Case No. 19-231

IN THE
SUPREME COURT OF THE UNITED STATES
MARCH TERM 2019

ROBERT R. REYNOLDS,

Petitioner,

v.

WILLIAM SMITH, Chief Probation Officer, Amantonka Nation Probation Services;
JOHN MITCHELL, President, Amantonka Nation,
ELIZABETH NELSON, Chief Judge, Amantonka Nation District Court,

Respondents.

BRIEF FOR THE PETITIONER

ON WRIT OF CERTIORARI
TO THE U.S COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

Team 211

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A. Indian Status

Robert Reynolds married a member of the Amantonka Nation and was later naturalized by the tribe to be a citizen, but has no blood quantum. Should Mr. Reynolds be considered an Indian pursuant to special domestic violence criminal jurisdiction, even though Mr. Reynolds does not meet the necessary blood quantum or lineal descendant requirements that are continuously used to determine Indian status for the purpose of asserting criminal jurisdiction?

B. Inadequate Counsel

Generally, tribal courts do not have criminal jurisdiction over non-Indians pursuant to *Oliphant v. Suquashmish Indian Tribe*, 435 US 191 (1978). Congress took initiative to grant tribal court criminal jurisdiction was expanded with the reauthorization of the Violence Against Women Act of 2013. 25 USCA § 1304 states in its relevant part that tribal courts exercising their criminal jurisdiction over crimes of domestic violence must "provide criminal defendants with the effective assistance of licensed defense counsel". Does the statute require that the attorney be licensed not only by the tribal court, but also by a state or federal licensure to qualify as effective counsel?

STATEMENT OF THE CASE

A. Statement of Proceedings

June 15, 2017 Mr. Reynolds was arrested for an unfortunate altercation, between him and his wife Lorinda Reynolds. R. at 1. The official complaint was filed the following day, in the district court for the Amantonka Nation on June 16, 2017. R. at 1. Mr. Reynolds filed three separate

pretrial motions. R. at 3. The first pretrial motion sought to have the charges dismissed on the grounds that he is a non-Indian and the Amantonka lacking criminal jurisdiction. R. at. 3. This motion was denied. R. at 3. The second pretrial motion, sought to have an attorney appointed to him, stating that he falls under category of non-Indian for the purposes of the Special Domestic Violence Criminal Jurisdiction. R. at. 3. This motion was also denied by the Amantonka court. His third, and final motion sought relief for the insufficiently qualified service of his court-appointed counsel, violating his civil rights. R. at 3. This motion was denied. R. at 4. On August 24, 2017, a jury found Mr. Reynolds guilty and the court entered a judgement and sentence. R. at 5. Mr. Reynolds was sentenced to seven months incarceration and pay $6,800 in fines and damages. R. at. 5.

The judgment was appealed to the Amantonka Supreme Court, which affirmed the district court's decision. R. at 7. On March 7, 2018 the U.S. District Court For The District of Rogers granted Mr. Reynolds petition for a Writ of Habeas Corpus under 25 U.S.C. §1303. R. at. 8. The U.S. Court of Appeals for the Thirteenth Circuit reversed the Rogers District Court's decision and remanded with instructions to deny the petition for Writ of Habeas Corpus. R. at 9. This Court has granted Mr. Reynolds' petition for Writ of Certiorari. R. at 10.

B. Statement of Facts

Prior to meeting his wife Mr. Reynolds, was not an Indian. R. at 6. Mr. Reynolds met his wife Lorinda Reynolds ("Lorinda") while attending the University of Rogers. R. at 6. Lorinda was born as a member of the federally-recognized Indian tribe, the Amantonka Nation. R. at 6. Mr. Reynolds and his wife both live on the Amantonka reservation. R. at 6. The reservation is located in the state of Rogers. R. at 6. Both Mr. Reynolds and Lorinda found work inside the

reservation. R. at 6. Lorinda worked as an accountant at the Amantoka casinso, and Mr. Reynolds the manager for the Amantonka shoe factory. R. at 6.

