

No. 19-231

In the Supreme Court of the United States

Robert 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 United States Court of Appeals
for the Federal Circuit**

BRIEF OF PETITIONER

589

Counsel for Petitioner

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Questions Presented

- I. Is Petitioner a non-Indian for purposes of Special Domestic Violence Criminal Jurisdiction?**

- II. Did Petitioner's court-appointed attorney satisfy the relevant legal requirements?**

Statement of the Case

a. Statement of the Proceedings

On June 16, 2017 Amantonka Nation's Chief Prosecutor filed criminal charges against Petitioner Robert R. Reynolds, alleging Reynolds of domestic violence against his wife, Lorinda Reynolds. R. at 3. Petitioner filed three pretrial motions: 1) he is a non-Indian and the Amantonka Nation lacks criminal jurisdiction; 2) he is a non-Indian accused of domestic violence against an Indian within Indian country and falls within the Special Domestic Violence Criminal Jurisdiction and therefore is entitled to have an attorney-appointed to him; and 3) his court-appointed counsel is insufficiently qualified to serve as his counsel and violates relevant Equal Protection requirements. R at 3-4. During trial in the District Court for the Amantonka Nation, the jury returned a verdict of guilty, and Petitioner made a motion to set aside the verdict based on his pretrial motions. R at 5. Petitioner appealed the jury verdict to the Supreme Court of the Amantonka Nation to which his conviction was affirmed. R at 7. Petitioner then filed a motion in the United States District Court for the District of Rogers for a Writ of Habeas Corpus to which the petition for Writ was granted. R at 8. The writ of habeas corpus was denied and remanded to the US District Court for the District of

Rogers by the United States Court of Appeals for the Thirteenth Circuit. R at 9. The Supreme Court of the United States then granted the petition for Writ of Certiorari to resolve the issues of 1) Petitioner a non-Indian for purposes of Special Domestic Violence Criminal Jurisdiction, and 2) Petitioner's court-appointed attorney satisfying relevant legal requirements. R at 10.

b. Statement of the Facts

Petitioner Reynolds and his wife Lorinda met while they attended the same university, during which time Reynolds was not a citizen of the Amantonka Nation. R at 6. Lorinda was and continues to be a citizen of the Amantonka Nation. R at 6. After graduation, the couple wed and moved to the Amantonka Reservation where both lived in tribal housing and found jobs on the Amantonka Reservation. R at 6. Two years after marriage, Reynolds applied for citizenship and was approved – he successfully completed the naturalization process, took the oath of citizenship, and received his Amantonka Nation ID card. R at 6.

The couples' marital troubles did not start until after Reynolds became unemployed and started drinking heavily. R at 6. At this time, Reynolds became verbally abusive towards Lorinda and subsequently had the police called to their apartment on some occasions. R at 6. On June 15, 2017, the Amantonka Nation police responded to a call at the couple's residence and saw evidence of physical abuse. R at 6. Lordina, after being struck by Reynolds with an open palm, hit a coffee table which resulted in a cracked rib. R at 6. Since this incident, Reynolds' has been employed as a manager at a warehouse distribution center on the reservation. R at 6.

Summary of the Argument

This case is about affirming the right of the federal government, as guardian for Indian Nations, to make determinations about an individual's status as Indian for the purpose of resolving jurisdictional questions under federal statute. The extension of tribal jurisdiction at issue in this case, was created by federal statute and must be applied in accordance with the definitions and provisions contained within United States Code. Application of Code definitions and provisions creates consistency in the law and allows courts to uniformly enforce federal statutes.

Applying the federal definition of Indian, makes Petitioner Reynolds a non-Indian for the purposes of Special Domestic Violence Criminal Jurisdiction. The federal definition of Indian contains a minimum blood quantum or descent requirement that Reynolds fails to meet. The inclusion of these two criteria within the definition of Indian has been continuously upheld by the federal courts and used to interpret the Indian status of defendants in numerous cases. Based on this precedent Reynolds should be considered a non-Indian for the purpose of Special Domestic Violence Criminal Jurisdiction.

Petitioner Reynolds did not receive adequate legal representation because defense counsel did not zealously advocate on Reynolds behalf, nor does counsel possess the legal requirements Reynolds was entitled. Reynolds is entitled to certain constitutional protections, such as due process and equal protection, as well as access to a competent defense attorney. Therefore, Reynolds' conviction should be reversed because Reynolds was not afforded due process nor equal protection.

