**Case No. 19-231**

In the

**Supreme Court for the United States**

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Robert R. Reynolds,

*Petitioner*,

v.

WILLIAM SMITH, Chief Probation Officer, Amantonka Nation Probation Services;

JOHN MITCHELL, President, Amantonka Nation; and

ELIZABETH NELSON, Chief Judge, Amantonka Nation District Court;

*Respondents*.

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**On Writ of Certiorari from the U.S. Court of Appeals for the Thirteenth Circuit**

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# Brief for Respondent

**TEAM #331**

# TABLE OF CONTENTS

# TABLE OF AUTHORITIES

**CASES**



**STATUTES**

**OTHER AUTHORITIES**



**TREATISES**

## QUESTIONS PRESENTED

1. Whether an adopted citizen of an Indian tribe without Indian ancestry is subject to his tribe's jurisdiction to the same extent that adopted citizens with Indian ancestry are?

2. Whether counsel who is a member of the tribal bar is adequate to represent a tribal citizen in a tribal proceeding?

## STATEMENT OF THE CASE

### I. Statement of the Proceedings

Robert Reynolds was charged in Amantonka Nation District Court with partner assault under the Amantonka Nation Code. R. at 2. As an indigent defendant, Reynolds was represented by court appointed counsel. R. at 4. A jury found Reynolds guilty of the charge. R. at 7. The trial judge sentenced Reynolds to seven months' incarceration, $5300 restitution, $1500 fine, and programs for alcohol treatment and batterer rehabilitation. R. at 5.

Reynolds appealed his conviction to the Supreme Court of the Amantonka Nation. R. at 6. The Supreme Court of the Amantonka Nation upheld Reynolds' conviction. R. at 7. Reynolds, having exhausted his tribal remedies, filed a petition for Writ of Habeas Corpus to the U.S. District Court for the District of Rogers. R. at 8. The District Court granted the petition. *Id.* Then, the U.S. Court of Appeals for the Thirteenth Circuit reversed the District Court's decision, instructing them on remand to deny the petition. R. at 9. Reynolds petitioned for a Writ of Certiorari to the Supreme Court which granted it. R. at 10.

### II. Statement of Facts

Robert Reynolds, non-Indian by birth, married Lorinda Reynolds, an Amantonkan citizen. R. at 6. The two then moved to the Amantonka reservation. *Id.* There, Reynolds availed

himself of the benefits of living in the Amantonkan community. Reynolds lived in tribal housing and was employed by the tribe at the Amantonka shoe factory. *Id.*

The Amantonka Nation "has a long history of welcoming into the tribe those who marry tribal members." R. at 7. Reynolds applied for citizenship in the tribe soon after he became eligible to do so. R. at 6. After successfully completing the naturalization process, Reynolds was sworn in as a citizen of the Amantonka Nation. R. at 6. Upon becoming a tribal citizen, Reynolds was "thereafter entitled to all the privileges afforded all Amantonka citizens." 3 A.N.C. § 203.

Almost two years later, the incident at the center of this case occurred. R. at 6. Reynolds became unemployed when the shoe factory closed. *Id.* During this time, Reynolds drank alcohol excessively and "became verbally abusive" to his wife. *Id.* Amantonka police were called to the Reynolds' apartment on multiple occasions. R. at 6. On one such visit, police found that Robert Reynolds had struck Lorinda Reynolds, causing her to fall and break a rib. *Id.* The tribal police arrested Robert Reynolds. R. at 6. He was charged in tribal court for partner assault under Title 2 Sec. 244 of the Amantonka Nation Code. R. at 7.

## ARGUMENT

### I. As a citizen of Amantonka Nation, Reynolds is subject to the jurisdiction of the Nation, independent of VAWA SDVCJ.

When Reynolds became a citizen of the Amantonka Nation, he became subject to the jurisdiction of the Amantonkan courts. The Amantonka Nation's authority to exercise jurisdiction over its citizens is derived from its sovereignty. The Nation's jurisdiction over its citizens predates the Special Domestic Violence Criminal Jurisdiction (SDVCJ) provisions under the Violence Against Women Act Reauthorization of 2013 (VAWA). Pub. L. 113-14, tit. IX, § 904, 127 Stat. 54, 120, codified at 25 U.S.C. § 1304. VAWA does not disrupt the pre-existing

authority of tribes. Therefore, Reynolds is not entitled to be provided counsel that meets the standards required by VAWA.

## A. Amantonka Nation has jurisdiction over all of its citizens.

### 1. Amantonka Nation retains sovereign authority to determine its own citizenship and to enforce its laws against those citizens.

Indian tribes retain all sovereign powers over internal matters that they have not ceded by treaty and that Congress has not overridden by statute. United States v. Winans, 198 U.S. 371, 381 (1905). Williams v. Lee, 358 U.S. 217, 223 (1959). Among these powers is tribes' inherent authority to determine their membership. Santa Clara Pueblo v. Martinez, 436 U.S. 49, 55-56 (1978). Although Congress has plenary power over Indian tribes, it has not restricted the Amantonka Nation's ability to adopt non-Indians as citizens for internal tribal purposes.

A tribe's inherent sovereign powers include the authority to make its own membership decisions. *Martinez,* 436 U.S. at 55. Martinez challenged her tribe – the Santa Clara Pueblo – for violating the Indian Civil Rights Act (ICRA) equal protection by enforcing patrilineal membership criteria. *Id*. at 51. 25 U.S.C.A. § 1302 (West 2018). The court rejected her claim because Congress did not create a remedy to challenge tribes in federal court for violations of the ICRA except by Writ of Habeas Corpus. *Id*. at 72. Without explicit instruction from Congress, the Court declined to interfere in the tribes' internal affairs.

> *Indian tribes are "distinct, independent political communities, retaining their original natural rights" in matters of local self-government. Although no longer "possessed of the full attributes of sovereignty," they remain a "separate people, with the power of regulating their internal and social relations." They have power to make their own substantive law in internal matters, and to enforce that law in their own forums.*

*Id*. at 55 (internal citations omitted). Tribal sovereignty is the source of tribes' power over their internal affairs.

A tribe has inherent jurisdiction over its own members. United States v. Wheeler, 435 U.S. 313, 322 (1978) In *Wheeler,* a tribal member was convicted in tribal and federal court for charges arising from the same event. *Id.* at 315-316. Wheeler challenged the dual convictions, arguing that they violated Fifth Amendment protections against double jeopardy. *Id*. at 314. The Court found that the convictions were proper because the tribe and the federal government have different sources of authority. *Id.* at 329-30. A tribe's authority to punish its members derives from its "right of internal self-government." *Id*. at 322. Therefore, the authority to punish its members is part of a tribe's "retained sovereignty." *Id*. at 228-29. The Court unequivocally recognized tribal authority to prosecute members: "[i]t is undisputed that Indian tribes have power to enforce their criminal laws against tribe members… Their rights of internal self-government includes the right to prescribe laws applicable to tribe members and to enforce those laws by criminal sanctions." *Id*. at 322. Tribal authority to prosecute members derives from sovereignty.

*Wheeler* and *Oliphant* are twin cases as both were decided in March 1978 and both concern the extent of tribal criminal jurisdiction. Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978). In *Oliphant*, two non-Indians residents of an Indian reservation who were not tribal members were tried in tribal court for criminal offenses. *Id*. at 194. The Court considered Congressional intent by examining statutes that explicitly recognize tribal jurisdiction over crimes only when "committed by one Indian against another." *Id*. at 201. Therefore, the Court determined, Congress intended that tribal courts should not have criminal jurisdiction over non-Indians who were not tribal members. *Id*. at 195. Taking the two cases together, tribal courts had jurisdiction over tribal members and did not have jurisdiction over non-members.

Like the Santa Clara Pueblo, the Amantonka Nation has the authority to determine its own membership criteria. The Amantonka Nation has, throughout its history, allowed the spouses of its citizens to become citizens. Like the tribe in *Wheeler*, the Amantonka Nation has sovereign authority to exercise jurisdiction over all of its citizens. This authority pre-dates Congressional restoration of tribal jurisdiction that includes right to counsel provisions. Therefore, Amantonka Nation had jurisdiction over Reynolds without exercising its authority to prosecute non-Indians via VAWA's SDVCJ.

**2. Amantonka Nation's exercise of subject matter jurisdiction over its citizens is consistent with federal Indian law.**

For a tribal court to have proper subject matter jurisdiction, it must have authority in tribal law over the cause of the action, and the jurisdiction must not be in conflict with federal Indian law. Frank Pommersheim, *Braid of Feathers: American Indian Law and Contemporary Tribal Life* 86 (1995). The Amantonka Tribal Code asserts the Nation's jurisdiction over partner assault. 5 A.N.C. § 244. The exercise of jurisdiction over partner assault between two citizens is consistent with federal Indian law because tribes have exclusive jurisdiction over Indian-on-Indian misdemeanor crimes within their territory. Reynolds, as an Amantonkan citizen, is bound to the laws of the Nation and is Indian for tribal jurisdiction purposes.

