No. 21-429

IN THE

Supreme Court of the United States

OKLAHOMA,
Petitioner,
v.
CASTRO-HUERTA,
Respondent.

On a Writ of Certiorari to the Oklahoma Court of Criminal Appeals

BRIEF OF *AMICI CURIAE* NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, PRAIRIE BAND POTAWATOMI NATION, THE SEMINOLE NATION, AND THE YUROK TRIBE, ET. AL. IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*[1]

The National Indigenous Women's Resource Center ("NIWRC") is a national organization working to end domestic violence and sexual assault against Native women and children. The NIWRC's work is directly implicated by Oklahoma's request that this Court grant the State criminal jurisdiction over crimes committed by non-Indians against Indians on tribal lands.

The NIWRC is a Native non-profit organization whose mission is to ensure the safety of Native women and children by protecting and preserving the inherent sovereign authority of American Indian and Alaska Native Tribes to respond to domestic violence and sexual assault. The NIWRC's Board of Directors consists of Native women leaders from Tribes across the United States. Collectively, these women have extensive experience in tribal courts, tribal governmental process, and programmatic and educational work to end violence against Native women and children, including domestic violence and sexual assault.

The NIWRC is joined by five Tribal Nations. These Tribal Nations offer a unique perspective on Congress's exclusive, plenary power over Indian affairs, the inherent sovereign authority of tribal governments to prosecute crimes committed by or against tribal citizens, and safety for Native women and children.

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[1] Pursuant to Supreme Court Rule 37.6, the NIWRC states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from NIWRC and its counsel, made any monetary contribution toward the preparation or submission of this brief. The parties have filed blanket consent for the filing of *amicus* briefs.

The Confederated Tribes of the Chehalis Reservation is located in southwest Washington in an area that is poor and mostly rural with limited county or State services, such that state law enforcement rarely reaches the Chehalis Reservation. The word "Chehalis" means people of the sand, referring to the the Upper and Lower Chehalis people's close proximity to the river that empties into Grays Harbor. For centuries, the Upper and Lower Chehalis people lived in villages along the river. In October 2018, the Tribe implemented a revised domestic violence code, including all necessary provisions of the 2013 Violence Against Women Act's ("VAWA 2013") restored domestic violence criminal jurisdiction, and today the Tribe prosecutes non-Indians for acts of domestic violence on tribal lands.

The Confederated Tribes of the Umatilla Indian Reservation ("CTUIR") is a union of three Tribes—Cayuse, Umatilla, and Walla Walla—located on a 172,000-acre reservation in Oregon. The CTUIR has more than 3,100 citizens, nearly half of whom live on the Reservation alongside approximately 1,500 non-Indians. The CTUIR was the first Tribe in the nation, and the first jurisdiction in the country, to implement the Adam Walsh Act in 2009. In March of 2011, the CTUIR implemented felony sentencing under the Tribal Law and Order Act of 2010, P.L. 111-211, 124 Stat. 2258, and has since prosecuted numerous felony cases. In July of 2013, the CTUIR implemented all necessary provisions of VAWA 2013's restored tribal jurisdiction and was approved by the United States for early exercise of that authority in February of 2014. Since implementing VAWA 2013, the CTUIR has prosecuted cases for acts of domestic violence committed by non-Indians against Indian women on the Umatilla Indian Reservation while according those

defendants the full panoply of protections called for under federal law.

The Prairie Band Potawatomi Nation ("PBPN") is a federally recognized Tribe of the Potawatomi people primarily located on its federally established reservation near Mayetta, Kansas. The Kansas Act of 1940 granted concurrent criminal jurisdiction on Indian reservations in Kansas to the State without the consent of PBPN. This has resulted in infringements on PBPN's sovereignty and public safety concerns due to state and local law enforcement's misinformed understandings of concurrent state/tribal jurisdiction and lack of accountability to tribal communities.

The Seminole Nation of Oklahoma started exercising the enhanced jurisdiction under VAWA in 2015. While the Nation has implemented this jurisdiction since that time, this jurisdiction has become even more critical with the re-recognition of the Nation's reservation status. The Nation is experiencing a significant increase in the amount of domestic and dating violence in the reservation, and the Nation is committed to pursuing justice for its victims.

