadic and non-farming. The term Chiricahua is connected to the Chiricahua Mountains in Southeast Arizona and is not considered our ancestral territory. However, sometime after 1871, Chiricahua became a general umbrella term for those of the four previously mentioned bands that did not participate in the referenced treaties. For all of the above reasons, we do not claim Chiricahua identity as our tribal identity.

We do not consider Victorio, who aligned with Mangas Coloradas, to be the leader of our specific and sovereign kinship groups. In much the same way, Mangas Coloradas is inaccurately considered the leader of all the Chiende. Indian agent Michael Steck clearly documents that Mangas Coloradas only led one group associated with the Southern Apache Agency, constituting less than a third of the bands at the Southern Apache Agency. Similarly, Victorio and Loco were the leaders of only a portion of the bands during their breakout from San Carlos and the subsequent battles. Many historians mistakenly credited Victorio with leading all the Chiende local groups and rancherias at that time, identifying them as Warm Springs Apache. This U.S. historical manifestation of a single Chiende spokesperson, as defined by their role at war with the U.S., is not a Chiende custom. The Petitioner cautions readers not to assume leaders such as Victorio and Mangas Coloradas represent our separate and sovereign leadership.



The language and argumentation used in the Mescalero and consultants' comments measure our Indian entity identification based on the historical experiences and actions of Mescalero's ancestors rather than ours. The experiences of the Mescalero Apache families on their Reservation do not represent or define us. Our tribe had a completely different tribal story, which was left unanswered by Mescalero and the consultants who used their own historical narrative to evaluate our Indian entity identification. Our leaders aligned with the United States through trust relations and our promise to farm on our tribal lands. The U.S. government funded rations, contracts, and irrigation canal projects and secured the Indian Affairs' investment in our tribe. Our Indian Agent, Michael Steck, authorized the enhancement of our historic acequias irrigation ditches and supported our agreed-upon farming lifestyle by providing tools and farming implements. Some of our leaders may have died as farmers and not in battle as glorious warriors; however, we hold our nantans (leader/chief) in high regard.

In the 1850s, due to our long history as farmers, our ancestors adapted to the United States' economic transformations, like mining and farming, the influx of settlers, and land dispossession. Parts of Southwest New Mexico became communities of homesteaders who required laborers to mechanize their ranches and farms. No different than today, these Anglos looked to Natives of the area to provide labor. It benefited the settlers and the US Government to deny our people our rights and existence as the original inhabitants. We submitted to the Anglos' economic thirsts and provided labor to remain in our homeland. Still, we preserved our cultural beliefs and identity.

In 1858, Indian Agent Steck advised our people to continue farming in our established locations without a ratified treaty. Consequently, our Chiende treaty-keeping ancestors continued farming near the old Fort Webster, the old Fort Thorn, Mesilla, the village of Paraje, the old Fort Tularosa Reservation area, and Ojo Caliente or Cañada Alamosa.

By the 1870 U.S. Census, those Chiende living in farming and ranching communities were subject to changes in census guidelines. The U.S. designed categories distinguishing reservation Indians from those Indians living off-reservations and began misidentifying our ancestors as White (W) on censuses. As reported by Vincent Colyer, Member of the Board of Indian Commissioners, in 1871, entitled Peace with the Apaches of New Mexico and Arizona, Indian Agent Michael Steck instructed our leaders, absent a ratified treaty, to continue farming on our old fields on the Rio Mimbres and Rio Palomas (Palomas), a tributary of the Rio Grande River. Vicente Colyer's 1872 report to the Board of Indian Commissioners speaks of an enduring peace with farming Apaches over the last 15 years.

The Petitioner's tribal leaders never wholly separated from the agency unless under attack by U.S. Troops or when U.S. agents left because the agency was being relocated or dissolved. Instead, the Southern Apache Agency, where the Petitioner received rations, was relocated several times until the New Mexico Superintendency was abolished in 1878, after which the agent reported directly to the Office of Indian Affairs in Washington, D.C. Therefore, we cannot and do not falsely incorporate Mescalero experiences after 1886 into our historical narrative.