After a few years of marriage, and living together, Mr. Reynolds applied to become a naturalized citizen of the Amantonka Nation. R. at 6. Mr. Reynolds completed the process of becoming a naturalized citizen and was sworn in via the oath of citizenship. R. at 6. Following the newly acquired membership, Mr. Reynolds was laid off of work when the shoe factory shut down. R. at 6. Unfortunately, Mr. Reynolds was unable to find a job for over 10 months following the closing of the shoe factory. R. at 6. During which time he began to compensate the terrible feelings with alcohol, and began to drink. R. at 6. The alcohol abuse caused issues between Mr. Reynolds and his wife Lorinda. R. at 6. Mr. Reynolds was luckily able to find work at a ware house distribution center opened up inside of the Amantonka reservation R. at 6. Unfortunately not before the regrettable incident on June 15, 2017, when the Amantonka Nation Police responded to a call at Mr. Reynolds' apartment. R. at 6. The call concerned an altercation, between Mr. Reynolds and Lorinda, which was the first time that there had been any evidence of physical abuse between the spouses. R. at 6. Mr. Reynolds was transported to the Amantonka Nation Jail. R. at 6. The following day, the chief prosecutor for the tribe filed a complaint, charging Mr. Reynolds with violating Title 5 Section 244 of the Amantonka Nation Code. R. at 7.

SUMMARY OF THE ARGUMENT

A. Indian Status

The Thirteenth Circuit erred in reversing the Rogers District Court's grant of Mr. Reynolds' writ of habeas corpus under 25 U.S.C. § 1303 of the Indian Civil Rights Act. The

reversal was based on the Thirteenth Circuit's erroneous determination that both Amantonka Tribal Courts' holdings classified Mr. Reynolds is an Indian. Based on the naturalized citizenship process Mr. Reynolds completed, pursuant to Title 3, Chapter 2 of the Amantonka Nation Code. This process is a valid form of membership determination on behalf of the tribe. However, it is not lawful standard to be used in determining Indian status for jurisdictional purposes. This Court should exercise its authority through the doctrine of implicit divestiture, apply the longstanding *Rogers* two-prong test. Once the *Rogers* two-prong test has been applied to the present case, this Court should unequivocally determine that, without being a lineal descendant of an Amantonka member, or possessing the blood quantum, Mr. Reynolds is a non-Indian for the purpose of Special Domestic Violence Criminal Jurisdiction.

B. Inadequate Consel

The Thirteenth Circuit court erred in denying Mr. Reynold's Writ of Habeus Corpus. This occurred due to the determination that counsel was adequate under the Violence Against Women Act of 2013. Congress authorized to expand the criminal jurisdiction of tribal courts over nonmembers, but with that they provided safeguards within the statute, specifically the assistance of effective, licensed counsel. Because of the pattern of Congressional response to this area of tribal court jurisdiction, it is clear that the congressional prerogative would be to create equal standards for lawyers in a tribal court extending jurisdiction over non-Indians as they would in other state jurisdictions.

ARGUMENT

I. MR. REYNOLDS IS A NON-INDIAN PURSUANT TO SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION. BECAUSE MR. REYNOLDS DOES NOT MEET THE NESSESSARY BLOOD QUANTUM OR LINEAL DESCENDANT REQUIREMENTS THAT ARE CONTINUESLY USED TO

DETERMINE INDIAN STATUS FOR THE PURPOSE OF ASSERTING CRIMINAL JURISDICTION

Roughly forty years after the United States gained independence from Great Britain, Justice John Marshall authored the first of three Supreme Court cases, which laid the foundation for American Indian law. Impressively, almost two-hundred years after the ink dried, these three opinions are still infamously known as the *Marshall Trilogy*.[1] After the trilogy, and during the 18th century and most of the 19th century, the United States' Executive Branch bargained with the Indian tribes, concerning the tribes' ownership of land, and their authority status, through treaties. In 1871, the Indian Appropriations Act was passed by Congress. This was significant because it established that all dealings between the United States and the Indian tribes would now be through expressed congressional abrogation, and no longer through treaties which are subject to the control of the executive branch. After the Indian Appropriations Act was passed, Congress retained full plenary authority over Indian tribes.