The Yurok Tribe has resided from time immemorial in what is now Northern California and currently holds a reservation along Heyhl-keek 'We-roy (the Klamath River) that is both rural and relatively remote and that overlaps with parts of two counties. The Yurok Tribe has more than 6,400 members and is widely celebrated for its tribal justice system that focuses on restorative justice and the Yurok traditional village culture. The Yurok Tribe is within the exterior boundaries of a Public Law 280 State and therefore shares concurrent criminal jurisdiction with the State of California. However, surrounding counties consistently struggle to provide law enforcement

services to the Yurok Reservation. On December 16, 2021, the Yurok Tribe declared a state of emergency due to the ongoing crisis of Missing and Murdered Indigenous People ("MMIP") and is actively pursuing its plan to implement VAWA restored criminal jurisdiction.

The NIWRC is also joined by thirty-seven additional non-profit organizations and Tribal Nations that share the NIWRC's commitment to end domestic violence, rape, sexual assault, and other forms of violence against Native women and children in the United States (collectively, the "NIWRC *Amici*").[2] The depth of the NIWRC *Amici*'s experience in working to end domestic violence and sexual assault renders them uniquely positioned to offer their views on Oklahoma's request that the Court grant the State a new category of criminal jurisdiction over tribal lands based on the pretense that Oklahoma desires to protect Native victims.

[2] The additional NIWRC *Amici* are identified and listed in the Appendix to this brief.

SUMMARY OF THE ARGUMENT

The Nation shall be strong so long as the hearts of the women are not on the ground.

Tsistsistas (Cheyenne)

Tribal Nations have long understood that, if they cannot protect their women and children, the entire nation is in jeopardy. Women perpetuate the existence of all Tribal Nations since, without them, Nations will literally have no future citizens. Further, as this Court has previously noted, nothing is "more vital to the continued existence and integrity of Indian tribes than their children,"[3] and consequently, the extraordinarily high rate of violence against Indian children—and the mothers who raise them—imperils the ability of Tribes to perpetuate their own existence and continue to self-govern.

Because "[t]here is a vital connection between inherent tribal sovereignty and protecting [Native] children,"[4] a Tribal Nation's continued existence depends upon its ability to protect its women and children. And nothing is more critical to this endeavor than jurisdiction. Jurisdiction allows tribal governments to make and implement laws that command individuals to

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[3] *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 49 (1989) (recognizing "'[t]here is no resource that is more vital to the continued existence and integrity of Indian tribes than their children.'") (quoting 25 U.S.C. § 1901(3)).

[4] Byron L. Dorgan et al., *Attorney General's Advisory Committee on American Indian and Alaskan Native Children Exposed to Violence: Ending Violence So Children Can Thrive* 7 (Nov. 2014) https://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2015/03/23/ending_violence_so_children_can_thrive.pdf.

treat their women and children with dignity and respect.[5]

Oklahoma, however, now asks this Court to conclude that "[t]here are no serious issues of tribal sovereignty involved in the prosecution of non-Indians for crimes committed against Indians." Pet'r Br. 42. Oklahoma is wrong. Oklahoma predicates its erroneous conclusion on this Court's 1978 holding that Tribal Nations may not "try and punish non-Indians." *Id.* (quoting *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978)). While it is true that this Court's decision in *Oliphant* eliminated tribal criminal jurisdiction over non-Indians, it is equally true that the very same Court concluded that whether Tribal Nations should "be authorized to try non-Indians" is a "consideration[] for Congress to weigh . . ." 435 U.S. at 212; *see also United States v. Cooley*, 141 S. Ct. 1638, 1643 (2021) ("[T]ribal authority remains subject to the plenary authority of Congress.").

Although Oklahoma fails to see the connection between tribal sovereignty and safety for Native victims, this connection has not been lost on Congress. *See, e.g.,* 167 Cong. Rec. S9,231-03 (daily ed. Dec. 16, 2021) (statement of Sen. Lisa Murkowski) ("In the 2013 reauthorization of VAWA, Congress recognized the inherent authority of Tribes to prosecute and punish certain domestic violence crimes committed by non-Indians against Indian people" as an important means to combat "the acts of violence being perpetrated

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[5] *See* Amnesty Int'l, *Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA* 1 (2007), http://www.amnestyusa.org/pdfs/mazeofinjustice.pdf ("As citizens of particular Tribal Nations, the welfare and safety of American Indian and Alaska Native women are directly linked to the authority and capacity of their nations to address such violence.").

against Native women and children."); *see also* 165 Cong. Rec. S2,679-02 (daily ed. May 7, 2019) (statement of Sen. Dianne Feinstein) ("[T]he very core of [tribal] sovereignty mean[s] the right of Tribes to exercise dominion and jurisdiction over appalling crimes that occur on Tribal land.").