Argument

Reynolds is not considered an Indian for the purposes of Special Domestic Violence Criminal Jurisdiction. This extension of tribal jurisdiction was created through federal statute

and must be uniformly interpreted using the federal definition of Indian. This definition creates a blood quantum or descent requirement that applies to the determination of an individual's status. Reynolds does not meet either requirement and therefore, is not an Indian under federal law.

Determination of Reynolds non-Indian status, through application of the two aforementioned requirements is supported by historical precedent. This precedent is established by the Court in a line of cases that fails to recognize adopted or naturalized members of Indian tribes as Indians for purposes of federal jurisdiction. Failure to extend the definition of Indian to include naturalized or adopted members of the tribe, indicates that the courts do not view membership in an Indian tribe as determinative of federal Indian status.

Reynolds' defense counsel was not competent because defense counsel did not zealously advocate on behalf of Reynolds' nor did counsel possess the legal requirements Reynolds was entitled. Reynolds was denied due process and equal protection as a result and should have a new trial with the proper procedural safeguards.

I. The Petitioner is a non-Indian for the purposes of Special Domestic Violence Criminal Jurisdiction established by Federal Statute.

The federal government of the United States has long recognized its Indigenous Nations as domestic dependent nations engaged in a trust relationship with the United States. *Cherokee Nation v. Georgia*, 30 U.S. 1, 2 (1831). This relationship allows Congress plenary power over Indian affairs, which it has continuously used to limit the scope of tribal authority. *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505 (1991). Federal statutes and court cases often abrogate the powers inherent to tribal

sovereignty in an attempt to draft and interpret laws consistent with the values and ideals of the United States and its system of justice.

While Congress often uses its plenary power to abrogate inherent rights of Indian Tribes, in the case of the Violence Against Women Reauthorization Act of 2013 (VAWA), the federal government actually extended tribal jurisdiction. 25 U.S.C. § 1304 (a)(6). VAWA created a narrow exception to the Court precedent set by *Oliphant v. Suquamish*, barring Indian jurisdiction to try and punish non-Indians. *Oliphant v. Suquamish*, 435 U.S. 191 (1978). This Congressional exception specifically grants participating Indian tribes the right to assume jurisdiction over non-Indians who perpetrate acts of dating violence, domestic violence, or criminal violations of protection orders in Indian Country. 25 U.S.C. § 1304. This extension of tribal jurisdiction created by federal statute, must be applied and interpreted in accordance with the surrounding United States Code provisions. Interpretation of the federal statute in context requires application of the federal definition of Indian to status determinations.

A. Special Domestic Criminal Jurisdiction is a federal statutory provision that must be applied uniformly in accordance with the federal definition of Indian.

The term Indian is one that is used by the federal government as a standard to determine eligibility for benefits and to resolve jurisdictional questions. Margo Brownell, Who is an Indian - Searching for an Answer to the Question at the Core of Federal Indian Law, 34 U. Mich. J.L. Reform 275, 320 (2000). Determination of an individual's status, is often the demarcation point used to determine the jurisdiction for a criminal defendant. Spruhan, Paul, A Legal History of Blood Quantum in Federal Indian Law to 1935, 51 S.D. L. Rev. 1,2 (2006). Because of its application in resolving questions of criminal jurisdiction it is

imperative that the term Indian be understood and implemented uniformly. To achieve uniformity the federal definition must be applied.

The federal government defined Indian in the 1934 Indian Reorganization Act as, all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and all person who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any reservation, and shall further include all other persons of one-half or more Indian blood. For the purposes of this Act, Eskimos and other aboriginal peoples of Alaska shall be considered Indians. Indian Reorganization Act, ch. 576, 48 Stat. 984, *as amended*, at 25 U.S.C. §§ 461-79 (1970).

This definition requires an individual to meet either a minimum blood quantum or descent threshold in-order to be considered Indian for the purposes of federal statute. Spruhan, *supra* at 1.

Implementation of this definition creates a uniform standard, which can be applied equally throughout Indian Country. This uniform standard prevents confusion over how a federal statute will be applied from tribe to tribe based on differing tribal determinations of membership. Consistency within in United States Code allows federal and tribal courts to understand how the federal government intends to determine jurisdiction based on Indian status and eliminates costly and time consuming litigation over varying standards of Indian.

