U.S. v. Veneno, --- 4th ---, 2023 WL 5921331 (10th Cir., September 12, 2023), rehearing granted and substitute opinion filed, — F.4th —, 2024 WL 980214 (Mach 7, 2024).

- **Holding**: Congress had authority to criminalize the conduct of Indians within Indian country.
- **Summary**: Defendant assaulted his girlfriend with the bounds of the Jicarilla Apache Nation reservation. Both defendant and his girlfriend were enrolled member of the Nation. Defendant was tried and convicted of two counts of domestic assault by a habitual offender in Indian Country under 18 U.S.C. §§ 117(a)(1), 1153, and assault in Indian Country resulting in serious bodily injury in violation of 18 U.S.C. §§ 113(a)(6), 1153.

  On appeal, among other arguments, defendant challenged Congress' constitutional authority to criminalize the conduct of Indians on tribal land. Defendant acknowledged that this argument contradicts Supreme Court authority and that he advanced it solely to preserve the issue. Following *United States v. Kagama,* 118 U.S. 375 (1886), the court rejected Defendant's argument.

  Defendant next posited that his prior tribal-law conviction for a domestic violence offense was categorically overbroad and thus cannot be a predicate offense for his § 117 convictions. Section 117(a)(1) provides that a person who commits a "domestic assault within ... Indian country" is subject to enhanced penalties if he has two prior convictions "in Federal, State, or Indian tribal court proceedings for offenses that would be, if subject to Federal jurisdiction ... any assault, sexual abuse, or serious violent felony against a spouse or intimate partner." The court held that defendant had forfeited this argument by failing to cite any tribal-court decisions or authoritative sources of tribal law that might bear on the meaning of the tribal law or his argument that it was categorically overbroad, nor had he cited any decisions in the 10th Circuit or any other court addressing the tribal statute.
- **Relevant (2023) Deskbook Section**: 4:7
- **Comment**: The argument defendant made to preserve his challenge to Congress' authority to criminalize the conduct of Indians on tribal land is interesting, given that the defendant was represented by a reputable law firm (Parsons Behle & Latimer, Salt Lake City, Utah). On rehearing, the court issued a revised opinion that ""resulted in only non-substantive changes to the opinion that do not affect the outcome of this appeal."