Our continuous presence as an Indian Entity is further supported by geological assessments of our homelands. In 1891, the Twelfth Annual Report of the United States Geological Survey to the Secretary of Interior, 1890-1891, by J.W. Powell concurs with the Petitioner's oral histories of our families remaining in our ancestral homelands in the community. J.W. Powell attested to seeing an Indian village with several houses within the area of the survey site at Cañada Alamosa around 1890. The survey denotes a landmark title, Montoya Butte, that identifies a local Chiende community. The Romolo Montoya family, whose descendants are a part of our membership, are historically tied to the Cañada Alamosa. The location of Montoya Butte, the Montoya Site, and the ruins at the Victorio Site are located within the family's homestead patent, which the family received in August 1890.

We have a unique experience of leadership documented in our treaties and reflective of our extended family histories. Our oral traditions and primary documents emphasize our tribe's maintenance of aspects of our traditional matriarchal society. We valued our matriarchs, and our women served as treaty signers, diplomats, and spiritual leaders. Signed treaties often list primarily male leadership; however, our traditional matriarchal principles served to protect our families. Monica and Refugia demonstrate examples of our women leaders participating in diplomatic negotiations and signing treaties in 1855. The practice of demonstrating ancestral relations solely to male leaders serves US geopolitical interests but does not represent all of our people.

Our Chihene identity is our birthright, and trying to deny us our identity by narrowing our membership to named male leaders ignores decades of community integrity maintained through our extended families. The idea that our members participated in diplomatic and social relations as individuals and not members of our tribe sidesteps our historical narrative. Our petition draws continuous connections between Apache families, cultural traditions, social relations, and community upliftment.

In their letter, the Mescalero Tribal Council claims sovereign authority over other Apache treaty bands. They state the Chihene, Tcihene, Coppermine, Gila, Mimbres, Warm Springs, and Mogollon Apache were names used to identify the Chiricahua Apache who came to live on the Mescalero Apache Indian Reservation and thus all fall under their sovereign status. They state, "Therefore, any reference to these groups in the historical record is a reference to the ancestors of Mescalero, not CNN." However, they offer no primary or secondary evidence to support their contention.

Contemporary Apache historians and scholars agree that not all Apache bands are Chiricahua and that Mescalero's claim to represent all Apache treaty bands developed from outdated 20th-century understandings of largely incomplete historical accounts of the Indigenous population of the region. Furthermore, the grand statement of representing all Apache treaty bands conflicts with the strongly supported opinion of scholars and our elders that several Apache bands evaded forced movements and relocations. This point is supported by the 1962 report by Fort Sill Historian Gillette Griswold, who, through the testimony of over 70 informants, determined there were Chiricahua, Warm Springs, and associated Apaches who were not sent East as prisoners of war. It is also supported by the 2011 letter from former Mescalero Tribal President Mark Chino, previously referenced in this response.

The traditional social organization and political structure of the Chihene predate the reservation period. The Mescalero consultants espoused an archaic analysis that mirrors Commissioner of Indian Affairs John Collier's thoughts of the Western Shoshone living off reservations, considering them "scattered Indians." Furthermore, presumptions have been made in the Mescalero Apache Tribe's cover letter that we are attempting to appropriate an identity, not our own. Our petition does not include a post-1886 prisoners-of-war narrative. As we stated, most of our lineal ancestors never boarded the trains to Florida. Indisputably, Mescalero's consultants' understanding of our history and culture as bands has been substituted for the limited modern interpretations of Apaches.

According to the 1962 unpublished research notes and informant data provided by Fort Sill Apache historian Gillett Griswold, "Since the surrender of 1886, after which they shared a common fate, these two tribes (Chiricahua and Warm Springs) have usually but erroneously been regarded as one, being generally referred to as Chiricahuas." Griswold describes earlier in his paragraph that "Bedonkohe and Nednai Apaches had merged with the Chiricahuas prior to their surrender in 1886, and the Mimbreno Apaches had merged with the Warm Springs prior to the same period, for the purpose of contemporary classification the Bedonkohes and Nednais are regarded as Chiricahuas and the Mimbrenos as Warm Springs." The significance of this quote relates to the diasporic experiences and the fate of the prisoners of war, three decades after our ancestors separated into a sovereign political identity. Suffering a divergent fate, our tribe continued to exist as bands in our homelands. We never commingled band identities, as referenced by Griswold. We continuously functioned peacefully in our extended family groups.

