No. 19-231

IN THE SUPREME COURT OF THE UNITED STATES

ROBERT R. REYNOLDS,
Petitioner

v.

WILLIAM SMITH, JOHN MITCHELL, & ELIZABETH NELSON,
Respondents

ON WRIT FOR CERTIORARI
TO THE U.S. COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

Team No. 770

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QUESTIONS PRESENTED

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

II. Did Mr. Reynolds' court-appointed attorney satisfy the relevant legal requirements?

STATEMENT OF THE CASE

Statement of the Proceedings

[¶1] On July 15, 2017, Mr. Robert R. Reynolds was arrested and transported to the Amantonka Nation Jail. On July 16, 2017, the Amantonka Nation's chief prosecutor filed a complaint charging Mr. Reynolds with a violation of Title 5, Section 244 of the Amantonka Nation Code. The Amantonka Nation District Court denied Mr. Reynolds' pretrial motions in which he sought to have the charges dismissed on the grounds that (1) he is a non-Indian and therefore the Amantonka Nation lacks criminal jurisdiction over him; (2) that as a non-Indian, he has the right to a court-appointed attorney who meets the requirements of 25 U.S.C. 1302; and (3) that the court-appointed attorney was insufficiently qualified to serve as his counsel pursuant to his Equal Protection requirements.

[¶2] Mr. Reynolds' case went to trial on August 14, 2017 and a jury found him guilty. Mr. Reynolds made a motion to the District Court for the Amantonka Nation requesting the court set aside the verdict, reiterating the same arguments he made in his pre-trial motions. On August 23, 2017, the District Court denied Mr. Reynolds' motion. Citing the same pre-trial motion arguments, Mr. Reynolds then appealed to the Supreme Court of the Amantonka Nation which affirmed Mr. Reynolds' conviction on November 27, 2017.

[¶3] Having exhausted tribal remedies, Mr. Reynolds filed a petition for a Writ of Habeas Corpus to the U.S. District Court for the District of Rogers. The court held that Mr. Reynolds was a non-Indian by law, found the Amantonka Nation failed to provide him with the indigent defense counsel as required under the VAWA 2013, and granted Mr. Reynolds' writ for habeas corpus on March 7, 2018. The Amantonka Nation et al. appealed this decision to the U.S. Court of Appeals for the Thirteenth Circuit which reversed the decision of the U.S.

District Court for the District of Rogers and, on August 20, 2018, remanded the case with instructions to deny the writ of habeas for the reasons articulated by the Amantonka Nation Supreme Court. Mr. Reynolds now petitions the United States Supreme Court for a writ of *certiorari* to address the plethora of due process and equal rights violations he endured due to the Amantonka Nation's egregious judicial errors.

Statement of the Facts

[¶4] Appellant, Robert R. Reynolds ("Reynolds") first met his wife, Lorinda, when they were students at the University of Rogers. When they met, Reynolds was a non-Indian and was not residing on any reservation. Lorinda was (and still is) a member of the Amantonka Nation, a federally recognized tribe located in the State of Rogers. After the couple graduated from the university, they got married and lived on the Amantonka Nation reservation. Two years after they got married, Reynolds applied, and successfully completed the process, to become a naturalized citizen of the Amantonka Nation. Reynolds took the oath of citizenship and received an Amantonka Nation Identification card.

[¶5] One year after Reynolds became a naturalized citizen of the Amantonka Nation, he lost his job with the Amantonka shoe factory because the factory went out of business. However, Reynolds found a job in July 2017 as a manager of a warehouse distribution center on the Amantonka Nation's reservation and has been employed in that position ever since.

[¶6] While Reynolds was unemployed, on June 15, 2017, the Amantonka Nation police responded to a call at the Reynolds' residence. The police observed signs of abuse on Lorinda. According to the evidence presented at trial, Reynolds struck his wife with an open palm across her face, causing her to fall into a coffee table, resulting in a cracked rib. Reynolds was arrested and charged with assault of a partner or family member, in violation

of Title 5, Section 244 of the Amantonka Nation Code. Reynolds was charged as an Indian of the Amantonka Nation despite his objections otherwise.

[¶7] After his arrest, Reynolds requested, and was appointed, indigent defense counsel to represent him. Reynolds' attorney was qualified under Title 2, Chapter 6 of the Amantonka Nation Code. Therefore, his attorney completed a JD program from an ABA accredited law school and passed the Amantonka Nation Bar Exam, and not the Rogers State Bar Exam (or any other state bar exam).

[¶8] Reynolds was tried as an Indian in Amantonka Nation District Court and after the district court denied his pretrial motions, a jury found Reynolds guilty.

