No. 19-231

In the
Supreme Court of the United States

ROBERT REYNOLDS

Petitioner

v.

WILLIAM SMITH ET AL.,

Respondent

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

Team 684

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

QUESTIONS PRESENTED

1. Is Reynolds, a naturalized member of the Amantonka Nation, a non-Indian beyond the reach of tribal criminal jurisdiction?
2. Did Reynold's court-appointed indigent defense counsel meet the relevant statutory and constitutional requirements for adequate representation?

STATEMENT OF THE CASE

A. Statement of Proceedings

The Chief Prosecutor of the Amantonka Nation filed a criminal complaint in the District Court for the Amantonka Nation against Petitioner Robert R. Reynolds. R. at 3. In his complaint, the Prosecutor accused Reynolds of intentionally striking and injuring his wife. *Id.* Reynolds therefore stood accused of violating Title 5 section 244 of the Amantonka Nation Code. *Id.* At his arraignment, Reynolds requested and was granted indigent defense counsel to represent him throughout the proceedings. R. at 4.

Reynolds fought back and filed three pretrial motions challenging the tribal court's jurisdiction over him. R. at. 3. In the first motion, Reynolds argued that the tribal court lacked criminal jurisdiction over him because he is a non-Indian. *Id.* The court flatly rejected this argument under *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). In his second motion, Reynolds continued to alleged that he was a non-Indian. R. at 3. This time, however, Reynolds argued that his non-Indian status qualified him for Special Domestic Violence Criminal Jurisdiction, which the Amantonka exercised under 25 U.S.C. § 1302 et seq. *Id.* The court again rejected his motion, stating that Reynolds is not subject to Special Domestic Violence Criminal Jurisdiction because he is a citizen of the Amantonka Nation. *Id.*

In one final pretrial motion, Reynolds argued that the Amantonka Nation violated Equal Protection by provided him with inadequate counsel. R. at 3–4. Specifically, Reynolds argued that counsel appointed to represent defendants charged under the Special Domestic Violence Criminal Jurisdiction must be members of a state bar association under the VAWA. R. at 4. The court again rejected Reynolds' motion and proceeded to trial. *Id.*

At trial, Reynolds was convicted. R. at 5. Reynolds then filed a post-conviction motion requesting that the tribal court to set aside the verdict. *Id.* This motion, which reiterated the same arguments Reynolds had made in his pretrial motions, was denied. *Id.* Following this denial, Reynolds appealed to the Supreme Court of the Amantonka Nation, which unanimously affirmed his conviction. R. at 7.

In affirming his conviction, the Supreme Court of the Amantonka Nation commented on two of the three merits of his appeal. With respect to his first argument, the court applied the reasoning of *Santa Clara Pueblo* and held that a tribe retains the sovereign right to define its own membership. R. at 7. Because the Amantonka Nation allowed for naturalization, and because Reynolds applied for and consented to tribal membership, Reynolds was Indian for the purposes of tribal criminal jurisdiction. *Id.*

In rejecting Reynolds' final argument, the court remarked on Reynolds' failure to produce "facts to support a difference between the state and tribal bar exams." R. at 7. The court further noted that, despite alleging inadequacy of counsel, Reynolds could not point out any errors committed by his defense counsel. *Id.*

Reynolds then sought post-conviction review, petitioning the U.S. District Court for the District of Rogers for a writ of habeas corpus under 25 U.S.C. §1303. R. at 8. In his petition, Reynolds alleged that his conviction in the Amantonka courts violated his federal civil rights. *Id.* Specifically, he alleged that the conviction stood in violation of the Fifth Amendment of the U.S. Constitution; the Indian Civil Rights Act (ICRA); and the Violence Against Women Act of 2013 (VAWA). *Id.* The district court granted Reynolds' petition for habeas review. *Id.* In doing so, the district court made two rulings. *Id.* First, the court held that federal law requires some definition of "Indian" that requires some degree of Indian blood. *Id.* The court reasoned

that, because Reynolds was a naturalized Amantonka citizen and did not possess any Indian blood, he was not Indian for the purpose of tribal criminal jurisdiction. *Id.* Second, the court held that the Amantonka Nation failed to provide Reynolds with indigent defense counsel as required by the VAWA. *Id.*

The Amantonka Nation promptly appealed the district court's grant of habeas. R. at 9. On appeal, the U.S. Court of Appeals for the Thirteenth Circuit agreed with the Amantonka Supreme Court. *Id.* The Thirteenth Circuit relied on this reasoning to reverse the district court's grant of habeas. *Id.* In so doing, the Court of Appeals also remanded Reynolds' case with instructions to deny his petition for habeas. *Id.*

In a last ditch attempt to avoid his conviction, Reynolds filed a petition for writ of certiorari to the Supreme Court of the United States. R. at 10. The Court granted his petition. *Id.*

B. Statement of Facts

The Amantonka Nation is a federally-recognized tribe with a long history of welcoming spouses of tribal members into the tribe. R. at 7. The Amantonka Nation's Naturalization Process is a longstanding custom and tradition that is formalized in the Amontonka Nation Code. *Id.* A person must complete two requirements to become eligible for adoption into the tribe. App. at 13 (citing Title 2, Chapter 3, Section 201 of the Amantonka Tribal Code). First, a person must marry a citizen of the Amantonka Nation. *Id.* In addition, the individual must live on the Amantonka reservation for at least two years. *Id.* Once both requirements are completed, the prospective member may apply to the Amantonka Citizenship Office in order to commence the naturalization process. *Id.*

But a person does not become a tribal member simply because she is eligible to apply for it. In fact, a prospective member must complete four additional requirements in order to successfully obtain membership in the Amantonka Nation. R. at 12. In order to become a naturalized Amantonka citizen, individuals must fulfill a number of rigorous requirements. *Id.* In particular, the individuals must complete a course on Amantonka culture; complete a course on Amantonka law and government; pass the Amantonka citizenship test; and perform 100 hours of community service with a unit of the Amantonka Nation government. *Id.* (citing Title 3, Chapter 2, Section 202).