The consultants did not consider the range of Apache identities and activities in the U.S. and Mexico after 1886. Evidence abounds that Apache activity was sporadic yet existed in Mexico until 1940. The dismissal of this critical information contained in our petition signals notions of Apache as people who could only exist through imprisonment and forced containment. Western ideals, biases, and stereotypes cloud this analysis. The consultant should have interpreted through our petition that, as Apache, we disagree with the notion that to be Apache is to have existed as a prisoner of war or lived on a reservation. Our stories emphasize our existence as one that has been continuous and prevalent in our homelands. Our petition contradicts mainstream Apache history as a free people never subjugated by a superior power. More accurately, the U.S. defeated a small group of defiant leaders and their followership.

The consultant dismisses the academics, authors, and archaeologists who have supported our petition on record. This includes authors like Lynda A. Sanchez, Karl Laumbach, Jeffrey P. Shepherd, and Matthew Babcock. The consultant minimizes their ability to identify us as Chihene and discredits them, insinuating these academics are unqualified to determine our degree of Indianness. These supportive scholars have hundreds of years of combined experience. Yet, their interpretive accounts are easily dismissed in favor of the consultant's approach, foregrounding their belief that we are not sophisticated enough to understand the OFA process.

The consultant's assertion that the name "Chihene Nde Nation" is not a nation with which the United States has ever had government-to-government relations is a form of presentism. The consultants do not consider that the place name identifiers applied to our people by nation-state governments are not our Apache names for our people. The petition

repeatedly mentions we are the historical Mimbres Bands of Gila Apaches, the place name identifiers used in our treaty negotiations. Overwhelming evidence exists of government-to-government interaction with the Mimbres and Gila Apache. The petition is clear: the Chihene Nde Nation reflects our choice to name ourselves in line with names known by our ancestors and not those created for us.

At a public meeting in front of the New Mexico Legislative Indian Affairs Committee, a former leader of the Mescalero inferred we may be descendants of (American) Indians but no longer live in the Apache Way. We have maintained our tribal identity as part of our Apache ancestors' expectations. We proudly represent a nation without an Indian reservation. Reservation living should not be the litmus test of Indian, Native American, or Apache identity. This essentialist approach centers blame on our Indigenous communities instead of the dominant state that had its interests in reclassifying Indian identity and eliminating Indigenous communities. The U.S.'s creation of new racial classifications for our families served to reinforce social hierarchies and to deny us of our tribal sovereignty, land, and resources. We recognize Chihene as our political identity and contest any other imposed identity.

To those who assert our focus for federal recognition is money-driven, they could not be further from the truth. We understand that statistically, most Native American tribes in the United States face high levels of poverty and unemployment - significantly higher than the national average. Dr. Veronica Tiller, a Jicarilla Apache, in her book *Culture and Customs of the Apache Indians*, writes, "Unlike many other Americans, Apache tribes are indigenous to this country, they are a conquered people who assimilated into the dominant society, and they have a special trustee relationship with the U.S. federal government...this is why they live on Indian reservations...and why their economies are in some instances more like Third-World economies...."

We honor Indigenous Peoples for acquiring reservation lands and ensuring their continuation in modern society. We can assure the Mescalero Apache Tribe that we have core values and a purpose emphasizing a spiritual community built around shared values, beliefs, and traditions, and not financial gain. Although we have a need to ensure our place as a sovereign nation leading its own economic circumstances, the Chihene Nde Nation continues to contribute financially to reservation tribes and families in need. An example is the recent wildfires in Ruidoso, Mescalero, NM, and San Carlos, AZ. Traditionally, giving has continuously strengthened our bonds and ability to help other Apache in need.