The federal government has dozens of different definitions of 'Indian,' each for different purposes. David E. Wilkins, *American Indian Politics and the American Political System* 26 (2002). "Who counts as Indian for purposes of federal Indian law varies according to the legal context. There is no universally applicable definition." Cohen's Handbook of Federal Indian Law § 3.03 [1] (2012). Therefore, a person can be considered non-Indian for purposes of federal criminal jurisdiction and Indian for purposes of tribal criminal jurisdiction.

A person who becomes a tribal member may become bound to the laws of the tribe. United States v. Rogers, 45 U.S. 567, 573 (1846). Rogers, a U.S. citizen with no Indian ancestry, became a Cherokee member by marriage. *Id*. at 571. He murdered another person who had been similarly adopted by the tribe. *Id*. Rogers contested federal jurisdiction on the grounds that he had become a Cherokee Indian and was therefore exempt from federal jurisdiction under the Indian Country Crimes Act (ICCA). 18 U.S.C.A. § 1152 (West 2018) (also commonly known as the General Crimes Act). The ICCA gave federal courts jurisdiction over crimes committed in Indian country except for Indian-on-Indian crimes.[1] *Id*. The Supreme Court held that Rogers was not an Indian for purposes of the Indian-on-Indian crime exception to federal criminal jurisdiction because, it reasoned, Congress would not have granted the exception to "men of that class who are likely to become members by adoption, and who will generally be found the most mischievous and dangerous inhabitants of Indian country." *Id.* at 572-573. Federal jurisdiction over such offenders was therefore necessary to "preserve the peace of the frontiers." *Id*. at 573. Although a federal court properly had jurisdiction over Rogers this did not disturb Rogers' obligations to his tribe: "[h]e may by such adoption become entitled to certain privileges in the tribe and make himself amenable to their laws and usages." *Id.* at 573. Although Rogers was considered non-Indian for purposes of federal criminal jurisdiction, he may well have also been considered Indian for purposes of tribal jurisdiction because a person who becomes a member of a tribe may commit to be bound by the tribe's laws. Tribal jurisdiction over tribal members fulfills the government interest in preserving peace in Indian country.

[1] Today, state courts have jurisdiction over non-Indian on non-Indian crime on reservations and over victimless crime committed by non-Indians. At the time of *Rogers*, Indian country was outside the boundaries of existing states, therefore the federal courts had jurisdiction over these crimes.

A person who is adopted into a tribe becomes "Indian" for purposes of tribal jurisdiction. Nofire v. United States, 164 U.S. 657, 662 (1897). Rutherford, who had no Indian ancestry, married into the Cherokee tribe. *Id.* at 658. He became Indian for purposes of tribal jurisdiction. *Id.* at 662.

> *Rutherford sought to become a citizen, took all the steps he supposed necessary therefor [sic], considered himself a citizen, and that the Cherokee Nation in his lifetime recognized him as a citizen, and still asserts his citizenship. Under those circumstances, we think it must be adjudged that he was a citizen by adoption, and, consequently, the jurisdiction over the offense charged herein is, by the laws of the United States and treaties with the Cherokee Nation, vested in the courts of that Nation.*

*Id*. The person accused of murdering Rutherford was also an Indian. *Id*. at 658. Therefore, the crime qualified under the "Indian-on-Indian" crime exception to federal jurisdiction and the tribal court had jurisdiction over the murder. *Id*. at 662. By his adoption, Rutherford became Indian for purposes of tribal jurisdiction.

Today, in Indian country, criminal jurisdiction still depends on the Indian status of the perpetrator and the victim. Tribes have jurisdiction over Indian-on-Indian crimes within their territory. But the federal government asserts federal jurisdiction over non-Indian–on–Indian and Indian–on–non-Indian crimes that take place in Indian country via the ICCA at 18 U.S.C. § 1152. Tribes have exclusive jurisdiction over Indian-on-Indian misdemeanor crimes that occur within their territory, such as the one at issue in this case. Handbook, *supra*, at §9.04.

The Amantonka Nation has inherent authority to assert subject matter jurisdiction over misdemeanor crimes committed by its citizens against other Indians within its territory. The Amantonka Nation's authority to assert subject matter jurisdiction over crimes committed by its members is the same whether they were born Indians or became Indian by being adopted into the tribe. Like Rogers and Rutherford, Reynolds is an adopted member of his tribe. Like Rogers, Reynolds has become bound to the laws of his adopted tribe. Therefore, Reynolds, like

Rutherford, is an Indian for tribal jurisdiction purposes. Therefore, the tribal court, as in *Nofire*, properly exercised jurisdiction over Reynolds.

The Amantonka Nation has proper subject matter jurisdiction over Reynolds because it asserts jurisdiction over the cause of action, and the exercise of jurisdiction is consistent with federal Indian law. The Amantonka Nation's criminal code asserts jurisdiction over partner assault. 5 A.N.C. § 244. Further, the Amantonka Nation's exercise of jurisdiction is consistent with federal Indian law because the Amantonka Nation has exclusive jurisdiction over all misdemeanor Indian-on-Indian crimes committed within its territory. As an Amantonkan citizen, Reynolds is Indian for purposes of tribal jurisdiction. Therefore, the Amantonka Nation properly exercised subject matter jurisdiction over Reynolds.

### 3. Amantonka Nation's exercise of personal jurisdiction over its citizens is consistent with due process.

A tribal court has proper personal jurisdiction over a person where tribal law asserts authority over that person and the exercise of personal jurisdiction satisfies due process requirements of the ICRA and tribal law. Pommersheim, *supra*, at 89. Reynolds is among those whom the Nation's code asserts authority over. The process for becoming a citizen of the Nation is voluntary and the Nation allows naturalized citizens to fully participate in tribal government. Thus, the Amantonkan naturalization process satisfies the consent model of jurisdiction outlined by the court in *Duro v. Reina*. 495 U.S. 676, 693 (1990). Therefore, the exercise of Amantonka Nation's jurisdiction over Reynolds is consistent with due process. Thus, the Amantonka Nation has properly asserted personal jurisdiction over Reynolds.

For the exercise of personal jurisdiction to be valid, tribal law must assert its court's authority over the person. Port Gamble S'kallam v. Hjert, 10 NICS App. 60, 69. (Port Gamble S'kallam Ct. of App. 2011). The Amantonka Code vests its courts with personal jurisdiction over

"any person violating [its] code within the boundaries of Amantonka Nation's Indian Country." 2 A.N.C. § 105(a). Reynolds was charged with violating the tribal code within the boundaries of the Nation's Indian Country. Therefore, the Tribal Court is properly vested with personal jurisdiction over him.

For an exercise of personal jurisdiction to be valid, it must also be consistent with due process requirements of the tribal code and the ICRA. The Supreme Court of the Amantonka Nation affirmed Reynolds' conviction in tribal court and did not find that the conviction had violated due process requirements. R. at 7. Tribal jurisdiction over a tribal member is proper, because, through membership, the member has consented to the tribe's jurisdiction over him. *Duro*, 495 U.S. at 694.

A tribe exercising jurisdiction over its own members satisfies the minimum contacts requirement of the federal Due Process analysis for personal jurisdiction. Int'l Shoe Co. v. State of Wash., Office of Unemployment Comp. & Placement, 326 U.S. 310, 316 (1945). However, a tribe exercising jurisdiction over members of other Indian tribes may not be consistent with due process. *Id.* Duro, an enrolled member of one Indian tribe was arrested by officers of another Indian tribe. *Id.* at 679. The arresting tribe did not have jurisdiction over Duro because tribes' retained sovereignty "does not include the power of criminal jurisdiction over nonmembers." *Id.* at 684-685. The court reasoned that a tribe's jurisdiction over its members derives from their consent to be governed:

> *Retained criminal jurisdiction over members is accepted by our precedents and justified by the voluntary character of tribal membership and the concomitant right of participation in a tribal government, the authority of which rests on consent.*

*Duro*, 495 U.S. at 694. Thus, *Duro* suggests, a tribal court's jurisdiction over its members is consistent with due process when membership is voluntary, and members may participate in the

tribal government. This justification is similarly true for members adopted by the tribe as for those born into the tribe.

The Amantonka naturalization process requires the prospective citizen to take initiative to complete a multi-step process. 3 A.N.C. § 202. A person may only become a naturalized citizen of the tribe after being married to a tribal citizen for two years. *Id*. The prospective citizen must then complete a course on Amantonka culture, and another course on Amantonka law. *Id*. The prospective citizen must pass a citizenship test and complete 100 hours of community service with a branch of the tribal government. *Id*. Finally, the prospective citizen becomes a citizen by taking an oath at a swearing in ceremony. *Id*. Thus, the successful completion of the process demonstrates the active consent of the naturalized citizen.

The Amantonka Nation's naturalization process is both voluntary and allows naturalized members to participate in the government. By requiring the completion of courses, a test, and volunteer hours, the tribe ensures that its new citizens are aware of the responsibilities and privileges of citizenship before they become a citizen. Therefore, a person who becomes a member does so with informed consent. In addition, a naturalized citizen of the Amantonka Nation is entitled to all of the privileges of members by birth, including the right to participate in tribal government. *Id*. The Amantonka Nation's naturalization process fulfills the consent model of *Duro.*

The Amantonka Nation properly exercised personal jurisdiction over Reynolds. Such jurisdiction is asserted in the Amantonka Nation Code and is consistent with due process. Reynolds, by his own volition, followed the process as outlined in the Amantonka tribal code and became a naturalized citizen of the Amantonka Nation. As a citizen, he is "entitled to all the privileges afforded all Amnatonka [sic] citizens." *Id*. Concomitant with the privilege of

citizenship are the responsibilities of citizenship. Reynolds has taken an oath to be bound by the laws of the Amantonka Nation. Therefore, the Amantonka Nation's exercise of personal jurisdiction over Reynolds is proper.