SUMMARY OF THE ARGUMENT

[¶9] Robert R. Reynolds (Reynolds) is a non-Indian by law. The Amantonka Nation arrested, adjudicated, and sentenced Mr. Reynolds to a term of imprisonment as if he were an Indian. The tribal prosecutor has the burden of proving Mr. Reynolds' Indian status and failed to do so, yet the court still treated Mr. Reynolds as an Indian throughout the process. Because of this material error Mr. Reynolds was denied multiple due process rights established by the federal government and outlined in the Violence Against Women Act (VAWA).

[¶10] Pursuant to VAWA 2013, as a non-Indian, Mr. Reynolds had the right to (1) a properly licensed attorney; (2) a jury compiled of a fair cross-section of the population-including non-Indian citizens; (3) notice of the ability to file a writ of habeas corpus or stay of detention; and (4) a tribal criminal code which outlines the various criminal, civil, and evidentiary procedures.[1]

[¶11] At the very least the lack of a properly licensed attorney as mandated by law requires Mr. Reynolds' writ of habeas to be granted. Because the Amantonka Nation failed to comply with the VAWA 2013 requirements by failing to provide Mr. Reynolds the aforementioned rights, the tribe may not utilize the enhanced Special Domestic Violence Criminal Jurisdiction (SDVCJ), and therefore cannot prosecute non-Indians. Mr. Reynolds is a non-Indian, due to the tribe's non-compliance with VAWA 2013 requirements, even if Mr. Reynolds' attorney met the licensing requirements, which is not the case, the Amantonka Nation does not have jurisdiction to prosecute non-Indians and therefore, any and all judgments against Mr. Reynolds must be overturned.

[1] 25 U.S.C.A. § 1304 (West)

ARGUMENT

I. Mr. Reynolds is a Non-Indian for Purposes of Special Domestic Violence Criminal Jurisdiction

[¶12] Courts have consistently recognized that one of an Indian tribe's most basic powers is the authority to determine questions of its own membership. However, Congress also has plenary power to define membership differently when necessary. Therefore, Congress has the ability to define "Indian" when that definition is necessary for administrative and other purposes. For purposes of criminal jurisdiction, Congress has defined "Indian" to include some form of Indian heritage, and therefore, Reynolds is a non-Indian.

[¶13] "Indian tribes are 'distinct, independent political communities, retaining their original natural rights' in matters of local self-government."[2] Therefore, "[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community."[3] Title 3, Section 201 of the Amantonka National Code provides:

> In recognition of and accordance with the Amantonka Nation's historical practice of adopting into our community those who marry citizens of the Amantonka Nation, the Amantonka National Council has hereby created a process through which those who marry a citizen of the Amantonka Nation may apply to become a naturalized citizen of the Amantonka Nation. Any person who has
> a) Married a citizen of the Amantonka Nation, and
> b) Lived on the Amantonka reservation for a minimum of two years
> May apply to the Amantonka Citizenship Office to initiate the naturalization process. [4]

[2] *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55, 98 S. Ct. 1670, 1675 (1978)
[3] *Id*. at 1684, n. 32
[4] Amantonka Nation Code Title 3, Chapter 2, § 201

[¶14] As a new citizen of the Amantonka Nation, the Amantonka Nation Code states the following:

> Upon successful completion of the Naturalization process, the applicant shall be sworn in as a citizen of the Amantonka Nation. The name of each new citizen shall be added to the Amantonka Nation roll, and the new citizen shall be issued an Amantonka Nation ID card. Each new citizen is thereafter entitled to all the privileges afforded all Amantonka citizens.[5]

[¶15] However, "Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess."[6] Congress may define the term "Indian" when it deems necessary. In regard to defining the term "Indian," Congress has spoken. Section 1152 of the United States Code provides the following:

> 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, except the District of Columbia, shall extend to the Indian country.
>
> This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively[7].

[¶16] The exception in the second paragraph of section 1152 uses the term "Indian." It is "very clear, that a white man who at mature age is adopted in an Indian tribe does not thereby become an Indian," and is therefore not intended for this exception.[8] The Court defines "Indian," not as members of the tribe, but as a member of the race generally.[9] This requires some percentage of Indian ancestry, though the percentage is not defined.