Robert Reynolds met his wife, Lorinda, met while they were both students at the University of Rogers. R. at 6. At the time, Reynolds was a non-Indian. *Id.* Lorinda, however, was and remains a citizen of the Amantonka Nation. *Id.* Reynolds married Lorinda after graduating and moved with her to the Amantonka Nation Reservation. *Id.*

Their first two years of marriage went smoothly, and the couple prospered together. Reynolds found work on the reservation as a manager at a shoe factory. *Id.* Lorinda also earned an income through her work as an accountant. *Id.* They moved into a tribal housing complex, and their dual incomes allowed them to begin saving for a house. *Id.* Reynolds accomplished all of the Amantonka Nation's rigorous naturalization requirements and, just two years after marrying Lorinda, was offered membership within the tribe. *Id.* In accepting his membership, Reynolds took an oath of citizenship. *Id.* Shortly thereafter, Reynolds received his Amantonka Nation ID card. *Id.*

But just one year after joining the Nation, Reynolds lost his job at the shoe factory. *Id.* For ten months, Reynolds struggled and failed to find work. *Id.* Throughout his unemployment, Lorinda worked to support both her husband and herself. *Id.* This troubled Reynolds. He turned

to alcohol and drank heavily. *Id.* He became verbally abusive towards his wife. *Id.* Over the course of this abuse, the Amantonka Nation police were called at least once to Reynolds' apartment. *Id.* But the police's efforts to protect Lorinda were frustrated; there was no evidence of physical abuse, and they were not able to refer the case for prosecution.

But on June 15th, 2017, the Amantonka Nation police were called again to the Reynolds' apartment. *Id.* This time, the police came upon the scene of a battered Lorinda Reynolds. *Id.* Her husband had smacked her across the face with his open palm, and she fell into a coffee table. *Id.* The force of her fall cracked one of her ribs before she hit the ground. *Id.*

The Amantonka Nation police officer arrested Reynolds and took him to the tribal jail. *Id.* The next day, the Amantonka Chief Prosecutor charged Reynolds with partner assault in violation of the Amantonka Nation Criminal Code. R. at 6–7.

At arraignment, Reynolds requested and was appointed indigent defense counsel. R. at 4. His appointed attorney—like all Amantonka Nation public defenders—held a J.D. from a law school accredited by the American Bar Association (ABA). R. at 7. His attorney was also a member in good standing of the Amantonka Nation Bar Association. *Id.* As a condition of membership, the Amantonka Nation Bar Association requires passage of the Amantonka Nation's bar exam, which is similar to a state bar exam. App. at 5. The Amantonka Nation does not require its public defenders to pass any bar exam other than that of the Amantonka Nation. App. at 8.

At trial, Reynolds was convicted and sentenced him to seven months incarceration, $5,300 restitution to compensate the survivor, batterer rehabilitation and treatment programs, and a $1,000 fine. R. at 5.

SUMMARY OF ARGUMENT

Indian tribes have historically exercised sovereign authority. This sovereignty authority—like that of all sovereign nations—included the tribes' power to control internal and external relations. Over time, however, the federal government has drastically abrogated the powers that tribal nations may exercise independent of federal oversight. This abrogation occurred through a combination of three judicially endorsed methods.

The first method relies on treaties between tribes and the federal government. In this case, no treaty exists which abrogates the Amantonka Nation's power to define its own tribal membership.

The second method relies on express congressional limitation. In determining that tribes are "domestic dependent sovereigns," the Supreme Court paved the way for the post-treaty era. In this era, Congress exercises plenary power over the tribes, and may vitiate as much of their sovereign authority as it wishes. Although Congress has half-heartedly attempted to define "Indian," this definition has existed almost exclusively for the purposes of determining who is eligible for federal benefits. In other words, congressional definitions of "Indian" impact an individual's relationship with the federal government, but not an individual's relationship with a tribe. The only exception to this trend, passed as a provision of the Indian Reorganization Act of 1934, was soon repealed.

Finally, a tribe's sovereign power may be abrogated implicitly. In developing the doctrine behind the tribes' new "domestic dependent" status, the Supreme Court concluded that Congress intended to limit tribal sovereignty. The Court explained that this abrogation was the most natural inference arising from the implicit character of congressional legislation regarding Indian tribes. This doctrine ultimately concluded that tribes had lost their ability to

control relations external to themselves. By contrast, the tribes all retained their ability to control internal relations.

The Amantonka Nation's power to naturalize non-Indians is a function of its retained power to control internal relations. By becoming a member of the Nation, an individual does not abrogate his relationship with the federal government. Furthermore, precedent indicates that a tribe's prosecutorial powers hinge on whether the actor is a tribal member; not on the actor's ancestry or blood quantum. Rather, *United States v. Lara* and its progeny declare that tribal membership impacts the tribe's relationship with the individual.

Regardless of whether Reynolds is Indian or non-Indian, his court-appointed attorney met the statutory and constitutional requirements for adequate representation. If, as Reynolds claims, he is a non-Indian for the purposes of criminal jurisdiction then his appointed counsel met the statutory requirements under the Violence Against Women Act of 2013 (VAWA) and the Indian Civil Rights Act (ICRA) and satisfied the constitutional requirements for effective assistance of counsel. Reynolds' conviction fulfills the explicit purpose of the VAWA, the case meets the statutory requirements for special domestic violence criminal jurisdiction, and the Amantonka Nation created a public defender system that met all requirements for adequate assistance of counsel. Affirmation of Reynolds' conviction would respect Congress' legislative intent to strengthen the autonomy of tribal courts and enforce the right of native peoples to be free from domestic abuse.

If Reynolds is an Indian for the purposes of criminal jurisdiction, then his court-appointed attorney met all relevant statutory and constitutional requirements for adequate representation. Both Congress and the Supreme Court have decided that standards for tribal counsel are determined by the ICRA and the Amantonka Nation fulfills those requirements.

Further, the ICRA's standard for tribal counsel creates no Equal Protection violation—stare decisis demands a rejection of such claims, Respondent has shown no purposeful discrimination, and tribes are sovereign entities.

ARGUMENT

I. Reynolds is an Indian for purposes of tribal criminal jurisdiction.

Indian tribes are "domestic dependent nations that exercise inherent sovereign authority." *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788 (2014) (internal quotation marks omitted). Although they are "no longer possessed of the full attributes of sovereignty," tribes nonetheless have retained the power to regulate their "internal and social relations." *Santa Clara Pueblo*, 436 U.S. at 55.