### B. Tribal Courts must continue to have jurisdiction over tribal citizens of all races.

Through legislation to preserve and restore tribal jurisdiction, Congress has demonstrated its intention to expand tribal jurisdiction beyond membership. Congress has not limited who could become a tribal citizen for internal tribal matters. The Court should not create a race-based rule for who can become a tribal citizen or for determining which tribal citizens a tribe has jurisdiction over. Basing tribal jurisdiction on tribal citizenship is consistent with understanding Indian as a political status and is therefore consistent with equal protection. Further, tribes are better able to protect all of their members if they are able to exercise jurisdiction over their adopted members of all races. Therefore, the Court should follow Congressional intent and uphold tribal sovereignty by preserving tribes' jurisdiction over their citizens without Indian blood.

#### 1. Congress has demonstrated intent to preserve and extend tribal jurisdiction.

In *Duro*, the Court recognized the longstanding principle that tribes have jurisdiction over their members. 495 U.S. at 693. The Court determined that whether or not a defendant was a tribal member was the crucial factor in determining if the tribal court had jurisdiction over them: "in the criminal sphere membership marks the bounds of tribal authority." *Id*. However, consistent with Court precedent, the Court was cautious against making a ruling that would disrupt the status quo of Indian law without evidence of clear Congressional intent. *Id*. at 708-709 and 712. The court wrote:

> *We hesitate to adopt a view of tribal sovereignty that would single out another group of citizens, nonmember Indians, for trial by political bodies that do not include them…If the present jurisdictional scheme proves insufficient to meet the practical needs of reservation law enforcement, then the proper body to address the problem is Congress, which has the ultimate authority over Indian affairs.*

*Id*. Indeed, in 1991, Congress overruled *Duro* through an amendment to the ICRA, known as the "Duro Fix." Act of Oct 28, 1991, Pub. L. No. 102-137, 105 Stat. 640. Through its timely action to restore tribal jurisdiction over non-member Indians after *Duro*, Congress expressed a clear intention to expand tribal jurisdiction.

Congress similarly affirmed the authority of tribal courts by restoring tribal jurisdiction over some non-members through VAWA. VAWA partially restored tribal jurisdiction over non-Indians that had been foreclosed by *Oliphant*. The statute explicitly preserves tribes' "inherent powers" of "self-government" at § 1304 (b)(1).

The Court's ruling must be consistent with Congress's policy toward Indians. Ex Parte Kan-gi-shun-ca (*Crow Dog*), 109 U.S. 556, 572 (1883). Through the Duro Fix and VAWA, Congress has demonstrated its intention to preserve tribal courts' jurisdiction over tribal members and to expand tribal jurisdiction over certain nonmembers. Preserving tribal jurisdiction over adopted tribal members is consistent with Congress's policy of preserving and expanding tribal jurisdiction.

**2. Tribal jurisdiction over tribal citizens must be preserved.**

Before colonization, "traditional Indian identity was usually, but not necessarily, passed down at birth and represented *a way of life of a people*." Jessie Young & Alan Parker, *Traditional Indian Identity, in American Indian Identity: Citizenship, Membership, and Blood* 7, 8 (2016). Traditional native communities were based on shared culture and place. *Id*. Although indigenous communities were structured around kinship, adoptions were not uncommon. Handbook, *supra*, at § 3.03 [2]. In those days, membership "was relatively fluid, and ancestry

within the group was not always essential." *Id*. Tribal adoptions of those who were not racially Indian began with the arrival of settlers and continued to be a common practice in the 19th century. Throughout its history, the Amantonka Nation has allowed those who marry its citizens to become citizens themselves. R. at 7.

Although Congress has made blood quantum part of its requirements to establish Indian status to determine who is entitled to some government benefits, it has not created such limits on who can be Indian for internal tribal matters. To the contrary, in limited circumstances, Congress has required tribes to include those of without Indian blood as members: "By treaties made in the wake of the Civil War, the federal government has required certain tribes that had adopted forms of slaveholding to treat former slaves as tribal members." Handbook, *supra*, at § 4.01 [2][b]. By requiring tribes to accept as members people without Indian blood, Congress demonstrated its approval of such practices.

In the early 20th century, the practice of tribes adopting members without Indian ancestry effectively ended. John Rockwell Snowden et. al., *American Indian Sovereignty and Naturalization: It's A Race Thing*, 80 Neb. L. Rev. 171, 216 (2001). This may have been caused by a combination of pressure from the Bureau of Indian Affairs and tribes' need for self-preservation. Paul Spruhan, *"Indians in a Jurisdictional Sense": Tribal Citizenship and Other Forms of Non-Indian Consent to Tribal Criminal Jurisdiction*, 1 Am. Ind. L. J. 79, 91. Since 1924 there have been no reported court cases that concern tribal citizens who are not racially Indian. *Id.* at 220. *Nofire*, decided in 1897, was the last Supreme Court case that considered the status of a tribal citizen without Indian ancestry for criminal jurisdiction purposes. Weston Meyring, *I'm an Indian Outlaw, Half Cherokee and Choctaw: Criminal Jurisdiction and the Question of Indian Status*, 67 Mont. L. Rev. 178, 189 (2006).

However, sovereign authority to accept citizens who are not racially Indian can be claimed by tribes who include such a provision in their constitution. Spruhan, *supra*, at 95. Amantonka Nation has done so. Tribal citizens without Indian ancestry are unusual in the modern era. However, the Court in *Nofire* considered tribes' adopted citizens without Indian ancestry to be Indian for tribal court jurisdiction purposes and that decision should be upheld in this case. *Nofire,* 164 U.S. at 662. Alberty v. United States, 162 U.S. 499, 502-03 (1896).

**3. Preserving tribal jurisdiction over tribal citizens is consistent with the Court's definition of "Indian" as a political category.**

Citizenship in an Indian tribe is the clearest expression of political affiliation with a tribe and should be dispositive. The Fifth and Fourteenth Amendments make government action based on race subject to strict scrutiny and consequently impermissible in most circumstances. However, laws discriminating on the basis of Indian status are permissible both because Indian is a political category and because of the federal government's interest in fulfilling its trust responsibility to tribes. Some federal definitions of Indian rely on blood quantum but in light of Fourteenth Amendment jurisprudence, "the federal government increasingly associates being an Indian with being a tribal member according to tribal law." Handbook, *supra,* § 3.03 [1].

Federal or state sponsored racial discrimination is generally impermissible unless it can survive a strict scrutiny analysis. Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995). However, discrimination based on Indian status is subject to a rational basis review because 'Indian' is a political category not a racial category. *Morton v. Mancari*, 417 U.S. 535, 554 (1974). The federal government's trust responsibility to Indian tribes is a legitimate government interest. *Id.* at 555. So, federal legislation that discriminates on Indian status is permissible so long as it relates to Indians as a political category and is rationally related to fulfilling the government's trust responsibility to Indian tribes. *Id.*

Government regulations that distinguish on the basis of Indian status do not violate Constitutional Due Process because 'Indian' is a political category, not a racial category. Tribal members, Indian by blood, challenged federal jurisdiction after they were convicted in federal court for the murder of a non-Indian on the reservation. *Antelope,* 430 U.S. at 642-643. Defendants argued that federal jurisdiction over them violated Due Process because as Indians they were tried under federal laws, whereas a non-Indian in the same situation would be charged under the more lenient state laws. *Id.* at 644. However, the Court found that the 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*. at 646. Therefore, tribal jurisdiction based on membership in an Indian tribe is consistent with Due Process.

Circuit Courts use a blood quantum test to determine who is Indian for purposes of federal criminal jurisdiction, but tribes should not be forced to use such a test to determine who is Indian for purposes of tribal criminal jurisdiction. Because neither Congress nor the Court has defined Indian for purposes of federal criminal jurisdiction, the Circuit courts have "judicially explicated" its meaning. United States v. Broncheau, 597 F.2d 1260, 1263 (9th Cir. 1979). To determine whether the federal government has criminal jurisdiction over a person, circuit courts use the reasoning of *Rogers* and consider "(1) the degree of Indian blood; and (2) tribal or governmental recognition as an Indian." *Id*. These circuit courts test for blood quantum in determining whether the federal government has criminal jurisdiction over a person. Ex parte Pero, 99 F.2d 28, 31 (7th Cir. 1938). United States v. Stymiest, 581 F.3d 759 (8th Cir. 2009). United States v. Bruce, 394 F. 3d 1215, 1223 (9th Cir. 2005). U.S. v. Zepeda, 792 F.3d 1103, 1106 (9th Cir. 2014). Under this test, a person who is not a member of any tribe may be

considered Indian for federal criminal jurisdiction purposes if they have Indian blood, and relate to the tribe or federal government as an Indian.