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[5] Amantonka Nation Code Title 3, Chapter 2, § 203.
[6] *Martinez*, 1670 S. Ct. at 1676
[7] 18 U.S.C.A. § 1152 (West 1948).
[8] *United States v. Rogers*, 45 U.S. 567, 572 (1846)
[9] *Id.* at 573

[¶17] In *Martinez,* a female tribal member brought action against the tribe for injunctive relief against the enforcement of the tribe's ordinance which denied membership to children of female members who married outside the tribe, but granted membership to children of male members who married outside the tribe. Respondent stated that the ordinance discriminated "on the basis of both sex and ancestry in violation of Title I of the Indian Civil Rights Act of 1968 (ICRA)."[10] ICRA states that "'[n]o Indian tribe in exercising powers of self-government shall … deny to any person within its jurisdiction the equal protection of its laws.'"[11]

[¶18] Respondent's daughter, as a non-member who lives on the Santa Clara Pueblo reservation, was not allowed to "vote in tribal elections or hold secular office in the tribe."[12] She also would have "no right to remain on the reservation in the event of [her] mother's death, or to inherit [her] mother's home or her possessory interests in the communal lands."[13] After efforts to persuade the tribe to change their rule regarding membership were unsuccessful, the respondent in *Martinez,* filed the lawsuit "in the United States District Court for the District of New Mexico, on behalf of themselves and others similarly situated."[14]

[¶19] The Court in *Martinez*, stated, "Indian tribes are 'distinct, independent political communities, retaining their original natural rights' in matters of local self-government."[15] Even though tribes no longer retain their attributes of a full and complete sovereignty, they

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[10] *Martinez,* 1670 S. Ct. at 1673
[11] *Id*. *See also,* Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C. § 1302(8) (2010).
[12] *Id*. at 1674
[13] *Id*.
[14] *Id.*
[15] *Id*. at 1675. *See also, Worcester v. State of Ga.,* 31 U.S. 515, 8 (1832); *see United States v. Mazurie,* 419 U.S. 544, 95 S. Ct. 710, 717 (1975).

continue to be a "'separate people, with the power of regulating their internal and social relations.'"[16] According to *Martinez*, Indian tribes have their own power to "make their own substantive law in internal matters" and to enforce those laws "in their own forums."[17]

[¶20] Even though the Court in *Martinez* was torn between the two purposes of ICRA—"strengthening the position of individual tribal members vis-à-vis the tribe," and "to promote the well-established federal 'policy of furthering Indian self-government"—the Court decided that preserving the tribe's self-governance must prevail.[18] The Court decided that if it were to undermine the authority of the tribe, it would also "impose serious financial burdens on already 'financially disadvantaged' tribes."[19]

[¶21] Based on the legislative history of ICRA, "Congress' provision for habeas corpus relief, and nothing more, reflected a considered accommodation of the competing goals of 'preventing injustices perpetrated by tribal governments, on the one hand, and, on the other, avoiding undue or precipitous interference in the affairs of the Indian people.'"[20] However, "[a] tribe's right to define its own membership for tribal purposes has long been recognized as central to its existence as an independent political community."[21]

[¶22] In the "Cherokee Intermarriage Cases,"[22] there was a dispute regarding the rights of intermarried white persons to lands distributed to Cherokee people who were entitled to participate in the distribution of the common property of the Cherokee Nation."[23] The assertions of this case are as follows:

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[16] *Id. See also, United States v. Kagma*, 118 U.S. 375, 6 S. Ct. 1109, 1112-13 (1886)
[17] *Id.*
[18] *Id.* at 1679
[19] *Id.* at 1680
[20] *Id.* at 1681
[21] *Id.* at 1684, n. 32.
[22] *Red Bird v. United States*, 203 U.S. 76, 27 S. Ct. 29, 51 L. Ed. 96 (1906)
[23] *Id.*

> [O]n one hand, [ ] the Cherokee laws have never recognized the right of 'intermarried citizens' to share in the distribution of the property of the Nation, and, on the other hand, [ ] the Cherokee laws as well as the laws of Congress recognize those persons who have been married to Cherokee citizens in accordance with the laws of the Cherokee Nation relating to marriage as full citizens of such nation, entitled to share equally with full-blooded citizens in the property of the tribe.[24]

[¶23] The Court in *"*Cherokee Intermarriage Cases" stated that the "intermarried whites show no grant of equal rights as members of the Cherokee Nation by treaty or otherwise," and therefore did not retain the right to acquire the lands the Cherokee Nation distributed.[25] Finally, the Court stated the Cherokee Nation "possessed the right of local self-government with authority to make such laws as it deemed necessary for the government and protection of persons and property within the country, belonging to its people." [26]

[¶24] While there is a clear tribal power to define "Indian" for the purpose of self-governance, *Martinez*, as well as other cases[27], clearly states that "Congress has plenary authority to limit, modify or eliminate the powers of local self-government which the tribes otherwise possess."[28]