Just this past month, Congress restored tribal criminal jurisdiction over non-Indian crimes of child violence, sexual violence, trafficking, and assaults on tribal justice personnel. *See* Violence Against Women Act Reauthorization Act of 2022 ("VAWA 2022"). Pub. L. No. 117-103, 136 Stat. 49 (2022). Congress's recent restoration of tribal criminal jurisdiction includes the category of crime at issue in this case. *See id.* § 804(B)(3),), 136 Stat. ? (restoring jurisdiction over non-Indian perpetrated crimes of "child violence" as defined by the implementing Tribal Nation). Congress's decision to recognize and affirm tribal criminal jurisdiction constitutes a constitutional exercise of Congress's exclusive power over Indian affairs—one with which this Court should not interfere. *See Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) ("[The Court has] consistently described [Congress's authority] as plenary and exclusive to legislate [with] respect to Indian tribes.") (citations and quotations omitted).

Congress has, in the past, elected to pass laws granting States criminal jurisdiction over non-Indian crimes against Indians on tribal lands. But as discussed in more detail below, those laws have failed to increase safety for Native women and children, and ultimately, have only undermined public safety on tribal lands. Given the clear connection between tribal sovereignty and safety for Native women and children, and given that Congress is well-aware of the crisis of

non-Indian violence in Indian country and is actively engaged in addressing it, Oklahoma's requested remedy falls squarely within the hands of Congress, not this Court.

ARGUMENT

I. Congress, and Congress Alone, has the Authority to Determine Which Sovereign Exercises Criminal Jurisdiction over Crimes Committed in Indian Country

This Court has repeatedly, and consistently, affirmed its "respect both for tribal sovereignty [] and for the plenary authority of Congress" over Indian affairs. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987) (citations and quotations omitted). To be sure, "[t]he plenary power of Congress to deal with the special problems of Indians is drawn both explicitly and implicitly from the Constitution itself." *Morton v. Mancari*, 417 U.S. 535, 551-52 (1974).

Accordingly, "the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that [this Court has] consistently described as 'plenary and exclusive.'" *United States v. Lara*, 541 U.S. 193, 200 (2004); *see also Bay Mills Indian Cmty.*, 572 U.S. at 788 (The Court has "consistently described [Congress's authority] as plenary and exclusive to legislate [with] respect to Indian tribes.'") (citations and quotations omitted). Indeed, "proper respect . . . for the plenary authority of Congress in this area cautions that [the courts] tread lightly." *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 60 (1978).

Furthermore, since the inception of the United States, interactions between the United States and Tribal Nations have been vested exclusively in the federal government. *Worcester v. Georgia*, 31 U.S.

515, 557 (1832) ("The treaties and laws of the United States contemplate . . . that all intercourse with [Indian tribes] shall be carried on exclusively by the government of the union."). Indeed, the supremacy of congressional regulation is necessary to protect Tribal Nations from States, whose actions have historically threatened tribal self-governance and their continued existence. *See United States v. Kagama*, 118 U.S. 375, 383-84 (1886) (concluding that this exclusively federal authority "is within the competency of congress" in part because Indian Tribes "owe no allegiance to the states, and receive from them no protection"). Consequently, "tribal sovereignty is dependent on, and subordinate to, only the Federal Government, not the States." *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 207 (1987).

In addition to deriving from the text of the Constitution, Congress's exclusive authority to regulate Indian affairs also derives, in significant part, from the unique trust relationship between Tribal Nations and the United States. *See, e.g., United States v. Mitchell*, 463 U.S. 206, 225 (1983) (recognizing "a general trust relationship between the United States and the Indian people."). This Court has reaffirmed that management of this trust relationship is assigned to Congress. *See United States v. Jicarilla Apache Nation*, 564 U.S. 162, 175 (2011) ("Throughout the history of the Indian trust relationship, [the Court] ha[s] recognized that the organization and management of the trust is a sovereign function subject to the plenary authority of Congress."); *see also Blackfeather v. United States,* 190 U.S. 368, 373 (1903) ("The moral obligations of the government toward the Indians, whatever they may be, are for Congress alone to recognize.").

Indeed, the United States's trust relationship with Tribal Nations has *no* counterpart in any relationship between Tribal Nations and individual States. *See Washington v. Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. 463, 501 (1979) ("States do not enjoy this same unique relationship with Indians . . . ."). The trust relationship between Indian Tribes and the United States, therefore, is "an instrument of federal policy[,]" and Congress has the authority to "invoke[]its trust relationship to prevent state interference with its policy toward the Indian tribes." *Jicarilla Apache Nation*, 564 U.S. at 180 & n.8. When it comes to regulation of Indian affairs related to tribal government, sovereignty, and safety for Native women and children, only Congress has the necessary constitutional authority to complete the task.