Our tribe's motives are not secular; however, funds to finance our language preservation program, land-back initiatives, and increasing ceremonial costs are a reality. Anyone who would dare say these cultural obligations can be met at no cost is mistaken. Nonetheless, we contribute to other tribes with spiritual integrity. We desire to cooperate with other tribes and offer our assistance and experience in solidarity. We have no desire to deprive or compromise your tribe's way of living. We are passionate about giving back and helping create strong communities for everyone.

### **Our Process:**

We are the Chihene Nde Nation of New Mexico, a tribe of 425 adult members. We are known by various names and have historical treaties with Spain, Mexico, and the United



States. We are pursuing federal acknowledgment and have maintained tribal political influence. Despite land dispossession, we still hold land patents in the names of our ancestors. We desire to live in peace in our homelands and have a distinct identity with different social practices from other regional bands.

In making our case for federal re-acknowledgment, we utilized oral history, archival research, maps, land records, census data, and literature from reputable primary, secondary, and tertiary sources. The history team compiled the oral histories of specific extended family groups through oral conversations with tribal leaders and family representatives. Each extended family history is summarized in the petition and covers the 20<sup>th</sup> century. These accounts document our people living as an Indian entity in our ancestral homelands since time immemorial. We also consulted with several scholars with specific expertise in documented Apache history who verified the facts in our petition.

Upon the completion of our petition, we sent a letter to all Apache nations and the Pueblo Indian Council in the state of New Mexico, informing them of our submission to the OFA. In our letter, we formally announced our submission and invited tribal councils to enter into dialogue with our tribal council. We also held conversations with notable academics from several New Mexican tribes to share our histories. Our outreach efforts were largely successful. We are pleased to see very little formal opposition to our petition for re-acknowledgment from all federally recognized tribes in New Mexico and all Apache nations, including in Arizona and Oklahoma. Of all of the 23 nations in New Mexico and all federally recognized Apache Tribes, only Mescalero formally submitted comments opposing our petition.

Before the publication of our petition, we made several attempts to contact the Mescalero Tribal Council through our tribal council and several intermediaries. Twice, we extended efforts in writing to provide Mescalero with an in-person opportunity to have a dialogue and ask questions of us, but there was no response. Two liaisons reached out on our behalf and were met with similar results. However, we continue to hope for a future where both tribes can cooperate in solidarity, as our ancestors intended. We remain committed to collaborating with the members of the Mescalero Apache Tribe and respectfully ask that the OFA be allowed to do its job and verify our Indian entity identification. We are willing to discuss the main points outlined in this letter of response with the Mescalero Apache Tribal Council should their Tribal Council desire such a meeting.

The Mescalero Apache Tribe's consultants provided a 56-page report that summarized their own findings as inconclusive, stating:

*"We find that it is possible that the CNN petitioner meets criteria§ 83.11(d), Governing Document,§ 83.11(f), Unique Membership, and§ 83.11(g), Congressional Termination. We could not evaluate whether it meets criterion§ 83.11(e), Descent, because interested parties are restricted from access to a petitioner's genealogical data. If the OFA finds the CNN meets all four criteria, it will publish a positive Proposed Finding and the petitioner will proceed to a Phase II evaluation. p.57-58."*

The Consultant's Phase I conclusion acknowledges the strengths of our Tribe's governing documents, unique membership, and no congressional termination. They agree we are



likely the descendants of a historical tribe from New Mexico and admit the impossibility of fully evaluating the petition due to OFA privacy restrictions related to genealogical petition data. Furthermore, we have an ethical responsibility to protect the personally identifiable information of our membership and can not share this data outside the OFA process. Overall, the Mescalero consultants suggest that a positive finding in Phase I is likely and that we will proceed to Phase II.