[¶25] In *United States v. Rogers*, the defendant, a white man born in the United States who voluntarily removed himself to Cherokee country, "made it his home," and was adopted as a citizen of the Cherokee nation and able to exercise "all the rights and privileges of a Cherokee Indian," was charged with murder.[29] The decedent was also a white male adopted into the Cherokee Indian tribe and the alleged offense occurred in Cherokee Indian country.[30] The Court in this case stated, while it is that true that the Cherokee Indians occupy the land,

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[24] *Id*. "Cherokee intermarriage cases"
[25] *Id*. at 34
[26] *Id*. at 3.
[27] *Del. Tribal Bus. Comm. V. Weeks*, 430 U.S. 73 (1977); *United States v. Rogers*, 45 U.S. 567 (1846).
[28] *Martinez*, 1670 S. Ct. at 1676
[29] *Rogers*, 45 U.S. at 571
[30] *Id*.

the United States assigned the land to them, as a place of domicile for the tribe, and they hold and occupy it with the assent of the United States, and under their authority.[31] Therefore, Congress may punish any individual who commits a crime within Indian country, whether that individual be white or an Indian.[32]

[¶26] In *Rogers*, the Court uses Section 1152 of Title 18 of the United States Code to define "Indian" in criminal cases occurring on Indian reservations. Section 1152 states in the second paragraph, "[t]his section shall not extend to offenses committed by one Indian against the person or property of another Indian."[33] Congress has the ability to define "Indian" when that definition is necessary for administrative and other purposes. This power is very broad, and Congress has spoken when defining who is an Indian for purposes of criminal activity which occurs on Indian reservations in this section.

[¶27] The Court in *Rogers* stated, "we think it very clear, that a white man who at mature age is adopted in an Indian tribe does not thereby become an Indian," and is therefore not intended for this exception.[34] The Court defines "Indian," not as members of the tribe but as a member of the race generally.[35] This requires some percentage of Indian ancestry, though the percentage is not defined. The Court adopted this definition in order to protect Indian tribes from individuals who may try to take advantage of the tribe and escape "all responsibility to the laws of the United States."[36]

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[31] *Id.* at 573
[32] *Id.*
[33] *Id. citing* 18 U.S.C.A. § 1152 (West).
[34] *Id. Rogers*, 45 U.S. at 572
[35] *Id.* at 573
[36] *Id.* "[I]n the opinion of the supreme court, a white man may incorporate himself with an Indian tribe, be adopted by it, and become a member of the tribe. The plea avers that the said [decedent] did so incorporate himself, was adopted, and became a member of the Cherokee tribe of Indians, and continued to be a member thereof, to the time he is charged to have been murdered by [defendant]." *United States v. Ragsdale*, 27 F. Cas. 684, 686 (C.C.D. Ark. 1847).

[¶28] Therefore, the test in defining "Indian" was clearly set out in *Rogers*. The test considers *both* Indian descent as well as recognition as an Indian by federally recognized tribe. Some percentage of Indian descent is required, even though the percentage is not defined.

[¶29] The present case is clearly distinguishable from *Martinez*. In *Martinez*, the respondent wanted the tribe to allow her children to become members so they could have the benefits that came with tribal membership.[37] She wanted not only for her children to be able to participate in local elections, but she also wanted them to have rights to remain on the reservation and to her property after she passed away.[38] In this case, the Amantonka Nation has already welcomed Reynolds into the tribe and allowed him those benefits. The Amantonka Nation is a distinct community and can make that decision. However, this case is not about benefits from the tribe. This case is about criminal jurisdiction, and the federal government's ability to keep individuals from escaping the laws of the United States by moving to, and becoming a member of, federally recognized tribes as mature adults with no tribal history or ancestry.

[¶30] The Court in *Martinez* was even torn between protecting individuals of the tribe and protecting the tribe's ability to govern itself.[39] The Court ultimately chose to allow the tribe to decide membership for itself because undermining the tribe's authority would place an unnecessary financial burden on the tribe.[40] That would not be the case here. The tribe still has authority to prosecute in this case. However, by defining "Indian" for purposes of criminal defendants, as opposed to individuals who are entitle to tribal benefits, not only

[37] *Martinez*, 1670 S. Ct. at 1674
[38] *Id*.
[39] *Id*. at 1679
[40] *Id*.

would Congress be able to protect tribal members, but there also would be no additional financial burden placed on the tribe.