II. Congress Has Historically Granted Some States the Jurisdiction that Oklahoma Requests, but that Has Only Resulted in Dysfunctional Criminal Justice Systems

Even if this Court had the requisite constitutional authority to grant States criminal jurisdiction in Indian country, experience and empirical evidence counsel against granting Oklahoma's request. In the mid-twentieth century, Congress chose to implement the legal framework Oklahoma now requests, and by all accounts, this state jursidiction model consistently failed. The failure of the state jurisdiction model is the result of several factors, including that States lack the incentive to provide adequate resources to patrol and protect Native populations living on tribal lands, and ultimately, they have simply failed to do so. States lack this incentive—and ultimately, any accountability to Tribal Nations—because, in contrast to the federal government, States do not have a trust duty to recog-

nize and protect Tribal Nations and their citizens. *See Confederated Bands & Tribes of Yakima Indian Nation*, 439 U.S. at 501 ("States do not enjoy this same unique relationship with Indians . . . ."). Finally, the granting of this jurisdiction to States has, historically, resulted in less funding (or in some cases, no funding) to Tribal Nations located within those States, based on the assumption that the States would protect tribal citizens.

To be sure, Oklahoma's use of the "lawlessness" narrative is not new or original. The "lawlessness" narrative has been invoked countless times by States to justify termination era grants of Indian country jurisdiction to States through congressional legislation, including the Kansas Act and Public Law 280.[6] After almost eighty years of experience with these laws, however, it is clear that this model has not increased safety for Native women and children. Instead, granting States this jurisdiction has only served to place Native women and children in greater jeopardy.

The Kansas Act[7] was the first of the state jurisdiction laws that Congress passed, and many soon

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[6] Act of August 15, 1953, Pub. L. No. 280, 67 Stat. 588, codified as amended at 18 U.S.C. § 1162.

[7] Act of June 8, 1940, ch. 276, 54 Stat. 249, codified as amended at 18 U.S.C. § 3243. The Tribes in Kansas have consistently opposed the Kansas Act since its inception. *See e.g.,* Letter from Chairman James Wahbnosah, Potawatomi Bus. Comm., to Rep. Will Rogers, House Indian Comm. (May 16, 1939) (on file with the National Archives at Washington, D.C.) ("The Business Committee of the Prairie Band Potawatomi tribe of Indians represents eleven-hundred of the sixteen hundred Indians of Kansas . . . I beg to urge all you can in your power to stop this House resolution 3048.").

followed.[8] In 1953, Congress enacted PL-280, effectively "shifting federal criminal jurisdiction over Indian Country to [select] states regardless of tribal consent."[9] Since its inception, PL-280 has been criticized for creating "jurisdictional uncertainty" between Tribes and States, the effects of which have resulted in a lack of law enforcement responsiveness due to States' "inability or unwillingness" to perform their mandated responsibilities under the law.[10]

Almost as soon as Congress began granting States this jurisdiction, the affected Tribal Nations began seeking retrocession and repeal,[11] in no small part because the laws that were ostensibly enacted to address "lawlessness" on reservations in many instances increased lawlessness and stultified the development

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[8] Examples of other state-specific acts are: Act of July 2, 1948, ch. 809, 62 Stat. 1224, codified at 25 U.S.C. § 232 (New York); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (Iowa); and Act of May 31, 1946, ch. 279, 60 Stat. 229 (North Dakota).

[9] M. Brent Leonhard, *Returning Washington P.L. 280 Jurisdiction to Its Original Consent-Based Grounds*, 47 Gonz. L. Rev. 663, 674 (2011). Public Law 280 grants six States criminal jurisdiction over "offenses committed by or against Indians" in Indian country. 18 U.S.C. § 1162(a). The six States are Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin, subject to a few exceptions. *Id*. The Metlakatla Indian community on Annette Islands, Alaska can exercise concurrent jurisdiction, and the Red Lake Reservation in Minnesota and the Warm Springs Reservation in Oregon are excluded. *See id.* Minnesota retroceded authority over the Bois Forte Indian Reservation at Nett Lake in 1975. *See* Boise Forte Indian Reservation - Nett Lake; Acceptance of Retrocession of Jurisdiction, 40 Fed. Reg. 4,026 (Jan. 15, 1975).

[10] *See* Vanessa J. Jimenez and Soo C. Song, *Concurrent Tribal and State Jurisdiction under Public Law 280*, 47 Am. U. L. Rev. 1627, 1635-37 (1998).