This test has not been applied to determine whether a tribal government has criminal jurisdiction over a person. The court should not require tribes to apply a blood quantum test to determine which of their citizens they have criminal jurisdiction over. If the government were to enforce such a race-based test on tribes, it would fail the equal protection analysis because it would create racial discrimination that would be detrimental to tribal sovereignty. Such a decision would be at odds with the government's trust responsibility to Indian tribes.

The court has not examined a question of Indian tribal members without Indian ancestry in light of modern Fourteenth Amendment jurisprudence. One legal scholar argues that today, "the race-based reasoning" of earlier decisions, such as *Rogers*, "is no longer valid." Tommy Miller, *Beyond Blood Quantum: The Legal and Political Implications of Expanding Tribal Enrollment*, 3 Am. Ind. L. J. 323, 329. Therefore, the court should not extend the race-based reasoning of *Rogers* to govern the assignment of tribal jurisdiction.

Instead, the court should allow for one's membership in an Indian tribe to determine whether or not they are under tribal jurisdiction. Allowing tribes to continue to have jurisdiction over their members of all races is consistent with equal protection because it would be based on Indian as a political category. Further, it would allow tribes to enforce law and order within their territories and thus be in alignment with the government trust responsibility to Indian tribes.

Although he is not racially an Indian, as a citizen of the Amantonka Nations, Reynolds is politically an Indian. Therefore, the Amantonka Nation's jurisdiction over him is consistent with the Court's definition of Indian as a political, and not a racial category.

**4. The Court should not disturb tribal courts' authority to exercise jurisdiction over all of their citizens.**

Tribes must retain authority to manage their internal affairs by exercising jurisdiction over citizens of any racial ancestry. Marrying outside one's kinship group is a common practice across cultures and history. Claude Lévi-Strauss, *The View from Afar* 47-72 (Joachim Neugroschel & Phoebe Hoss, trans., Basic Books 1985) (1983). Today, Indians have an extremely high rate of intergroup marriages.[2] Wilkins, *supra*, at 38. Tribes must retain the authority to adopt their citizens' spouses as citizens themselves and to hold adopted citizens bound to the same laws as all other citizens.

Tribes must enforce laws against adopted citizens of non-Indian ancestry so that they can fully integrate them into tribal society. For example, the Navajo Supreme Court affirmed tribal court jurisdiction over a non-member because he was intimate partners with a tribal member. The court found that the authority to assert tribal jurisdiction over *hadane* or "in-laws" is necessary for the Navajo tribe to protect its members. The Court wrote, "It would be absurd to conclude that our *hadane* relatives can enter the Navajo Nation, offend, and remain among us, and we can do nothing to protect Navajos and others from them." Means v. Dist. Court of Chinle Judicial Dist., 2 Am. Tribal Law 439, 451 (Navajo May 11, 1999) *aff'd by 9th Cir.*, 432 F.3d 924 (2005), *and cert. denied*, 549 U.S. 952 (2006). Tribes must have jurisdiction over their adopted citizens so that they can fulfill their responsibility to protect all of their citizens.

Congress and the Court have long recognized tribes' jurisdiction over their own citizens. But only Congress can restrict tribal jurisdiction. The Court should not disturb this important expression of tribal sovereignty because Indian tribes "have a significant interest in maintaining orderly relations among their members and in preserving tribal customs and traditions." *Wheeler*, 435 U.S. at 331. Further, creating a new gap in jurisdiction would be at odds with the significant

[2] According to Wilkins, as of 1990, 53% of married American Indians were married to a person of another race whereas only 4% of married people in the United States were.

federal interest in preserving "law and order" on reservations, *Wheeler*, 435 U.S. at 331, and in fulfilling trust obligation to Indian tribes. *Mancari*, 417 U.S. at 555. If the court were to deny tribes' jurisdiction over adopted citizens who are not racially Indian, it would go against Congressional efforts to restore tribal jurisdiction in Indian country.

All tribal citizens, of any race, are under tribal jurisdiction because "Indian" is a political category. Tribal courts must not be forced to apply a race-based standard to determine which of its citizens must answer to its laws.

Reynolds became Indian when he chose to become a citizen of the Amantonka Nation. He made an oath to the Nation and became bound by its laws. The Nation has jurisdiction over all its citizens, independent of VAWA's SDVCJ. Thus, Reynolds, like all other citizens of Amantonka Nation, is not entitled to VAWA's right to counsel provisions.

## II. The Amantonka courts satisfied the relevant legal requirements because the United States Constitution's Equal Protection Clause does not apply to tribal courts and Reynolds' representation in Amantonka court is consistent with VAWA's requirement of representation for indigent defendants.

The counsel provided to Reynolds by the Amantonka Nation satisfied all of the relevant legal requirements. Reynolds is entitled to the right to counsel provisions of the ICRA and the Amantonka tribal code. However, Reynolds is not entitled to the indigent counsel requirements of VAWA because he is an Indian. Although a non-Indian defendant would be entitled to the indigent counsel requirements of VAWA, this does not constitute a violation of equal protection because Indian is a political category, not a racial category. Further, tribal courts are not bound by the federal constitution's Equal Protection Clause. Even if Reynolds qualified as a non-Indian defendant, Reynolds' appointed counsel was sufficiently qualified to meet the requirements of VAWA.

The ICRA was put into law with the intention of giving tribal citizens the same benefits as enjoyed by other individuals under the United States' Constitution's Bill of Rights. Angela R. Riley, *Crime and Governance in Indian Country*, 63 UCLA L. Rev. 1564, 1579 (2016). While some language of the ICRA mirrors the Bill of Rights word for word, other rights are nonexistent or altered in the statute. *Id*. In one such instance, the ICRA does not require tribes to "provide paid counsel to indigent defendants," contrary to current jurisprudence on the Sixth Amendment right to counsel.[3] Matthew L.M. Fletcher, *American Indian Tribal Law, Criminal Law and Procedure* 384 (2011). These differences have allowed tribes room to exercise their self-governance and to generally "insulate tribes from outside influence and interference." Christy Gover, *Tribal Constitutionalism: States, Tribes, and the Governance of Membership* 70 (2010). In doing so, courts avoid impeding upon any "tribal custom, tradition or cultural norm." Healy v. Mashantucket Pequot Gaming Enter., No. CV-AA-1997-0183, 1999 WL 34828700, 5 (Mash. Pequot Tribal Ct. 1999).

Another right that differs between the Bill of Rights and the ICRA is the Equal Protection Clause. Most courts have determined that there is no federal equal protection claim when the ICRA's proscriptions differ from the federal definition because the United States Constitution does not extend to tribal affairs. *Antelope*, 430 U.S. at 641; *see also Martinez*, 436 U.S. at 54.

This court should follow stare decisis and uphold the Thirteenth Circuit Court of Appeals' decision that the Amantonka court did not violate Mr. Reynolds' right to equal protection. The wealth of case law dictates that the petitioner cannot establish an equal protection claim because he is not a member of a suspect or quasi-suspect class and because the United States Constitution does not apply to tribal affairs. *See generally Mancari*, 417 U.S. at 553-554;

[3] Congress specifically did not require paid counsel for indigent defendants in tribal court per the request of the United States Department of Justice. Matthew L.M. Fletcher, *American Indian Tribal Law, Criminal Law and Procedure* 384 (2011).

*Martinez*, 436 U.S. at 54; *Antelope*, 430 U.S. at 645; Means v. Navajo Nation, 432 F.3d 924, 932 (9th Cir. 2005); United States v. Keys, 103 F.3d 758, 761 (9th Cir. 1996); Groundhog v. Keeler, 442 F.2d 674, 676 (10th Cir. 1971). Furthermore, finding that treatment consistent with the ICRA violates the Equal Protection Clause may invalidate the entire statute and undermine "the Government's commitment to Indians." *Mancari*, 417 U.S. at 537. In addition, a finding of a violation of equal protection would ignore the history, legislative intent, and sovereignty of Indian tribes. *Id*. at 550.

Secondly, VAWA newly amends the ICRA, allowing for tribal courts to try and convict non-Indians who commit domestic or dating violence crimes against Indians on tribal land. Jordan Gross, *Through A Federal Habeas Corpus Glass, Darkly—Who Is Entitled to Effective Assistance of Counsel in Tribal Court Under ICRA and How Will We Know If They Got It?*, 42 Am. Indian L. Rev. 1, 44 (2017). The statute was intended to address the incredible rate of domestic and sexual violence in Native American communities.[4] VAWA allows an important opportunity for tribes to prosecute crimes that had previously gone unaddressed due to restrictions on jurisdiction under *Oliphant*. Riley, *supra*, at 1591; *Oliphant*, 435 U.S. at 195-196.

The statute imposes heightened protections for defendants, as laid out in the Tribal Law and Order Act of 2010 (TLOA). 25 U.S.C. § 1302(c); Gross, *supra*, at 45. These include "providing effective assistance of counsel at least equal to that guaranteed by the United States Constitution," and to provide "an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional

[4] Native American women are two times more likely than non-Native women to face domestic violence; 46% of Native American women have experienced physical violence, stalking or rape by a partner. Jodi Gillette & Charlie Galbraith, *President Signs 2013 VAWA - Empowering Tribes to Protect Native Women*, White House Blog (Mar. 7, 2013, 7:07 PM), obamawhitehouse.archives.gov/blog/2013/03/07/president-signs-2013-vawa-empowering-tribes-protect-native-women

licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys." 25 U.S.C. § 1302(c).

