

No. 19-231

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IN THE  
**Supreme Court of the United States**

ROBERT R. REYNOLDS,

*Petitioner,*

v.

WILLIAM SMITH, JOHN MITCHELL, AND ELIZABETH NELSON,

*Respondents.*

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

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**BRIEF FOR PETITIONER**

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Student Group No. 760

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## **QUESTIONS PRESENTED**

1. Whether the circuit court erred when it held that an individual with no Indian blood can be classified as an Indian for federal criminal jurisdiction because he voluntarily agreed to be adopted into his wife's federally-recognized Indian tribe.
2. Whether the circuit court erred when it agreed with the Amantonka Nation Supreme Court and held that Appellant was provided adequate indigent defense counsel by the Nation's Court.

## STATEMENT OF THE CASE

The Petitioner appeals from a *per curiam* opinion of the court of appeals' opinion reversing and remanding the lower court's decision, arguing that he is a non-Indian who was not provided indigent defense counsel required under VAWA 2013.

### **A. STATEMENT OF THE PROCEEDINGS**

On June 16, 2017, Plaintiff-Respondents filed a complaint against Defendant-Petitioner Robert Reynolds alleging a violation of Title 5, section 244 of the Amantonka Nation Code. R. 2. Mr. Reynolds timely filed three pretrial motions: (1) requesting to have charges dismissed on the grounds he is a non-Indian and the Amantonka Nation lacked criminal jurisdiction over non-Indians; (2) requesting an attorney be appointed to him as provided for in 25 U.S.C. § 1302 et seq.; (3) alleging his then court-appointed attorney was insufficiently qualified to serve as his counsel. R. 3-4. On July 5, 2017, the district court for the Amantonka Nation entered an Opinion and Order Denying Defendant's Pretrial Motions, holding that by virtue of his citizenship with the Amantonka Nation Mr. Reynolds was now an Indian for purposes of criminal jurisdiction. R. 4. Moving forward with the case against the Mr. Reynolds, the district court held a jury trial beginning on August 14, 2017. R. 4. After a jury verdict finding Mr. Reynolds guilty was rendered, he made a timely Motion to Set Aside the Verdict, but an Order Entering Judgment and Sentence was entered on August 23, 2017, denying his motion based on the same grounds; he was an Indian due to his membership with the Amantonka Nation. R. 5. Mr. Reynolds then appealed the district court's ruling to the Supreme Court of the Amantonka Nation, again raising the same three agreements as his pretrial motions. R. 6-7. That court affirmed the district court's ruling and the lower court's justification for jurisdiction over the Mr. Reynolds. R. 7. Mr. Reynolds then

filed a Writ of Habeas Corpus under 25 U.S.C. §1303, which was granted March 7, 2018. R. 8. Plaintiff-Respondents appealed the decision to the U.S. Court of Appeals for the Thirteenth District, who in a *per curiam* opinion reversed and remanded the matter with instructions to deny Mr. Reynold's Writ of Habeas Corpus. R. 9. Mr. Reynolds then filed a Writ of Certiorari to the United States Supreme Court, which was granted October 15, 2018.

## **B. STATEMENT OF THE FACTS**

Mr. Reynolds is a man who, shortly after marrying his college sweetheart, Lorinda, went through the process to become a naturalized citizen of her Indian Tribe, the Amantonka Nation. R. 6. Even though a non-Indian by blood, Mr. Reynolds has been living and working upon the Amantonka Nation Reservation since their marriage. R. 6. While Mr. Reynolds and his wife have been living in tribal housing, they have been working hard and saving their money to buy a house of their own. R. 6. Unfortunately, hard times fell upon the Reynolds family, when the Amantonka shoe factory went out of business, closing its doors forever and leaving Mr. Reynolds out of a job. R. 6.

As he felt the toll of unemployment, Mr. Reynolds began drinking heavily, causing conflict in his marriage. R. 6. On June 15, 2017, the police arrived to the Reynolds residence after one particularly heated incident, where the police reported Mr. Reynolds had smacked Lorinda, which caused her to fall to the ground. R. 6. Unfortunately, during her fall, Lorinda fell onto the coffee table and cracked one of her ribs. R. 6. Mr. Reynolds was arrested that evening and the next day charges were filed against him. R. 6.

## **SUMMARY OF ARGUMENT**

Because the appellate court and tribal courts have incorrectly applied federal policy and Supreme Court precedent in finding Petitioner is an Indian not entitled to federal

criminal jurisdiction, and therefore failed to properly appoint him indigent defense counsel, meeting the requirements of both VAWA 2013 and the Amantonka Nation's tribal code, this Court should reverse the appellate court's opinion.