*"This evaluation has concluded that the CNN petitioner may have had unambiguous previous Federal acknowledgment for the twenty-five-year period between 1852 and 1877, which would significantly reduce its burden of proof for criterion § 83.11(b), Community. However, we also conclude that despite this advantage, the petitioner does not have sufficient evidence to meet criteria §83.11(a), Indian Entity Identification, § 83.11(b), Community, or § 83.11(c), Political Influence or Authority. p.58"*

Despite the consultant's admitted lack of access to data due to OFA privacy restrictions (family genealogies, photos, census documents, military service, homestead patents, and other supporting information), they dismiss wholesale the extensive evidence we provided to meet the Indian Entity Identification, Community, or Political Influence or Authority criteria. In stating our case, we utilized oral history, archival research, homestead patents, military service records, census and map data analysis, and literature from reputable primary, secondary, and tertiary sources. The Mescalero report creates a false narrative that we were Apache until 1877 at the closing of the Southern Apache Indian Agency but are somehow no longer Apache. Through the late 19th century, federal policies of relocation, consolidation of agencies, and military conflict support our continued existence despite forced assimilation efforts like termination and blood quantum to dissolve distinct Indian entity identification.

The sweeping generalization in Mescalero's comments ignores and discards the fact that different Apache bands did not cede authority to the Mescalero or join them at their agency. There is no proof of this transfer of authority. However, we do not refute the fact that some of our allied bands, which do not represent our direct ancestors, ultimately ended up in the Mescalero Agency. Like some Lipan and Jicarilla families that joined the Mescalero Agency in the late 19th century, their existence on Mescalero does not undermine the federally-recognized status of the Jicarilla Apache Tribe, the San Carlos Apache Tribe or that of the Lipan Apache Tribe located in the State of Texas.

Our past federally-recognized leaders and current membership represent those descendants of the bands that Negrito, who is reported to have signed the 1852 Treaty on behalf of Ponce, and the peaceful bands of the Chihéne, the Coppermine, Gila, Mimbres, and Mogollon Apache, represented. These bands made the specific sovereign decision not to align with the Chiricahua Apache Tribe under Cochise or the mixed Mogollon and Mimbres bands under Mangas Coloradas. This alignment of bands, through the marriage of Mangas Coloradas' daughter to Cochise, later became known as the Chiricahua Apache, the Tribe to which the Mescalero Apache Tribe refers as coming under their authority. A later leadership dispute between the sons of Cuchillo Negro and Victorio and Nana in 1874 on the Tularosa Valley Reservation resulted in the death of two of Cuchillo Negro's sons, which further solidified the divided sovereign identities of our people.

Our peaceful bands, joined by the bands of Monica, Camilio, and Refugia from the Peloncillos and the Animas Mountains of the border region of Southwest New Mexico, exercised their sovereign decision-making and confederated into the Mimbres and Gila Apache Tribe that signed the 1853 Fort Webster and 1855 Fort Thorn Treaties with the United States. Confederation of these Bands as a Tribe was a specific requirement in these treaties.

The Leyva, Rodriguez, Morales, Alderete, Enriquez, and Luna families, and their extended family groups, in our membership descend directly from the extended family groups of, at a minimum, Ponce, Poncito, Josécito, Cuchillo Negro, Parajito, José Nuevo, Refugia, Elías, Showanocito, Bartolo, Ytan, Placeres, Negrito, and Riñon that were all actual signers on these treaties at Fort Webster and Fort Thorn. The extended family groups in our membership can demonstrate over two centuries of kinship, cooperation, and intermarriage. To our knowledge, the Mescalero Apache Tribe cannot point to a signer on the 1853 or 1855 Treaty from which the Chiricahua extended family groups on the Mescalero reservation directly descend.

We reiterate that although our people consistently identified as Chiende people and remained farmers in the areas identified by our 1853 and 1855 Treaties. From the 1850s through the 1930s, the Chiende people iteratively experienced peace and adaptation in the United States. Most Southern Apache families, including those relocated to reservations and our Chiende ancestors, faced and survived U.S. assimilation efforts in several ways. During this same period, Chiende land bases passed into non-Indian hands as a result of U.S. occupation after the war with Mexico (1846-1848), the signing of the Treaty of Guadalupe Hidalgo (1848), and the Gadsden Purchase (1854).