[11] *See, e.g.,* 34 Fed. Reg. 14,288 (1969) (Quinault); 35 Fed. Reg. 16,598 (1970) (Omaha).

of tribal governmental institutions.[12] Following PL-280's enactment, Tribal Nations located in States exercising PL-280 jurisdiction reported a decrease in law enforcement protections and a concomitant increase in lawlessness on their tribal lands,[13] including specifically the Confederated Tribes of the Umatilla Reservation in Oregon,[14] the Tribes in Alaska,[15] and the Tulalip Tribes in Washington.[16]

In response to the public safety concerns expressed by Tribal Nations, as well as the concern that States were obtaining jurisdiction on tribal lands without the consent of Tribal Nations, in 1968, Congress amended

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[12] *See* Carole Goldberg, *Public Law 280 and the Problem of Lawlessness in California Indian Country*, 44 UCLA L. Rev. 1405, 1423 (1997) ("With the tribe, the state, and the federal government all hobbled, at least partly, as a result of Public Law 280, the eruption of lawlessness was predictable.").

[13] Leonhard, *supra* n. 9, at 699-700 ("Indian Country crime in some P.L. 280 states became worse than it was under exclusive federal jurisdiction.").

[14] *Id.* at 699-700 ("This was the experience of the Confederated Tribes of the Umatilla Reservation, and a significant reason the Umatilla tribes sought retrocession from Oregon in the 1970s.").

[15] Laura S. Johnson, *Frontier of Injustice: Alaska Native Victims of Domestic Violence*, 8 Mod. Am. 2, 6 (2012) ("The lack of prosecution for serious domestic violence crimes is a source of frustration for Native Alaskan victims and Alaska tribal governments alike.").

[16] Wendy Church, *Resurrection of the Tulalip Tribes' Law and Justice System and its Socio-Economic Impacts*, 15 (2006) (M.A. thesis, The Evergreen State College), https://www.tulaliptribes-nsn.gov/Base/File/TTT-PDF-TribalCourt-TulalipHistoryOfLaw ("[L]aw enforcement prior to retrocession [w]as ineffective and the county's lack of interest in enforcing the law on the reservation… [left] tribal people not trusting the county. This left the Tribes in a state of lawlessness.") (quoting former Tulalip Chief Judge Gary Bass).

PL-280 such that States could no longer exercise this concurrent jurisdiction absent a special election where the majority of the tribal citizens living in the affected area voted in *favor* of state jurisdiction. *See* 25 U.S.C. §1321, 1326 (defining consent as an election where the "enrolled Indians within the affected area . . . accept such jurisdiction by a majority vote . . . ."). Notably, since Congress amended PL-280 in 1968, *no* population of tribal citizens has voted in favor of granting a State PL-280 jurisdiction.[17] All the same, in the 1968 amendment to PL-280, Congress set forth a path for Oklahoma (and any other State) to exercise the jurisdiction Oklahoma now requests. Oklahoma, however, has chosen not to follow it.

Furthermore, insufficient federal funding for tribal government institutions has been particularly acute on reservations under concurrent State criminal jurisdiction.[18] Initially this was because Congress, intending "to reliev[e] itself from the financial burdens of its trust responsibility," did not allocate special funding for those States when enacting Public Law 280 or the various state-specific acts.[19] Later, the Department of the Interior intentionally provided less

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[17] Leonhard, *supra* n. 9, at 702.

[18] *See, e.g.,* Duane Champagne and Carole Goldberg, *A Second Century of Dishonor: Federal Inequities and California Tribes*, Advisory Council on California Indian Policy, 47-59 (1996) www.aisc.ucla.edu/ca/Tribes.htm ("Federal funding for law enforcement in California, never robust, disappeared almost entirely [after passage of Public Law 280].").

[19] Jimenez and Song, *supra* n. 10, at 1661; Carole Goldberg, Duane Champagne, and Heather Valdez Singleton, *Final Report: Law Enforcement and Criminal Justice Under Public Law 280*, 340 (Washington, D.C., U.S. Department of Justice, 2007), http://www.tribal-institute.org/download/pl280_study.pdf.

funding to reservations under concurrent state criminal jurisdiction. *See Los Coyotes Band of Cuahilla & Cupeno Indians v. Jewell*, 729 F.3d 1025, 1031 (9th Cir. 2013) ("OJS must focus its limited dollars to provide direct law enforcement services to tribes in non-Public Law 280 states because state law enforcement is not available for Indian tribes in those states.") (quoting the Bureau of Indian Affairs Deputy Bureau Director of the Office of Justice Services). Indeed, one study found that 91.8% of Tribes in mandatory Public Law 280 States and 82.8% of Tribes in optional Public Law 280 States did not receive any BIA law enforcement funding *at all*.[20]