The appellate court disregarded federal policy and judicial precedent when it reversed the order granting Petitioner's Writ of Habeas Corpus in favor of the opinion that he is an Indian and that the Amantonka Nation possessed criminal jurisdiction over him. In short, this Court should find that there was sufficient evidence produced that clearly established that the Petitioner is not an Indian by blood or descendancy, and therefore is not an Indian for purposes of federal criminal jurisdiction. Further, since the Petitioner is a non-Indian, the Amantonka Nation failed to provide him with indigent defense counsel required under VAWA 2013 and its own provisions because the attorney was only licensed in tribal court and not the State of Rogers.

First, the appellate court erred as a matter of law in holding that the Amantonka Nation had jurisdiction over Mr. Reynolds since "Indian tribes do not have inherent jurisdiction to try and punish non-Indians.<sup>1</sup>" By failing to consider blood quantum or descendancy as an additional element, the Amantonka Nation has ignored past Supreme Court precedent and Congressional intent on who is an Indian for federal criminal jurisdiction and included a class of persons who in fact are *not* Indian. While Mr. Reynolds did not contest the tribal court's jurisdiction regarding the act or the place where the offense was committed, he has contested the tribal court's jurisdiction over him and asserted the affirmative defense that he is not an Indian for federal criminal jurisdiction.

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<sup>1</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978).



Second, the appellate court erred as a matter of law and fact when it reversed the District Court holding on the qualifications of Mr. Reynolds' defense counsel. The Amantonka Nation provided him with an attorney that does not meet the standards for indigent defense counsel set by VAWA 2013.<sup>2</sup> The attorney was only licensed in the Amantonka Nation and did not hold a state license for Rogers. Additionally, the appellate court lacked the information needed to determine whether passage of the Amantonka bar met the requirements of VAWA. If found to be an Indian, the appellate court still erred because the Amantonka Code's provisions of indigent defense counsel fail equal protection.

For these reasons, this Court should reverse the appellate court's *per curium* opinion and remand the case for further proceedings, including instructions that Mr. Reynolds is a non-Indian subject to federal criminal jurisdiction and the appointment of indigent defense counsel as required under VAWA 2013.

### **ARGUMENT**

Since assessing whether a court had jurisdiction is a question of law, this case must be reviewed *de novo*.<sup>3</sup> Therefore, this Court must look far enough into the case to determine whether the tribal court had jurisdiction over "the person, the act, and the place where [the offense] was committed;" looking at every element of the case that invokes the jurisdiction of the court.<sup>4</sup> The question of the qualification of defense counsel also requires *de novo* review.<sup>5</sup> It poses a mixed question of law and fact. Whether the lower court erred by incorrectly applying the law, or if there were insufficient facts to make its ruling.

#### **I. THE DISTRICT COURT DISREGARDED FEDERAL PRECEDENT THAT CONSISTENTLY RECOGNIZES AN INDIVIDUAL AS INDIAN**

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<sup>2</sup> 25 U.S.C. § 1304.

<sup>3</sup> *Port Gamble S'Klallam Tribe v. Hjert*, No. POR-CR-09/09-169 (slip op. Dec. 15, 2011).

<sup>4</sup> *Ex parte Kenyon*, 14 F. Cas. 353, 354 (C.C.W.D. Ark. January 1, 1878).

<sup>5</sup> *U.S. Bank Nat'l Ass'n v. Vill. at Lakeridge, LLC*, 138 S. Ct. 960, 967 (2018).

**FOR FEDERAL CRIMINAL JURISDICTION WHEN HE HAS MEMBERSHIP IN A FEDERALLY RECOGNIZED TRIBE AND SOME QUANTUM OF INDIAN BLOOD.**

The appellate court erred as a matter of law when it disregarded the undisputed fact that Mr. Reynolds has no Indian blood and as a result is subject to federal criminal jurisdiction. Mr. Reynolds has not made any attempts to dispute whether the alleged offense was committed within Indian country or that the victim was an Indian, fully recognizing the authority of the Tribal court in those respects. Instead Mr. Reynolds has consistently raised the issue that he is a non-Indian and not subject to the jurisdiction of the Amantonka Nation. He therefore contends that as a non-Indian, he falls under federal criminal jurisdiction for purposes of Special Domestic Violence Criminal Jurisdiction, not the Amantonka Nation's jurisdiction.