B. The federal requirement of a minimum blood quantum or descent for determination of Indian status has historical precedent.

The Supreme Court of the United States established the use of blood quantum or descent to determine Indian status in *United States v. Rodgers*. *United States v. Rodgers*, 45 U.S. 567 (1846). In *Rodgers*, the Court was faced with the issue of whether the defendant William S. Rodgers, an adopted member of an Indian tribe, is Indian for the purposes of determining federal criminal jurisdiction. *Id.* at 568. In its decision, the Court determined that

Rodgers was a member of the Cherokee Nation according to tribal law, but lacked the Indian status required to transfer his case from federal to tribal jurisdiction. *Id.* at 573. In explaining its holding, the Court reasoned that Rodgers was not Indian because he lacked Indian blood or decent. *Id.* Rodgers was non-Indian by birth, which according to the Court barred him from federal Indian status. *Id.*

The holding in *Rodgers*, established the legal precedent that blood quantum or descent is a requirement for a federal determination of Indian status. John Rockwell Snowden et al., *American Indian Sovereignty and Naturalization: It's a Race Thing*, 80 Neb. L. Rev. 176, 202 (2001). The Court applied this precedent in a series of cases from 1846 to 1897. *Id.* at 200-14; *See, In re Mayfield*, 141 U.S. 107 (1891); *Famous Smith v. United States*, 151 U.S. 50 (1894); *Westmoreland v. United States*, 155 U.S. 545 (1895); *Alberty v. United States*, 162 U.S. 499 (1896); *Lucas v. United States*, 163 U.S. 612 (1896); and *Nofire v. United States*, 164 U.S. 657 (1897). In all of these cases, the Court used a determination of Indian status to decide if criminal jurisdiction belonged to the tribe or the federal government.

In *Lucas v. United States*, the Court extended tribal jurisdiction to include adopted or naturalized Indian Tribe members. *Lucas v. United States*, 163 U.S. 612 (1896). In this case, the Court was asked to determine whether the victim, an illegitimate child of a Choctaw man and a female Choctaw slave was Indian for the purpose of federal criminal jurisdiction. *Id.* at 615. The Court held that the Indian Appropriation Act of 1885, 23 Stat. 362, 366 (1885), was a federal statute that recognized and consented to the Choctaw adoption of freed former slaves into the tribe. *Id.* at 614.

The holding in this case created a very narrow exception to the precedent established by the *Rodgers* line of cases. This exception allows for the inclusion of naturalized or adopted members of an Indian tribe under the federal Indian status only if the federal government has acknowledged an extension through treaty or federal statute.

Examination of the *Rodgers*' precedent illustrates that historically the Supreme Court of the United States as viewed blood quantum or decent as a criteria required for Indian status under federal law. Ancestry or blood as a prerequisite to Indian status means that the Petitioner Reynolds fails to qualify, as he is a naturalized member of the Amantonka Nation.

Reynolds also fails to qualify for the Lucas exception because there are no treaty provisions or federal statutes of record that extend Indian status to Amantonka naturalized citizens.

C. Use of the federal definition to determine Indian status does not conflict with the inherent sovereignty of Indian tribes.

The District Court erred when it held that the federal definition of Indian was unenforceable post the decision in *Santa Clara Pueblo v. Martinez*. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). In *Santa Clara Pueblo*, the respondent brought suit against the tribe for its ordinance denying membership to the children of female tribe members who marry outside the tribe. *Id.* The Court held that the right to decided membership was an inherent sovereign power retained by the tribe. *Id.* at 56. As a sovereign right membership in the tribe can't be limited or determined by federal law. *Id.* at 55.

The Court's decision in *Santa Clara Pueblo* governs membership in a tribe, but does not govern the determination of Indian status under federal law. This distinction is supported by the decision of the Eighth Circuit in *United States v. Stymiest*. *United States v. Stymiest*, 581 F.3d 759 (8th Cir. 2009). In *Stymiest*, the court was asked to determine the Indian status of the defendant. *Id.* The court used the Rodgers' precedent as the starting point for its determination, noting that the defendant was a descendant of a member of the Leech Lake Band of Ojibwe thus meeting the requirement for Indian blood or descent. *Id.* at 765. The defendant while, having some Indian blood, did not meet the blood quantum required for tribal membership. *Id.* This led to the court's decision that tribal membership was not determinative of Indian status under federal law. *Id.* at 766.

The *Stymiest* decision differentiates tribal membership and Indian status under federal law. The separation of these two concepts allows the federal definition of Indian to

be applied to determinations of Indian status under federal law without infringing upon the inherent right of Indian tribes to govern membership.

II. Petitioner Robert Reynolds’ court-appointed attorney did not satisfy the relevant legal requirements because counsel did not provide competent representation.

Robert Reynolds’ court-appointed attorney did not satisfy the relevant legal requirements and therefore, Reynolds did not receive adequate consultation which violates his due process rights. Under Title 2, Chapter 7 of the code of Ethics for Attorneys in the Amantonka Nation code, “[a]n attorney shall provide competent representation to a client. Competent legal representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.” Petitioner Reynolds filed a Writ of Habeas Corpus under 25 U.S.C. § 1303 because his conviction violates his civil rights under the Fifth Amendment, U.S. Const. amend. V; Indian Civil Rights Act (ICRA), 25 U.S.C. § 1301 *et seq.*; and the Violence Against Women Act of 2013 (VAWA), Pub. L. No. 113-4, § 901-910 (2013). R at 8. Under the Fifth Amendment, Reynolds’ should not be “deprived of life, liberty or property without due process of law.” Peter Strauss, *Due Process*, Cornell Law School Legal Information Institute (last visited Jan. 13, 2019), https://www.law.cornell.edu/wex/due_process. The ICRA uses the same language in the Fifth Amendment of the U.S. Constitution in 25 U.S.C. § 1302(a)(8) by stating a tribe, in exercising self-governance 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[.]” (emphasis added). Under the VAWA Reauthorization of 2013, Reynolds is entitled to protections under the U.S. Constitution, Pub. L. No. 113-4 § 904(d)(4).

Reynolds is a non-Indian and is subject to the Special Domestic Violence Criminal Jurisdiction exercised by the Amantonka Nation under Title 2, § 105(b). Even if Reynolds is considered a naturalized citizen of the Amantonka Nation, Reynolds' is an indigent defendant of a criminal offense and qualifies to receive legal representation under Title 2, § 607(b) of the Amantonka Nation code.

A. Non-Indian legal representation under the Special Domestic Violence Criminal Jurisdiction

Reynolds is a non-Indian convicted of domestic violence against an Indian within the Amantonka Nation jurisdictional boundaries. R at 5. Amantonka Nation has jurisdiction over Reynolds under the Special Domestic Violence Criminal Jurisdiction and is afforded the privileges of such jurisdiction as a non-Indian defendant. Under Title 2, § 607(b), a public defender sufficient under the Special Domestic Violence Criminal Jurisdiction "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, [and] is sufficiently qualified under the Indian Civil Rights Act[.]" As a non-Indian defendant, Reynolds should receive the protection of the United States' Fifth Amendment's due process clause. The Fifth Amendment due process is applied in cases where the state deprives an individual of "life, liberty or property[.]" U.S. Const. amend. V.

Under the Special Domestic Violence Criminal Jurisdiction the criminal procedure safeguards are heightened to ensure there is no violation of civil rights by preserving rights under ICRA and the United States Constitution. 25 U.S.C. § 1304(d). The jurisdiction does not bar United States or state jurisdiction over the offender. 25 U.S.C. § 1304(b)(2). Petitioner Reynolds' argument that counsel needed to be a member of the state bar

association does not lack merit or is irrelevant for the matter at hand. Although the Amantonka Nation bar examination is not listed, nor are the attributes of the examination, in order to be eligible to be admitted to state bar association's without a legal education from an ABA-accredited school there is a requirement of bar admission plus legal experience prior to be eligible to take a bar examination. *See American Bar Association Section of Legal Education and Admissions to the Bar, Comprehensive Guide to Bar Admission Requirements 2018* 8-11 (Judith A. Gundersen et al eds, 2018th ed. 2018).

B. Indian legal representation under the Amantonka Nation code and applicable law.

Under the ICRA, 25 U.S.C. § 1302(c)(1), a defendant has the right to effective assistance of counsel and counsel is required to be “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[.]” § 1302(c)(2) (as amended by Tribal Law and Order Act of 2010, Pub. L. No. 111-211, 124 Stat. 2258 (2010)).

The U.S. Const. amend. XIV, § 1 provides that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” ICRA provides that a 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[.]” 25 U.S.C. § 1302(c)(1) (emphasis added). Although Reynolds is sentenced to 7 months incarceration, R at 5, Reynolds should receive the same protections as the defendant described in ICRA.

Three basic requirements for an equal protection argument are: 1) court must have jurisdiction over the claim; 2) claim must be justiciable; and 3) the government conduct must have given rise to the claim. Russell W. Galloway Jr., *Basic Equal Protection Analysis*, 29

Santa Clara L.R. 121, 123 (1989). Here, the Amantonka Nation had jurisdiction over the claim – legal counsel was insufficient – and the claim was justiciable because the District Court handles complaints against attorneys under Title 2, Chapter 7 Canon 22. The conduct that gave rise to the claim was on the government’s because the Amantonka Nation appointed Reynolds’ attorney pursuant to their code. The code makes no distinction between a public defender and attorney requirements in under Title 2. By not appointing Reynolds, or other defendants, Amantonka Nation is not appointing equal representation for all defendants, including indigent defendants.

C. Requirements and best practices of legal practitioners generally and competence of legal criminal defense representation.

There is no standard examination adopted by all jurisdictions within the United States, neither are the requirements to obtain a license to practice in all the jurisdictions the same. The American Bar Association (ABA) is an organization that “[p]romote[s] the best quality legal education, promote competence, ethical conduct and professionalism, and promote pro bono and public service by the legal profession.” The American Bar Association, https://www.americanbar.org/about_the_aba/ (last visited Jan. 13, 2019). The ABA also publishes a guide for admissions into several jurisdictions across the United States.

The Amantonka Nation code is unclear as to the requirements of the bar examination as well as the examiners. Under Title 2, § 501(a) the bar examination is to be administered by the Amantonka Nation’s Executive Board. Among several suggestions, the ABA recommends that bar examiners “should be a person with scholarly attainments and an affirmative interest in legal education and requirements for admission to the bar.” American Bar Association

Section of Legal Education and Admissions to the Bar, *Comprehensive Guide to Bar Admission Requirements 2018* vii (Judith A. Gundersen et al eds, 2018th ed. 2018).

The ABA also has groups that specialize in different topics within the legal profession, specifically their criminal justice group. This group created a “best practices” standard for criminal defense attorneys. The group advocates that public criminal defense attorneys should be knowledgeable about alternatives to prosecution or conviction and inform their client. American Bar Association, *Criminal Justice Standards for the Defense Function* 4-1.2(f) (April 16, 2015),

[https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/?q=&fq=\(id%3A%5C%2Fcontent%2Faba-cms-](https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/?q=&fq=(id%3A%5C%2Fcontent%2Faba-cms-)

[dotorg%2Fen%2Fgroups%2Fcriminal_justice%2F*\)&wt=json&start=0](https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/?q=&fq=(id%3A%5C%2Fcontent%2Faba-cms-dotorg%2Fen%2Fgroups%2Fcriminal_justice%2F*)&wt=json&start=0) (last visited Jan. 13, 2019). In the article, *Criminal Justice Standards*, the ABA group also states that defense counsel should “reassess prior decisions made in the case, . . . in light of all changed circumstances, and pursue options that now seem appropriate, including possible motions to set or reduce bail or conditions[.]” *Id.* at 4-8.2. The record does not indicate defense counsel’s actions to reassess any of the fee or imprisonment time for Reynolds.

Regardless of whether Reynolds is considered Indian for legal purposes and the status of Indian country, Reynolds, along with other defendants, should be provided with adequate, competent, and zealous legal representation within the courts of the Amantonka Nation.

Conclusion

The federal definition of Indian should be used to make determinations of Indian status under federal law. The use of this definition is supported by historical precedence and creates a uniform application of the law. Adhering to the federal definition disqualifies Petitioner

Reynolds from Indian status for the purpose of Special Domestic Violence Criminal Jurisdiction.

Petitioner Reynolds' conviction should not be upheld because he did not receive adequate defense representation which resulted in the violation of his due process and equal protection rights under the United States Constitution, Indian Civil Rights Act, and Violence Against Women Act of 2013.