A. *The Amantonka Nation's sovereign power to extend tribal membership to any person, regardless of blood quantum or ancestry, has not been explicitly or implicitly abrogated.*

The question in this case is whether an individual must show Indian ancestry in order to become a tribal citizen. Under *Santa Clara Pueblo*, "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." *Id.* at 72 n.32. This sovereign right to define membership is not limited with respect to ancestry, and tribes retain all of their inherent sovereign authority until that authority is abrogated. *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788 (2014) (citing *Wheeler*, 435 U.S. at 323).Therefore, tribes cannot be compelled to require Indian ancestry for tribal membership unless the federal government has abrogated tribal sovereignty.

Tribal sovereignty can be abrogated in one of three ways. The first is through a treaty with the federal government. *Wheeler*, 435 U.S. at 323. But neither Reynolds nor the

Amantonka Nation are aware of any treaty abrogating the Amantonka Nation's authority to define its own membership. The second way is through an express congressional limitation. *Kelsey v. Pope*, 809 F.3d 849, 855 (2016). Finally, a tribe's sovereignty may be "implicitly divested by virtue of their domestic dependent status." *Kelsey v. Pope*, 809 F.3d 849, 855 (2016).

i. *Congress did not expressly limit the Amantonka Nation's right to define its own membership.*

Congress may exercise plenary control over tribes because tribes are dependent on the federal government. *Michigan v. Bay Mills Indian Community*, 572 U.S. 782, 788 (2014) (citing *United States v. Lara*, 541 U.S. 193, 200 (2004)). But "courts will not lightly assume that Congress in fact intends to undermine Indian self-government." *Bay Mills*, 572 U.S. at 790. Rather, courts must "respect Congress's primary role in defining the contours of tribal sovereignty." *Id.* (citing *Bay Mills*, 572 U.S. at 803). Legislative silence cannot support an inference of congressional intent to abrogate tribal sovereignty. *Helvering v. Hallock*, 309 U.S. 106, 121 (1940) ("[W]e walk on quicksand when we try to find in the absence of corrective legislation a controlling legal principle."). In these cases, "congressional silence is more aptly viewed as congressional deference." *Kelsey*, 809 F.3d at 863.

Current discussion and usage of Indian blood quantum stems from the much-reviled policy of Indian termination and the General Allotment Act. 25 U.S.C. §§ 331–58 (repealed 2000); Paul Spruhan, *A Legal History of Blood Quantum in Federal Indian Law to 1935*, 51 S.D. L. Rev. 1, 50 (2006). Beginning in 1887, the General Allotment Act aimed to eliminate tribes as a political unit and force Indians to assimilate into mainstream American society. Paul Spruhan, *A Legal History of Blood Quantum in Federal Indian Law to 1935*, 51 S.D. L. Rev. 1, 23 (2006). Communal tribal lands were broken into individual plots and distributed to

Indians so for farming. *Id.* The tribal rolls, which list the names of tribal members, were borne of this effort at forced assimilation. *Id.* at 23–24.

The passage of the General Allotment Act required that Congress finally develop a workable definition of "Indian." *Id.* at 30. Congress nonetheless dodged this responsibility to the best of its ability, opting instead for a piecemeal approach that offered limited definitions of "Indian" that hinged on specific situations—namely, intermarriage and racial mixing. *Id.* Many of these fact-based rules considered blood quantum. *Id.* at 30–33. Additionally, many congressmen considered blood quantum with the secondary goal of "getting rid of the Indian question" and encouraging "the gradual fading out of Indian blood." *Id.* at 32 (citing 27 CONG. REC. 2614 (statement of Sen. Higgins)). The result was that Congress used blood quantum "primarily to describe, but not to define individual Indians." *Id.* at 39.

In 1934, however, Congress reversed course entirely. *Id.* at 46. The General Allotment Act was repealed, and Congress passed the Indian Reorganization Act (IRA), which re-incorporated tribes as "dependent sovereign nations." *Id.*; 25 U.S.C. § 461 et seq. The IRA included the first legislative definition of Indian. Paul Spruhan, *A Legal History of Blood Quantum in Federal Indian Law to 1935*, 51 S.D. L. Rev. 1, 46–47 (2006). Although this definition required some Indian ancestry, it was primarily used to determine which persons were eligible for federal programs; not to limit the reach of tribal membership. *Id.* (citing Indian Reorganization Act, ch. 576, 48 Stat. 984.). As tribes reincorporated and Indians affiliated with their respective tribes, the racialized definition of "Indian" became less necessary and was repealed in 1948—only fourteen years after it was first crafted. G. William Rice, *The Indian Reorganization Act, the Declaration on the Rights of Indigenous Peoples, and a Proposed*

Carcieri *"Fix": Updating the Trust Land Acquisition Process*, 45 ID. L. Rev. 575, 579–80 (2009).

At no point in history did Congress expressly abrogate the Amantonka Nation's power to define tribal membership in any capacity. Nor has Congress ever expressly required that all tribes consider ancestry or blood quantum in extending citizenship to non-Indians. Paul Spruhan, *A Legal History of Blood Quantum in Federal Indian Law to 1935*, 51 S.D. L. Rev. 1, 9 (2006) ("For most of the nineteenth century Congress remained generally silent on defining Indian status."). Although Congress briefly required blood quantum to qualify as Indian for the purpose of federal benefits, it never extended this ancestry requirement to tribal membership. Concluding that Congress statutorily abrogated a tribe's right to determine its own membership based on a repealed and inapposite definition would constitute precisely the "light assumption" that the Court sought to avoid in *Bay Mills*. Importantly, Congress has statutorily required blood quantum for two tribes; the Eastern Cherokee and the Menominee. *Id.* at 45. By contrast, Congress's failure to affirmatively limit the contours of tribal membership—both generally and with respect to the Amantonka Nation specifically—should be viewed as deference to tribal sovereignty.

ii. *The Amantonka Nation has not been implicitly divested of its sovereignty with respect to tribal membership.*

Implicit divestiture was first explored in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). In *Oliphant*, the Supreme Court held that there was a "commonly shared presumption of Congress, the Executive Branch, and lower federal courts that tribal courts do not have the power to try non-Indians." *Id.* at 206. Although Congress never forbade Indian tribes from prosecuting and sentencing non-Indians, the Court inferred that Congress intended to do so because this was "the necessary result of its repeated legislative actions." *Id.* at 219.

The Court based its conclusion on the tribes' status as dependent sovereigns. *Kelsey*, 809 F.3d at 860.

The Court later explained that the "exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations is inconsistent with the dependent status of the tribes, and so cannot survive without express congressional delegation." *Montana v. United States*, 450 U.S. 544, 564 (1981). By limiting a tribe's retained sovereignty to internal relations, the Court indicated that a tribe's dependent status vitiates its power to control relations external to the tribe. *Wheeler*, 435 U.S. at 326. But powers of self-government are different because they only involve relations among tribal members. *Id.* Therefore, tribal powers of self-government—most saliently, a tribe's power to determine its own membership—is "not necessarily lost by virtue of a tribe's dependent status." *Id.*

This is particularly true because tribal naturalization does not vitiate a member's pre-existing citizenship. In *United States v. Rogers*, the Court held that that a non-Indian's adoption into a tribe does not exempt him from federal criminal jurisdiction because tribal adoption cannot change his relationship with the federal government as a non-Indian. 45 U.S. 567, 572–73 (1846). In the same breath, the Court held that a non-Indian can "by adoption, become entitled to certain privileges in the tribe and make himself amenable to their laws and usages." *Id.* This outcome establishes that tribal naturalization changes an individual's relationship with a tribe, but not an individual's relationship with the federal government. As such, the Court has indicated that tribal naturalization refers exclusively to internal relations, thus falling within the *Montana* exception.

This is true even though a naturalized tribal member may be subject to greater federal benefits by virtue of her new citizenship because the tribe has no control over its external

relations—including the limitations that Congress places on federal benefits for Indians. Put differently, federal benefits afforded to Indians are the result of the federal government's relationship with the tribe, not the tribe's relationship with federal government. And, if so moved, Congress could certainly re-incorporate ancestry into the federal definition of "Indian" without impacting tribal naturalization rights.

B. ***All members of the Amantonka Nation are subject to the Nation's criminal jurisdiction, regardless of their blood quantum or ancestry.***

A tribe's "sovereign power to punish tribal offenders" is one of the "inherent powers of limited sovereignty which has never been extinguished." *United States v. Lara*, 541 U.S. 193, 197 (2004) (citing *United States v. Wheeler*, 435 U.S. 313, 318 (1978)). In framing the power to prosecute crimes as a power of self-government, the Court explicitly recognized that tribes have never been divested of their power to punish tribal members for their crimes. *Wheeler*, 435 U.S. at 326. Tribal criminal jurisdiction is furthered bolstered by the nature of tribal membership, which requires that persons consent to participate in tribal government. *Duro v. Reina*, 495 U.S. 676, 694 (1990).

The Amantonka Nation is no exception. The Nation's power to punish tribal offenders remains inherent to its sovereignty and has never been divested. Reynolds consented to tribal criminal jurisdiction by choosing to become a naturalized member of the Nation and participate in tribal self-governance. In sum, the Nation maintains a particularly strong claim of criminal jurisdiction over Reynolds. Because Reynolds is a tribal member, and because his tribal membership exists independent of his ancestry, he should be prosecuted and sentenced under the legal system that he selected to submit himself to.

II. Reynolds' court-appointed attorney met the statutory and constitutional requirements for adequate representation regardless of whether he is Indian.

A. *If Reynolds is a non-Indian, defense counsel met the relevant legal requirements for adequate representation under the Violence Against Women Act of 2013.*

If, as Reynolds claims, he is a non-Indian for the purposes of criminal jurisdiction, then then his court-appointed attorney met all relevant statutory and constitutional requirements for adequate representation. The prosecution of Petitioner Reynolds fulfills the explicit purpose of the Violence Against Women Act of 2013 (VAWA), the case meets the requirements for special domestic violence criminal jurisdiction, and the Amantonka Nation created a public defender system that met all relevant legal requirements. Affirmation of Reynolds' conviction would respect Congress' legislative intent to strengthen the autonomy of tribal courts and enforce the right of native peoples to be free from domestic abuse.

i. *Native women are disproportionately subject to domestic abuse, and this case fulfills the explicit purpose of the increase in tribal court criminal jurisdiction under the VAWA.*

As the Supreme Court has noted, Native women are subject to tragically high rates of domestic assault and abuse. *United States v. Bryant*, 136 S.Ct. 1954, 1959 (2016). The late Senator McCain, advocating for legislation to support Native women, said that "compared to all other groups in the United States," Native American women "experience the highest rates of domestic violence." 151 CONG. REC. 9061 (2005). Nearly three out of five Native American women had been assaulted by their spouses or intimate partners. *See* S. REP. NO. 112-153, at 8 (2012). Moreover, a large number of domestic assaults against women tribal members are committed by non-Indians. Lawrence Greenfeld & Steven Smith, *American Indians and Crime*, U.S. DEPARTMENT OF JUSTICE, NCJ 173386 (Feb. 1999), http://www.bjs.gov/content/pub/pdf/aic.pdf (finding that at least 70 percent of the violent

victimizations experienced by American Indians are committed by persons not of the same race—a substantially higher rate of interracial violence than experienced by white or black victims). The pervasive violence against women is systemically underreported. *See* Ronet Bachman et al., *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response*, U.S. DEPARTMENT OF JUSTICE at 27 (Aug. 2008), https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf (finding that between 50 and 75 percent of intimate-partner assaults are never reported). Women may distrust police, fear long response times, or lack faith that the law will be enforced at all. *See id.* at 104.

Criminal jurisdiction is generally tied to territory and the power of a government over that territory. For example, Federal and state governments have the power to prosecute an offender if any significant element of a crime occurred within the territory of that government. *See, e.g.*, FED. R. CRIM. P. 18; NH R. CRIM. P. 18. This territorial emphasis is clear in legal naming conventions, such as "California v. Defendant." Not so for Native nations—instead of jurisdiction being defined by the place where the culpable conduct occurred, tribal governments' criminal jurisdiction is centered on the identity of the people involved in the crime, both the victim and the perpetrator. *Oliphant*, 435 U.S. at 208-09. In Indian country, jurisdiction is fractured between the federal courts, state courts, and tribal courts. *Duro*, 495 U.S. at 680, n. 1. "The 'complex patchwork of federal, state, and tribal law' governing Indian country has made it difficult to stem the tide of domestic violence experienced by Native American women." *Bryant*, 136 S.Ct. at 1959-60 (citation omitted).

State law enforcement officials have failed to stem the tide of domestic violence against Native women—as the Supreme Court has noted, "States are unable or unwilling to fill the enforcement gap," and, even when capable of exercising jurisdiction, "States have not devoted

their limited criminal justice resources to crimes committed in Indian country." *Bryant*, 136 S.Ct. at 1960. Similarly, the federal government has systemically under-prosecuted domestic violence crimes—federal reports show that prosecutors declined to pursue more than half of the cases referred to them.[1] This leaves tribes to try and protect their own without the jurisdictional power to do so, particularly in cases of abuse committed by non-Indians.

The hope for a meaningful legal response to rampant domestic violence against Native women is to increase tribal sovereign jurisdiction over crimes committed on tribal lands regardless of the identity of the perpetrator. In 2013 Congress did just that, amending the VAWA to facilitate tribal enforcement of laws against domestic violence. S. REP. NO. 112-153, at 8 (2012) ("This legislation bolsters existing efforts to confront the ongoing epidemic of violence on tribal land by . . . recognizing limited concurrent tribal jurisdiction to investigate, prosecute, convict, and sentence non-Indian persons who assault Indian spouses . . . in Indian country."). Expansion of tribal jurisdiction closes a legal loophole that "leaves victims tremendously vulnerable and contributes to the epidemic of violence against Native women" and increases the number of forms where perpetrators can be tried, thus enabling tribal communities to condemn abusive conduct. *Id.* at 9. The expansion of tribal court jurisdiction is entirely within Congress' plenary power to grant or divest attributes of sovereignty. *See Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 169 n.18 (1982) ("The United States retains plenary authority to divest the tribes of any attributes of sovereignty."). In the words of the Supreme Court: "the Constitution authorizes Congress to permit tribes, as an exercise of their

[1] Between 2005 and 2009, U.S. Attorney's offices (USAOs) declined to prosecute 50 percent of the 9,000 Indian country matters resolved by their offices. 77 percent of the matters were violent crimes. USAOs declined to prosecute violent crimes at a higher rate (52 percent) than nonviolent crimes (40 percent). *U.S. Department of Justice Declinations of Indian Country Criminal Matters*, GAO-11-167R, U.S. GOVERNMENT ACCOUNTABILITY OFFICE (Dec. 13, 2010), http://www.gao.gov/products/GAO-11-167R.

inherent tribal authority, to prosecute nonmember Indians." *United States v. Lara*, 541 U.S. 193, 210 (2004).

Here, the Amantonka Nation is exercising their congressionally and constitutionally sanctioned jurisdiction to curtail violence within their own community. Before the VAWA, tribal courts had limited ability to prosecute domestic abuse by non-Natives because of jurisdictional limitations. *See Oliphant*, 435 U.S. at 204 (holding that tribes cannot exercise criminal jurisdiction over non-Indians without an express congressional delegation). After adopting special domestic violence criminal jurisdiction under the VAWA, the Amantonka tribe can exercise jurisdiction over offenders such as Reynolds.

ii. *The Amantonka Nation met the requirements for special domestic violence criminal jurisdiction.*

Expansion of criminal jurisdiction under the VAWA is a voluntary increase in prosecutorial power and responsibility that a tribe may accept in order to combat acts of domestic violence committed by non-Indians on tribal lands. The Amantonka tribe has taken legislative steps to exercise jurisdiction over non-Indians in qualified domestic violence cases. *See* Amantonka Nation Code, Title 2 Chapter 1, § 105(b).

A crime must meet certain criteria to be eligible for special domestic violence criminal jurisdiction under the VAWA. *See generally*, 25 U.S.C. § 1302-1304. First, the victim must be Indian and the crime must have occurred in the Indian country of the participating tribe. 25 U.S.C. § 1304(b)(4)(A), (c)(1). Here, Reynolds' wife is an Indian, and the crime occurred on Amantonka land. *See* ROA at 6, 3.

Second, the crime must be one of domestic violence, dating violence, or violation of a protection order. 25 U.S.C. § 1304(c). Here, the Respondents actions clearly fulfill the

definition of domestic violence: his crime was committed against his spouse with whom he was cohabitating. *See* 25 U.S.C. § 1304(a)(2); ROA at 6.

Third, a non-Indian defendant must have sufficient "ties to the Indian tribe." 25 U.S.C. § 1304(b)(4)(B). Sufficient ties include residing on tribal land, employment in Indian country, or being the spouse or intimate partner of a member of the participating tribe. *Id.* Here, Reynolds fulfills at least two connections: he lives in tribal housing on Amantonka land and is married to an Amantonka citizen. *See* ROA 3, 6. While each of these ties would be independently sufficient under the statute, the combination of factors makes it clear that the Reynolds has ties to the Amantonka Nation. Finally, tribes must notify non-Indian defendants of their rights and privileges and make criminal laws publicly available. *See* 25 U.S.C. § 1304(e)(3); 25 U.S.C. § 1302(c)(4). Here, neither party has raised an issue of notice.

In short, the Amantonka Nation Code shows the Nation has proactively and appropriately extended jurisdiction over non-Indians who commit acts of domestic violence against Natives on tribal land. *See* Amantonka Nation Code, Title 2 Chapter 1, § 105(b). In the present case, as described above, Reynolds' crime has met all relevant criteria for jurisdiction.

iii. *The Amantonka Nation appointed qualified counsel who provided effective assistance.*

The standard for qualified counsel for non-Indians subject to special domestic violence criminal jurisdiction comes from the Indian Civil Rights Act (ICRA), specifically 25 U.S.C. section 1302(c) and section 1304(d). Under the ICRA, if a tribe imposes a term of imprisonment of more than one year then the tribe must "provide an indigent defendant the assistance of a defense attorney" who is "licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys." 25 U.S.C. §

1302(c)(2). Additionally, the tribe must "provide to the defendant the right to effective assistance of counsel at least equal to that guaranteed by the United States Constitution." *Id.*

First, the tribe must provide an attorney to indigent defendants. *Id.* Here, Reynolds requested and was appointed indigent defense counsel. *See* ROA at 4. Second, appointed counsel must be "licensed to practice law by *any* jurisdiction in the United States." 25 U.S.C. § 1302(c)(2) (emphasis added). Here, counsel was qualified to practice as a public defender under Title two, Chapter six of the Amantonka Nation Code. *See* ROA at 4. A textual reading of "any jurisdiction" includes Indian tribes—the word "any" refers to "one or some of a thing or number of things, *no matter how much or many*." Angus Stevenson & Christine A. Lindberg, NEW OXFORD AMERICAN DICTIONARY (3rd ed. 2010). Reynolds may argue that licensing jurisdictions are limited to state and federal bars; however, the text of the statute shows that Congress intended to include licensing by Indian tribes.

Third, the licensing jurisdiction must apply an "appropriate professional licensing standard." 25 U.S.C. § 1302(c)(2). Here, an Amantonka Nation public defender representing non-Indians must hold a JD from an accredited law school, pass the Amantonka Nation Bar Exam, take the oath of office, and pass a background check. *See* Amantonka Nation Code, Title 2 Chapter 6, § 607(b). The attorney appointed to represent Reynolds met these qualifications. *See* ROA at 7. The Amantonka bar is an "appropriate licensing standard" because the tribal bar sets the same licensing standard as a state bar. *Id.* Additionally, the American Bar Association (ABA) amended their Constitution in August of 2014 to recognize tribal bar members as full ABA members, placing tribal bar associations on equal footing with state bar associations. *See* ABA CONST. art. 3, § 1, https://www.americanbar.org /content/dam/aba/administrative/house_of_delegates/aba_constitution_and_bylaws_2016-

2017.pdf. Respondent may argue that the minimum qualification for Amantonka public defenders is inadequate because it does not require that all public defenders attend an ABA accredited law school and pass the Amantonka bar; however, that argument is irrelevant as applied to non-Indians—the Amantonka Nation Code clearly states that any indigent non-Indian defendant is entitled to a public defender who is an attorney, not a lay counselor. *See* Amantonka Nation Code, Title 2 Chapter 5, § 503(2).

Fourth, the tribe must "ensure[] the competence and professional responsibility of its licensed attorneys." 25 U.S.C. § 1302(c)(2) Here, the Amantonka Nation ensures competence by requiring attorneys to pass the tribal bar exam and by reserving the right to disbar attorneys for significant violations of the Code of Ethics of the Amantonka Nation. *See* Amantonka Nation Code, Title 2 Chapter 5, § 504(a). The ethics code includes Competence, Diligence, Honesty, and Fairness. *Id.* at Title 2 Chapter 7, Cannon 1, 3, 13, 14. The Respondent may argue that tribe has an affirmative obligation to monitor competence and provide continuing legal education; however, the tribal bar and background check, combined with disbarment for incompetence, provide sufficient screening to "ensure competence and professional responsibility." 25 U.S.C. § 1302(c)(2).[2]

Next, a non-Indian defendant must receive effective assistance of counsel at least equal to that guaranteed by the United States Constitution." 25 U.S.C. § 1302(c)(2). The federal standard for effective representation derives from *Strickland v. Washington*, under which a

[2] It is important to note that Respondent does not argue that all tribal counsel satisfy the standard of counsel for non-Indian defendants under the ICRA. For example, the Fort Peck tribe has lay advocated that do not pass the IRCA standard. In contrast, the Navajo Nation Bar Exam likely satisfied the standard for competent representation. Since the Amantonka Bar Exam is similar to state bar exams, Amantonka public defenders are more similar to Navajo Nation attorneys than Fort Peck counsel. *See* Maureen L. White Eagle et all., *Tribal Legal Code Resource: Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction*, TRIBAL LAW AND POLICY INSTITUTE 121 (March 2016), http://www.tribal-institute.org/download/codes/TLOA_VAWA_3-9-15.pdf.

defendant alleging ineffective assistance of counsel must show that counsel's performance was deficient and that the individual was prejudiced by the deficiency. 466 U.S. 668 (1984). Here, the defendant has "not pointed to any errors allegedly committed by his defense counsel." ROA at 7. Since even extreme cases of deficient performance are permissible, Reynolds will be unable to satisfy the ineffective assistance of counsel test set forth in *Strickland*. *See, e.g.*, *Muniz v. Smith*, 647 F.3d 619 (6th Cir. 2011) (finding no ineffective assistance of counsel, even when the defense attorney slept through a portion of the trial).

Finally, it is worth noting that the length of the sentenced imposed on Respondent is only seven months. *See* ROA at 5. Under the IRCA, a tribe need not provide an indigent defendant with counsel unless imposing a sentence of more than one year. *See* 25 U.S.C. § 1302(c). However, considering the catch-all provision in the VAWA requiring the tribe to respect "all other rights whose protection is necessary under the Constitution of the United States," *Id.* at § 1304(d)(4). The Amantonka nation correctly followed the federal constitutional standard from *Argersinger v. Hamlin* and provided qualified counsel for a charge that could carry a maximum of three years imprisonment and where the sentence resulted in actual imprisonment. 407 U.S. 25 (1972) (holding that the assistance of counsel must be provided when a defendant is tried for a crime that results in a sentence of imprisonment).

iv. *The VAWA reflects Congress' modern Indian policy of respect for tribal sovereignty and autonomy.*

As discussed in the previous section, Reynolds received qualified and effective representation which is itself sufficient grounds to hold for the Respondent; however, equally compelling is the need to respect Congress' acknowledgement of tribal sovereignty over domestic violence crimes committed against Native women on tribal land. *See* S. REP. NO. 112-153, at 8 (2012). Holding that the Reynolds received inadequate counsel will "unduly

interfere with the balance that Congress has struck between recognizing tribal sovereignty and protecting the rights of the accused." Brief of National Congress of American Indians as Amicus Curiae in Support of Petitioner at 2, United States v. Bryant, 136 S.Ct. 1954 (2016) (No. 15-420), 2015 WL 6774576, at *2.

For decades after *Oliphant v. Suquamish Indian Tribe*, the Supreme Court determined the extent of tribal authority over non-Indians. 435 U.S. at 204 (holding that Tribes cannot exercise criminal jurisdiction over non-Indians without an express congressional delegation). By passing the VAWA and creating special domestic violence criminal jurisdiction in 2013, Congress did more than pass a jurisdictional grant—the legislature took back their lead role in balancing tribal sovereignty and Constitutional values. *See generally*, Recent Legislation Note, *The Violence Against Women Reauthorization Act of 2013*, 127 HARV. L. REV. 1509, 1509-10 (Mar. 2014) (discusses the VAWA and special domestic violence jurisdiction). The language of section 1304 of the ICRA signals Congress' intent to partially override *Oliphant*, as section 1301(2) overrode *Duro v. Reina* in 2004.[3] The section of the ICRA granting special domestic violence criminal jurisdiction is aligned so closely with the Court's previous concerns from *Duro*—primarily the fear of tribal court power—that Congress leaves the Court with no choice but to accept values of tribal sovereignty and re-affirm Congress' role in setting federal Indian policy.

The VAWA includes protections designed to limit the power of tribal courts and forcing them to mirror federal courts. For example, tribes must provide non-Indian defendants with jury trials, keep a record of all court proceedings, and appoint counsel if non-Indian

[3] The Supreme Court upheld the Congressional override of *Duro v. Reina*, 495 U.S. 676 (1990), in *United States v. Lara*, 541 U.S. 193 (2004). For more detail on the *Oliphant-Duro-Lara* trilogy, see Philip P. Frickey, *A Common Law for Our Age of Colonialism: The Judicial Divestiture of Indian Tribal Authority over Nonmembers*, 109 YALE L.J. 1, 9-10 (1999).

defendants are indigent. *See* 25 U.S.C. § 1302. Requiring a non-Indian defendant to have "ties to the tribe" represents the liberal ideal of government legitimized by the consent of the governed. *See* 25 U.S.C. § 1304 (b)(4)(B); THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) ("That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."). Judicial affirmation of special domestic violence criminal jurisdiction under the VAWA would be an affirmation of national values, which are best established by elected representatives.

B. ***If Reynolds is an Indian, defense counsel met the relevant statutory requirements for adequate representation and there is no Equal Protection violation.***

If, as Respondent claims, Reynolds is an Indian for the purposes of criminal jurisdiction, then his court-appointed attorney met all relevant statutory and constitutional requirements for adequate representation. Both Congress and the Supreme Court have decided that standards for tribal counsel are determined by the ICRA, and the Amantonka Nation fulfills those requirements. Further, the standard of tribal counsel mandated by the ICRA creates no Equal Protection violation because stare decisis demands a rejection of such claims, Respondent has shown no purposeful discrimination, and tribes are sovereign entities.

i. *This issue has already been decided: Indian defendants are adequately protected by the ICRA.*

The U.S. Constitution's Bill of Rights applies only to the federal government and does not apply to proceedings in tribal courts because tribes pre-date the Constitution. *See Talton v. Mayes*, 163 U.S. 376 (1896). The historical presumption in American law is to leave Indian tribes with the authority to resolve crimes committed between Indians. *See Ex parte Crow Dog*, 109 U.S. 556 (1883). In 1968, Congress enacted the ICRA which makes many, but not all, guarantees of the Bill of Rights applicable within Indian tribes. *Bryant*, 136 S.Ct. at 1962. For

example, the ICRA bars self-incrimination, prevents double jeopardy, and ensures a speedy trial. *See* 25 U.S.C. § 1302(a). However, the ICRA does not grant the right to appointed counsel for all indigent defendants—it only guarantees assistance of counsel if a party can retain representation. *Id.* at (a)(6). Various courts have held that principles of comity support recognizing even uncounseled tribal court convictions that comply with the ICRA. *See, e.g.*, *U.S. v. Shavanaux*, 647 F.3d 993, 1000 (10th Cir. 2011); *State v. Spotted Eagle*, 316 Mont. 370, 378–379, (Mont. 2003). These decisions by Congress, the Supreme Court, and other courts represent a balancing act between tribal sovereignty and the rights of criminal defendants.

Most recently, in *United States v. Bryant* the Supreme Court granted approval for the ICRA's standard for right to counsel. 136 S.Ct. at 1962. Justice Ginsberg wrote, "In tribal court, [] unlike in federal or state court, a sentence of imprisonment up to one year may be imposed without according indigent defendants the right to appointed counsel." *Id.* In *Bryant*, the Court affirmed the validity of tribal court convictions when Congress grants tribes the affirmative power to do so. *Id.*

Following *Bryant*, the present case is a similar opportunity to affirm Congressionally-approved tribal sovereignty over criminal jurisdiction. Here, the Amantonka Nation's standard for indigent defense satisfy the right to counsel in the ICRA. *See* Part II. A., *supra*. Ruling that Indians are adequately protected by the ICRA would create a clear and logical continuation of federal Indian law right to counsel doctrine. Ruling otherwise would "disregard Congress' deliberate choice, in the exercise of its plenary power over Indian country, not to require tribal courts to provide appointed counsel outside the limited circumstances set forth in ICRA as amended." Brief of National Congress of American Indians as Amicus Curiae in Support of

Petitioner at 16, United States v. Bryant, 136 S.Ct. 1954 (2016) (No. 15-420), 2015 WL 6774576, at *16.

ii. *The Amantonka Nation's standard for appointed counsel does not violate the Equal Protection Clause.*

The Supreme Court has long held that classifications based Indian status do not violate the Equal Protection Clause. In *United States v. Antelope*, the Court held that classifications expressly singling out Indian tribes are based on "the quasi-sovereign status of [Indian tribes] under federal law," not based on invidious race-based distinctions. 430 U.S. 641, 644 (1977). The court noted that classifications of Indian tribes are "expressly provided for in the Constitution" and "supported by the ensuing history of the Federal Government's relations with Indians." *Id.* at 645. Further, the Equal Protection clause under the ICRA differs from the federal standard in that the ICRA clause guarantees "the equal protection of *its* [the tribe's] laws, rather than of *the* laws." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 63 n.14 (1978).

