No. 19-231

IN THE

SUPREME COURT OF THE UNITED STATES

MARCH 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

ON WRIT OF CERTIORARI

TO THE U.S. COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

Team No. **410**

Counsel for Respondents

TABLE OF CONTENTS

TABLE OF CONTENTS
TABLE OF AUTHORITIES
QUESTIONS PRESENTED
STATEMENT OF THE CASE
I. STATEMENT OF THE FACTS
II. STATEMENT OF THE PROCEEDINGS
SUMMARY OF ARGUMENT
ARGUMENT
I. **PETITIONER IS SUBJECT TO THE AMANTONKA NATION'S JURISDICTION BECAUSE OF THE TRIBE'S INHERENT SOVEREIGNTY TO DETERMINE TRIBAL MEMBERSHIP OR IN THE ALTERNATIVE BECAUSE OF THE SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.**
A. There Is No Universally Accepted, Or Controlling Federal Definition Of The Term "Indian."
B. Indian Tribes Have An Inherent Sovereign Right To Define And Determine Their Own Tribal Membership, And Mr. Reynolds Has Been Found An Indian Through This Process.
C. Even If This Court Finds That Mr. Reynolds Is Not Indian Due To Lack Of Blood Quantum, The Amantonka Nation Still Has Criminal Jurisdiction Over Reynolds As A Non-Indian Under The Special Domestic Violence Criminal Jurisdiction Of VAWA.
II. **THE PETITIONER'S COURT APPOINTED ATTORNEY FULFILLS THE LEGAL REQUIREMENTS SET FORTH BY TRIBAL CODE AND CONGRESSIONAL STATUTES**
A. The Amantonka Nation provides procedural safeguards that go beyond the legal tribal and statutory requirements.
B. Because there is no national uniform bar examination and different jurisdictions retain the authority to determine who is to be admitted to practice law, the Amantonka Bar Examination is a proper assertion of its authority as an inherent sovereign.
C. Statistics demonstrate that the Special Domestic Violence Criminal Justice system is fair and upholds the rights of defendants.
D. The Amantonka Nation's Code and the SDVCJ under VAWA passes Constitutional muster and is a proper expression of the tribe's inherent sovereignty.
1. The Constitution does not limit Congress's power to remove common law barriers to exercises of tribal sovereignty.
CONCLUSION

TABLE OF AUTHORITIES

CASES

Cherokee Intermarriage Cases, 203 U.S. 76 (1906)..... 7
Cherokee Nation v. Georgia, 30 U.S. 1 (1831)..... 6, 11, 13
Duro v. Reina, 495 U.S. 676, 688 (1990)..... 13
Morton v. Mancari, 417 U.S. 535, 555 (1974)..... 11
Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978)..... 7, 13
Roff v. Burney, 168 U.S. 218 (1897)..... 6
United States v. Bryant, 136 S. Ct. 1954, 1959 (2016).....
United States v. Kagama,118 U.S. 375, (1886)..... 6, 13
United States v. Lara, 541 U.S. 193, 196 (2004)..... 14
United States v. Rogers,45 U.S. 567 (1846)..... 5
Williams v. Lee, 358 U.S. 217, 220 (1959)..... 13
Worcester v. Georgia,31 U.S. 515, 559 (1832)..... 6, 13

STATUTES

18 U.S.C. § 1151 (1949)..... 4
25 U.S.C. § 1301(2) (2012)..... 14
25 U.S.C. § 1302 (2012)..... 8, 11, 14
25 U.S.C. § 1304..... 7, 8, 13, 15
25 U.S.C.S. § 1603 (1976)..... 5
25 U.S.C.S. § 1903 (1978)..... 4

OTHER AUTHORITIES

Angela R. Riley, *Crime and Governance in Indian Country*, 63 UCLA L. Rev. 1564, 1617 (2016).....12
Cohen's Handbook of Federal Indian Law § 7.01 (Nell Jessup Newton ed., 2012)..... 11
Congressional Record 159:21 (February 11, 2013).....
Congressional Record 159:29 (February 28, 2013)..... 14
S. Rep. No. 112-153, at 9 (2012)..... 12

QUESTIONS PRESENTED

I. Whether Petitioner Robert Reynolds is subject to the Amantonka Nation under the Special Domestic Violence Criminal Jurisdiction (hereinafter "SDVCJ") or in the alternative is subject to the Amantonka jurisdiction through the tribe's inherent sovereignty.

II. Whether Petitioner's court-appointed legal counsel either under the standards of an Indian defendant or a non-Indian defendant satisfy tribal, statutory, and constitutional requirements.

STATEMENT OF THE CASE

I. Statement of the Facts

This appeal arises out of, Petitioner Robert R. Reynolds' improper belief that the Amantonka Nation lacks criminal jurisdiction over him on the basis of his claim that he is a non-Indian by federal definition, as well as Petitioner's improper belief that the attorney appointed to him was inadequate as a matter of law. Opinion of the Supreme Court of the Amantonka Nation ¶¶ 5-7, hereinafter "Op."

Petitioner Reynolds and his wife Lorinda, met while they were both students at the University of Rogers. Op. ¶ 1. At the time that they met, Reynolds was a non-Indian and Lorinda was, and still is, a citizen of the Amantonka Nation. Id. The Amantonka Nation is a federally-recognized tribe whose reservation is located within the State of Rogers, the 51st state of the United States. Id. Reynolds and Lorinda began a romantic relationship, and after graduation, the two got married. Id. Both Reynolds and Lorinda found jobs on the Amantonka Nation Reservation. Id. Lorinda worked as an accountant at the Amantonka casino, and Reynolds as a manager at the Amantonka shoe factory. Id. The couple then moved into an apartment in the tribal housing complex and began saving to buy a house. Id.Two years after the couple got married, Reynolds sought out to become a naturalized citizen of the Amantonka Nation. Id.

Reynolds applied to become a naturalized citizen, successfully completed the process, took the oath of citizenship, and received his Amantonka Nation ID card. Id.

One year after Reynolds became a citizen of the Amantonka Nation, he lost his job when the Amantonka shoe factory went out of business. Op. ¶ 2. Reynolds was out of work for ten months, and during that ten months is when Reynolds and Lorinda's marriage took a dark turn and became increasingly troubled. Id. During his ten months of unemployment, Reynolds began drinking heavily and became very verbally abusive towards his wife. Op. ¶ 3.

On June 15, 2017, Amantonka Nation police responded to a call at the Reynolds shared home. Op. ¶ 3. While this was the first time that the police actually saw evidence of physical abuse, it was not the first time the police had been called to Reynolds and Lorinda's home. Id. According to the evidence presented at trial, Robert Reynolds struck his wife across her face with an open palm. Id. Reynolds struck his wife across her face, with so much force, that he caused her to fall to the ground, which resulted in Lorinda experiencing serious bodily injury. Id. During her fall, Lorinda's torso struck their coffee table so hard, that her rib cracked. Id.

The responding officer arrested Reynolds and transported him to the Amantonka Nation Jail. Op. ¶ 4. The next day, the Amantonka Nation's chief prosecutor filed a complaint charging Reynolds with violating Title 5 Section 244 of the Amantonka Nation Code. Id. The Amantonka Nation District Court denied Reynolds' pretrial motions and set the case for trial. Id. A jury found Reynolds guilty, and this appeal ensued. Id.

As of July 2017 Reynolds has been continuously employed, according to the Amantonka Nation Probation Services, as a manager at a warehouse distribution center that opened up on the Amantonka Nation's reservation. Op. ¶ 2.

II. **Statement of the Proceedings**

In 2017, the Amantonka Nation charged Robert Reynolds with violating Title 5 section 244 of the Amantonka Nation Code. Opinion of the Amantonka District Court, ¶ 1, hereinafter "A.D.C." Reynolds filed three pre-trial motions asserting that he is a non-Indian and therefore beyond the jurisdiction of the Amantonka tribe, as a non-Indian he is entitled to a court appointed attorney under the Special Domestic Violence Criminal Jurisdiction, and that his indigent counsel is insufficiently qualified to serve as his counsel. A.D.C. ¶¶ 5-7. The trial court denied all three motions and found Reynolds guilty. A.D.C. ¶ 7. The trial court then sentenced Reynolds to seven months of incarceration, $5,300 in restitution feeds, court mandated batterer and alcohol treatment program, and a $1,500 fine. A.D.C. ¶ 9.

Reynolds subsequently submits an appeal to the Amantonka Supreme Court. Op. ¶ 1. The arguments raised on appeal mirror those made in the lower court - that he is a non-Indian and therefore not subject to the tribe's criminal jurisdiction, his court-appointed counsel does not meet the standards articulated in the 2013 Violence Against Women Act (hereinafter "VAWA"), and in the alternative, if he were to be classified as an Indian, the discrepancies between the an attorney for an Indian and attorney for a non-Indian violate equal protection. Op. ¶¶ 6-10. The Amantonka Supreme Court denies all three of Reynolds' contention and affirms his conviction. Id.

Petitioner Reynolds files a writ for Habeas Corpus guaranteed under 25 U.S.C. § 1303 with the U.S. District Court for the District of Rogers. The District Court finds that the tribe failed to provide Petitioner with proper defense counsel and thereby grants the writ of habeas corpus. District Court ¶¶ 1-4. The U.S. Court of Appeals for the Thirteenth Circuit, however, reverses the previous court's decision and reaffirms the rationale articulated by the Amantonka

Nation Supreme Court. U.S. Court of Appeals ¶ 1. Reynolds then submits a petition for a Writ of Certiorari requesting that this Court decide the questions presented

SUMMARY OF ARGUMENT

The US District Court for the District of Rogers erred in determining that Robert R. Reynolds cannot be an "Indian" for purposes of criminal jurisdiction. Further, the Amanktonka Nation did not fail to provide Mr. Reynolds with the indigent defense counsel required under the 2013 reauthorization of the Violence Against Women Act (hereinafter VAWA).

Alternatively, this Court should find that Mr. Reynolds is in fact "Indian" for purposes of criminal jurisdiction, on the basis of the tribe's inherent sovereign right in defining and determining their own tribal membership. Additionally, the court appointed attorney to represent non-Indian Petitioner Robert Reynolds meets both tribal code and the statutory requirements under the Special Domestic Violence Criminal Jurisdiction. The Petitioner's public defender graduated and possess a JD degree from an accredited ABA law school and is in good standing with the Amantonka Nation Bar Association.

ARGUMENT

I. PETITIONER IS SUBJECT TO THE AMANTONKA NATION'S JURISDICTION BECAUSE OF THE TRIBE'S INHERENT SOVEREIGNTY TO DETERMINE TRIBAL MEMBERSHIP OR IN THE ALTERNATIVE BECAUSE OF THE SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION.

Petitioner Mr. Reynolds appeals this case on the false presumption that the Amantonka Nation does not have criminal jurisdiction over him, based on his claim that he is a non-Indian, despite the fact that Mr. Reynolds actively, voluntarily, and intentionally sought out citizenship with the Amantonka Nation, and was successful in his efforts in doing so. It is highly likely that

the Amantonka Nation would have criminal jurisdiction over Mr. Reynolds under the 2013 reauthorization of the Violence Against Women Act (VAWA), regardless of whether or not Reynolds is found to be considered Indian. However, for the purposes here, I will argue that Mr. Reynolds is in fact considered Indian, and that the Amantonka Nation was correct in asserting their jurisdiction over him as an Indian and member of their tribe.

A. There Is No Universally Accepted, Or Controlling Federal Definition Of The Term "Indian."

Mr. Reynolds claims that the Amantonka Nation lacks criminal jurisdiction over him, on the basis that he is not Indian by federal definition. Reynolds further states that the federal definition of "Indian" controls, and that the definition requires that a person possess some degree of Indian blood and be recognized as a member of a tribal community. This is simply not true. There is a universally accepted definition of "Indian Country," which was set out by the Indian Country Crimes Act. The definition states that the term "Indian Country" 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. 18 U.S.C. § 1151 (1949).

However, for purposes of determining criminal jurisdiction, there is yet to be a concrete and universally accepted definition of the term "Indian." While the Indian Child Welfare Act provides a more broad definition and defines "Indian" as: any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in

section 7 of the Alaska Native Claims Settlement Act. 25 U.S.C.S. § 1903 (1978). The Indian Health Care Improvement Act provides a more narrow definition and defines "Indian" as: any person who is a member of an Indian tribe, as defined in subsection (d) [para. (14)] hereof, except that, for the purpose of sections 102 and 103 [25 USCS §§ 1611 and 1612], such terms shall mean any individual who (A), irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or (B) is an Eskimo or Aleut or other Alaska Native, or (C) is considered by the Secretary of the Interior to be an Indian for any purpose, or (D) is determined to be an Indian under regulations promulgated by the Secretary. 25 U.S.C.S. § 1603 (1976). Despite their differences, neither definition states that an individual must be some degree of Indian blood. While there are various cases that have also addressed the issue of who is considered Indian, the decisions of those cases have left much room for interpretation and confusion. Therefore, finding a universal federal definition of "Indian" is not as simple as Mr. Reynolds would like to suggest, and there is no "controlling" federal definition.

Petitioner may argue that the most widely accepted test for determining who is an Indian and who is not, is a two prong test which was established in The United States Supreme Court case of United States v. Rogers, 45 U.S. 567 (1846). This test looks at whether or not an individual is of Indian descent as well as whether or not the individual is recognized by a federally recognized tribe, but the test does not set any specific blood quantum guidelines. However, the right to define and control membership is a central part of a tribe's inherent

sovereignty and Congress should give deference to tribes, and allow them to establish their own membership criteria in order to determine who is Indian and who is not.

B. Indian Tribes Have An Inherent Sovereign Right To Define And Determine Their Own Tribal Membership, And Mr. Reynolds Has Been Found An Indian Through This Process.

Precedence has shown that Indian Nations have inherent sovereignty that is institutionally recognized by the United States, which means that tribes have the right to make their own laws and be governed by them. Cherokee Nation v. Georgia established that Indian tribes are a distinct political society, separated from others, capable of managing their own affairs and governing themselves, and that the tribes have inherent sovereignty, which predated the United States and its constitution. 30 U.S. 1, 16 (1831). Worcester v. Georgia further established Indian nations as independent entities, and that since Indian tribes are considered to be sovereign nations, states do not have the right to impose laws on Indian nations. 31 U.S. 515, 559 (1832). These cases establish that tribes were never divested of their inherent sovereignty. From these foundational principles of inherent tribal sovereignty, the court should uphold that a tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community. See Roff v. Burney, 168 U.S. 218 (1897); Cherokee Intermarriage Cases, 203 U.S. 76 (1906).

Additionally, the determination of who is a tribal member is an internal matter of the tribe. As stated in United States v. Kagama, Indian tribes are a separate people who have the power to regulate their internal and social relations. 118 U.S. 375, 382 (1886). The Amantonka set forth a fairly sophisticated and extensive process for those who wish to become members of the Amantonka Nation. Petitioner Reynolds voluntarily and successfully completed this process, and took an oath in order to become a naturalized citizen of the Amantonka Nation. Title 3,

Chapter 2 of the Amantonka Nation Code provides in detail both the eligibility and process requirements an individual must meet in order to become a naturalized citizen of the Amantonka Nation. The eligibility portion, section 201, states that 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. The process portion, section 202, states that 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 states that upon successful completion of the Naturalization process, the applicant shall be sworn in as a citizen of the Amantonka Nation and that each new citizen is thereafter entitled to all the privileges afforded all Amantonka citizens. Allowing Petitioner to relinquish his status as an Indian strictly for criminal jurisdiction purposes, while simultaneously allowing him to enjoy all of the other privileges afforded to him as a citizen of the Amantonka Nation, would not only be disrespectful to the tribe, but would also be a direct infringement on the tribe's inherent sovereignty and right to govern their own internal affairs.

Petitioner may argue however, that due to the case precedent set in Oliphant v. Suquamish Indian Tribe 435 U.S. 191 (1978) tribal courts do not have inherent sovereign authority over non-Indians who commit crimes on the reservation. Oliphant divested tribes of their criminal jurisdiction over non-Indians, and held that without an affirmative delegation from Congress, tribes do not have jurisdiction to try non-Indians. In this current case however this argument would prove to be moot, as there has been an affirmative delegation from Congress, and that is the 2013 reauthorization of the Violence Against Women Act.

C. Even If This Court Finds That Mr. Reynolds Is Not Indian Due To Lack Of Blood Quantum, The Amantonka Nation Still Has Criminal Jurisdiction Over Reynolds As A Non-Indian Under The Special Domestic Violence Criminal Jurisdiction Of VAWA.

VAWA explicitly granted Indian tribes Special Domestic Violence Criminal Jurisdiction over non-Indians, and states that a participating tribe may exercise special domestic violence criminal jurisdiction over a defendant only if the defendant:

> (i) resides in the Indian country of the participating tribe;
> (ii) is employed in the Indian country of the participating tribe; or
> (iii) is a spouse, intimate partner, or dating partner of--
> (I) a member of the participating tribe; or
> (II) an Indian who resides in the Indian country of the participating tribe.
> 25 U.S.C.S. § 1304 (2013).

Since Mr. Reynolds resides in the Indian country of the participating tribe, is also employed in the Indian country of the participating tribe, and is also the spouse of a member of the participating tribe, then the Amantonka Nation is proper in exercising criminal jurisdiction over Reynolds, whether or not he is found to be Indian by the courts or any federal definition. If the court determines that the Amantonka Nation does not have the inherent sovereign right to deem Mr. Reynolds an Indian, then Mr. Reynolds would be considered a non-Indian subject to the Special Domestic Violence Criminal Jurisdiction of the Amantonka Nation.

II. THE PETITIONER'S COURT APPOINTED ATTORNEY FULFILLS THE LEGAL REQUIREMENTS SET FORTH BY TRIBAL CODE AND CONGRESSIONAL STATUTES

Petitioner Robert Reynolds claims he has not been appointed adequate counsel as required under the 2013 Violence Against Women Act's Special Domestic Violence Criminal Jurisdiction. The statute grants "criminal jurisdiction that a participating tribe may exercise under this section but could not otherwise exercise." 25 U.S.C. § 1304(a)(6) (Supp. 2013). In addition to granting criminal jurisdiction to prosecuting tribes that is narrow in scope, Congress requires

tribes to provide defendants all rights guaranteed under the Indian Civil Rights Act (ICRA). 25 U.S.C. § 1302(c). The due process rights under ICRA that Congress expressly mandates also include those amendments established by the Tribal Law & Order Act. Id. Here, the applicable federal laws require the participating tribe, in this case the Amantonka Nation, to:

> "(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 appropriately professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys." 25 U.S.C. §§ 1302(c)(1) – (c)(2).

In compliance with VAWA, the Amantonka Nation code directly reflects the requirements under the Special Domestic Violence Criminal Jurisdiction. More specifically, the tribal code guarantees a non-Indian defendant who meets the tribe's standards for indigence to be appointed a public defender. Amantonka Nation Code Title 2, Attorneys an Lay Counselors, Chapter 5, Section 503(2). In order to be qualified to practice as a public defender for a non-Indian defendant, attorneys must hold a JD degree from an accredited ABA law school, pass the Amantonka Nation Bar Exam, pass a background check, and 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." Title 2, Chapter 6, District Court Prosecutor and Public Defender, Section 607(b).

Accordingly, the court appointed attorney to represent non-Indian Petitioner Robert Reynolds meets both tribal code and the statutory requirements under the SDVCJ. The Petitioner's public defender graduated and possess a JD degree from an accredited ABA law school and is in good standing with the Amantonka Nation Bar Association. The Petitioner, however, may allege that he is classified as an Indian and therefore the minimum requirements under Section 607(a) of the

Amontonka Nation Code which differ from the requirements of a public defender for a non-Indian, is a violation of equal protection. Under the tribe's code, in order to be qualified as a public defender for an Indian defendant, a lawyer must:

> " (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 Amontonka Nation's Executive Board; and (6) Must have training in Amantonka law and culture." Amontonka Nation Code, Title 2, Chapter 6, Chapter 607(a).

Here, the Petitioner's public defender satisfies the non-Indian defendant's lawyer requirements and surpasses the qualifications for an Indian defendant's lawyer. In fact, every public defender serving the Amantonka Nation holds a JD degree from an ABA accredited law school, and therefore all meet the tribal requirements for indigent counsel for both Indian and non-Indian defendants.

A. The Amantonka Nation provides procedural safeguards that go beyond the legal tribal and statutory requirements.

The Petitioner may assert that his court-appointed counsel does not satisfy the mandatory legal requirements set forth under the Violence Against Women Act. However, the Amantonka Nation Code surpasses the minimum standards required under the SDVCJ. The tribal government's additional due process protections has given Petitioner Robert Reynolds ample opportunity to seek counsel better suited to his personal preference. Tribal code dictates that Reynolds' public defender "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." Title 2, Chapter 7, Code of Ethics for Attorneys and Lay Counselors. Canon 2. Additionally, if Petitioner did not feel he was being adequately represented, the Amantonka Nation provides an escape route. He is given

the right to issue a formal written complaint to the District Court Administrator. A complaint prompts an investigation from the Tribal attorney and if probable cause is found, then a hearing will be set before the Chief Judge. Canon 22. Rule of Court for Handling Complaints against Attorneys and Lay Advocates. Additionally, the tribe maintains a process in which attorneys that significantly violate the Code of Ethics can be disbarred or suspended from practice. Section 504, Disbarment, Title 2, Chapter 5. If Reynolds was dissatisfied by the direction of his legal counsel, the Amantonka Nation Code affords Petitioner multiple avenues to seek new counsel. In fact, Petitioner fails to point out a single error his public defender committed. The Amantonka Nation equips both Indian and non-Indian defendants with enough due process safeguards that more than satisfies any statutory or constitutional minimums.

B. Because there is no national uniform bar examination and different jurisdictions retain the authority to determine who is to be admitted to practice law, the Amantonka Bar Examination is a proper assertion of its authority as an inherent sovereign.

Both criminal and civil jurisdiction within Indian Country is a maze of competing and overlapping authorities. See Cohen's Handbook of Federal Indian Law § 7.01 (Nell Jessup Newton ed., 2012). There are three levels of sovereigns – the Federal Government, State government, and the tribe - that may have possible exclusive or concurrent jurisdiction within Indian Country and the interplay between the competing interests turns on the facts of each case. Tribes possess powers similar to a sovereign state in the extent that it has vested rights in regards to internal sovereignty (i.e., self-rule for internal affairs) but because of conquest and the Doctrine of Discovery it no longer maintains external sovereignty (e.g., the power to enter into treaties with foreign nations). See id. Here, as a political entity with a vested inherent sovereignty, it is within the purview of the Amantonka Nation to determine which law should

apply and more specifically which bar examination indigent counsel is required to take. Denying the Amantonka Nation the opportunity to assert its sovereign authority over internal affairs, directly contradicts the judicial precedence recognizing Indian tribes as a "domestic dependent nation." See Morton v. Mancari, 417 U.S. 535, 555 (1974); Cherokee Nation v. Georgia, 30 U.S. 1, 10 (1831).

According to statute, a defense attorney provided to an indigent defendant must be "licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards." 25 U.S.C. § 1302(c)(2). Absent any congressional mandate that would impose additional burdens on the tribe, "any jurisdiction" is satisfied because a federally recognized tribe is judicially and statutorily considered a proper jurisdiction. Additionally the "professional licensing standards" is met because the Amantonka Nation requires public defenders for non-Indian defendants to take and pass the Amantonka Nation Bar Exam. Because VAWA does not dictate what bar examination must be taken, the Petitioner's indigent counsel successfully satisfies the legal requirements after graduating with a JD from an accredited law school and passing the Amantonka Bar. See Amantonka Title 2, Chapter 6, Section 607(b).

C. Statistics demonstrate that the Special Domestic Violence Criminal Justice system is fair and upholds the rights of defendants.

The Five-Year Report conducted by the National Congress of American Indians analyzes the 18 participating tribes that have reported implementing the SDVCJ. VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five-Year Report, National Congress of American Indians, p. 18-19 (2018). According to the report, there have been 143 arrests, 74 convictions, 6 trials (more specifically 5 jury trials and 1 bench trial), and 5 acquittals. Id. While the statistics

may not be dispositive, it does address allegations that a non-Indian would be treated unfairly in a tribal court system in which the judge, prosecutor, and public defender area members of the tribe. In fact, "numerous parties asserted that they preferred tribal court to federal court, stating that the tribal process was less formal, less intimidating, offered more focus on treatment and showed more respect to defendants." Angela R. Riley, *Crime and Governance in Indian Country*, 63 UCLA L. Rev. 1564, 1617 (2016).

D. The Amantonka Nation's Code and the SDVCJ under VAWA passes Constitutional muster and is a proper expression of the tribe's inherent sovereignty.

Congressional intent behind the formation of VAWA and more specifically SDVCJ stems from the need to fill jurisdictional gaps that continues the systemic violence Native women face by non-Indian perpetrators who "regularly go unpunished." S. Rep. No. 112-153, at 9 (2012). As a result, VAWA was codified to include that "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." 25 U.S.C. §1304(b)(1) (2013).

Here, the Amantonka Nation is affirmed their inherent sovereignty through VAWA to exercise jurisdiction over all persons – meaning both Indian and non-Indian defendants – within the narrow context of domestic violence. This Court has been consistent in affirming tribal sovereignty, highlighting the importance of "the right of the Indians to govern themselves." Williams v. Lee, 358 U.S. 217, 220 (1959); See also Worcester v. Georgia, 31 U.S. 515, 580 (1832). Foundational to Federal Indian Law are the doctrines articulated in the Marshall Trilogy which permeate the government's modern approaches and define tribes as "semi-independent," "quasi-sovereign," "domestic dependent nations." See Oliphant v. Suquamish Indian Trib*e*, 435

U.S. 191, 196 (1978); United States v. Kagama, 118 U.S. 375, 382-83 (1886); Cherokee Nation v. Georgia, 30 U.S. 1, 10 (1831); Additionally, the judicial branch's use of the Canons of Construction to construe treaty ambiguities in favor of tribes, interpret language as Indians understood them at the time, and mandating abrogation to require clear congressional language, all support the common historical understanding that tribes, like the Amantonka Nation, retain a distinct inherent government.

1. The Constitution does not limit Congress's power to remove common law barriers to exercises of tribal sovereignty.

In 1990, this Court ruled that tribal authority within criminal enforcement did "not extend beyond internal relations among members." Duro v. Reina, 495 U.S. 676, 688 (1990). The Duro Court asserted that "the exercise of criminal jurisdiction subjects a person not only to the adjudicatory power of the tribunal, but also to the prosecuting power of the tribe, and involves a far more direct intrusion on personal liberties." Duro v. Reina, 495 U.S. at 688. More specifically, the Court determined that tribal authority is derived from the consent of its members." Id. at 693.

In response, Congress acted swiftly and passed statutory changes that effectively overruled the Duro decision. The new legislation granted tribal criminal jurisdiction over non-member Indians by defining Indian to mean "any person" that would be subject to the Major Crimes Act. 25 U.S.C. § 1302(4) (2012). Additionally, Congress added a provision that expressly states that the authority tribes have over nonmember Indians is derived from their "inherent power." 25 U.S.C. § 1301(2) (2012). Then in 2004, the "Duro-Fix" reached the Supreme Court, and the Court affirmed two things: (1) that "Congress has the constitutional power to relax restrictions that the political branches have, over time, placed on the exercise of a

tribe's inherent legal authority" and (2) that criminal jurisdiction over nonmember Indians rests on their authority rooted in inherent sovereignty. United States v. Lara, 541 U.S. 193, 196 (2004). The "Duro-fix" is demonstrative of congress's authority to expand tribal authority. In fact, Congress explained that "the Lara Court's holding that Indian tribes' status as domestic dependent nations does not prevent Congress from recognizing their inherent authority to prosecute non-members is solidly grounded in our constitutional history." "Violence Against Women Reauthorization Act of 2013." Congressional Record 159:29 (February 28, 2013).

Here, similar to the "Duro-fix" Congress has properly asserted its constitutionally grounded authority to expand the criminal jurisdiction of the participating tribes under VAWA to be able to prosecute non-Indians. Furthermore, the expansion of tribal criminal jurisdiction under SDVCJ is narrow in scope. It is only applicable if the defendant satisfies the sufficient ties to the prosecuting tribe provision, either the defendant or the victim must be an Indian and the acts must fall into one of three categories: (1) dating violence, (2) domestic violence, and (3) violations of protective orders. 25 U.S.C. § 1304(c) (Supp. 2013). SDVCJ will not cover crimes involving two strangers, two persons who do not satisfy the necessary sufficient ties, and acts between two non-Indians.

VAWA and the implementation of the SDVCJ effectively partially overturns Oliphant v. Suquamish Indian Tribe. In 1978, the Court complicated the jurisdictional maze in Indian Country when it held that "Indian tribes do not have inherent jurisdiction to try and punish non-Indians." Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 212 (1978). The Court acknowledged that the passage of the Indian Civil Rights Act provides certain due process rights to anyone in tribal court. 435 U.S. 191 at 211. While ICRA may be steps in the right direction, the Supreme Court held that "we are not unaware of the prevalence of non-Indian crime on

today's reservations which the tribes forcefully argue requires the ability to try non-Indians. But these are considerations for Congress to weigh." Id.

Here, Congress has weighed on the issue of jurisdictional gaps in protecting Native women from domestic violence by creating the SDVCJ under VAWA. Congressional record reflected that "Native American women are raped and assaulted at 2 ½ times the national average. That means more than 1 in 3 Native American women will be raped in their lifetimes and 3 in 5 will suffer from domestic assault. However, less than 50 percent of the domestic violence cases in Indian Country are prosecuted because of a gap in our legal system." Congressional Record 159:21 at S579 (February 11, 2013). Even this Court has acknowledged the staggering statistics facing Native women. "Compared to all other groups in the United States" Native American women "experience the highest rates of domestic violence." United States v. Bryant, 136 S. Ct. 1954, 1959 (2016). The Constitution does not restrict Congressional power in removing common law barriers that allow tribes to better fulfill their sovereignty. Therefore, Congress implementing SDVCJ is a proper assertion of its authority and reaffirms the Amantonka Nation's self-determination to be able to better protect its own citizens. The indigent counsel afforded to Petitioner Reynolds not only satisfies the legal requirements set under tribal code, but also is aligned statutorily and constitutionally.

CONCLUSION

For the foregoing reasons, the Respondents Amantonka Nation respectfully requests that this Court affirm the decision of the U.S. Court of Appeals for the Thirteenth Circuit which subsequently affirms the decision of the Amantonka Supreme Court. We pray that the Supreme Court find that Petitioner Robert Reynolds falls within the tribe's criminal jurisdiction because he meets the standards as a non-Indian under the SDVCJ or in the alternative that he is an Indian

because the tribe has the inherent sovereignty to determine its own membership. Lastly, the Respondents request that the Petitioner's court appointed legal counsel satisfies tribal, statutory and constitutional requirements.