This court should find that the Amantonka Nation provided adequate counsel to the petitioner because the qualifications of counsel sufficiently satisfied both elements of 1302(c). In doing so, this Court has the important opportunity to elucidate the parameters of tribal sovereignty under VAWA. The decision would allow tribes to prosecute crimes that affect their communities according to their own laws, allowing tribal communities to self-determine and enforce their own community guidelines. In allowing the tribal court to decide the merits of its own counsel, this Court would further impress the strength of tribal sovereignty, fulfilling the purpose of VAWA.

**A. As an Indian petitioner, this court should uphold the Thirteenth Circuit Court of Appeal's ruling because Reynolds does not qualify for an equal protection claim.**

Historically, federal courts have been reluctant to apply equal protection as found in the United States Constitution to tribal court proceedings. See generally *Oliphant*, 435 U.S. at 194; Nevada v. Hicks, 533 U.S. 353, 384 (2001). The ICRA provides that "[n]o Indian tribe in exercising powers of self-government shall…deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law." 25 U.S.C.A. § 1302 (West 2018). However, federal courts often take into account the balance between tribal sovereignty and individual rights when evaluating equal protection claims. *Martinez*, 436 U.S. at 54. This is the most appropriate approach, as it promotes tribal sovereignty and follows the legislative history that underlies the ICRA provision. *Id*. at 66. With this in mind, the Court should follow the stare decisis and defer to the judgement of the tribal court.

**1. Equal protection does not apply to Reynolds because he is not a member of a suspect or quasi-suspect class and because the ICRA is not coextensive with the**

**Fifth and Fourteenth Amendments.**

Reynolds is not a member of a suspect or quasi-suspect class because his Amantonkan citizenship is based solely on its political affiliation and not on race. Therefore, this Court should employ rational basis review. Because the laws of the Amantonkan courts were tied to a legitimate state interest, Reynolds' equal protection claim fails. Furthermore, this Court should defer to the Amantonkan courts' authority to decide equal protection cases in its own jurisdiction. Secondly, Reynolds is only entitled to equal protection under the ICRA as the Fifth and Fourteenth Amendments of the United States Constitution do not apply to Indian affairs.

**2. Reynolds does not qualify for an equal protection claim because he does not qualify for a suspect or quasi-suspect classification.**

In order to elicit strict or heightened scrutiny from this Court, Reynolds must demonstrate that he is a member of a suspect classification or quasi-suspect classification, respectively. These classes may allege that state action disproportionately impacts them through discriminatory intent, creating an equal protection claim. Washington v. Davis, 426 U.S. 229, 246 (1976); Note, *Quasi-Suspect Classes and Proof of Discriminatory Intent: A New Model*, 90 Yale L.J. 912, 913 (1981). Jurisprudence shows that the only groups that qualify for suspect classification are race, national origin, and alienage. Ryan James & Jane Zara, *Equal Protection*, 4 Geo. J. Gender & L. 1, 5 (2002). Members of these classes are entitled to strict scrutiny, in which state action fails unless the state can prove that it was "necessary to promote a compelling state interest." *Quasi-Suspect Classes*, *supra*, at 915.

Secondly, the groups that qualify as quasi-suspect are gender and illegitimacy.[5] *Id.* These groups are entitled to intermediate scrutiny, in which state action disproportionately burdening

[5] Although courts have not included other populations in quasi-suspect classifications, they have treated certain groups' claims with "rational basis with bite," which is treated with heightened scrutiny in relation to rational

those groups fails unless the state can prove that it was "substantially related to an important government interest." Kyle C. Velte, *Paths to Protection: A Comparison of Federal Protection Based on Disability and Sexual Orientation*, 6 Wm. & Mary J. Women & L. 323, 325 (2000).

Thirdly, all other parties bringing equal protection claims earn rational basis review by the court.[6] Under this lower standard, laws are considered to be constitutional under the Equal Protection Clause if the discriminatory classification is "rationally related to a legitimate state interest." City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 433 (1985).

Reynolds only qualifies for rational basis review. Suspect or quasi-suspect classification do not apply to Indian citizenship. The petitioner's Indian identity is based solely on his citizenship with the Amantonka Nation and not on any perceived differences based on race, national origin, alienage, gender, or illegitimacy. Membership in a political group is not a suspect or quasi-suspect class. Therefore, the Amantonkan court's treatment of Reynolds does not elicit strict or heightened scrutiny and Reynolds consequently does not have an equal protection claim.

The classification of Indian tribes as separate political entities is supported by a multitude of case law. In *Talton v. Mayes*, the Court recognized the categorization of the Cherokee Nation as a separate political entity:

> *So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize them as a people capable of maintaining the relations of peace and war, of being responsible in their political character for any violation of their engagements…Laws have been enacted in the spirit of these treaties. The acts of our government plainly recognize the Cherokee Nation as a state, and the courts are bound by those acts.*

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basis scrutiny. The most notable classification treated to rational basis with bite is sexual orientation. *Romer v. Evans*, 517 U.S. 620, 635 (1996).

[6] This includes some disadvantaged classes such as mental disability. *City of Cleburne*, *supra*, at 442.

Talton v. Mayes, 163 U.S. 376, 376. (1896). This created a precedent that recognized Indian categorization as political without reference to race. Therefore, any categorization of Reynolds under race would not hold.

In *Morton v. Mancari*, non-Indian employees of the Bureau of Indian Affairs brought suit against the BIA under the claim that its heightened employment preferences for Indian employees violated the Fifth Amendment as well as the Equal Employment Opportunities Act of 1972. 417 U.S. at 535. The court noted that BIA's preference was a direct result of the United States' government's "special relationship," with Indian tribes, *Id*. at 552, and was "reasonably designed to further the cause of Indian self-government." *Id*. at 554. Under this purpose, the categorization of Indian and non-Indian employees was not racial but rather was "granted to Indians…as members of quasi-sovereign tribal entities." *Id*. In recognizing that the differentiation was based on political sovereignty and not on race, the court held that there was no racial discrimination. *Id*. Furthermore, because it was a political categorization and not a racial one, the employment preferences were entitled solely to a rational basis review. Because it was "rationally designed to further Indian self-government," it passed this review. *Id*. at 536. Therefore, the BIA's employment preferences did not violate the Due Process Clause of the Constitution. *Id*.

Later court decisions followed the standard of classification of Indians as a political group. In *Antelope*, two Indians were convicted of first-degree murder by way of the Major Crimes Act, which grants federal courts jurisdiction over a total of fourteen crimes when committed by an Indian perpetrator in Indian country. 430 U.S. at 641; 18 U.S.C. § 1153. The court remarked that the Major Crimes Act, and all other federal legislation aimed at Indian tribes, was not based in racial classification, but rather was "rooted in the unique status of Indians as 'a

separate people,' with their own political institutions." *Id*. (quoting *Mancari*, 417 U.S. at 535). Therefore, prosecution under the Major Crimes Act did not qualify for strict scrutiny because it did not target a racial group, consequently not violating the Equal Protection Clause.

This case law demonstrates that Reynolds is classified as an Indian based on political affiliation rather than racial categorization. Because of this, this Court should use rational basis review in evaluating Reynolds' equal protection claim.

**3. Reynolds' equal protection claim fails because Amantonkan trial procedures are rationally tied to a legitimate state interest.**

Because Reynolds does not belong to a suspect or quasi-suspect class, this Court should use rational basis review in consideration of his case. Under this standard, Reynolds' treatment by the Amantonkan courts must be rationally tied to a legitimate state interest in order to be constitutionally viable.

In *City of Cleburne, Tex. v. Cleburne Living Center*, the court struck down a requirement that homes for the mentally impaired apply for a special use permit. The court noted that the city lacked "rational basis in [the] record for believing that [the] group home would pose any special threat to city's legitimate interests," and the disparate treatment came solely from discrimination. 473 U.S. at 432. Therefore, the city ordinance violated the Equal Protection Clause.

The Amantonkan courts meet and surpass the standard set out by *Cleburne*. The Amantonka Nation has a legitimate interest in enforcing its right to self-governance, which has been an integral part of the relationship between the United States and tribes since *Talton*. 163 U.S. at 383. The trying and sentencing of its own citizens according to its own standards of representation is rationally based in this legitimate interest. In this view, the Amantonka Nation passes the rational basis review and therefore its supply of representation to Reynolds does not violate the Equal Protection Clause.

**4. Reynolds is not entitled to equal protection because the Fourteenth and Fifth Amendments do not operate upon Amantonka self-governance.**

Because Reynolds is an Indian defendant tried for a misdemeanor crime against his wife who is an Indian, Reynolds' case is entirely subject to Amantonka authority and self-governance. Handbook, *supra*, § 9.02(d)(i). As such, the Fifth and Fourteenth Amendments do not apply to Reynolds and he is not entitled to an equal protection argument in relation to his representation in the tribal courts.