This authority that Congress had delegated unto itself, allowed it to pass legislation in response to issues occurring in Indian country. One of the earliest examples of congressional abrogation, was a legislative response to a violent crime that occurred in, what is now South Dakota. *Ex Parte Crow Dog*, 109 U.S. 556 (1883) involved the murder of an Oglala Sioux Chief, Spotted Tail, by defendant Crow Dog, who was also a member of the same tribe. Crow dog was sentenced to death by the First Judicial District Court of Dakota. This Court held that federal courts did not have criminal jurisdiction when a crime was committed in Indian country and both

[1] The Marshall Trilogy included: Johnson v. McIntosh, 21 U.S. (8 Wheat) 543 (1823), Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831), Worcester v. Georgia, 31 U.S. 515 8 L.ED. 483 (1832).

victim and perpetrator were Indians. Following this decision, Congress responded by enacting the Major Crimes Act.

The Major Crimes Act authorized the federal courts to exercise criminal jurisdiction over Indians in certain circumstances. Congress also provided the first statutory definition of "Indian Country" in 18 U.S.C. §1151 of the Act.[2] As the statutory language helped the federal courts to decide criminal matters in Indian country more precisely, inevitably more issues were going to arise. The doctrine of implicit divestiture would allow the federal courts to interpret statutes and rule on issues that Congress had not explicitly granted.

I. The Doctrine of Implicit Divestiture allows this Court the discretion to apply the Rogers' two-prong test, and over-rule the lower court's erroneous decision.

American Indian law is often considered to be one of the most unique and intellectually challenging practices in the legal profession. There seems to be an unsettling aura that surrounds the area of Indian law, likely because most Indian law doctrines have only been in existence for a relatively short amount of time, in comparison to other areas of the common law like torts, or contracts. Also separating itself from other common areas of law, Indian law is constantly deciding matters that concern multiple sovereign parties. In the second case of the trilogy, Justice Marshall recognized Indian tribes as "domestic dependent nations" that exercise inherent sovereign authority over their members and territories *Cherokee Nation v. Georgia*, 30 U.S. (5

[2] 18 U.S.C. § 1151 of the Major Crimes Act states:"[e]xcept as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."

Pet) 1 (1831). Later in the opinion, Justice Marshall expounded on the relationship between the United States and the Indian tribes, stating "like that of a guardian to its ward."

In *Williams v. Lee*, 358 U.S. 217 (1959), this Court showed the first signs of the development of the doctrine implicit divestiture. The *Williams*' opinion held that the Arizona state courts do not have the authority to exercise jurisdiction over civil actions between an Indian and a non-Indian, and where the suit arises on an Indian reservation *Id*. at 272. Although *Williams* ruled on the issue of civil jurisdiction powers over actions arising out of Indian reservations, this Court has applied the foundational principles in that decision, and expanded them to federal jurisdiction and tribal jurisdiction cases.

Almost twenty years after the *Williams* decision, another jurisdictional issue within Indian country surfaced. Contrary to the facts in *Williams*, the new issue involved an Indian tribe's authority to exercise jurisdiction over non-Indians who commit crimes on Indian reservations. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) was the first openly acknowledged application of implicit divestiture by this Court relating to Indian tribes and criminal jurisdiction. Justice Rehnquist authored the opinion, which articulated a judicially created limitation on an Indian tribe's criminal jurisdiction. Rehnquist acknowledged that Indian tribes continue to retain quasi-sovereign authority, but through signed treaties have entered into a dependent position relying on the protection of the United States *Id*. at 211. Holding that the Suquamish Tribe did not have inherent criminal jurisdiction over non-Indians who commit crimes within their reservation, Rehnquist stated that it was for Congress to delegate this authority to the tribes *Id*. at 212.

The most recent use of the doctrine of implicit divestiture, for criminal jurisdiction purposes was in *United States v. Lara*, 541 U.S. 193 (2004). After the absolute catastrophe that was the decision of *Duro v. Reina*, 495 U.S. 676 (1990),[3] this Court ruled in *Lara*, that the Indian tribes' inherent authority allowed for the tribes to exercise criminal jurisdiction over all Indians. The ability for an Indian tribe to assert criminal jurisdiction over Indians from other tribes was much needed and long overdue. This would help mitigate the problems that some tribes have when they are geographically close to another tribe. The closeness alone wouldn't raise too much concern, but when the two tribes that close have had a historically combative relationship, then it becomes cause for major concern.