Since Equal Protection claims address political status, not race, claims are subject to "rational tie" scrutiny, which requires that classifications based on Indian status be "reasonable and rationally designed to further Indian self-government." *Morton v. Mancari*, 417 U.S. 535, 555 (1974). For example, in *Means v. Navajo Nation*, an enrolled member of an Indian tribe claimed that he was denied Equal Protection by an ICRA provision that made him subject to the criminal jurisdiction of another tribe's courts. 432 F.3d 924, 932 (2005). In *Means*, the Indian defendant argued that, although he was an Indian, he was also a citizen of the United States and entitled to the full protection of the U.S. Constitution. *Id.* The Ninth Circuit disagreed and applied rational tie scrutiny, holding that the statute was reasonable and rationally designed to further Indian self-government. The court reasoned that any different

treatment was not the result of the accused's race, but of his political status as an enrolled member of an Indian tribe. *Id.*

Additionally, as the Supreme Court has noted, tribes are "distinct, independent political communities" that retain "their original natural rights in matters of local self-government." *Santa Clara Pueblo*, 436 U.S. at 55 (quotations omitted). In particular, "Indians have power to make their own substantive law in internal matters and to enforce that law in their own forums." *Id.* This reflects the liberal ideal of government legitimized by the consent of the governed, and as applied to federal Indian law means that Natives are subject to the applicable laws of tribal land. *See* THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) ("That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."); JOHN LOCKE, SECOND TREATISE OF GOVERNMENT, § 95 (1689) ("The only way whereby anyone divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community).

Here, Respondent may argue that *Antelope* left open the question of whether "instances in which Indians tried in federal court are subjected to differing penalties and burdens of proof from those applicable to non-Indians charged with the same offense" would violate the Equal Protection Clause. In the present case, however, neither situation is presented. Reynolds is subject to the same criminal statutes regardless of whether he is Indian or non-Indian and faces no greater burden in proving that he was denied the right to counsel than he would in federal court. *See* Part II. A., *supra*.[4]

[4] For a similar argument, see *United States v. First*, 731 F.3d 998, 1007 n.8 (9th Cir. 2013). Further, it is worth noting that this Equal Protection argument was rejected by Congress during hearings about the VAWA, indicating that congress' plenary power over tribal courts applies to the civil rights of consenting citizens, see S. REP. NO. 112-153, at 36-37 (2012) (minority views of Senators Grassley, Hatch, Kyl, and Cornyn). If this argument was rejected for non-Indian defendants, then surely it would be rejected for Indian defendants.

Despite the lack of invidious racial classification, the Respondent may argue that his Equal Protection claim warrants strict scrutiny because the Amantonka nation showed discriminatory purpose by allowing lay counsel to defend indigent Natives and discriminatory effect by allowing lower qualifications for lay counsel. *See Washington v. Davis*, 426 U.S. 229, 242 (1976) (requiring a showing of both discriminatory purpose and effect for a valid Equal Protection claim). Respondent may rely on the minimum qualifications for Amantonka Nation public defenders and the alleged difference between a state and a tribal bar exam.

Here, however, the Amantonka Nation has high standards for appointed counsel. At a minimum, Amantonka public defenders have successfully complete the Amantonka Nation Bar Exam and be of "moral character and integrity." Amantonka Nation Code, Title 2 Chapter 6, § 607(a). As noted by the Amantonka Supreme Court, "no facts [on the record] support a difference between a state bar exam and the Amantonka Nation's bar exam." ROA at 7. This is similar to the states of California, Virginia, Vermont, and Washington, where individuals without a JD may take the state bar and practice law. *See* Crockett, Zachary, "How to Be a Lawyer Without Going to Law School," PRICEONOMICS, Nov. 15, 2015, https://priceonomics.com/how-to-be-a-lawyer-without-going-to-law-school/; CAL. STATE BAR R. 4.29 "Law Office Study Code." Further, all public defenders currently serving the Amantonka Nation hold a JD degree from and ABA accredited law school. ROA at 7 n.1. Considering the totality of qualifications, Respondent will not be able to prove discriminatory purpose and effect in regard to his appointed counsel. Additionally, it is worth noting that the Amantonka Nation likely would have permitted lay counsel to represent indigent native defendants regardless of any invidious classification. *See Arlington Heights v. Metropolitan Housing Corp.*, 429 U.S. 252, 271 n.21 (1977) (stating that proof of a discriminatory purpose

shifts to the responding party the "burden of establishing that the same decision would have resulted even had the impermissible purpose not been considered").

This case is a straightforward application of tribal jurisdiction over tribal members and holding otherwise would violate tribal sovereignty. Respondent consented to the laws of the Amantonka Nation by becoming a naturalized citizen of the tribe. Since Native Nations are sovereign entities, there can be no Equal Protection violation under the federal Constitution as long as Indian courts operate within the ICRA. *See Cherokee Nation v. Georgia*, 30 U.S. 1, 17 (1831) (noting that, although tribes have no sovereignty in an international sense, they retain governmental authority within the United States as "domestic dependent nations"). Further, eliminating the use of lay attorneys would take power away from the tribes by forcing their legal systems to comply completely with federal government standards, potentially disbarring Native tribal counsel, and devaluing tribal and community knowledge. By requiring formal law school training, the Supreme Court would price out tribes from affordable legal counsel. *See* Judge Jed S. Rakoff, "Why You Won't Get Your Day in Court," THE NEW YORK REVIEW OF BOOKS (Nov. 2016), https://www.nybooks.com/articles/2016/11/24/why-you-wont-get-your-day-in-court. In short, finding an equal protection violation in the present case would deprive sovereign Native nations the flexibility that Congress intended them to have. *See Santa Clara Pueblo*, 436 U.S. at 62 (noting that, in passing the ICRA, Congress intended "to promote the well-established federal 'policy of furthering Indian self-government'") (quoting *Morton v. Mancari*, 417 U.S. 535, 551 (1974)).

CONCLUSION

For the foregoing reasons, the Court should affirm the decision below.

Respectfully submitted,

Counsel for William Smith, et al.