Moreover, many States exercising PL-280 jurisdiction over crimes on tribal lands have failed to provide sufficient funding to county and local law enforcement patrolling tribal lands. For instance, as early as 1961, Tribal Nations in Nebraska were being told that local governments did "not have the funds to maintain station deputy sheriffs on their reservations."[21] Washington has likewise failed to adequately fund law enforcement on tribal lands, and in 1988, Percy Youckron, Chairman of the Chehalis Business Council, and Robert Joe, Sr., Chairman of the Swinomish Indian Senate, wrote to Senator Bob McCaslin that: "[c]urrently, the state of Washington, through the local county is responsible for [law enforcement services]," but "this arrangement has not been successful for

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[20] Duane Champagne and Carole Goldberg, *Captured Justice: Native Nations and Public Law 280*, 129 (2d ed. 2019) (emphasis added).

[21] 5 U.S. Comm'n on Civil Rights, Justice: 1961 Comm'n on Civil Rights Report 148 (1961).

most reservations; partially due to . . . constrained County law enforcement budgets."[22]

In the present case, Texas, Kansas, Louisiana, Nebraska, and Virginia ("State *Amici*") assert that the Court should grant the jurisdiction Oklahoma requests because "Indians suffer proportionally more violent victimizations" than non-Indians, and further because their "attackers [] belong[] to a different demographic group than their own." State *Amici* Br. 15. While the NIWRC *Amici* do not deny the truth in this statement, the NIWRC *Amici* disagree that granting States jurisdiction over these crimes will alleviate or solve the crisis. Ironically, the State *Amici* cite the incredibly high levels of violence in Alaska as a specific example they think proves their point, stating:

> Take Alaska for example. Alaska residents who are American Indian or Alaska Native are killed far more often than would be expected given their overall representation in Alaska's population. Indian victims were over-represented in Alaska homicides (30.5%) compared to their population (16.3%).

Id. at 21-22. Alaska, however, is a PL-280 State, and the fact that Native Alaskans suffer disporportionately high rates of violence is not because Alaska lacks jurisdiction over the crimes. Alaska has jurisdiction, and Alaska has declined to dedicate sufficient resources to protect Alaska's Native populations—something

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[22] Letter from Percy Youckton, Chairman Chehalis Business Council, and Robert Joe, Sr., Chairman Swinomish Indian Senate, to Senator Bob McCaslin in support of retrocession of state criminal jurisdiction (Feb. 1, 1988) (on file with author).

tribal leaders in Alaska have repeatedly asked the federal government to address.[23]

The State of Montana, which exercises concurrent jurisdiction over crimes committed against Indians on the Flathead Reservation, has fared no better. Just this year, Lake County, Montana sent a demand letter to Governor Greg Gianforte requesting that the State allocate funding to address the "severe impact" concurrent state criminal jurisdiction is having on the county budget, as the county has been unable to adequately fund law enforcement on the Flathead Reservation.[24] There can be no question that Montana

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[23] *See, e.g.,* U.S. Department of Justice Office on Violence Against Women, *2022 Tribal Consulation Report* 28 (2022), https://www.justice.gov/ovw/page/file/1481661/download (testimony of Vivian Korthuis, Chief Executive Officer of the Association of Village Council Presidents) ("Alaska is also a PL-280 state, meaning the federal government . . . transferred that authority to the State. However, State law enforcement is largely absent in our villages.").

[24] Letter from Reep, Bell & Jasper, P.C. to Governor Greg Gianforte (Feb. 8, 2022), https://bloximages.chicago2.vip.townnews.com/helenair.com/content/tncms/assets/v3/editorial/d/25/d25d3df9-c757-552f-9d9e-9e4c8cf46daa/6206fa6f2d1fa.pdf.pdf. Some of the funds that Lake County requests are for the Lake County jail, which services the Flathead Reservation. It is estimated that the Lake County jail releases about 80 people per month who have been arrested on felony warrants due to overcrowding. Seaborn Larson, Independent Record, (Feb. 13, 2022), https://helenair.com/news/state-and-regional/govt-and-politics/lake-county-launches-new-bid-to-recover-law-enforcement-costs/article_5e0a6fbe-c1a6-5153-9f50-9009deb0d030.html. Conditions at the Lake County jail were the subject of litigation in the 90s and are currently the subject of dozens of recently filed lawsuits. *See Lozeau v. Lake County*, 98 F.Supp 2d 1157 (D. Montana 2000); *see also Dozens of prisoners file lawsuits for inadequate living conditions*, Valley Journal (Mar. 2, 2022), http://www.valley

has failed to allocate sufficient public safety resources to properly effectuate its concurrent jurisdiction on the Flathead Reservation. But as this Court has previously noted, Montana's failure to fund law enforcement in Indian country is not uncommon. *See United States v. Bryant*, 579 U.S. 140, 146 (2016) ("Even when capable of exercising jurisdiction, however, States have not devoted their limited criminal justice resources to crimes committed in Indian country.").