The distinction that must be made from the *Lara* holding, and the adverse position the lower court is taking, is that the *Lara* opinion articulated that tribes have criminal jurisdiction over non-member Indians. The perpetrator must be a member of another Indian tribe to constitute as an Indian. Here, the lower courts are ignoring that Mr. Reynolds, is not a member of another tribe. Mr. Reynolds is also not an Indian by proof of blood quantum, nor is Mr. Reynolds an Indian by showing of a lineal descendant. The knowledge and ability to distinguish this status terms is necessary in order to protect citizens from being deprived of their civil rights.

II. Distinguishing "Indian" from "member" for criminal jurisdiction purposes

Indian tribes have traditionally required that members of their tribe show either a lineal connection to someone on an original roll, or blood quantum. These requirements allow the tribe

[3] The *Duro v. Reina* case was an example of implicit divestiture being erroneously applied. The Court held that Tribal courts have the authority to adjudicate internal criminal disputes, but do not have criminal jurisdiction over the actions of nonmember Indians. In 1991, Congress responded by amending the Indian Civil Rights Act. The 1991 amendment is most commonly referred to as the "Duro fix."

to insure that their culture and heritage will be protected and continue their existence. The Indian Reorganization Act of 1934 provided a definition that is still being used by federal agencies and courts today:

> "The term 'Indian' . . . shall include all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all persons who are descendants of such { "pageset": "Star members who were, on June 1, 1934
>
> , residing within the present boundaries of any Indian reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians."

25 U.S.C. § 479

Aside from the federal definition, there has been well establish legal precedent that each individual tribe has ultimate discretion to determine membership within their tribe. The most notable case on this discretionary authority retain by the tribes is the landmark case, *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

The cause of action in *Santa Clara Pueblo* came from a dispute over the tribe's membership requirements. Petitioner claimed that the tribe's blood quantum requirements were unlawful. This Court held that Indian tribes are "separate sovereigns, pre-existing the Constitution," whose inherent sovereignty allows them to determine who is to be a member of their tribe *Id*. at 56. Just to distinguish Santa Clara from Mr. Reynolds' current situation with the Amantonka tribe. The Santa Clara Pueblo Nation had a lineal connection requirement for membership, but even if a person was able to prove the lineal connection, the tribe would refuse membership to any mixed children born from a female member and a male non-member. *Id.* at 49.

Membership determination is paramount to a tribes' sovereign right to self-govern. However, it is very important to distinguish the terms, "member" or "citizen" from "Indian." The distinction has astronomical legal ramifications, for the purposes of jurisdiction. As just mentioned, this Court ruled in *Santa Clara*, that all federally recognized tribes have the inherent sovereign authority to determine who is to be a "member" of their tribe. However, tribes do not have the inherent sovereign authority to determine who is to be considered an "Indian." As this determination made by the tribes, and not the federal government, would drastically affect the federal government's ability to oblige its duty owed to the tribes. "Like that of a guardian to its ward" *Cherokee Nation*, 30 U.S. at 5. Justice Marshall's description is still considered to be a correct representation of the relationship between the United States and the tribes. In 1846, this Court clearly made this distinction in *United States v. Rogers*, 45 U.S. 567 (1846).[4]

III. Applying the Rogers' two-prong test

During the western expansion of the 1800s, this Court was faced with many legal issues relating to Indian country due to the intermingling of Indians and white settlors. The *Rogers* case arose from a murder, which took place in Arkansas. During this time, the Cherokee Nation was inhabiting certain parts of the state. William Rogers, was a born a white non-Indian. Rogers was married to, and had multiple children with, a Cherokee woman *Id*. at 1. He was also domiciled within the Cherokee Nation's reservation and was also adopted by the proper authorities within the Cherokee Nation *Id*. In 1836, he was charged with the murder of Jacob Nicholson, a non-Indian *Id*. at 5. Rogers contended that he was to be considered an Indian for the purposes of