[¶31] This case is also different that the *Cherokee Intermarriage Cases*. The *Intermarriage Cases* were also about white individuals who married into the Cherokee tribe and the tribe denied them rights to lands distributed to Cherokee people who were entitled to participate in the distribution.[41] The Court allowed the Cherokee Nation to deny intermarried whites the rights to land because there was no express grant of equal rights by the Cherokee Nation to the intermarried white spouses.[42] While the Amantonka Nation does expressly state that the new citizens are entitled to all privileges afforded to all Amantonka citizens, this statement is limited to that of administrative, internal benefits of the tribe, and does not extend to the definition of "Indian" when dealing with crime that occurs on the reservation.

[¶32] Finally, this case is most similar to *Rogers*. In *Rogers*, when a defendant was charged with a murder that occurred on the reservation, the question of whether or not he was "Indian" was answered. Congress has the ability to define "Indian," and for purposes of criminal jurisdiction in Indian Country, the Court looked to 18 U.S.C.A. §1152. The Court in *Rogers* was very clear when it stated that when a white man, of a mature age, moves to a reservation and is adopted into an Indian tribe, is *not* an Indian.[43] The Court considered "Indian" to mean, not a member of a tribe, but a member of the race generally.[44] Here, Reynolds, at a mature age, married an Indian woman and moved to the Amantonka Nation reservation to make it his home. However, for purposes of criminal jurisdiction, Congress has spoken—this does not make Reynolds an "Indian." Even though there is no dispute that the

[41] *Red Bird*, 203 U.S. 77 at 30
[42] *Id*. at 34
[43] *Rogers*, 45 U.S. at 572
[44] *Id*.

tribe recognizes the defendant as an Indian, the defendant has no Indian ancestry and therefore would not meet the requirements set out in *Rogers*.

[¶33] Therefore, for the foregoing reasons, Reynolds is a non-Indian for purposes of the Special Domestic Violence Criminal Jurisdiction.

II. Mr. Reynold's court-appointed attorney did not satisfy the relevant legal requirements.

a. Relevant Legal Requirements- The Violence Against Women Act 2013

[¶34] In *Oliphant v. Suquamish Indian Tribe,* this Court held that tribes do not have the inherent power to prosecute non-Indians for crimes committed in Indian country.[45] This holding was amended when Congress passed the Violence Against Women Act (VAWA) which permitted tribes to criminally prosecute non-Indians for acts of domestic violence.[46] In 2013, the VAWA[47] was reauthorized and "recognized tribes' inherent powers to exercise 'special domestic violence criminal jurisdiction' over certain defendants."[48] This reform allowed tribes to assert prosecutorial authority over offenders regardless of their Indian status in cases of domestic or dating violence, or violations of protection orders in Indian country.[49]

[¶35] The VAWA 2013 authorizes tribes to use their sovereign powers "to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses or

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[45] *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 191, (1978) ("By submitting to the overriding sovereignty of the United States, Indian tribes necessarily yield the power to try non-Indians except in a manner acceptable to Congress, a fact which seems to be recognized by the Treaty of Point Elliott, signed by the Suquamish Indian Tribe."

[46] 34 U.S.C.A. § 12361 (West). (Title IV, sec. 40001-40703 of the Violent Crime Control and Law Enforcement Act, H.R. 3355 (Congress expressly permits tribes to criminally try all non-Indians who have sufficient "ties" to res for three separate domestic violence crimes, but it requires juries to include a cross section of the community including non-Indians. Tribes must opt in by seeking certification by the Attorney General to prosecute non-Indians. This power is delegated by congress so there is a double jeopardy issue- the federal government can't come in and try for the same crime.)

[47] 25 U.S.C. § 1302

[48] *Violence Against Women Act (VAWA) Reauthorization 2013*, Department of Justice (Mar. 26, 2015), https://www.justice.gov/tribal/violence-against-women-act-vawa-reauthorization-2013-0

[49] *Id*.

dating partners or violate a protection order in Indian country." [50] This sovereign power of the tribes also extends to issuing and enforcing civil protection orders against Indians and non-Indians.[51] Although the VAWA 2013 "affirms and recognizes the inherent jurisdiction of tribes within the wording of the statutes . . . tribes are not required to exercise any of this newly recognized authority."[52] Tribes that do wish to utilize the enhanced jurisdiction afforded by the VAWA 2013 "must comply with certain prerequisites set out in the statutes."[53]

[¶36] To qualify as having the proper jurisdictional authorization under the VAWA 2013, and thus the authority to try non-Indian defendants, the tribe must follow Congressional mandates which "provide[] procedural safeguards to domestic violence criminal defendants that must be observed by the implementing tribe."[54] The tribe must "amend their tribal codes to recognize special domestic violence crimes as different from assault between two strangers."[55] Specifically, the "VAWA 2013 requires a 'dating or domestic relationship' between the perpetrator and victim," as well as requirements that the location of the criminal act and residence of the victim be in Indian Country.[56] Furthermore, the victim must be a "tribal member or an Indian that resides in the prosecuting tribe's Indian country."[57]