Tribal independence from constitutional claims has a strong foundation of case law. In *Talton*, the defendant filed a Writ of Habeas Corpus on the basis that his conviction in a Cherokee tribal court by a five-person jury violated the United States Constitution and deprived him of his due process liberty rights. 163 U.S. at 377. The Court noted that the power of the Cherokee nation to self-govern existed long before the creation of the United States Constitution, *Id.* at 383, and that the nation had been given the "guaranty [sic] to self-government" in the treaty of 1835 and later in the treaty of 1866. *Id*. at 380. Furthermore, the Court saw that the power exercised by the Cherokee government to try Talton came from treaty, rather than an act of Congress. Because the power to enact their own trials came from a recognition of the tribe as an "autonomous body," *Id*. at 379-380, and not an act of domestic governance, the court reasoned that the United States Constitution did not apply. *Id.* at 382. *See also Worcester v. State of Ga.*, 31 U.S. 515, 519 (1832) (holding that "[t]he Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights."). Consequently, Talton's Fifth Amendment rights to a thirteen-person jury and Fourteenth Amendment due process rights did not apply to the Cherokee proceedings. *Id*. at 379-380. *Talton* demonstrated the concept that the United States Constitution is not coextensive with tribal law,

and parties are not entitled to due process or equal protection claims during tribal court proceedings.

This case law demonstrates that Reynolds is not entitled to an equal protection claim on the basis of his representation in tribal court. His claim of equal protection in tribal court is similar to the standard of the Fifth Amendment contested in *Talton*. As the case demonstrates, specific proceedings in tribal court are within the sphere of self-government of the Amantonka Nation, and therefore not subject to the United States Constitution. As such, Reynolds' representation at trial in Amantonka court did not violate the Equal Protection Clause.

Furthermore, the passage of legislation does not necessarily apply the United States Constitution to tribal proceedings. In *Groundhog v. Keeler* in the Tenth Circuit, plaintiffs challenged an act of Congress that allowed Congress to appoint the President of the Cherokee nation, citing violations to due process and equal protection rights. 442 F.2d at 676. The plaintiffs further argued that they were entitled to these rights because the passage of the Indian Bill of Rights (the ICRA) made them applicable to tribal proceedings. *Id*. at 681. The court observed the broad language as well as the legislative intent of the ICRA showed that there was no legislative intent for the Fifth, Sixth, Seventh, Fourteenth, Fifteenth Amendments to apply through the Indian Bill of Rights. *Id*. at 682. Therefore, the plaintiffs were not entitled to an equal protection claim under the ICRA § 1302. *Id.*

Although § 1302 has become more elucidated since the date of *Groundhog*, the statute is still broad enough to follow the case's precedent. Even in its amended state after the passage of TLOA, § 1302 does not specifically name requirements for equal protection rights that are verbatim the same as United States Constitution. 25 U.S.C.A. § 1302. This remains ambiguous

enough for tribal courts to interpret for their own jurisdiction, using both history and legislative intent as inputs as well.

**a. This court should rule that Reynolds' equal protection rights were not violated because of the need to balance his rights with tribal sovereignty.**

One important consideration in evaluating an individual's equal protection rights is the balance between tribal sovereignty and individual rights. Frank Pommersheim expounded upon this important balance:

> *Tribal courts ought to be able to interpret and declare what tribal law is, for if tribal sovereignty and self-determination mean anything, they mean the authority to declare and interpret the law that will govern in tribal forums. Federal courts should therefore stay their hands unless tribal decision making offends some specific federal law that applies to the tribes.*

Pommersheim, *supra*, at 96. In keeping with this jurisprudence on the balance between tribal self-government and individual rights, the Equal Protection Clause in the Constitution should not apply to the Amantonka courts. In deferring to the Amantonka's ruling on equal protection under the ICRA, this Court recognizes the tribal court's right to self-determination as its own nation.

In *Wounded Head v. Tribal Council of the Oglala Sioux Tribe of the Pine Ridge Reservation*, plaintiffs brought suit against the tribe under the argument that the tribe's voting age of twenty-one violated the Equal Protection Clause and the Twenty-Sixth Amendment. 507 F.2d 1079, 1080 (8th Cir. 1975). The court found that imposing the federal voting age upon the tribe and "requir[ing] a tribe to enfranchise a new class of the tribal population" would "forc[e] an alien culture, with strange procedures, on this tribe." *Id*. at 1083. Therefore, the court found that the tribe should have discretion as to what degree to enfranchise various populations, "absent explicit Congressional legislation to the contrary." *Id*. In *Wounded Head*, the Eighth Circuit showed that equal protection arguments relating to tribal proceedings could be curtailed in instances where the federal law is distinctly culturally dissonant from the corresponding tribal

ones. *See also* Daly v. United States, 483 F.2d 700, 704 (1973) (finding that laws that strictly followed "Anglo-American" culture should follow the United States Constitution more closely).

The case at hand is analogous to that found in *Wounded Head*. The Amantonka Nation has its own regulations for its courts and representation for its indigent defendants. Although some of the Amantonka code is similar to codes of state and federal jurisdictions, it retains its distinctness and sovereignty. Section 503 is too dissimilar from federal codes regarding right to counsel and therefore counts as forcing an "alien culture" onto the Amantonka nation, impeding upon its sovereignty. *Id*; 5 A.N.C. § 502. Therefore 1302(a)(8) should be "implemented somewhat differently than its constitutional counterpart." Howlett v. Salish & Kootenai Tribes of Flathead Reservation, Montana, 529 F.2d 233 (9th Cir. 1976).

**b. Reynolds' representation met the relevant constitutional requirements because it met the requirements of the Amantonka Nation.**

In the Eighth and Ninth Circuits, the representation requirements that are deemed necessary are often determined by the jurisdiction asserting them. In *United States v. First*, a party contested the use of a predicate conviction in tribal court on the grounds that he was not afforded the right to counsel according to constitutional requirements at the state or federal level. 731 F.3d 998, 1001 (9th Cir. 2013). The Ninth Circuit noted that First's "right to counsel" met the requirements of the tribal court in which he was convicted. *Id*. at 1004. Therefore, the court reasoned, this right to counsel is "the right as it existed in the predicate misdemeanor proceeding," and not a right "to a uniform federal right to counsel," consequently not violating the Sixth Amendment. *Id*. at 1001. *See also* United States v. Long, 870 F.3d 741, 746 (8th Cir. 2017) (finding that "right to counsel" should be carried out as defined by tribal court and not by

federal standards). Therefore, the only protections Reynolds is entitled to are those designated by the Amantonka code and the tribal court's interpretations of the ICRA.

**c. The Equal Protection Clause does not apply to tribal court proceedings because the legislative history of the ICRA shows Congress did not intend to do so.**

The legislative history and intent of the ICRA show that the Equal Protection Clause is not coextensive with the rights under the statute. Congress did not intend for the Fifth or Fourteenth Amendments to apply to tribal proceedings. The legislative intent behind the ICRA and its subsequent amendments shows and elucidates the meaning behind the broader sections of the act. In *Martinez*, the court came to its holding of tribal sovereignty under the ICRA by way of evaluating the Congressional intent of the statute:

> *Section 1302 selectively incorporated and in some instances modified the safeguards of the Bill of Rights to fit the unique needs of tribal governments, and other parts of the ICRA similarly manifest a al purpose to protect tribal sovereignty from undue interference. Creation of a federal cause of action for the enforcement of § 1302 rights would not comport with the congressional goal of protecting tribal self-government.*

436 U.S. at 49. Because of this Congressional intent of "protecting tribal self-government," the Court found that § 1302 "differs from the constitutional Equal Protection Clause in that it guarantees 'the equal protection of *its* [the tribe's] laws,' rather than of '*the* laws.'" *Id*. at 63 n. 14 (quoting 25 U.S.C. § 1302). Therefore, § 1302 does not require the comparison of the federal Equal Protection Clause with that of individual tribes.

Furthermore, tribal interpretations of provisions of the ICRA by tribes are often upheld in federal court with the idea that they are "intentionally left ambiguous for tribes to imbue with their own meanings." *ICRA Reconsidered: New Interpretations of Familiar Rights*, 129 Harv. L. Rev. 1709, 1722 (2016). In this vein, this court should uphold the

Amantonka ruling on the basis of deferring to its interpretation of the ICRA and its amendments.

**B. Even if petitioner is non-Indian, this court should uphold the Thirteenth Circuit Court of Appeals' holding because the tribal court did not violate VAWA's requirement of representation for indigent defendants.**

VAWA provided that "in a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant…if a term of imprisonment of any length may be imposed, all rights described in section 1302(c) of this title." 25 U.S.C.A. § 1304(d). (West 2018). The referenced § 1302(c) details these rights:

> *[T]he Indian tribe shall…(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and (2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys.*

25 U.S.C.A. § 1302(c) (West 2018). Reynolds' representation in Amantonka court satisfied all constitutional requirements because it is subject to tribal law and not the Sixth Amendment. Therefore, it did not violate § 1302(c) and consequently the VAWA requirements under § 1304(d).