The borderlands, upon which some of our ancestral and territorial homelands existed, once our sovereign territory and later a part of Spain, then a part of Mexico, were split between the jurisdictions of the Mexican Republic and the United States. Through these centuries, our families traversed across all parts of our historical homelands. The late imposition of a border in 1848 and its re-drawing in 1854 did not terminate our migratory patterns or our relations with our families throughout the region. At this time, many of our borderland families dispersed into what was once called the "Mesilla Window," which later became Hidalgo, Luna, Grant, Sierra, Socorro, and Dona Ana counties. Other families followed employment opportunities east to El Paso County, and some moved south into Northern Mexico.

In the early 20th century, the US Government policy systematically changed our identity to White (on various records) due to our mostly settled agrarian lifestyles. This point is specifically evident in the 1910 federal census at Santa Rita, New Mexico, the 1920 federal census at the Village of Salem, and other censuses and government records from throughout Southwest New Mexico in the locations where our extended family groups were settled.

Actions by the U.S. Federal Government displaced our extended family groups from our farms around Southwest New Mexico to make way for water infrastructure projects and the creation of National Forests. This land displacement, combined with the Great Depression, caused our people to return to our traditional social organization and political structure, Extended Family Groups. The loss of our farms and available mining jobs in the

region left our mostly agrarian people landless and with limited options to support their families. We relied on our Extended Family Groups to make hard decisions and provide for their families. In some cases, they pursued employment opportunities outside of southwest New Mexico. However, they continued to send money home to help support their extended families. Generations of descendants continued to live in and return to our homeland to preserve our culture, traditions, and history. For those that remained outside the region, our family oral histories document our continued efforts to pass on our cultural traditions to new generations and convey a strong desire to return home.

As the U.S. entered the war, many male ancestors left to serve in the military to fulfill their duty to their families, our Tribal Nation, and the United States. This suffering and hardship prevented our people from participating in the Indian Reorganization Act of 1934. The Office of Indian Affairs List of Indian Tribes, which the consultant opined does not consist only of federally-acknowledged tribes, documents that the U.S. government acknowledged our continued existence and, like Gillette Griswold, knew that some Chiricahua, Warm Springs, and associated Apaches were not sent back East and lived apart from reservations.

The consultant criticized the format of our petition, which was a sample format provided by the OFA. In addition, our late tribal historian emeritus, Audrey Espinoza, maintained ongoing communication with the OFA staff for further guidance. They also expressed dissatisfaction with the OFA's limitation on making our genealogy, references, and supporting evidence available. With their stated previous experience in the OFA process, the consultants know that the release of genealogical and personally identifying information is subject to privacy concerns and, therefore, restricts the ability of the information to be shared in the OFA process. The contractor questioned the OFA's guidance and repeatedly asked how we might fare in the second round of the process. We cannot think of any reason why the consultant's report on their analysis of our petition, which was written for the Mescalero Apache Tribal Council, was submitted as a public comment except as an attempt to influence the OFA's decision.

The Indian Claims Commission decided to compensate the Chiricahua prisoners of war as part of a settlement related to land claims stemming from the unlawful seizure of lands in Southwest New Mexico. Therefore, the Chihene Nde Nation's petition does not infringe on the sovereignty of the Chiricahua People on the Mescalero Reservation, as they no longer exist in a community in Southwest New Mexico and have accepted compensation for their interest in those lands. The Chihene Nde Nation has no desire to undermine the federally acknowledged tribes' existing right to consult on matters related to the Native American Graves Protection and Repatriation Act (NAGPRA) or other federal processes. However, as the descendants of treaty signers recognized as sovereigns of the region by three separate governments (Spain, Mexico, and the U.S.), our people have never relinquished our claim to the aboriginal title of the land.

### **Federal Jurisdiction:**

In the Mescalero consultant's comments, they contend that our people lack federal jurisdiction after 1877. However, we highlight the following examples to demonstrate the ongoing Federal Jurisdiction of our people into modern history.

- 1) Identification of an Indian village continuing to exist at the location of the Romolo Montoya family homestead in the Twelfth Annual Report of the United States Geological Survey to the Secretary of Interior by J.W. Powell in 1891 documents our continued existence in the Cañada Alamosa Box Canyon. This report is an act of Federal Jurisdiction.
- 2) Acceptance of claims for lands comprising our traditional Rancherias established in our previous treaties with the Nation States of Mexico and Spain in the Court of Private Land Claims in 1893 was an act of Federal Jurisdiction. These specific claims are for the Rancheria de Rincones, Rancheria de Comals, Ranchería de Corrales, and Rancheria the Gallina.
- 3) The Fort Thorn Military Reservation, where our 1855 Treaty was signed, and some of our Extended Family Groups continued to live until their lands were taken in 1922, remained a Federal Reservation until at least 1900.
- 4) Each taking of land from our people 1899 to 1928 for the creation of the National Forests, National Wilderness areas, and federal water infrastructure projects were exercises in Federal Jurisdiction over our people.
- 5) Each act to change the expressed Tribal identity of our ancestors to White in the census and in other federal records were actions of Federal Jurisdiction over our people.
- 6) Beginning in 1931 at least one of our entire Extended Family Groups participated in the Civilian Conservation Corps operations in the Hoover Dam project. This was an act of Federal Jurisdiction.
- 7) Many of the homestead lands taken from our people between 1899 through 1928 continue to be documented in the federal lands inventory in the specific names of our families today, even though those lands are no longer in our possession. This fact is documented in the Bureau of Land Management land records database. This is an act of continuing Federal Jurisdiction.

### **Conclusion:**

Our ancestors who signed the treaties are primarily absent in modern Mescalero Apache history. The Mescalero Apache Research Report, dated July 2020, was published by the Texas Department of Transportation. The report was commissioned to inform future transportation planning, project development, tribal consultation activities, and public engagement with the Texas Department of Transportation. The authors of the report state that it reflects the Mescalero Apache Tribe's perspectives because of the involvement of Holly Houghton, the Mescalero Apache Tribe's Historic Preservation Officer, and tribal elders. On page 12 of the report, the authors provide a table listing Lipan and Mescalero bands and tribal leaders. The Mescalero incorporate some Chihénde band leaders such as Mangas Coloradas, Victorio, Nana, and Loco, later referred to as having associations with the 19th-century Mescalero nation. Mescalero uses the names above but not the specific names of our treaty-signing leaders. Our leaders are not incorporated into this Mescalero narrative because we have our sovereign identity and direct relations with the U.S. government.



In addition, the conclusion reached by the honorable Mescalero Apache Tribal Chairwoman in her letter commenting on our petition is inconsistent with the conclusion listed by the consultant retained by the Tribe. Mescalero's consultants directly commented on how the OFA should interpret the evidence we submitted supporting our petition without having access to that evidence. The consultants did so by referencing decisions made based on previous regulations from decades ago. Yet, their conclusion concedes it is "possible" we are who we say we are. We are the modern descendants of the Apache bands that confederated into the Mimbres and Gila Apache Tribe that signed the 1853 Fort Webster and 1855 Fort Thorn Treaties with the United States.

We are incredibly grateful to current scholars who have continued to support us through this process including Jeffrey Shepherd PhD, Matthew Babcock PhD, Deni Seymour PhD, Neil Goodwin, Mark Santiago, Karl Laumbach, Neil Ackerly Ph.D., Tiffany Lee PhD, Michelle Kells PhD, and Lynda Sanchez, Brenda Wilkinson, Lydia Wilkes PhD, Megan Poole PhD, Savannah Paige Murray PhD, and Donna Miranda-Begay PhD.

We are thankful to have been given this opportunity to respond to comments submitted by the Mescalero Apache Tribe.

Respectfully submitted,



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Chihene Nde Nation of New Mexico



Gilbert Anthony Flores, Vice-Chair  
Chihene Nde Nation of New Mexico



Lauren Denson, Secretary  
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