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[50] *Id*.
[51] *Id*.
[52] Maureen L. White Eagle et al., *Tribal Legal Code Resource: Tribal Laws Implementing TLOA Enhanced Sentencing and VAWA Enhanced Jurisdiction*, Tribal Law and Policy Institute (Mar. 2016), http://www.tribal-institute.org/download/codes/TLOA_VAWA_3-9-15.pdf
[53] *Id*. at 1
[54] Paul C. Echo Hawk & April Day, *United States: Tribes Must Implement Changes To Take Advantage Of The Violence Against Women Act's Tribal Provisions*, Lexology (July 12, 2013), https://www.lexology.com/library/detail.aspx?g=386a022a-5862-44a2-bc40-cb27d88ef7be
[55] *Id*.
[56] *Id*.
[57] *Id*.

[¶37] Along with the definition requirements and location mandates, Congress requires tribes enacting the VAWA 2013 to provide non-Indian defendants with "several procedural protections."[58] When prosecuting a defendant under the VAWA 2013 a tribe must "[p]rotect the rights of defendants under the Indian Civil Rights Act of 1968."[59] Because the U.S. Constitution does not apply in Indian Country, the Indian Civil Rights Act (ICRA) outlines the defendant's rights which are akin to the rights found in the "Constitution's Bill of Rights, including the right to due process."[60] These protections, available even to indigent defendants, include the right to attorneys who are licensed [61] and "law-trained," and judges who are law-trained and a state-licensed attorneys. Furthermore, the defendant must be informed of their ability to "file a writ of habeas in federal court," and be provided the "right to a jury from a fair cross-section of the community," as well as "other provisions in the Indian Civil Rights Act"[62] and the Tribal Law and Order Act (TLOA).[63]

[¶38] Should the tribe fail to comply with these federal mandates they will not be granted the special enhanced jurisdiction over non-Indians in domestic violence cases. If the tribe decides not to utilize the enhanced jurisdictional powers, or if they fail to implement the provisions required by the VAWA 2013, the jurisdiction of state and federal agencies remains unchanged regarding their prosecutorial functions.[64]

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[58] *Id*.
[59] *Violence Against Women Act (VAWA) Reauthorization 2013*, Department of Justice (Mar. 26, 2015), https://www.justice.gov/tribal/violence-against-women-act-vawa-reauthorization-2013-0
[60] *Id*.
[61] White Eagle, *supra* note 52 at 100.
[62] Echo Hawk, *supra* note 54
[63] *Violence Against Women Act (VAWA) Reauthorization 2013*, *supra* note 59
[64] *Id*.

b. Properly Licensed and Law-Trained Attorneys

[¶39] The VAWA 2013 mandates, "if a term of imprisonment of any length may be imposed,"[65] then a tribe must "require that its court-appointed attorneys be licensed to practice law by any jurisdiction in the United States that applies appropriate professional licensing standards"[66] and effectively ensure "the competence and professional responsibility of its licensed attorneys."[67] Tribes may satisfy these requirements through options including: "(1) creating its own tribal licensing procedure; (2) requiring membership in a state bar association; and (3) requiring membership in the bar association of another tribe (provided that the tribal bar satisfies the requirements.)"[68]

[¶40] If a tribe wishes to satisfy TLOA's and VAWA 2013's requirements by using its existing tribal bar association or by establishing a tribal bar association, it must ensure that the tribal bar applies "appropriate standards" to ensure "both the competence and professional responsibility of its licensed attorneys."[69] However, "[b]ecause TLOA and VAWA have different licensing standards for judges and for defense counsel, it is possible that a tribal bar association's standards would be sufficient to license a judge, but not a defense counselor."[70] Therefore, "if a tribal bar simply required members to submit an application, fee, and swear an oath of admission, this bar may be sufficient to license the

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[65] *Introduction to the Violence Against Women Act*, Tribal Court Clearinghouse, http://tribal-institute.org/lists/title_ix.htm (last visited Jan. 7, 2019).
[66] 25 U.S.C. § 1302(c)(2).
[67] White Eagle, *supra* note 52
[68] *Id*. at 72, 75 (*see e.g.* The statutes of the Confederated Tribes of the Umatilla Indian Reservation: "The Tribes shall provide any indigent defendant the assistance of a defense attorney licensed to practice law by any jurisdiction in the United States, including tribes, provided that jurisdiction applies appropriate professional licensing standards and effectively ensures the competence and professional responsibility of its licensed attorneys."
[69] 25 U.S.C. § 1302(c)(2)
[70] White Eagle *supra* note 52 , at 100

judge, but insufficient to license the defense counselor because it fails to monitor the competence of its members."[71]

