

TOHONO O'ODHAM NATION OFFICE OF THE CHAIRMAN AND VICE CHAIRWOMAN

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**Verlon M. Jose**  
CHAIRMAN

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**Carla L. Johnson**  
VICE CHAIRWOMAN

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February 20, 2025

State Senate President Warren Petersen  
Arizona State Senate  
Room 205 Capitol Complex – Senate  
1700 West Washington Street  
Phoenix, AZ 85007-2890

Re: Programs That Benefit Tribes and Their Members are Not “DEI”

Dear Arizona State Senate President Petersen:

The Tohono O’odham Nation (the “Nation”) has reviewed a copy of your letter dated February 10, 2025, entitled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.” The letter appears to instruct the Presidents of the three State Universities to comply with Executive Order (EO) 14173 (January 21, 2025) entitled “Ending Illegal Discrimination and Restoring Merit-Based Opportunity.” As you may be aware, programs designed to benefit tribal members are not diversity, equity and inclusion (DEI) programs as identified in the Executive Order. That is, programs that benefit the Nation and its members (and other federally recognized tribes), are not “race- and sex-based preferences under the guise of diversity, equity, and inclusion (DEI) or diversity, equity, inclusion, and accessibility (DEIA) that can violate the civil-rights laws . . . .” EO 14173.

Indeed, the current Administration has acknowledged that its trust obligations to the Tohono O’odham Nation, and other federally recognized tribes, neither implicate, nor derive from, notions of Environmental Justice (EJ) or DEI. For example, Department of Interior, Secretarial Order 3416 (January 30, 2025) (“Ending DEI Programs and Gender Ideology Extremism”) specifically provides that:

[n]othing in this Order shall be construed to eliminate, rescind, hinder, impair, or otherwise affect activities that implement legal requirements independent of the rescinded equity-related EOs, including . . . . the statutory authorities, treaty, and/or trust obligations of the Department and its Bureaus/Offices to Tribal nations and the Native Hawaiian Community.

*Id.* at Sec. 6(d); *see also, e.g.*, Ariz. Const. Art. 20, Sec. 4 (confirming the unique political status of the tribes).

It is well established that tribal enrollment is political and not a racial classification. *E.g.*, *Morton v. Mancari*, 417 U.S. 535, 553-555 (1974). In *United States v. Antelope*, 430 U.S. 641

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(1977), for example, the Supreme Court applied federal criminal law to Indians charged with crimes against non-Indians in Indian country. *Id.* at 646-47. The Court reasoned that the application of federal law is “not based upon impermissible classifications” but, rather, “is rooted in the unique status of Indians as ‘a separate people’ with their own political institutions” and, thus, “is not to be viewed as legislation of a ‘racial group consisting of Indians.’” *Id.*, quoting *Mancari*, 417 U.S. at 553 n.24. To reinforce the point, the Court stated that the criminal defendants “were not subjected to federal criminal jurisdiction because they are of the Indian race but because they are enrolled members of the Coeur d'Alene Tribe.” *Id.* Thus, the Court concluded “that the federal criminal statutes enforced here are based neither in whole nor in part upon impermissible racial classifications.” *Id.* at 647; see also, e.g., *Moe v. Confederated Salish & Kootenai Tribes of Flathead Reservation*, 425 U.S. 463, 479-80 (1976) (rejecting equal-protection challenge to federal law preventing state from taxing sales of cigarettes on Indian reservation), citing *Mancari*.

As a practical matter, the Nation is not aware of any EJ/DEI organization that has legally established government-to-government relationships with state and federal governments and/or that significantly contributes to state and local economies on an ongoing basis. Tribal preferences based on the political status of tribal members, the sovereign nature of their respective tribes, and, in part, the federal government’s trust obligations to the tribes, significantly predate the mainstreaming and implementation of EJ/DEI programs. Maintaining programs that benefit federally recognized tribes, and their members, does not amount to impermissible racial discrimination. It is important to acknowledge that state and federal programs, including university programs, designed to benefit federally recognized tribes, and tribal members, are not “race-and sex-based preferences functioning under the guise of diversity, equity and inclusion.”

Thank you for your consideration. Hopefully, the State and its universities will continue to serve their respective communities and to work closely with the Tohono O’odham Nation and its members going forward. Please let me know if you would like to discuss any aspect of this matter.

Sincerely,



Verlon Jose, Chairman  
Tohono O’odham Nation

CC: Dr. Michael M. Crow, President Arizona State University  
PO Box 877705  
Tempe, AZ 85287-7705

Dr. Suresh Garimella, President University of Arizona  
PO Box 210021  
Tucson, AZ 8571-0021

Dr. José Luis Cruz Rivera, President Northern Arizona University  
PO Box 4092  
Flagstaff, AZ 86011