It's been a long-standing practice that criminal jurisdiction over offenses committed within the boundaries of Indian country is to be governed according to the complex web of applicable federal, state, and Tribal law.<sup>6</sup> For example, the Indian Country Crimes Act, 18 U.S.C. §1152, provides that,

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

Because Indian country includes all land within the boundaries of an Indian reservation, this Court has taken measures to narrow the reach of tribal governments from exercising control over non-Indians.<sup>7</sup> However, since Indian tribes "possess [only] those

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<sup>6</sup> *Negonsott v. Samuels*, 507 U.S. 99, 102 (1993) (internal quotation marks and citations omitted).

<sup>7</sup> See *United States v. McBratney*, 104 U.S. 621 (1881) (holding that absent treaty provisions to the contrary the state had exclusive criminal jurisdiction over crimes committed by non-Indians in Indian country); *United States v. Antelope*, 430 U.S. 641, 643 n.2 (1977); *Draper v. United States*, 164 U.S. 240 (1896).

aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status,” they cannot exercise criminal jurisdiction over non-Indians unless authorized to do so by Congress.<sup>8</sup> But Congress has not done so, and in fact it has acted with the belief that Indian tribes, in general, have never had the authority to try and punish non-Indian offenders, even within Indian country.<sup>9</sup> For example, treaties with Indian tribes often included language indicating that tribes were not to shelter or conceal non-Indians who violated the laws of the United States and that they were instead required to surrender them to the proper authorities for trial.<sup>10</sup> Therefore, while tribes have the inherent sovereign power to prosecute their own Indian members for violations of tribal law, by virtue of their dependent status, they have been divested of their inherent power to prosecute non-Indians.<sup>11</sup>

Furthermore, the word “Indian” is a legal term of art that has many different definitions depending on the purpose it is used for.<sup>12</sup> According to the Bureau of Indian Affairs an Indian is “someone who has blood degree from and is recognized as such by a federally recognized tribe or village (as an enrolled tribal member) and/or the United States.<sup>13</sup>” Additionally, according to the Indian Reorganization Act, an Indian is someone who is either one-half Indian blood, a descendant of Indians living on reservations, or all

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<sup>8</sup> *United States v. Wheeler*, 435 U.S. 313, 323 (1978).

<sup>9</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 204 (1978).

<sup>10</sup> *Id.* at 208.

<sup>11</sup> *Id.* at 212 (emphasis added).

<sup>12</sup> *St. Cloud v. United States*, 702 F. Supp. 1456, 1460 (D.S.D. 1988) (including the definitions of Indian under the Indian Financing Act, 25 U.S.C. § 1452 and 25 C.F.R. § 11.2(c), which state federal recognition from either the Bureau of Indian Affairs or federal government; and 25 U.S.C. 302, 25 U.S.C. 2008(f), 25 U.S.C. § 345, and 42 C.F.R. §36.12, which use blood quantum and descendance as a factor).

<sup>13</sup> *Frequently Asked Questions*, BIA, <https://www.bia.gov/frequently-asked-questions> (last visited Jan. 14, 2019).

those of Indian descent who are members of a federally recognized Indian tribe.<sup>14</sup> Similarly, this Court has long-held that in order to be classified as an Indian under federal criminal jurisdiction, one must satisfy both elements of a two-prong standard: [1] some Indian descendency or blood quantum *and* [2] membership in a federally recognized tribe (the *Rodgers* test).<sup>15</sup> Therefore, by failing to meet the first prong of this standard, Mr. Reynolds is not an Indian according to the BIA or this Court.

Once upon a time, membership in a federally recognized Indian tribe was sufficient to grant a non-Indian the title of Indian. Prior to the Indian Reorganization Act of 1934, this Court recognized that when an individual took all the necessary steps to become an Indian citizen, and considered himself an Indian, he then became one for purposes of federal criminal jurisdiction.<sup>16</sup> But this is no longer the case. Additionally, it was not that the government or this Court was recognizing that one could shed their non-Indian status through adoption or naturalization processes, but recognition of federal treaties which granted tribal jurisdiction to “all members” of a tribe, without any mention to the race of the individual.<sup>17</sup> Since 1934, the federal government, the BIA, and this Court have no longer accepted the adoption of non-Indian members as a basis for determining Indian status, and instead have turned back to the *Rodgers* test. Even current versions of the Indian Reorganization Act reflect this, listing that membership of “all persons” who are descendants of members living within the boundaries of Indian reservations as of June 1, 1934 as a limiting factor for those without Indian descendency.<sup>18</sup>

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<sup>14</sup> 25 U.S.C.S. § 5129 (LexisNexis, Lexis Advance through PL 115-281, approved 12/1/18).

<sup>15</sup> *United States v. Rodgers*, 45 U.S. 567, 573 (1846) (emphasis added).

<sup>16</sup> *Nofir v. United States*, 164 U.S. 657, 661 (1896); *see also, Alberty v. United States*, 162 U.S. 499 (1896) (holding that the Cherokee Nation’s tribal courts had jurisdiction over offenses committed by one Indian against another, including Indians by birth and *Indians by adoption*) (emphasis added).

<sup>17</sup> Felix S. Cohen’s Handbook of Federal Indian Law 24 (Rennard Strickland et al. eds., 1982 ed.).

<sup>18</sup> 25 U.S.C.S. § 5129 (LexisNexis, Lexis Advance through PL 115-281, approved 12/1/18).

As a result, membership alone is *not* sufficient to be an “Indian.” *United States v. Rodgers* is this Court’s leading authority regarding who is an Indian for federal criminal jurisdiction. While the Court in *Rodgers* permitted a white man, married into the Cherokee Nation, to be prosecuted for crimes committed in Indian territory, this Court more importantly held that a white man could not claim to be an Indian exempt from federal jurisdiction based upon his adopted status as a citizen of the Cherokee Nation.<sup>19</sup> As a result, this Court barred white men from adopting Indian status, concluding that being an “Indian” included a racial element under federal criminal law; requiring those claiming its designation to also belong to the Indian race.<sup>20</sup> The legacy of the two-prong test was borne and has since remained, requiring both Indian blood and membership in an Indian tribe to truly be Indian.

Membership may provide privileges, but it does not grant one the rights of being an Indian. Even when an individual has Indian blood, lack of membership in a federally recognized tribe can preclude their ability to receive the same rights as an Indian.<sup>21</sup> In the case of *St. Cloud v. United States*, the petitioner was an Indian by blood and received the privileges of being Indian, but his membership in a terminated Indian tribe prevented him from being classified as an Indian for federal criminal jurisdiction.<sup>22</sup> The court reasoned that even though he was otherwise a “full-blooded” Indian and given the privileges of membership, including housing benefits, his official membership with a terminated tribe severed the trust relationship between the United States government and the petitioner.<sup>23</sup> Ultimately, the court concluded that while he may qualify for some privileges as a result of

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<sup>19</sup> *United States v. Rodgers*, 45 U.S. 567, 572-73 (1846).

<sup>20</sup> *Id.*

<sup>21</sup> *United States v. Antelope*, 430 U.S. 641, 646 (1977).

<sup>22</sup> *St. Cloud v. United States*, 702 F. Supp. 1456, 1461-60 (D.S.D. 1988).

<sup>23</sup> *Id.* at 1466.

his Indian descendency, for purposes of federal criminal jurisdiction the petitioner was not an Indian.<sup>24</sup>

Despite his membership with the federally recognized Amantonka Nation, Mr. Reynolds is still not an Indian and therefore must be subjected to federal recognition as such. While the defendant in *Rodgers* was using his adopted status to claim the privilege of Indian status, Mr. Reynolds in this recognizing that he is still not an Indian. While both men were adopted into their tribes as a result of their marriage to an Indian woman, Mr. Reynolds is not claiming to have shed his past life and his non-Indian heritage. There is nothing in the record to indicate that he has ever considered himself to be an Indian, nor received any recognition from the Amantonka Nation that he is an Indian besides their attempts to prosecute him.

Further, there is no doubt that while he has enjoyed the privileges of membership within the Amantonka Nation, Mr. Reynolds is still not an Indian because he does not have the same rights as the Indian citizens. While there is no indication whether his housing and employment assistance is the result of his marriage to an Indian citizen or by virtue of his own citizenship, the Amantonka Nation's tribal code clearly states that "Each new citizen is thereafter entitled to all the privileges afforded all Amantonka citizens," without any mention of the rights that are thereafter granted.<sup>25</sup> As the petitioner in *St. Cloud* was not an Indian for purposes of federal criminal jurisdiction, so too is Mr. Reynolds not an Indian for purposes of federal criminal jurisdiction. While the petitioner in *St. Cloud* was a full-blooded Indian, it was his failure to meet both prongs of this Court's standards that prevented him from the rights afforded Indian. Likewise, while Mr. Reynolds is a member of a federally recognized

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<sup>24</sup> *Id.*

<sup>25</sup> Amantonka Nation Code §203.

tribe, that membership alone is not sufficient to meet this Court's standard for determining who is an Indian for federal criminal jurisdiction.

Therefore, this Court should find that the appellate court erred as a matter of law because Mr. Reynolds various motions should have been granted since, despite his status as a naturalized citizen of the Amantonka Nation, he still is not an Indian. While Mr. Reynolds did voluntarily elect to go through the naturalization process of becoming a citizen of his wife's Indian tribe, that membership alone is not sufficient to meet this Court's standard of who is an Indian for federal criminal jurisdiction.

**II. THE CIRCUIT COURT ERRED WHEN IT HELD THAT THE APPELLANT WAS GIVEN PROPER INDIGENT DEFENSE COUNSEL BY THE AMANTONKA NATION AND THAT HIS EQUAL PROTECTION RIGHTS WERE NOT VIOLATED.**

Mr. Reynolds is a non-Indian for criminal jurisdiction purposes. The Amantonka Nation failed to exercise its Special Domestic Violence Criminal Jurisdiction (SDVCJ) over Mr. Reynolds to convict him of a domestic violence crime. Instead, the Amantonka Nation's Courts used the incorrect jurisdictional basis and charged him as an Indian. R. 3.

SDVCJ allows Tribal courts to exercise limited criminal jurisdiction over non-Indians for some crimes of domestic and dating violence.<sup>26</sup> Tribal usage of SDVCJ was enabled by the Violence Against Women Act of 2013 (VAWA).<sup>27</sup> VAWA dictates that Indian tribes exercising SDVCJ over non-Indians must provide indigent criminal defendants with effective and licensed defense counsel.<sup>28</sup> Not only must Indian tribes provide indigent counsel, but provide counsel that is, "at least equal to that guaranteed by the United States Constitution".<sup>29</sup>

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<sup>26</sup> 25 U.S.C. § 1304 (2013).

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*, see 25 U.S.C. § 1302 (2010).

<sup>29</sup> *Id.*

When Congress augmented the rights of Indian defendants with the Tribal Law & Order Act of 2010 (TLOA), and then extended those augmented rights to non-Indian defendants via VAWA, it guaranteed that those non-Indian defendants would benefit from the Constitutional standard for indigent defense counsel.

Conversely, if the Court finds that Mr. Reynolds is an Indian based on his tribal membership, the Amantonka Code violated his right to Equal Protection under the Indian Civil Rights Act and TLOA.<sup>30</sup> The Amantonka Code sets different standards for defense counsel based on whether the defendant is an Indian.<sup>31</sup> This classification violates equal protection because Indians are subject to a lower standard of defense counsel based on their classification as Indians for criminal jurisdiction.

**A. The Attorney Provided to the Appellant Failed to Meet the Standards for Non-Indian Indigent Defense Counsel Established by VAWA 2013.**

The Amantonka Nation did not provide adequate indigent defense counsel to Mr. Reynolds as a non-Indian defendant. His court-appointed defense attorney was not licensed to practice law in the State of Rogers or in any jurisdiction outside the Amantonka Nation. R. 4,7. Mr. Reynolds' attorney held a juris doctor (JD) degree from an American Bar Association (ABA) accredited law school and is a member of the Amantonka Nation's Bar Association. R. 7. But this does not mean the attorney was qualified under VAWA 2013.

VAWA mandates that Indian tribes provide effective assistance of licensed defense counsel to indigent non-Indian defendants.<sup>32</sup> Additionally, this counsel must be in accordance

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<sup>30</sup> § 1302.

<sup>31</sup> Amantonka Nation Code §§ 503, 607

<sup>32</sup> § 1304.



with the standard set by the U.S. Constitution.<sup>33</sup> Further, ICRA and TLOA require that indigent defendants be provided attorneys licensed to practice in any jurisdiction in the United States.<sup>34</sup>

Section 607(b) of the Amantonka Nation Code applies to the representation of defendants charged under the Nation's SDVCJ and sets the qualifications for their advocates.<sup>35</sup> Among other requirements, Sec. 607(b) requires that public defenders representing defendants under SDVCJ must hold a JD degree from an ABA accredited law school and be qualified under ICRA.<sup>36</sup>