[4] The Bureau of Indian Affairs continues to use the Indian Reorganization Act's definition of Indian for hiring preferences. To establish hiring preference, the BIA will consider whether applicant (1) is a member of a federally-recognized tribe, band or community; (2) is a descendant of enrolled members of federally recognized tribes who were residing on a reservation on June 1, 1934; or (3) possesses at least one-half degree of Indian blood.

criminal jurisdiction, because of his adoption into the Cherokee Nation. To that point, this Court responded:

> "We think it very clear, that a [W]hite man who at mature age is adopted in an Indian tribe does not thereby become an Indian, and was not intended to be embraced in the exception above mentioned. He may by such adoption become entitled to certain privileges in the tribe, and make himself amenable to their laws and usages. Yet he is not an Indian; and the exception is confined to those who by the usages and customs of the Indians are regarded as belonging to their race."

Id. at 5.

The Court agreed that Rogers was a member of the Cherokee Nation, but did not agree that he was an Indian for criminal jurisdiction purposes. In order to determine who is an Indian, this Court interpreted the definition of "Indian" Trade and Intercourse Act of 1834. Using the *Rogers*' opinion as a foundation, the federal courts have developed a two-prong test for determining if someone is Indian for criminal jurisdiction purposes; (1) person must have Indian blood, and (2) be recognized by the tribe.

When deciding cases involving the Major Crimes Act (cite) and Indian status, the ninth circuit has used, and still uses the *Rogers'* two-prong test. In *United States v. Bruce,* 394 F.3d 1215, 1223 (9th Cir.2005) the court reiterated, the two-part test for establishing a person's status as an Indian under the Major Crimes Act the defendant must (1) have Indian blood and (2) be recognized by a tribe or the federal government as an Indian. The most recent case that the ninth circuit has applied this test in is *United States v. Zepeda*, 792 F.3d 1103 (9th Cir.2015). The court in *Zepeda* struck down its own recent changes to the *Rogers'* two-prong test:

> "*United States v. Maggi,* 598 F.3d 1073, 1080–81 (9th Cir.2010) added a gloss to both prongs of the *Bruce* test, holding that the government must prove that (1) the defendant has a quantum of Indian blood *traceable to a federally recognized tribe*

> and (2) the defendant is a member of, or is affiliated with, a federally recognized tribe."

Id. at 1112.

The court removed the federal language out of the first prong and returned to their original test for Indian determination.

Similar to the *Rogers'* facts, Mr. Reynolds lives within an Indian reservation, is married to an Indian woman, and was adopted by an Indian tribe. Also similar to *Rogers*, Mr. Reynolds does not possess blood quantum, or lineal descendant proof. Applying the *Rogers*' two-prong test, that is still being used in the ninth circuit, this Court should easily find that Mr. Reynolds is not an Indian for the purposes of criminal jurisdiction.

I. THE COURT OF APPEALS FOR THE THIRTEENTH DISTRICT ERRED WHEN IT DENIED THE WRIT OF HABEUS CORPUS BECAUSE THE COUNSEL APPOINTED TO THE PETITIONER, A NON-INDIAN, DID NOT MEET THE STANDARDS FOR COUNSEL PURSUANT TO THE VIOLENCE AGAINST WOMEN ACT OF 2013.

This Court should overrule the U.S Court of Appeals' denial of the Writ of Habeus Corpus. This should occur due to the standards for counsel stated in the Violence for Women Act of 2013. This standard requires that the defendant be appointed effective assistance of a licensed defense counsel, which has not been met in this case due to the lower standard for counsel provided, as set out and defined by the Amantonka Nation Code.

Generally, tribal courts do not have criminal jurisdiction over non-Indians pursuant to *Oliphant v. Suquashmish Indian Tribe*, 435 US 191 (1978). Congress still have plenary authority

to regulate tribal affairs and limit or expand sovereignty under the Indian Commerce. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). Congress took this initiative and tribal court criminal jurisdiction was expanded with the reauthorization of the Violence Against Women Act of 2013, which was later codified as 25 USCA § 1304. This bill provided a partial overruling of *Oliphant* by giving tribes special domestic-violence criminal jurisdiction to hold non-Indian offenders accountable, but only for crimes of domestic violence, dating violence, and violations of protection orders that are committed in Indian country. This case comes forth on a violation of Title 5 § 244 of the Amantonka Nation Code which is a domestic violence offense. Therefore, because Mr. Reynolds is a non-Indian subjected to the tribal court under 25 USCA § 1304, he is entitled to competent counsel by law.