**5. VAWA is not coextensive with the Sixth Amendment because earlier extensive case law history shows that the ICRA and its subsequent amendments are not coextensive with the Sixth Amendment.**

This right to counsel found in the ICRA has historically not been coextensive with the right to counsel found in the Bill of Rights. *See Martinez, supra*; Plains Commerce Bank v. Long Family Land and Cattle Co., 554 U.S. 316, 337 (2008). While criminal proceedings have always had constitutional restraints, the Sixth Amendment right to counsel has developed relatively late. More specifically, representation in criminal court proceedings for indigent defendants came to

United States jurisprudence in *Powell v. State of Alabama*, in which the Court determined that failure to appoint counsel in a timely manner with severe consequences violated indigent defendants' due process rights. 287 U.S. 45, 71 (1932). In *Gideon v. Wainwright*, the Court found that the right to counsel for indigent defendants extended to criminal prosecution in state court as it was a fundamental right protected by the Fourteenth Amendment. 372 U.S. 335, 343 (1963).

Although these Sixth Amendment protections apply to both federal and state court proceedings, they do not extend to tribal court proceedings. Therefore, the Sixth Amendment is not coextensive with the VAWA tribal court proceedings requirements. Consequently, the Amantonka court is not subject to the Sixth Amendment constraints found in other courts in the United States.

**6. Tribal court convictions that are aligned with the ICRA do not need to meet the requirements of the Sixth Amendment.**

There have been no major cases that found that participants in tribal court are entitled to the Sixth Amendment right to counsel. Settler v. Lameer, 507 F.2d 231, 241 (9th Cir. 1974). This jurisprudence continues in modern times, even after the passage of VAWA in 2013. In *United States v. Bryant* in 2016, the defendant was convicted under the enhancement statute § 117(a) using prior convictions of domestic assault in tribal court. 136 S.Ct. 1954, 1956 (2016). Bryant argued that because his earlier tribal convictions were uncounseled, they violated the Sixth Amendment and thus could not serve as predicate offenses under § 117(a). *Id*. at 1957. The Court noted that Indian tribes are generally "unconstrained by those constitutional provisions framed specifically as limitations on federal or state authority," more specifically the Bill of Rights. *Id*. at 1962 (quoting *Martinez*, 436 U.S. at 56). Within this context, the federally recognized right to counsel in criminal proceedings is not coextensive with the ICRA

requirements for counsel. *Id*. Therefore, the Court found that Bryant's previous convictions may be used as predicate offenses in federal court because they were in compliance with the ICRA regulations, and therefore did not violate § 117(a). *Id*. at 1966.

This decision firmly drew the line in relation to the Sixth Amendment: although it applies to state and federal proceedings, tribal courts are subject only to the ICRA and its amendments. *Id*. *See also* State v. Spotted Eagle, 316 Mont. 370, 376 (2003); United States v. Gillette, No. 3:17-CR-30122-RAL, 2018 WL 3151642, at 5 (D.S.D. 2018). This strong precedent shows that the Sixth Amendment does not apply to court proceedings. Only the ICRA and its amendments apply. Therefore, the Amantonka court did not violate Reynolds' Sixth Amendment rights.

**7. The petitioner's representation in tribal court does not violate VAWA as the Amantonka code satisfies the elements of representation under 25 U.S.C. § 1302(c).**

Even if the court finds that the VAWA requirements apply to Reynolds' conviction, the proceedings of the Amantonka court satisfied the requirements of 25 U.S.C. § 1302(c). Reynolds' counsel at tribal court met and surpassed the requirements of the relevant jurisdiction, the Amantonka Code. By satisfying these requirements, the Amantonka court did not violate the Sixth Amendment according to this case law. Therefore, his representation fulfilled the "constitutionally necessary" element of 1302(c)(2). The Amantonka code requires that non-Indian defendants be afforded the right to counsel found under Sec. 607(b), which states:

> *A public defender who holds a JD degree from an ABA accredited law school, has taken and passed the Amantonka Nation Bar Exam, and who has taken the oath of office and passed a background check, is sufficiently qualified under the Indian Civil Rights Act to represent a defendant imprisoned more than one year and any defendant charged under the Nation's Special Domestic Violence Criminal Jurisdiction.*

2 A.N.C. § 607. At his hearing in tribal court, Reynolds was appointed an attorney who "possessed a JD degree from an ABA accredited law school and was a member in good standing

of the Amantonka Nation Bar Association." R. at 7. These qualifications match and meet the requirements of the Amantonka jurisdiction as stated above.

Although petitioner contends that representation under VAWA must be "members of a state bar association," this language and intent is not reflected in VAWA or its constitutional requirements under § 1302. R. at 4. Section 1302 proscribes for indigent defendants "the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys." 25 U.S.C. § 1302(c)(2). The TLOA recognizes tribal jurisdictions as fulfilling the "any jurisdiction in the United States" requirement, and therefore the provision does not require a representative to be a member of a state bar association specifically. This language was not aimed at disempowering tribal jurisdictions, but rather at eliminating nonlawyers from representing indigent defendants facing VAWA claims. Seth Fortin, *The Two-Tiered Program of the Tribal Law and Order Act*, 61 UCLA L. Rev. Discourse 88, 100 (2013).

Furthermore, Reynolds' representation by a member of the Amantonka Bar Association and not by a representative licensed by the state of Rogers provided him with more culturally specific and informed counsel. Many tribal laws include specific culture and cosmology and do not align specifically with Anglo-American criminal justice. *Id*. at 101. Under this system, it is possible that "an American-educated lawyer without knowledge of [tribal] culture ended up somewhat lost at sea in tribal court, while an experienced lay advocate could in fact obtain a favorable result for his client." *Id*. at 101-102. However, this issue is moot as petitioner has not found any material difference between the Amantonka bar exam and the Rogers bar exam, or any difference in quality between his Amantonka advocate and any potential counsel from the state

of Rogers. R. at 7. Therefore, Reynolds was sufficiently represented under the requirements of § 1302(c)(2).

Secondly, the Amantonka Nation Code fulfills the requirement that it is a jurisdiction that "applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys." 25 U.S.C. § 1302(c). Title 2 Chapter 7 of the Amantonka Nation Code outlines extensive ethical requirements of its attorneys, which include confidentiality of information, "[h]onesty toward the Amantonka Nation [c]ourts," and "[f]airness to [o]pposing [p]arty," among many others. 2 A.N.C. Canon 6, 13-14. Through the meticulous detailing of standards, the Amantonka Nation Code ensures competence and professional responsibility of its attorneys, thus fulfilling the requirement of § 1302(c).

Because Reynolds was satisfactorily represented according to this tribal court jurisdiction, his right to counsel was fulfilled. Therefore, this Court should find that the Amantonka court achieved the "constitutionally necessary" element of § 1302(c).

## CONCLUSION

Amantonka Nation has jurisdiction over Reynolds because he is a tribal citizen. Therefore, the due process provisions of the SDVCJ created by VAWA are not implicated. Even if the due process provisions of VAWA's SDVCJ were implicated, the counsel provided to Reynolds by the Amantonka Nation met the standards imposed by VAWA.

Therefore, the decision of the Thirteenth Circuit Court of Appeals should be upheld.

## APPENDIX A: AMANTONKA TRIBAL CODE

### Title 2, Chapter 1. The Amantonka Nation District Court

* * *

Sec. 105. Criminal Jurisdiction of the Court.

(a) *Generally*. The Amantonka Nation District Court is vested with jurisdiction to enforce all provisions of this Code, as amended from time to time, against any person violating the Code within the boundaries of the Amantonka Nation's Indian country.

* * *

### Title 2, Chapter 5. Attorneys and Lay Counselors

**Sec. 501. Qualifications for admissions as attorney or lay counselor.**

(a)Attorneys. No person may practice as an attorney before the District Court or Supreme Court unless admitted to practice and enrolled as an attorney of the District Court upon written application. 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.

* * *

**Sec. 503. Right to counsel.**

* * *

(3) Any Indian defendant accused of a crime pursuant to the Nation's criminal jurisdiction, who satisfies the Nation's standard for indigence, is entitled to appointment of a public defender qualified under Title 2 Section 607(a).

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### Title 2, Chapter 6. District Court Prosecutor and Public Defender

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**Sec. 607. Qualifications.**

(a)To be eligible to serve as a public defender or assistant public defender, a person shall:

(1)Be at least 21 years of age;

(2)Be of high moral character and integrity;

(3)Not have been dishonorably discharged from the Armed Services;

(4)Be physically able to carry out the duties of the office;

(5)Successfully completed, during their probationary period, a bar examination administered as prescribed by the Amantonka Nation's Executive Board; and

(6)Must have training in Amantonka law and culture.

(b)A public defender who holds a JD degree from an ABA accredited law school, has taken and passed the Amantonka Nation Bar Exam, and who has taken the oath of office and passed a background check, is sufficiently qualified under the Indian Civil Rights Act to represent a defendant imprisoned more than one year and any defendant charged under the Nation's Special Domestic Violence Criminal Jurisdiction.

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## APPENDIX A: AMANTONKA TRIBAL CODE

### Title 2, Chapter 7 Code of Ethics for Attorneys and Lay Counselors

**Canon 1. Competence.**
An attorney shall provide competent representation to a client. Competent legal representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. As employed in this Code, the term "attorney" includes lay counselors.

**Canon 2. Scope of Representation.**
An attorney shall abide by a client's wishes concerning the goals of legal representation and shall consult with the client concerning the means of pursuing those goals. Attorneys should not pursue legal goals without their client's approval, nor should they assist a client in criminal or fraudulent activity.