[¶41] The Amantonka Nation Code provides that non-Indians being tried under the special criminal jurisdiction over non-Indian domestic or dating violence[72] are entitled to appointment of a public defender[73] with specific qualifications. [74] Although court records state that Mr. Reynolds' attorney held a JD from an ABA accredited law school and is a member in good standing of the Amantonka Nation's Bar Association,[75] the Amantonka Nation Code does not give notice of how attorneys are certified, licensed, or qualified through the Amantonka Nation's Bar Association. The tribal code states that in order for one to practice as an attorney they must be "admitted to practice and enrolled as an attorney … upon written application."[76]

[¶42] Even if the attorney of record had the qualifications of the JD and membership in the tribe's Bar Association, the use of an application and taking an oath of office to become a tribal attorney does not ensure that the bar association is applying the appropriate licensing standards, nor does it ensure the competence and professional responsibility of its licensed attorneys[77] as required by the Congressional mandates. Therefore, the due process rights of Mr. Reynolds, a non-Indian, were violated because his court-appointed attorney did not meet the relevant legal requirements vis-à-vis the constitutional standards nor the standards

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[71] *Id*.
[72] Amantonka Nation Code, Title 2, Chapter 1, Sec. 105(b)
[73] *Id*. at Title 2, Chapter 5, Sec. 503(2)
[74] *Id*. at Title 2, Chapter 6, Sec. 607(b) ("A public defenders who 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, is sufficiently qualified under the Indian Civil Rights Act to represent a defendant imprisoned more than one year and any defendant charged under the Nation's Special Domestic Violence Criminal Jurisdiction.")
[75] Opinion No. 17-198, page 7
[76] Amantonka Nation Code, Title 2, Chapter 5, Sec. 501(a)
[77] 25 U.S.C. § 1302(c)(2)

required by the ICRA, TLOA, or VAWA 2013. On this error alone, Mr. Reynolds' request for habeas corpus should be granted.

c. Right to a Jury Compiled from a Fair Cross-Section of the Community

[¶43] To utilize the enhanced jurisdiction provided by VAWA 2013, tribes exercising the authority must ensure that "trials held pursuant to the special domestic violence jurisdiction must include: 'an impartial jury that is drawn from sources that—(A) reflect a fair cross-section of the community; and (B) do not systematically exclude any distinctive group in the community, including non-Indians."[78] ICRA further requires "that tribes provide juries in all criminal cases in which imprisonment is a possibility,"[79] and that "tribes whose laws include imprisonment as a possible sentence must have a procedure for selecting a jury."[80]

[¶44] Mr. Reynolds, a non-Indian, was tried in tribal court as an Indian, and was found guilty by a jury. The Amantonka Nation Code is silent as to how juries are selected. The VAWA 2013 and ICRA require that tribes exercising the enhanced jurisdiction utilize a fair cross-section of the community[81] for non-Indian defendants but not for Indian defendants. Because the Code does not stipulate as to how the court compiled the jury pool in Mr. Reynolds' case, it is possible that a fair cross-section of the community was not utilized, and therefore Mr. Reynolds' due process rights were again violated. As such, Mr. Reynolds' request for habeas corpus should be granted, or more accurately, the case should be

[78] White Eagle, *supra* note 52 at 130 (citing 25 U.S.C. § 1304(d)(3).)
[79] *Id*. (citing 25 U.S.C. § 1302(a)(10).)
[80] *Id*.
[81] *Id*. at 131 ("According to the U.S. Constitution the "fair cross-section of the community" means that juries must be drawn from a source fairly representative of the community . It does not guarantee that the jury selected actually represents the community.") *See Taylor v. Louisiana*, 419 U.S. 522(1975) (rejecting the systematic exclusion of women from jury pools) *see also Duren v. Missouri*, 439 U.S. 357 (1979) (Establishing the requirements to challenge representativeness as: (1) "that the group alleged to be excluded is a 'distinctive' group in the community"; (2) "that the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community"; and (3) "that this underrepresentation is due to systematic exclusion of the group in the jury-selection process."

overturned because Amantonka Nation, through their numerous VAWA 2013 violations, lacks the authority to use enhanced jurisdiction over non-Indians.

d. Notice to File a Writ of Habeas Corpus

[¶45] To ensure the due process rights of the accused are upheld the "VAWA 2013 specifically provides that tribes exercising" the enhanced jurisdiction "must timely notify Non-Indian defendants of their rights and privileges"[82] "to petition the federal court for a writ of habeas corpus and a stay of detention pending the federal court's decision."[83] Therefore, "[a]n Indian tribe that has ordered the detention of any person has a duty to timely notify the person of his rights and privileges," and "the tribal court must also be able to clearly document that the required notice was provided."[84] If it is not clearly documented that the notice was given, "the federal court hearing a challenge to the tribal exercise of the SDVCJ will presume that the required notice was not provided."[85]

[¶46] Mr. Reynolds was arrested, tried, and sentenced as an Indian. The court erred in categorizing Mr. Reynolds as an Indian, and because of that error, Mr. Reynolds, a non-Indian was never given notice of his due process right to petition the federal court for a writ of habeas corpus and a stay of detention pending the federal court's decision as required by VAWA 2013. This is the second VAWA 2013-required violation of Mr. Reynolds' due process rights, and as such, this Court should grant Mr. Reynolds' request for habeas corpus, or more precisely, the case should be overturned because Amantonka Nation, through their numerous VAWA 2013 violations, lacks the authority to use enhanced jurisdiction over non-Indians.

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[82] White Eagle *supra* note 52 , at 42
[83] *Id*. at 159-160
[84] *Id*. at 42 (citing 25 USC 1304(e)(3).)
[85] *Id*.

e. Publication of Laws and Rules

[¶47] Another due process protection required by the VAWA 2013, states that "prior to charging a defendant, a tribe wishing to use the enhanced sentencing authority must make publicly available the criminal laws (including regulations and interpretive documents), rules of evidence, and rules of criminal procedure … of the tribal government." [86] Because of the possible "consequences of a criminal conviction, the U.S. Supreme Court has ruled that it is not fair to hold a defendant responsible for obeying the law if there was no way the defendant could know what the law required."[87]

[¶48] The *Selected Provisions of the Amantonka Nation Code*, specifically the *Criminal Code*, provide a criminal law definition of partner or family member assault, along with the possible penalties.[88] It does not, however, detail any rules of evidence or criminal procedure. Because these items are not publicly available now, nor were they available prior to Mr. Reynolds being charged, it is possible that Mr. Reynolds was not on notice of what the Amantonka Nation's law required regarding his behavior surrounding the offense. The Amantonka Nation failed to follow this provision of the VAWA 2013, subsequently, Mr. Reynold's due process rights were violated. Mr. Reynolds' request for habeas corpus should be granted, or more correctly, the case should be overturned because Amantonka Nation, through their numerous VAWA 2013 violations, lacks the authority to use enhanced jurisdiction over non-Indians.

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[86] *Id*. at 57
[87] *Id*. *see* 25 U.S.C. 1302(c)
[88] Amantonka Nation Criminal Code Title 5, Sec. 244(a)-(c)

CONCLUSION

[¶49] It has been established that Mr. Robert R. Reynolds is a non-Indian by definition of federal law. His non-Indian status does not bar the Amantonka Nation from prosecuting him for alleged acts of domestic or dating violence, provided the tribe ensure the due process rights of the accused are upheld pursuant to the Violence Against Women Act. In this case, they were not. Mr. Reynolds' due process rights were violated multiple times by the Amantonka Nation. First, because the prosecution did not meet their burden of proving Mr. Reynolds was an Indian, he was not granted the non-Indian status of which he qualified. Secondly, the court did not provide Mr. Reynolds with a court-appointed attorney who met the licensing standards required by law. This error alone would be sufficient for this Court to grant Mr. Reynolds' request for Habeas Corpus, and if that is the only issue upon which this Court wishes to rule, for the aforementioned reasons, Mr. Reynolds respectfully requests that this Court grant his petition for Habeas Corpus.

[¶50] It is imperative to note that the Amantonka Nation was non-compliant with several VAWA 2013 and Congressionally mandated requirements regarding defendants' due process rights, including the right of a notice to file a writ of habeas or stay of detention, the right to a jury complied from a fair cross-section of the community, and the right to have the Nation's laws and rules publicly available. For those reasons Mr. Reynolds respectfully requests this Court acknowledged that, because of the multiple violations regarding the implementation of the required mandates of the VAWA 2013, the Amantonka Nation lacks the authority to exercise the special domestic violence jurisdiction over non-Indians, including Mr. Reynolds, and thus overturn Mr. Reynolds' prior conviction in the Amantonka Nation tribal court.