I. The standards set forth for effective counsel under the Violence Against Women Act requires that the attorney be legally licensed through a state licensure, not just a member of the tribal bar.

25 USCA § 1304 states in its relevant part that tribal courts exercising their criminal jurisdiction over crimes of domestic violence must "provide criminal defendants with the effective assistance of licensed defense counsel". The requirements to qualify as an attorney are set out within Title 2 of the Amantonka Nation Code:

> Any attorney at law who is a member in good standing of the bar of any tribal, state, or federal court shall be eligible for admission to practice before the District Court upon approval of the Chief Judge, and successful completion of a bar examination administered as prescribed by the Amantonka Nation's Executive Board.
>
> Title 2, Chapter 5 § 501(a)

Given the requirements as they are described in Title 2, Chapter 5 § 501(a), there is the possibility that an appointed attorney could be only associated with a tribal court and only have taken a tribal bar exam to qualify. As in the case before the Court today, the attorney appointed to Mr. Reynold's is only affiliated with the Amantonka Nation, having only taken the Amantonka Bar Exam. The argument to be set forth is that Title 2, Chapter 5 § 501(a) is at odds with the purpose of 25 USCA § 1304. The purpose of 25 USCA § 1304 being to assure that fundamental procedural safeguards are in place to protect those defendants who fall within this criminal jurisdiction to receive rights that are particularly similar to those that are given to defendants in State and Federal court jurisdictions.

It is well established law that the Sixth Amendment protections do not apply in tribal court proceedings. *Plains Commerce Bank v. Long Family*, Land, & Cattle Co., 554 U.S. 316. Congress acted in response to this and through its plenary powers enacted the Indian Civil Rights Act which selectively conferred a handful of procedural safeguards to tribal defendants that are similar to those contained in the Bill of Rights such as the requirement for counsel for indigent defendants. The pattern made through the passage of these various bills shows how Congress has continued to, over time, help promote and create a stronger judicial system in tribal courts. This does not stop at the judicial system itself, but extends to the actors within the judicial system as well.

Because of the pattern of Congressional response to this area of tribal court jurisdiction, it is clear that the congressional prerogative would be to create equal standards for lawyers in a tribal court extending jurisdiction over non-Indians as they would in other state jurisdictions. This would bring that the requirement in 25 USCA § 1304 be that the "licensed counsel" would

be licensed to practice in either federal or state court and have a concurrent license to practice law in a tribal jurisdiction. This issue was approached by the United States District court of South Dakota. United States v. Gillette, 2018 WL 3151642. With facts similar to the case before this Court, the defendant was charged with domestic abuse on the Rosebud Sioux Tribe reservation. After speaking with police, he then confessed. The defendant was appointed counsel at his tribal court hearing where he pled guilty to his charges. The district court was asked to judge the validity of his plea and the court found that this was not a case in which a plea was entered without the benefit of adequate counsel, because the defendant had been "appointed a licensed attorney and a member of the tribal bar to represent him." 2018 WL 3151642. The court went on to distinguish that it did not matter what state the attorney was licensed in, but that the license was held in a state. This therefore, held the plea to be obtained in accord with the ICRA and the laws of the Rosebud Tribe.

The District Court of South Dakota distinguished between being a licensed attorney and a member of the tribal bar. We believe that this is the view that this Court should take to this issue as well. In the Violence Against Women Act of 2013, the legislature made an amendment which required effective assistance of counsel with the specific language of "licensed defense counsel". Congress felt the prerogative to amend the law in order to add this type of language into the act, which cannot be overlooked as this act is one which is established to extend jurisdiction of tribal courts over non-Indian defendants. In giving jurisdiction to the tribal court over citizens of the United States, the United States has a duty to protect the citizens from foreign sovereignties. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). This Court stated "The United States resemble that of a ward and his guardian. . . They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as

their great father." *Id.* at 11. The amendment passed in 2013 for this act was an attempt to provide assurance of the due-process protections for non-Indian defendants who are brought under the tribal court jurisdiction; assurances that they will receive effective assistance of counsel, just as they would in a state or federal court because the standards would be equal.