Unfortunately, the standards set by the Amantonka Code, VAWA, and ICRA are vague and do not answer the issue by themselves. If the question required accessing Mr. Reynolds' attorney's performance, the Court could put those facts through a *Strickland* analysis. Instead with the information available, the Court must determine whether an attorney that holds a JD but is only licensed on a reservation is just as qualified as an attorney licensed in a state court. Without in-depth knowledge of the Amantonka Nation's bar exam and how it compares to Rogers' bar exam, the Circuit Court did not have the information necessary to determine that Mr. Reynolds' attorney met VAWA's, and by extension ICRA's and TLOA's standard for indigent defense counsel. The circuit court also lacked precedence to determine whether Mr. Reynolds' attorney met IRCA's requirement for licensing in any United States jurisdiction.<sup>37</sup>

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<sup>33</sup> § 1302. The Court in *Strickland* set an objective standard of reasonableness for accessing effective assistance of counsel. 466 U.S. at 687.

<sup>34</sup> *Id.*

<sup>35</sup> Amantonka Nation Code § 607(b)

<sup>36</sup> *Id.*

<sup>37</sup> § 1302.

These realities require additional fact finding. Based on the facts available this Court is not able to affirm that an attorney possessing a JD and a tribal bar license meets the federal standard set by VAWA, ICRA, and TLOA.

**B. The Amantonka Nation’s Different Standards for Indian and Non-Indian Indigent Defense Counsel Violates Equal Protection.**

The Amantonka Nation’s Code sets two different standards for the qualifications of indigent counsel.<sup>38</sup> These two different standards are based on whether the defendant is an Indian.<sup>39</sup> The Amantonka Code violates equal protection because the qualifications for his defense counsel are lower than that of a non-Indian defendant.<sup>40</sup> This distinction violates the guarantee of equal protection established by ICRA.<sup>41</sup>

The Fourteenth Amendment of the United States Constitution states that the government cannot, “deny to any person within its jurisdiction the equal protection of the laws”.<sup>42</sup> ICRA extends the right to equal protection to individual Indians in Indian Country.<sup>43</sup> Equal protection protects individuals from laws that operate based on classifying groups of people.

If the Court agrees with the Appellee, and Mr. Reynolds is found to be an Indian for criminal jurisdiction purposes, then Amantonka Code fails equal protection because of its difference in standards. But he could have easily been appointed an attorney with no formal legal education. Luckily, Mr. Reynolds could have easily been appointed an attorney with no formal legal education. Per Sec. 607(a) of the Amantonka Code, it is unclear if the bar examination administered to lay advocates is the same as or requires the same knowledge for

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<sup>38</sup> Amantonka Nation Code § 607(b).

<sup>39</sup> Amantonka Nation Code § 503

<sup>40</sup> *Id.*, § 607(a).

<sup>41</sup> § 1302

<sup>42</sup> U.S. Const. amend. XIV.

<sup>43</sup> § 1302.

passage of the Amantonka Nation's bar exam.<sup>44</sup> The Amantonka Code is vague, and without additional facts on these exams the circuit court was unable to overrule the district court's decision.

Under ICRA, Indian tribes have an obligation to ensure equal protection under the laws to tribal members.<sup>45</sup> The Amantonka Code divides defendants by their Indian status and assigns them less qualified defense counsel if they are tribal members. Outside of preserving the profession of lay counselor, these code sections are not rationally related to any legitimate government purpose that would excuse different levels of counsel. All Amantonka tribal members have a right to qualified indigent defense counsel.

Under ICRA, Indian tribes have an obligation to ensure equal protection under the laws to tribal members.<sup>46</sup> The Amantonka Code divides defendants by their Indian status and assigns them less qualified defense counsel if they are tribal members. Outside of preserving the profession of lay counselor, these code sections are not rationally related to any legitimate government purpose that would excuse different levels of counsel. All Amantonka tribal members have a right to qualified indigent defense counsel. In addition to a reversal on the first issue, Mr. Reynolds requests a remand for additional fact finding to determine the qualifications mandated by the relevant federal statutes.

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<sup>44</sup> Amantonka Nation Code § 607(a)-(b).

<sup>45</sup> § 1302.

<sup>46</sup> § 1302.

## **CONCLUSION**

In conclusion, Mr. Reynolds respectfully requests this Court to reverse the appellate court's Opinion and remand this case for further proceedings, including an instruction that for federal criminal jurisdiction an Indian is a person who has membership in a federally recognized Indian tribe and some degree of Indian blood or descendency and the appointment of indigent defense counsel in accordance with VAWA 2013.