

United States v. Diaz, [499 F.2d 113 \(9th Cir. 1974\)](#), *rev'g* [368 F. Supp. 856 \(D. Ariz. 1973\)](#).

Location: Arizona—Indian lands owned or controlled by the United States

Applicable Law: [Antiquities Act \(16 U.S.C. §§ 431 et seq.\)](#)

Where Law Applies: *Antiquities Act*: Land owned or controlled by the United States government, including the outer continental shelf

Holding: The enforcement of the Antiquities Act is unconstitutionally vague in this case because: 1) terms like “antiquity” were undefined, and 2) a reasonable person could not have been on notice that the Apache masks at issue - which were manufactured just a few years earlier - would be considered “objects of antiquity” under the Act.

General Facts:

In 1973, a local attorney saw a box containing authentic Apache relics on display in a storefront in Scottsdale, Arizona. The attorney contacted the owner of the relics, Ben Diaz, and learned that Diaz had taken the relics, including twenty-three masks, from a medicine man’s cave on the San Carlos Indian Reservation. The relics had been made a few years earlier and left in the cave as part of an Apache religious ceremony—according to Apache tradition, only the medicine man was allowed to move the objects after the ceremony. Later, two undercover FBI agents contacted Diaz about the relics and were shown another box of relics also taken from a cave on the San Carlos Indian Reservation. The agents then identified themselves as FBI agents and arrested Diaz.

Procedural Posture:

In 1974, the Ninth Circuit reversed Ben Diaz’s conviction of appropriating objects of antiquity from government property in violation of the Antiquities Act. The Act states:

“Any person who shall appropriate, excavate, injure, or destroy any historic or prehistoric ruin or monument, or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which said antiquities are situated, shall, upon conviction, be fined in a sum of not more than \$500 or be imprisoned for a period of not more than ninety days, or shall suffer both fine and imprisonment, in the discretion of the court.” (16 U.S.C. § 433 (2011)).

Court Holding and Reasoning:

Both the district court and the magistrate court found Diaz guilty of appropriating the Apache objects from the San Carlo Indian Reservation in violation of the Antiquities Act. Diaz challenged the constitutionality of the Antiquities Act arguing that the Act’s failure to define terms like “ruin”, “monument”, and “objects of antiquity” made the Act unconstitutionally

vague. Reversing Diaz' conviction, the Ninth Circuit found that, based on the language of the Antiquities Act, an average person would not be able to determine that the term "antiquity" applied not only to the age of an object but also the use of an object. Therefore, Diaz could not have been on notice that his appropriation of recently manufactured Apache masks and other Apache objects was a violation of law. As such, enforcement of the Antiquities Act was rendered void under the due process clause of the U.S. Constitution and the Antiquities Act was found unconstitutionally vague.