Empirical evidence undermines Oklahoma's suggestion that granting its request for jurisdiction will increase safety for Native victims of violence.

III. Congress is Actively Engaged in Addressing the Crisis of Violence Against Native Americans

Oklahoma has claimed that granting Oklahoma jurisdiction is necessary to "enhance[e] the protection of Indians from the crimes of non-Indians." Pet'r Br. 16. Congress, however, is actively engaged in addressing the prevalance of non-Indian violence against Native victims on reservation lands, and Congress has chosen to do so by restoring tribal jurisdiction. In 2013, Congress restored tribal criminal jurisdiction over non-Indian perpetrated crimes of domestic violence, dating violence, and violation of protection orders. *See* 25 U.S.C. § 1304(c). And just this past month, Congress restored tribal criminal jurisdiction over non-Indian crimes, including: assaults on tribal law enforcement, stalking, trafficking, sexual violence, and child violence (thus including the category of crime at issue in this case). *See* VAWA

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journal.net/Article/26229/Dozens-of-prisoners-file-lawsuits-for-inadequate-living-conditions.

2022, Pub. L. No. 117-103, 136 Stat 49 (2022)("VAWA 2022").

Oklahoma, therefore, is not presenting a public safety problem that Congress has failed to consider or address. Congress is well-aware that "Indian women experience the highest rates of domestic violence compared to all other groups in the United States." 151 Cong. Rec. S4,871-01 (daily ed. May 10, 2005) (statement of Sen. McCain). In 2013, during the course of VAWA reauthorization, Congress specifically recognized that a large percentage of the violent crimes committed against Native people are committed by non-Indians, noting that:

> Unfortunately, much of the violence against Indian women is perpetrated by non-Indian men. According to Census Bureau data, well over 50 percent of all Native American women are married to non-Indian men, and thousands of others are in intimate relationships with non-Indians.

S. Rep. No. 112-153, at 9 (2012). Congress, therefore, understands that the lack of tribal jurisdiction over non-Indian perpetrated crimes leaves Native women and children exceptionally vulnerable, as Representative Tom Cole of Oklahoma noted: Native women "in many ways [are] the most at-risk part of our population." 159 Cong. Rec. H678-79 (daily ed. Feb. 27, 2013). Indeed, at the time, Congress recognized that the lack of jurisdiction over non-Indians left Tribal Nations unable to prosecute or hold accountable the majority of individuals committing violent crimes against their citizens. 159 Cong. Rec. E217-03, E218 (daily ed. Feb. 28, 2013) (statement of Rep. Jackson Lee) ("Currently, tribal courts do not have jurisdiction over non-Indian defendants who abuse and attack

their Indian spouses on Indian lands, even though more than 50% of Native women are married to non-Indians."); *see also* 159 Cong. Rec. H678-79 (daily ed. Feb. 27, 2013) (Representative Cole stating that "[t]he statistics on the failure to prosecute and hold accountable the perpetrators of those crimes are simply stunning.").

Moreover, in electing to restore tribal criminal jurisdiction, Members of Congress recognized that restoring tribal criminal jurisdiction was preferable to granting States jurisdiction over such crimes, as "state law enforcement and prosecutors have limited resources and may be located hours away from tribal communities." 159 Cong. Rec. E217-03, E218 (daily ed. Feb. 28, 2013) (statement of Rep. Jackson Lee). Indeed, one of the rationales Congress relied on in restoring *tribal* jurisdiction is the simple rationale that the government closest to the victim—*i.e.* the tribal government—has the most responsibility and accountability to the victim herself. *See* 159 Cong. Rec. S487 (daily ed. Feb. 7, 2013) ("When it comes to protecting those most at risk, Congress must recognize the need for local control, local responsibility, and local accountability.").

Finally, in electing to restore tribal criminal jurisdiction over non-Indian crimes, Congress explicitly cited this Court's decision in *Oliphant* as recognizing Congress's constitutional authority to do so, noting that:

> The Supreme Court has indicated that Congress has the power to recognize and thus restore tribes' 'inherent power' to exercise criminal jurisdiction over all Indians and non-Indians. In *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978), the Court sug-

> gested that Congress has the constitutional authority to decide whether Indian tribes should be authorized to try and to punish non-Indians.