**Canon 3. Diligence.**
An attorney shall act with reasonable diligence and promptness in representing a client. Unless the client agrees to modify the scope of representation, the attorney shall complete all matters undertaken on the client's behalf.

**Canon 4. Communication.**
An attorney shall keep a client well informed and shall respond promptly to requests for information. An attorney must fulfill reasonable client requests for information in order to help the client make intelligent decisions about his or her case.

**Canon 5. Fees.**
(1) An attorney's fees shall be reasonable. The determination of reasonable fees should include the following consideration: (a) The experience and ability of the attorney providing the legal services; (b) The time and skill involved in performing the service; and (c) The fee customarily charged on the Amantonka Nation’s Reservation and surrounding communities for similar services. (2) A fee may be contingent on the outcome of the representation. A contingent fee agreement should however, be in writing and state the method by which it shall be calculated. An attorney shall not enter into a fee arrangement contingent upon securing a divorce or upon the amount of support or property settlement thereof. Neither shall an attorney enter into a contingent fee arrangement for the representation of a defendant in a criminal case. (3) Representation should not be denied people because they are unable to pay for legal services. The legal profession encourages provision of le- gal services at no fee or at a substantially reduced fee in these circumstances.

**Canon 6. Confidentiality of Information.**
An attorney shall not reveal information communicated by a client. However, an attorney may reveal information to the extent that attorney reasonably believes necessary to prevent a client from committing a criminal act likely to result in death or serious bodily harm. An attorney may also reveal information necessary to allegations in any proceedings concerning

the attorney's representation of a client. An attorney, lay counselor, prosecutor or public defender shall not discuss any case, open or closed, with any member of the Amantonka Nation legislative or executive branches of government, except when a discussion is solicited by the legislative or executive branches of government. Attempts to discuss or discussion with said individuals shall result in sanctions, including disbarment, by the Amantonka Nation District Court.

**Canon 7. Conflict of Interest.**
(1) An attorney should not represent a client if that representation will be adverse to the interests of another client, or if the attorney's own interests conflict with those of a client, unless: (a) The attorney reasonably believes the representation will not adversely affect his or her ability to represent each client fully and competently; and (b) Each client consents after disclosure and consultation. Examples of conflict of interest between clients include: representing opposing par- ties in litigation, representing more than one defendant in a criminal case, and representing a client against a party who is a client in another case, even if the two cases are unrelated. Examples of conflicts of interest between a lawyer and client include: entering into any business transaction with a client and acquiring any financial interest adverse to the client. (2) An attorney who had formerly represented a client shall not thereafter represent another client in a related matter in which that client's interest are adverse to the interests of the former client, unless the former client consents after consultation. (3) An attorney shall not represent a client in a matter in which that attorney served as a judge or arbitrator without the consent of all parties to the proceeding.

**Canon 8. Client under Disability.**
When an attorney believes a client is incapable of acting in his or her own interest the attorney shall seek the appointment of a guardian for the client. Otherwise, the attorney shall asfar as practicable maintain a normal attorney-client relationship with the client.

**Canon 9. Safekeeping Property.**
A client's property held by an attorney in connection with representation of that client shall be kept separate from the attorney's own property. Funds shall also be kept in separate accounts.

**Canon 10. Declining or Terminating Representation.**
(1) An attorney shall terminate representation if a client requests that the attorney engage in illegal or fraudulent conduct or conduct that violates the Amantonka Nation Code of Ethics. (2) An attorney may withdraw from representing a client if withdrawal can be accomplished without adversely affecting the client's interests, or if: (a) The client fails substantially to meet an obligation to the attorney regarding the attorney's services and the client has been notified that the attorney will withdraw if the obligation is not met; (b) The representation will result in an unreasonable financial burden on the attorney or has been made unreasonably difficult by the client; or (c) Other good cause for withdrawal exists. When the attorney is representing the client in a Court matter, withdrawal can only be accomplished upon motion to the Court. When ordered by a court of the Amantonka Nation to continue representation, an attorney shall do so despite good cause for terminating the representation. If termination of representation is granted, an attorney shall take reasonable steps to protect

the client's interests. Such steps include giving reasonable notice and time to appoint new counsel and surrendering papers and property to which the client is entitled.

**Canon 11. Advice and Meritorious Claims.**
When representing a client an attorney shall give candid advice based on his or her best professional judgment. An attorney shall not raise or controvert issues without a substantial basis for doing so.

**Canon 12. Expediting Litigation.**
An attorney shall make reasonable effort to expedite litigation consistent with a client's interests. An attorney shall not engage in delaytactics designed solely to frustrate the opposing party's attempt to obtain a legal remedy.

**Canon 13. Honesty toward The Amantonka Nation Courts.**
An attorney shall act with honesty toward the Amantonka Nation Courts. An attorney shall not knowingly make false statements to the Courts or knowingly offer false evidence. Nor shall an attorney fail to disclose significant legal authority directly adverse to his or her client's position.

**Canon 14. Fairness to Opposing Party.**
An attorney shall act in a manner fair to the opposing party. In order that fair access to evidence be

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**Title 3, Chapter 2 Naturalization**

**Section 201. Eligibility**
In recognition of and accordance with the Amantonka Nation's historical practice of adopting into our community those who marry citizens of the Amantonka Nation, the Amantonka National Council has hereby created a process through which those who marry a citizen of the Amantonka Nation may apply to become a naturalized citizen of the Amantonka Nation. Any person who has
(a) Married a citizen of the Amantonka Nation, and
(b) Lived on the Amantonka reservation for a minimum of two years

May apply to the Amantonka Citizenship Office to initiate the naturalization process.

**Section 202. Process**
To become a naturalized citizen of the Amantonka Nation, applicants must
(a) Complete a course in Amantonka culture;
(b) Complete a course in Amantonka law and government;
(c) Pass the Amantonka citizenship test;
(d) Perform 100 hours of community service with a unit of the Amantonka Nation government.

**Section 203. Citizenship Status**
Upon successful completion of the Naturalization process, the applicant shall be sworn in as a citizen of the Amantonka Nation. The name of each new citizen shall be added to the Amantonka Nation roll, and the new citizen shall be issued an Amantonka Nation ID card. Each new citizen is thereafter entitled to all the privileges afforded all Amnatonka citizens.

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**Title 5 - Criminal code**
**Sec. 244. Partner or family member assault.**
(a) A person commits the offense of partner or family member assault if the person:

(1) intentionally causes bodily injury to a partner or family member;

* * *

(3) intentionally causes reasonable apprehension of bodily injury in a partner or family member.

(b) For the purpose of this section, the following definitions apply:

* * *

(2) *Partners* means spouses, former spouses, persons who have a child in common, and persons who have been or are currently in a dating or ongoing intimate relationship.

(c) Violation of this section carries with it a penalty of

- a minimum of 30 days imprisonment and a maximum of three years imprisonment; and/or
- a fine of up to $5000; and/or
- restitution in an amount determined by the District Court; and/or
- participation in a rehabilitation program; and/or
- a term of community service as established by the District Court.

## APPENDIX B: INDIAN CIVIL RIGHT ACT

### 25 U.S.C. § 1302. Constitutional Rights

(a) In general. No Indian tribe in exercising powers of self-government shall—

* * *

(6) deny to any person in a criminal proceeding the right to at his own expense to have the assistance of counsel for his defense (except as provided in subsection (b));
(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

* * *

(b) Offenses subject to greater than 1-year imprisonment or a fine greater than $ 5,000.

* * *

(c) Rights of defendants. In a criminal proceeding in which an Indian tribe, in exercising powers of self-government, imposes a total term of imprisonment of more than 1 year on a defendant, the Indian tribe shall--

(1) provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution; and
(2) at the expense of the tribal government, provide an indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys;

* * *

(d) Rights of defendants. In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant--

(1) all applicable rights under this Act;
(2) if a term of imprisonment of any length may be imposed, all rights described in section 202(c)

* * *

(4) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant.

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### 25 U.S.C.A. § 1303 Habeas corpus

The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.

## APPENDIX C: VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013

**25 U.S.C.A. § 1304. Tribal jurisdiction over crimes of domestic violence**

(b) Nature of the criminal jurisdiction

(1) In general

Notwithstanding any other provision of law, in addition to all powers of self-government recognized and affirmed by sections 1301 and 1303 of this title, the powers of self-government of a participating tribe include the inherent power of that tribe, which is hereby recognized and affirmed, to exercise special domestic violence criminal jurisdiction over all persons.

* * *

(d) Rights of defendants

In a criminal proceeding in which a participating tribe exercises special domestic violence criminal jurisdiction, the participating tribe shall provide to the defendant--

(1) all applicable rights under this Act;

(2) if a term of imprisonment of any length may be imposed, all rights described in section 1302(c) of this title;

(3) the right to a trial by an impartial jury that is drawn from sources that--

(A) reflect a fair cross section of the community; and

(B) do not systematically exclude any distinctive group in the community, including non-Indians; and

(4) all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of the participating tribe to exercise special domestic violence criminal jurisdiction over the defendant.

## APPENDIX D: INDIAN COUNTRY CRIMES ACT

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

## APPENDIX E: UNITED STATES CONSTITUTION

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### FIFTH AMENDMENT

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to

* * *

have the Assistance of Counsel for his defence.

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### FOURTEENTH AMENDMENT

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *