

CASE NO. 19-231

IN THE
Supreme Court of the United States

ROBERT R. REYNOLDS,

Petitioners,

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
United States Court of Appeals
for the Thirteenth Circuit**

BRIEF FOR THE RESPONDENTS

Team Identification Number 568

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QUESTIONS PRESENTED

- I. Whether the Amantonka Nation has criminal jurisdiction over Petitioner based on Petitioner's status as a citizen and member of the Amantonka Nation without the need to exercise Special Domestic Violence Criminal Jurisdiction.
- II. Whether the indigent counsel the Amantonka Nation provided for Petitioner satisfies the indigent counsel provisions relevant to the Amantonka Nation exercising inherent criminal jurisdiction.

STATEMENT OF THE CASE

I. STATEMENT OF THE PROCEEDINGS

The Amantonka Nation (Nation) charged Petitioner, Robert Reynold's, with partner or family member assault under Title 5, § 244 of the Amantonka Nation Code (ANC) on June 16, 2017. (Record on Appeal, 2 (2018)). Petitioner filed three pretrial motions. (R. at 3-4.) The first challenged the Amantonka Nation's criminal jurisdiction over him and sought to have the charges against him dismissed. (R. at 3) Petitioner argued that he was a non-Indian. (R. at 3.) The District Court for the Amantonka Nation denied this motion finding that a citizen of the Amantonka Nation Petitioner is an Indian. (R. at 3.) Petitioner's second pretrial motion sought to have an attorney appointed to him according to the requirements of the Nation's exercise of Special Domestic Violence Jurisdiction. (R. at 3.) The court again denied the motion because Petitioner "is a member of the Amantonka Nation and is therefore an Indian." (R. at 3.) Petitioner's final pretrial motion alleged that the counsel appointed to him was insufficiently qualified which was denied by the court. (R. at 3-4.) Petitioner argued that the Violence Against Women Reauthorization Act of 2013 requires appointed counsel to be a member of a state bar to satisfy the requirements for the Nation to exercise SDVCJ. (R. at 4.) After denying of all of Petitioner's pretrial motions the court set a trail date for August 14, 2017. (R. at 4.)

Following his trial in the District Court for the Amantonka Nation a jury found Petitioner guilty. (R. at 5.) Petitioner moved to set the verdict aside on the same grounds as his pretrial motions. (R. at 5.) The court again denied the motions and sentenced Petitioner to seven months incarceration, \$1,500 fine, and \$5,300 restitution, and to attend rehabilitation programs through Amantonka Nation Social Services Division. (R. at 5.)

Petitioner appealed to the Supreme Court of the Amantonka Nation challenging his conviction on the same grounds raised in his pretrial motions. (R. at 6.) The Supreme Court of the Amantonka Nation affirmed his conviction. (R. at 6-7.) The supreme court found that the Nation possessed criminal jurisdiction over Petitioner because he was a naturalized citizen of the Amantonka Nation and therefore an Indian. (R. at 7.) The supreme court also rejected Petitioner's arguments regarding the qualifications of his appointed attorney finding no facts to support a difference between membership in a state bar and membership in the Nation's bar. (R. at 7.)

Petitioner then filed a petition for a Writ of Habeas Corpus in the U.S. District Court for the District of Rogers. (R. at 8.) The court granted Petitioner's writ of habeas corpus. (R. at 8.) The court held that Petitioner could not be an Indian because he possessed no Indian blood. (R. at 8.) And, despite Petitioner falling within the Amantonka Nation's exercise of SDVCJ, the Nation failed to provide indigent counsel satisfying the requirements of VAWA 2013. (R. at 8.)

The Amantonka Nation appealed to the U.S. Court of Appeals for the Thirteenth Circuit challenging the writ of habeas corpus granted by the U.S. District Court for the District of Rogers. (R. at 9.) The court of appeals reversed and remanded the district court's decision citing the reasoning of the Amantonka Nation Supreme Court. (R. at 9.) Petitioner

then filed his appeal with this Court challenging the reversal by the U.S. court of appeals. (R. at 10.) This Court granted certiorari. (R. at 10.)

II. STATEMENT OF THE FACTS

On June 15, 2017 Amantonka Nation police responded to a call to Lorinda and Robert Reynold's apartment in the tribal housing complex on the Amantonka Nation Reservation. (R. at 6.) Tribal officers saw evidence of physical abuse and arrested Petitioner. (R. at 6.) Evidence presented at trial showed Lorinda Reynolds, an Amantonka Nation citizen, suffered a cracked rib from falling on a coffee table after Petitioner struck her in the face. (R. at 6.)

Lorinda, who is a citizen of the Nation, and Petitioner met in college. (R. at 6.) After graduation they married, found jobs on the Amantonka Nation Reservation, and moved into their apartment in the tribal housing complex. (R. at 6.) The Amantonka Nation is a federally recognized tribe with a reservation is located within the State of Rogers. (R. at 6.) Two years later, after fulfilling the residence requirement for the naturalization process, Petitioner applied for citizenship in the Amantonka Nation. (R. at 6.) It is a longstanding tradition of the Amantonka Nation to welcome those who have married tribal members into the tribe. (R. at 7.) Amantonka Nation Code Title 3 § 201. After completing the naturalization process Petitioner was granted citizenship. (R. at 6.) Per Amantonka Nation Code Petitioner was sworn in as a citizen, added to the Amantonka Nation roll, and provided an Amantonka Nation ID card. (R. at 6.) Amantonka Nation Code Title 3 § 203.

Both Lorinda and Petitioner worked for the Nation, Lorina at the Amantonka casino and Petitioner at the Amantonka shoe factory. (R. at 6.) The Amantonka shoe factory close one year after Petitioner became a citizen. (R. at 6.) At the time of his arrest Petitioner had

been out of work for ten months. (R. at 6.) During that time Petitioner began drinking and became verbally abusive toward Lorinda. (R. at 6.) Tribal police responded to calls to the Reynold's apartment prior to the incident leading to Petitioner's arrest but lacked probable cause for an arrest. (R. at 6.)

Following Petitioner's arrest on June 15, 2017, Petitioner was charged with partner or family member assault under Title 5, § 244 of the ANC. (R. at 2.) At his arraignment in Amantonka Nation District Court Petitioner requested and was appointed a public defender under ANC Title 2, §503. (R. at 4.) Petitioner's appointed attorney holds a JD degree from an ABA accredited law school, passed the bar exam administered by the Amantonka Nation, and meets all other qualifications to serve as a public defender under Title 2, Chapter 6 of the ANC. (R. at 7.) Petitioner's appointed attorney is also in good standing with the Amantonka Nation Bar Association which requires compliance with the ANC Ethics for Attorneys and Lay Counselors. (R. at 7.) Amantonka Nation Code Title 2, Chapter 7.

SUMMARY OF ARGUMENT

I. The removal of any sovereign authority from tribes requires explicit divestment by Congress, unless held to be implicitly divested as a result of the tribes' status. Tribe retain their inherent sovereign right to make laws, define their membership, and to enforce their laws against their own tribal members. As a citizen of the Amantonka Nation Petitioner is subject to the retained criminal jurisdiction of the Amantonka Nation to try their own members and the Nation has no need to exercise Special Domestic Violence Criminal Jurisdiction (SDVCJ). Petitioner chose to become a naturalized citizen of the Nation, and after his successful completion of the naturalization process he was granted the privileges given to all Amantonka citizens. Petitioner's citizenship status and treatment by the tribe

made him a member of the Amantonka Nation. The Amantonka Nation has never been divested, explicitly or otherwise, of its right to exercise its criminal jurisdiction over its own members. Therefore, the Nation does not need to rely on SDVCJ to exercise criminal jurisdiction over Petitioner.

II. Whether the public defender the Amantonka Nation provided to Petitioner satisfies the relevant legal standard for right to counsel depends on his status as an Amantonka Nation citizen. A tribal member charged with a criminal offense under tribal law is entitled to the Indian Civil Rights Act (ICRA) right to counsel, requiring access to counsel at the defendant's own expense. Any person charged under Special Domestic Violence Criminal Jurisdiction (SDVCJ) is entitled to an attorney satisfying the indigent counsel requirement in the Tribal Law and Order Act of 2010 (TLOA). TLOA requires tribes to provide a defense attorney licensed to practice law in any jurisdiction in the United States that has licensing standards suitable to the profession and effectively provides for the competence and professional responsibility of attorneys it licenses.

The Amantonka Nation provided Petitioner with a defense attorney licensed to practice law in the Amantonka Nation courts and a J.D. degree from an ABA accredited law school. The Amantonka Nation Code has appropriate professional licensing standards and a code of professional conduct to effectively ensure competence and professional responsibility in the attorneys it licenses. It does not matter whether the Amantonka Nation has criminal jurisdiction over Petitioner as a citizen or under SDVCJ. Either way the attorney the Amantonka Nation provided at Petitioner's arraignment satisfies the relevant legal standard. Finally, because the attorney provided satisfies the most demanding right to counsel

requirement applicable to inherent tribal criminal jurisdiction there is no merit to Petitioner's equal protection claims.

ARGUMENT

This matter is before this Court because Petitioner, Robert Reynold's, presents two issues surrounding Amantonka Nation's exercise of criminal jurisdiction over him and challenging that jurisdiction with a Writ of Habeas Corpus. Petitioner first argues that the Amantonka Nation must use SDVCJ to exercise any criminal jurisdiction over him. SDVCJ is a provision included by Congress in the Violence Against Women Reauthorization Act of 2013. It relaxes the restrictions on the exercise of inherent criminal jurisdiction by tribes so that they may assert criminal jurisdiction over non-Indian defendants in intimate partner domestic violence situations. Petitioner also argues that the Amantonka Nation provided him with insufficient counsel either under SDVCJ or ICRA. Respondents request that this Court find that the Amantonka Nation has inherent criminal jurisdiction over Petitioner as a citizen of the Nation. Second, respondents request that this court find that the indigent counsel provided to Petitioner satisfies the most demanding right to indigent counsel provision applicable to tribal criminal jurisdiction.

I. THE AMANTONKA NATION CAN EXERCISE ITS INHERENT CRIMINAL JURISDICTION OVER PETITIONER WITHOUT THE NEED TO USE SPECIAL DOMESTIC VIOLENCE JURISDICTION BY VIRTUE OF PETITIONER'S STATUS AS A CITIZEN AND MEMBER OF THE AMANTONKA NATION.

The first issue presented in this case is whether the Amantonka Nation has criminal jurisdiction over Petitioner without the need to exercise Special Domestic Violence Criminal Jurisdiction. Tribal Nations retain all sovereign authority that has not been explicitly divested by statute or treaty, or held divested by implication as a result of their dependent status.

United States v. Wheeler, 435 U.S. 313, 323 (1978), *superseded by statute on other grounds*,

Duro Fix, Pub. L. No. 101-511, 104 Stat. 1892-1893 (codified as amended at 25 U.S.C. §1301 (2018)), as recognized in *United States v. Lara*, 541 U.S. 193 (2004). See also *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014). Courts have historically and continually recognized the authority of tribes “to prescribe laws applicable to [their] members and to enforce those laws by criminal sanctions.” *Wheeler*, 435 U.S. at 323. See also *Puerto Rico v. Sanchez Valle*, 136 S. Ct. 1863, 1872 (2016) (“[U]nless and until Congress withdraws tribal power – including power to prosecute—the Indian community retains that authority in its earliest form.”); *Lara*, 541 U.S. 193; *Duro v. Reina*, 495 U.S. 676, 684 (1989), superseded by statute on other grounds, Duro Fix, Pub. L. No. 101-511, 104 Stat. 1892-1893 (codified as amended at 25 U.S.C. §1301 (2018)), as recognized in *Lara*, 541 U.S. 193; *Talton v. Mayes*, 163 U.S. 376, 380 (1896). Tribes further retain the “right to define [their] own membership.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 n.32 (1978). Therefore, the Amantonka Nation has retained criminal jurisdiction over Petitioner by virtue of his status as a naturalized citizen of the Amantonka Nation, and the tribe has no need to rely on SDVCJ to exercise criminal jurisdiction over Petitioner.

In *Wheeler* this Court held that “an Indian tribe’s power to punish tribal offenders is part of its own retained sovereignty” and does not impose a double jeopardy bar. 435 U.S. at 328. In that case a Navajo tribal member charged in federal court with statutory rape moved to dismiss his indictment under the Double Jeopardy Clause because he had previously plead guilty to the lesser included offense of contributing to the delinquency of a minor in Navajo tribal court. *Id.* at 314-16. The indictment was dismissed in district court and the 9th circuit affirmed. *Id.* at 315-16. Because “prosecutions under the laws of separate sovereigns do not . . .” invoke the Double Jeopardy Clause this Court first defined the sovereign status of Indian

tribes and their power to enforce their criminal laws against tribal members. *Id.* at 317. This Court reasoned that while “no longer ‘possessed of the full attributes of sovereignty,’” tribes continue to retain many aspects of sovereignty. *Id.* at 323 (quoting *United States v. Kagama*, 118 U.S. 375, 381 (1886)). Specifically, this Court reasoned that Congress has never deprived “Indian tribes of their sovereign power to punish offenses against tribal law by” tribal members and had instead “repeatedly recognized that power.” *Id.* at 325.

In coming to its conclusion in *Wheeler*, this Court partially relied on its decision in *Talton* where the Cherokee tribe exercised its criminal jurisdiction over a Cherokee tribal member who was charged with the murder of another Cherokee tribal member in Cherokee territory. 163 U.S. at 379. There this Court held that the Fifth amendment did not apply in tribal prosecutions, reasoning that “the powers of local self government enjoyed by the Cherokee nation existed prior to the Constitution.” *Id.* at 382.

Alberty v. United States was decided by this court a month prior to *Talton*. 162 U.S. 499 (1896). In *Alberty* the defendant in the case was a former slave who had become a citizen of the Cherokee Nation under the ninth article of the 1866 treaty between the Cherokee and the United States. *Id.* at 500-01. This Court held that “for the purposes of jurisdiction . . . [the defendant] must be treated as a member of the Cherokee Nation,” because the article gave him the rights of a native Cherokee. *Id.* at 500-01. However, the victim of the case was not a tribal member or Indian. *Id.* at 501. This Court stated that if the defendant was considered the sole party “the Indian courts would have jurisdiction,” because the Cherokee nation had jurisdiction over “all cases arising in the country in which members of the Nation, by nativity or by adoption, are the sole or only parties.” *Id.* at 504. This court instead reasoned that it was the intent of Congress to make the victim of the crime the other party and held that in

criminal cases originating in tribally controlled land, the defendant is treated as one party and the victim of the crime is treated as the other party. *Id.* at 504-05.

Similar to the previous cases, in *Duro* and *Lara* the criminal defendants were both tribal members. 495 U.S. at 679; 541 U.S. at 196. However, in both cases the tribe asserting criminal jurisdiction differed from the tribe in which the defendant was a member. *Duro*, 495 U.S. at 679-81; *Lara*, 541 U.S. at 196. In *Duro* this court recognized “the longstanding recognition of tribal jurisdiction over crimes committed by tribe members,” but held that tribal criminal jurisdiction did not extend past a tribe’s own members by virtue of the dependent status of Indian tribes. 495 U.S. at 694. After, Congress passed 25 U.S.C. § 1301(2) in 1991 this court revisited the issue of tribal criminal jurisdiction over members of other tribes in *Lara*. 541 U.S. 193. There this Court again recognized the inherent tribal “power to prosecute a tribe’s own members,” and reasoned that 25 U.S.C. §1301(2) was a limited change giving tribes “additional criminal jurisdiction” that was consistent with the “traditional understating of the tribes’ status as ‘domestic dependent nations.’” *Id.* at 204 (quoting *Cherokee Nation v. Georgia*, 5 Pet. 1, 17, 8 L.Ed. 25 (1831)). This Court then held that Congress has the constitutional authority to relax previously recognized restrictions on tribal sovereignty and allow tribes to exercise criminal jurisdiction over non-member Indians as a function of the tribe’s “inherent tribal authority.” *Id.* at 207, 210.

Unlike any previous case *Oliphant v. Suquamish Indian Tribe*, decided sixteen days prior to *Wheeler*, involves two defendants who were not members of any Indian tribe. 435 U.S. 191, 194 (1978), *superseded by statute on other grounds*, Duro Fix, Pub. L. No. 101-511, 104 Stat. 1892-1893 (codified as amended at 25 U.S.C. §1301 (2018)), *as recognized in Lara*, 541 U.S. 193. While defendants were residents of the Port Madison Reservation, they

shared no other connection to the Suquamish tribe and its people or culture. 435 U.S. at 194. In that case this Court held that Indian tribal courts did not have criminal jurisdiction over non-Indians, reasoning that Indian tribes forfeited their full sovereignty “in return for the protection of the United States.” 435 U.S. at 195, 211-12.

In this case, Petitioner is a citizen and therefore a member of the Amantonka Nation. *Martinez* made clear that tribes retain the “right to define [their] own membership.” 436 U.S. at 72 n.32. The Amantonka Nation Code (ANC) lays out the process for becoming a naturalized citizen of the Nation. Amantonka Nation Code Title 3, Chapter 2. Not just anyone may become a naturalized citizen of the Nation. Those individuals, like Petitioner, wishing to do so must show connection and commitment to the Nation. Amantonka Nation Code Title 3, Chapter 2. To even be eligible for the naturalization process, Petitioner had to live within the boundaries of the Nation’s reservation for two years after marrying a citizen of the Nation. Amantonka Nation Code Title 2 §201. This requirement is a reflection of the “Nation’s historical practice of adopting into [its] community those who marry citizens of the Amantonka Nation.” Amantonka Nation Code Title 2 §201. Petitioner completed this first hurdle to naturalization by marrying Lorinda, moving to the Amantonka reservation, and residing in the tribal housing complex for at least two years. (R. at 6.) Petitioner then decided to take the next step to citizenship and applied for naturalization. (R. at 6.)

Again, the ANC defines the steps an individual must take to complete naturalization. Amantonka Nation Code Title 2 §202. In order to ensure that those like Petitioner who choose to become citizens understand the people, culture, laws, rights, and responsibilities of being an Amantonka Nation citizen the Nation requires applicants to successfully complete four tasks. First, Petitioner had to take courses in both Amantonka culture and Amantonka

law and government. Amantonka Nation Code Title 2 § 202(a)(b). Additionally, Petitioner had to perform 100 hours of community service for the Amantonka Nation with a unit of the Nation's government. Amantonka Nation Code Title 2 § 202(d). Finally, Petitioner had to pass the Amantonka citizenship test. Amantonka Nation Code Title 2 § 202(c). Petitioner successfully completed all tasks required of him and was sworn in as a citizen of the Nation. (R. at 6.) As a part of becoming a naturalized citizen of the Nation Petitioner was issued an Amantonka Nation ID card and placed on the Amantonka Nation roll. (R. at 6.) Amantonka Nation Code Title 2 § 203. Petitioner's citizenship status also "entitled [him] to all the privileges afforded all Amantonka citizens." *Id.*

Moreover, *Alberty* illustrates that Petitioner should be treated as a tribal member. In this case Petitioner has been recognized as a citizen of the Nation for over a year, and that citizenship status gives him "all the privileges afforded all Amantonka citizens." *Id.* In *Alberty*, after discussing the defendant's status as a citizen of the tribal nation with the same rights as native tribal members, this Court held that "[f]or the purpose of jurisdiction . . . [defendant] must be treated as a member of the [tribal nation]." 162 U.S. at 500-01. Thus, Petitioner here must also be treated as a member of the Nation for purposes of jurisdiction. And, though the tribal nation in *Alberty* was held not to have jurisdiction over the case, it was only because the victim was not a citizen of the tribal nation. 162 U.S. at 500, 504-05. However, in this case the victim is a citizen of the Nation. (R. at 6.)

Additionally, the District Court for the Amantonka Nation held that Defendant was "a member of the Amantonka nation" in their opinion denying Petitioner's pretrial motions, and tribes retain the authority "to define [their] own membership." (R. at 3.) *Martinez*, 436 U.S.

at 72 n.32. Thus, everything taken together shows that Petitioner's status as a naturalized citizen of the Amantonka Nation also made him a member of the Amantonka Nation.

Because Petitioner is a citizen and member of the Nation and this Court has repeatedly recognized tribal authority to exercise criminal jurisdiction over their own members, the Nation can exercise their retained criminal jurisdiction over him unless they have been expressly deprived the authority to do so by statute or treaty. *Wheeler*, 435 U.S. at 323. Nowhere in the facts is it shown that the Amantonka Nation has ever been expressly deprived of criminal jurisdiction over their tribal members and land by statute or treaty. The ANC makes clear that the Nation claims criminal jurisdiction over "any person violating the code within the boundaries of the Amantonka Nation's Indian country." Amantonka Nation Code Title 2 § 105(a). This clearly includes Petitioner, a member of the Nation residing on the reservation. (R. at 6.) In *Wheeler* this Court held that a tribe's "right of internal self-government includes the right to prescribe laws applicable to [their] members and to enforce those laws by criminal sanctions." 435 U.S. at 322. In this case the Nation has exercised their inherent right of internal self-government. Not only are the Nation's laws prescribed by extensive codification, the Nation also has both police and courts to enforce these laws. In fact, the Amantonka Nation police responded to several calls to the Petitioner's residence to enforce these laws if the need so arose, and on June 15, 2017 it did, arresting Petitioner for partner or family member assault. (R. at 3, 6.)

Additionally, even if Petitioner is only considered a citizen, and not a member of the Amantonka Nation, *Wheeler* made clear that control over internal affairs is one of the most basic and fundamental functions of tribal sovereignty. 435 U.S. at 322, 331. Unlike the defendants in *Oliphant* who, outside of residing on the reservation, shared no connections

with the tribe attempting to assert criminal jurisdiction over them, Petitioner here is clearly deeply intertwined with the Nation and its community. 435 U.S. at 194. First, it is not disputed that Petitioner is a citizen of the Nation, who works on the reservation and has resided continually on the reservation for at least four years. (R. at 3, 6.) Further, Petitioner made the choice to become a citizen of the Amantonka Nation. Citizenship was not forced upon him and had he wanted to desist the naturalization process he could have, but he did not. Citizenship in the Amantonka Nation is like citizenship in any city, state, or country, it comes with both rights and responsibilities. Possibly the most rudimentary of these is the responsibility to follow the laws or face the consequences. Petitioner failed to follow the law, he cannot now avoid the consequences.

Finally, Petitioner claims he is a non-Indian for purpose of the Nation's exercise of criminal jurisdiction. (R. at 3, 7.) To support this claim Petitioner argues that the federal definition of "Indian" controls. (R. at 7.) Lacking a statutory definition for "Indian" Petitioner relies on a test created by U.S. circuit courts. (R. at 7.) *See United States v. Bronchaeu*, 597 F.2d 1260, 1263 (9th Cir. 1979); *United States v. Dodge*, 538 F.2d 770, 786 (8th Cir. 1976); *United States v. Bruce*, 394 F.3d 1215, 1223 (9th Cir. 2005). This test requires that an individual both "possess some degree of Indian blood and be recognized as a member of a tribal community." (R. at 7.) However, Petitioner's claim fails to take several factors into account. Primarily, the judge made test for "Indian" has never been applied to the question of tribal criminal jurisdiction. *See Bronchaeu*, 597 F.2d at 1263 (applying the test to the grant of federal criminal jurisdiction over Indians by 18 U.S.C. §1153.); *Dodge*, 538 F.2d at 786 (applying the test to determine if defendants were Indians "within the meaning of 18 U.S.C. §1153['s]" grant of federal criminal jurisdiction over crimes by Indians.); *United*

States v. Bruce, 394 F.3d at 1217 (applying the test to determine if defendant should have been indicted under 18 U.S.C. §1153, providing federal criminal jurisdiction for crimes by Indians, instead of 18 U.S.C. §1152 which excepts federal criminal jurisdiction by Indians against Indians.). While this test may provide the framework for the *federal* definition for “Indian”, the question in this case is one of tribal criminal jurisdiction, not one of federal criminal jurisdiction.

This Court has also never adopted the test Petitioner is advancing for the definition of Indian when considering tribal criminal jurisdiction. In fact, this Court’s previous decisions belie the definition of “Indian” the Petitioner has presented. In *Oliphant* this Court held that Indian tribal courts did not have criminal jurisdiction over non-Indians. 435 U.S. at 195, 211-12. Then in *Lara* this Court characterized its holding in *Oliphant* as “the Court[‘s] . . . conclusion about inherent tribal authority to prosecute tribe members.” 541 U.S. at 206. This Court has thus considered tribal members to be the inverse of “non-Indians” for tribal exercise of criminal jurisdiction.

Further, in *Duro* this Court made clear that while adoption into a tribe may not bring an individual “within the federal definition of ‘Indian’ for purpose of an exemption to a federal jurisdictional provision,” an individual “could, by adoption, ‘become entitled to certain privileges in the tribe, and make himself amenable to their laws and usages.” 495 U.S. at 694 (quoting *United States v. Rogers*, 45 U.S. 567, 572-73(1846)). The decision in *Duro* went on to state that because the tribes have “broad freedom not enjoyed by any other governmental authority in this country” to define their laws and usages tribal authority should be rejected “over those who have not given the consent of the governed.” *Id.* at 694. However, unlike in *Duro* where the defendant was a not a member of the tribe attempting to

exercise their criminal jurisdiction over him, the Petitioner here is a naturalized citizen of Amantonka Nation. *Id.* at 679-81. By choosing to become a naturalized citizen of the Amantonka nation Petitioner gave his consent to the Amantonka Nation's exercise of its authority over him.

Overall, the Amantonka Nation need not rely on Special Domestic Violence Jurisdiction in order to exercise criminal jurisdiction over the Petitioner. Due to the Petitioner's status as citizen he is also a member of the Amantonka Nation. The Nation has also never given up its inherent criminal jurisdiction over its own members or had expressly removed by statute or treaty. Thus, the Amantonka Nation can exercise criminal jurisdiction over Petitioner as a member in order to enforce its laws.

II. THE AMANTONKA NATION SATISFIES THE INDIGENT COUNSEL REQUIREMENT FOR EXERCISING SPECIAL DOMESTIC VIOLENCE CRIMINAL JURISDICTION UNDER THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013.

Whether the public defender appointed to Petitioner by the Amantonka Nation satisfies the relevant legal requirements depends on his status as a citizen of the Amantonka Nation. Under the Indian Civil Rights Act (ICRA), the only legal standard relevant to assistance of counsel in criminal proceedings against an Indian tribe's own members requires the defendant have access to assistance of counsel at the defendant's own expense for criminal sentences up to 1 year. 25 U.S.C. § 1302(a)(6). Alternatively, to assert criminal jurisdiction over a non-Indian under VAWA 2013 SDVCJ a tribe must

- (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. § 1302(c), “if a term of imprisonment of any length may be imposed.” 25 U.S.C. § 1304(d)(2). While not required by federal statute, the ANC provides counsel for all defendants at the Nation’s own expense. Amantonka Nation Code, Title 2 §§ 503(2) & (3).

Petitioner does not allege that he was not provided effective assistance of counsel by his appointed counsel. Petitioner contends that his appointed counsel did not satisfy the standards established by VAWA 2013 SDVCJ over non-Indians. Alternatively, Petitioner argues that if he is determined to be a citizen of the Amantonka Nation, and therefore an Indian for the purposes of tribal criminal jurisdiction, his appointed counsel violates his right to equal protection because his appointed counsel was less qualified than the attorney a non-Indian would be entitled to. Analysis of the plain meaning of the indigent counsel provision applicable to a non-Indian charged under VAWA 2013 SDVCJ in tribal court and the policy underlying the extension of criminal jurisdiction supports finding Petitioner’s appointed counsel satisfies these requirements. In addressing Petitioner’s equal protection claim, a proper understanding of the equal protection clause in the Indian Civil Rights Act, 25 U.S.C. § 1302(a)(8), leads to the conclusion that Petitioner’s appointed counsel does not violate equal protection.

A. Counsel appointed by the Amantonka Nation to represent Petitioner satisfies the standards of the indigent counsel requirement for exercising VAWA 2013 Special Domestic Violence Criminal Jurisdiction and is therefore adequate whether or not Petitioner is an Indian.

This Court has not been presented an opportunity to assess the indigent counsel requirement for exercise of VAWA 2013 SDVCJ, nor have any lower United States courts had such an opportunity. The indigent counsel requirement applicable to SDVCJ incorporates

the indigent counsel requirement from the Tribal Law and Order Act of 2010 (TLOA), Pub. L. 111-211, § 234, 124 Stat 2258, 2280, amending ICRA. 25 U.S.C. § 1304(d)(2). The only difference between the protections provided to Indian defendants under TLOA and non-Indian defendants subject to SDVCJ is when the protection attaches. The protections for non-Indians subject to SDVCJ attach “if a term of imprisonment of any length may be imposed,” 25 U.S.C. § 1304(d)(2), while protection for Indians only attaches when “an Indian tribe . . . imposes a total term of imprisonment of more than 1 year.” 25 U.S.C. § 1302(c). However, this Court has not directly addressed the standards for determining whether indigent counsel appointed by an Indian tribe meets the TLOA requirements.

This is a case of first impression for this Court as to whether the statutory language of 25 U.S.C. § 1302(c)(2) is satisfied by appointing an attorney that has a JD degree from an ABA accredited law school and is licensed by the Amantonka Nation Bar Association. The language of the statute requires appointed counsel be “a defense attorney licensed to practice law by any jurisdiction in the United States.” *Id.* (emphasis added). The statute further requires the licensing jurisdiction to apply “appropriate professional licensing standards and effectively ensure[] the competence and professional responsibility of its licensed attorneys. *Id.* The question presented by this issue is whether membership in the Amantonka Nation Bar Association satisfies the licensing requirements for appointed counsel identified in 25 U.S.C. § 1302(c)(2).

First, this Court must determine if the phrase “any jurisdiction in the United States” includes a tribal bar. Second, it is necessary to determine the meaning of “appropriate professional licensing standards” and how to determine whether a jurisdiction “effectively ensures the competence and professional responsibility” of attorneys licensed by that

jurisdiction. The phrase “any jurisdiction in the United States” needs to be interpreted independently of the rest of the statute before the other phrases limiting that phrase are given effect.

1. The Amantonka Nation attorney licensing and public defender qualifications satisfy the plain meaning of the TLOA indigent counsel requirement incorporated by VAWA 2013 for SDVCJ prosecutions.

The plain meaning of “any” as used in the indigent counsel provision of TLOA includes tribal jurisdictions. Interpreting a statute begins with the plain language, and if Congress’s intent is clear there is no need for further consideration. *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (citing *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 254 (1992)). Read naturally, the word “any” has an expansive meaning, that is, “one or some indiscriminately of whatever kind.” *Id.* (citing Webster's Third New International Dictionary 97 (1976)). “Given the straightforward statutory command, there is no reason to resort to legislative history.” *Id.* at 6. Here, as in *Gonzales*, the use of the word “any” should be given expansive meaning and be understood to include all jurisdictions in the United States, including tribal jurisdictions.

Unlike the statute in *Gonzalez*, Congress did limit the phrase “any jurisdiction” with the concepts of “appropriate professional licensing standards” and “ensures the competence and professional responsibility” for attorneys licensed by the jurisdiction. These limitations should be understood to place requirements on the licensing standards for attorneys, but should not limit the expansive meaning of “any” in referring to all licensing jurisdictions. “[A]ny jurisdiction in the United States” is unambiguous and includes tribal jurisdictions. The limitations provided by the remaining phrases in the statute are what should determine

whether membership in a specific tribal jurisdiction's bar satisfies the indigent counsel requirement.

The Amantonka Nation uses appropriate professional licensing standards for admitting attorneys to practice in Amantonka Nation courts. The meaning of the phrase "appropriate professional licensing standards" appears ambiguous on its face and not susceptible to plain language analysis. However, "professional licensing standards" has a plain meaning that is not ambiguous. The addition of the word "appropriate" does not render the plain meaning of "professional licensing standards" ambiguous. It simply makes clear that the standards must be appropriate to the profession, in this case attorneys.

Appropriate is defined as "especially suitable or compatible." () Interpretation using the ordinary definition of appropriate requires that the professional licensing standards in the jurisdiction be suitable or compatible with the profession they are applied to. The Amantonka Nation Code specifies qualifications for attorneys in that jurisdiction, including requirements for age, moral character and integrity, physical ability to perform job duties, passage of the Amantonka Nation Bar Exam, and "good standing in the bar of any tribal, state, or federal court." Amantonka Nation Code Title 2, Chapter 5. These licensing standards are suitable or compatible to the practice of law and should be determined to be appropriate for that reason.

The Amantonka Nation ensures the competence and professional responsibility of attorneys licensed to practice in its courts by enforcing the Nation's disbarment statute, ANC, Title 2 § 504, and the ethical code required for attorney's, ANC, Title 2, Chapter 7. Whether the Amantonka Nation Code effectively ensures competence and professional responsibility should be a question of fact that would need to be considered in an as applied challenge of the licensing requirements. That is not the question Petitioner has asked this Court to answer.

The issue presented by Petitioner asks this Court to determine that the licensing standards and process are deficient as a matter of law. Based on the plain meaning of the statute no jurisdiction in the United States that has licensing standards appropriate for the profession of defense attorney and a legal method to ensure competence and professional responsibility can be deficient as a matter of law.

The Amantonka Nation asserts jurisdiction over territory in the United States. The Amantonka Nation Code provides licensing standards suitable and compatible with the profession of defense attorney. The Amantonka Nation Code also provides for a method of removing attorneys from the Nation's bar for lacking professional responsibility of competence. Based on the plain meaning of the indigent counsel requirement for SDVCJ jurisdiction, the Amantonka Nation satisfies all of the requirements to exercise jurisdiction over Petitioner.

2. The Amantonka Nation attorney licensing and public defender qualifications satisfy the legislative intent of Congress in authorizing Indian tribes to exercise inherent sovereign jurisdiction over non-Indians for domestic violence offenses.

The legislative intent of Congress in authorizing tribal criminal jurisdiction over non-Indians in VAWA 2013 supports finding that Petitioner's appointed counsel satisfies the SDVCJ indigent counsel requirement. The provision in VAWA 2013 incorporating the ICRA indigent counsel requirement appeared the bill originally introduced in the Senate, 159 Cong. Rec. S44-01, S176, and, despite repeated attempts to remove Special Domestic Violence Criminal Jurisdiction, the provision was in the final Senate bill passed without amendment by the House of Representatives, 159 Cong. Rec. H707-01, H725, and signed by the president. 159 Cong. Rec. H2432-01. The legislative record also includes a report from the Senate Committee on Indian Affairs finding the SDVCJ section of VAWA 2013 under this Court's

precedent in *Lara*, 541 U.S. 193, restricting tribal criminal jurisdiction to Indians. 159 Cong. Rec. H707-01, H737. The fact that SDVCJ survived attempts to completely remove tribal criminal jurisdiction over non-Indians from VAWA 2013 shows a strong legislative intent to extend tribal criminal jurisdiction over non-Indian domestic violence defendants.

The Amantonka Nation has satisfied the legislative intent to protect the right to indigent counsel of non-Indian defendants when exercising SDVCJ. The Amantonka Nation Code provides non-Indian criminal defendants a right to counsel, ANC, Title 2 § 503, includes qualifications for all attorneys, *id.* § 501, and specific to indigent counsel, *id.* § 607, standards and procedures for disbarment, *id.* § 504, and an ethical code for attorneys, *id.* Chapter 7. The Amantonka Nation satisfied the legislative intent for SDVCJ right to counsel by appointing Petitioner an attorney meeting the relevant qualifications in the Amantonka Nation Code.

3. The federal policy of Indian self-determination supports allowing the Amantonka Nation to determine its own qualifications to satisfy the indigent counsel requirement for exercising SDVCJ.

This Court recognized the United States policy of Indian self-determination to support affirming Congress' power to relax restrictions on Indian tribes' inherent criminal jurisdiction imposed by the other political branches. *Lara*, 541 U.S. at 202. Congress has also passed two major acts declaring a policy of self-determination for Indian tribes, the Indian Self-Determination Act of 1975, Pub. L. No. 93-638, 88 Stat. 2203 (codified as amended at 25 U.S.C. § 5301 et seq.), and the Tribal Self-Governance Act of 1994, Pub. L. No. 103-413, tit. III, 108 Stat. 4270 (codified as amended at 25 U.S.C. § 5302, § 5361 et seq.). The policies of self-determination and self-government in these legislative acts express the intent to support greater tribal autonomy.

Congress relaxed the restrictions on inherent tribal criminal jurisdiction again in VAWA 2013. Interpreting the incorporation of the ICRA indigent counsel provision to allow tribal governments to prescribe and enforce their own licensing standards and professional responsibility code is supported by self-determination policy. Congress could have made the indigent counsel requirement under VAWA 2013 SDVCJ co-extensive with the Sixth Amendment right to indigent counsel, but they did not. Congress knows how to make tribal jurisdiction prerequisites co-extensive with Constitutional protections. Congress did this with the effective assistance of counsel provision in the TLOA amendments to ICRA. 25 U.S.C. § 1302(c)(2). Congress also included a provision in VAWA 2013 incorporating “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.” 25 U.S.C. § 1304(d)(4). Congress purposely left compliance with the indigent counsel requirement for exercising SDVCJ to the tribes exercising their inherent criminal jurisdiction.

B. Petitioner’s appointed counsel does not violate the equal protection provision in ICRA applicable to criminal jurisdiction over an Indian tribe’s own members.

Petitioner argues alternatively, if this Court determines he is a member of the Amantonka Nation his appointed counsel violates his equal protection rights. Petitioner’s argument rests on the difference between his attorney and the attorney a non-Indian would be entitled to under VAWA 2013. This argument assumes that equal protection requires the same representation a non-Indian is entitled to. This argument ignores the facts that are in the record for this case. Petitioner was provided counsel at the Amantonka Nation’s expense. That attorney was a member of the bar or “any jurisdiction in the United States,” namely the Amantonka Nation Bar Association. The Amantonka Nation Code includes licensing

standards for attorneys and specifically public defenders, a code of professional responsibility, and procedure for removing attorneys that do not satisfy the Nation's standards. According to the Amantonka Nation Code these qualifications are the same that appointed counsel for a non-Indian defendant facing VAWA 2013 SDVCJ would be entitled to have appointed.

Petitioner bases his argument on comparing the minimum level of representation required by ICRA to the requirements for indigent counsel under VAWA 2013 DVCJ as unequal. However, the indigent counsel provisions in the ANC provide the same requirements for indigent counsel whether the defendant is an Indian or non-Indian. Therefore, a facial equal protection challenge of the Amantonka Nation indigent counsel provision should fail. Further, Petitioner's appointed counsel satisfies all of the requirements of a public defender in the ANC and holds a J.D. degree from an ABA accredited law school, satisfying the additional ANC requirements for SDVCJ indigent counsel. Therefore, whether Petitioner's argument is considered a facial or an as applied challenge to the indigent counsel provisions in the ANC, it should fail because the ANC code provides for substantially similar rights for both Indians and non-Indians, and the attorney appointed to represent Petitioner met the most rigorous qualifications in the ANC.

CONCLUSION

For the reasons stated above the Amantonka Nation requests that this Court affirm the U.S. court of appeals in reversing the U.S. district court's grant to Petitioner of a writ of habeas corpus.