Therefore, we ask this Court to overrule the denial of the Writ of Habeus Corpus because the counsel in this case was not a member of a state legal licensure and therefore does not meet the requirements of the applicable statute, 25 USCA § 1304.

II. If Mr. Reynolds is found to be Indian, the lower standards required for an appointed counsel to him in tribal court, rather than the counsel he would be appointed in a different court setting is a violation of his rights.

It has been established that the Sixth Amendment protections do not apply in tribal court proceedings. *Plains Commerce Bank v. Long Family, Land*, & Cattle Co., 554 U.S. 316. Congress acted in response to this and through its plenary powers enacted the Indian Civil Rights Act which selectively conferred a handful of procedural safeguards to tribal defendants that are similar to those contained in the Bill of Rights such as the requirement for counsel for indigent defendants. Mr. Reynold's argues that in the alternative of him being found to being non-Indian that his rights to counsel are still hindered by the low standards of the tribe and is therefore an equal protection violation.

The issue of requisite requirements in courts in state districts versus tribal districts was approached in a case regarding the application for admission to the bar of the United States Air Force Court of Criminal Appeals. *In Re Skewes*, 52 M.J 562. Carlos Skewes had attended a University which awarded him a Juris Doctorate degree and a letter from the Hoopa Valley

Tribal court with stated that he was in "good standing of the Hoopa Valley Tribal Court Bar." The standards set out for admission to the bar of the service court of criminal appeals require that the counsel "shall be a member in good standing of the bar of a Federal Court, the highest court of a state, or another recognized bar." 52 M.J at 563. The court found that because the tribal court is neither federal nor state, the application could only be approved upon a clear and convincing showing that he is in good standing of "another recognized bar". Id. After analyzing the requirements for the Hoopa Valley Tribe court for an attorney, which just consisted of only a requirement that the attorney hold a JD degree, the court held that they declined to recognize the Hoopa Valley Tribal Court Bar. They based this decision based on their assessment of the practice of law established within the tribe.

> While modern tribal courts include many familiar features of the judicial process, they are influenced by the unique customs, languages, and usages of the tribes they serve. Tribal Courts are often subordinate to the political branches of tribal governments, and their legal methods may depend on the "unspoken practices and norms.

52 M.J at 564.

The application was denied because the applicant failed to establish that the practice of law in the tribal court is similar to the practice of law in the military.

In this case, tribal courts and the Federal Court would have concurrent jurisdiction over the dispute. This meaning that this case could have been brought in either federal or tribal court, each of which has a different standard for the conduct and requirements for attorneys whom work in their courtrooms. By allowing a lower standard for tribal court attorneys, the favor would shift towards the Federal Court for the defendants. *In Re Skewes* shows how federal court and tribal court requirements for attorneys differ and how the judicial systems are established for different reasons. In cases which concurrent jurisdiction runs, it would be a violation of equal

protection to subject someone to a less qualified attorney in one court and a more qualified attorney in another over the same dispute.

Therefore, we ask this Court to overrule the denial of the Writ of Habeus Corpus because the petitioner was entitled to counsel who is less qualified than an attorney which a non-Indian or Indian in Federal Court or State Court, would be qualified for which is a violation of equal protection.

CONCLUSION

In conclusion, the consistent test for determining if someone is an Indian for criminal jurisdiction purposes, is the blood quantum and lineal descendant requirements. Multiple cases and public policy support the reasoning behind this test. This Court should find that Mr. Reynolds is not an Indian, therefore finding the Amantonka Tribal Court's criminal jurisdiction invalid.

As stated in the facts above, because Mr. Reynolds is non-Indian, the criminal jurisdiction in this case is established under the Violence Against Women Act of 2013 which requires that defendants under this act receive effective licensed counsel. As the counsel that was appointed to Mr. Reynolds was not licensed within the meaning of the statute, he received ineffective assistance of counsel and therefore his Writ of Habeus Corpus should be granted.