See S. Rep. No. 112-153, at 213 (2012) (statement of Senate Comm. on the Judiciary Majority).[25]

Nine years have now passed since Congress restored tribal criminal jurisdiction in VAWA 2013, and by all accounts, it is clear that Congress's decision to restore tribal jurisdiction has increased safety for Native women and children. In commencing re-authorization discussions in 2019, Senator Feinstein referred to VAWA 2013 as a success, stating that it:

> [A]llowed Tribes to exercise their sovereign powers to prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses or dating partners. In other words, Tribes were finally able to prosecute anyone who committed domestic violence against an Indian on Indian land. These measures were not only necessary; *they worked* . . . . In fact, not a single conviction was overturned because of a lack of due process. We must now build on that success.

165 Cong. Rec. S2,679-02 (daily ed. May 7, 2019) (statement of Sen. Dianne Feinstein) (emphasis added). This recognition of VAWA 2013's success has drawn bi-partisan support, as Senator Murkowski recently stated that "[s]ince the Violence Against

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[25] Congress also recognized that "the unique legal relationship of the United States to Indian tribes creates a Federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women." VAWA 2013, Pub. L. No. 109-162, tit. IX, § 901, 119 Stat. 3077 (2013).

Women Reauthorization Act of 2013, certain Tribes in the Lower 48 that have implemented the Special Domestic Violence Criminal Jurisdiction have been able to hold perpetrators of domestic violence crimes accountable."[26]

Tribes likewise agree with Congress that the restoration of tribal criminal jurisdiction in VAWA 2013 was a resounding success. In 2018, five years after the passage of VAWA 2013, the National Congress of American Indians published a report documenting the experience of the Tribal Nations that had implemented VAWA 2013's restored jurisdiction.[27] Specifically, NCAI concluded that:

> VAWA 2013[] . . . has fundamentally changed the landscape of tribal criminal jurisdiction in the modern era. By exercising [this restored jurisdiction], many communities have increased safety and justice for victims who had

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[26] Press Release, Office of Sen. Lisa Murkowski, Schatz, Murkowski Introduce Bipartisan Violence Against Women Act Reauthorization, Legislation Includes Strong Tribal Provisions To Keep Native Women, Children, Families Safe (Feb. 10, 2022), https://www.murkowski.senate.gov/press/release/schatz-murkowski-introduce-bipartisan-violence-against-women-act-reauthorization [hereinafter *Murkowski Press Release*]. Senator Murkowski has also noted that "despite all of the horror stories that were predicted, the record shows that non-Indian defendants experienced a Tribal justice system that treats them fairly and in some ways with more attention than State or Federal systems," identifying "the acts of violence being perpetrated against Native women and children" as "the real horror story." 167 Cong. Rec. S9,233 (daily ed. Dec. 16, 2021).

[27] *See* Nat'l Congress of American Indians, VAWA 2013's Special Domestic Violence Criminal Jurisdiction (SDVCJ) Five-Year Report (2018), https://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf.

> previously seen little of either. [The restored jurisdiction] has allowed tribes to respond to long-time abusers who previously had evaded justice and has given a ray of hope to victims and communities that safety can be restored.[28]

Furthermore, the restoration of tribal jurisdiction has helped quell domestic violence in Indian country not only by enabling Tribes to arrest, prosecute, and convict non-Indian offenders, but also by enhancing the federal capability to deter domestic violence because, as the report noted:

> [T]ribal convictions can now lay the groundwork for future federal habitual offender charges. State, federal, and tribal law enforcement are now able, through cooperation and information sharing across jurisdictions, to ensure that defendants with a pattern of dangerous behavior are identified and receive appropriate sentences.[29]

Building on the success of VAWA 2013, on February 10, 2022, the Senate introduced a bi-partisan VAWA reauthorization bill that passed the Senate on March 10, 2022, and was signed into law by the President on March 15, 2022. This new VAWA reauthorization restores tribal criminal jurisdiction over non-Indian perpetrated crimes of child violence, including the category of crime in the present case.[30] To be sure, the

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[28] *Id.* at 1 (internal quotation marks and citations omitted).

[29] *Id*. at 15 (citation omitted).

[30] *See Murkowski Press Release*, supra n. 28 (noting that the introduced legislation "[r]estores Tribal jurisdiction over crimes of child violence"). The law specifically defers to the Tribal Nation's definition of "child violence," and thus allows for Tribal

discussions among Senators concerning this restoration of tribal criminal jurisdiction focused heavily on the importance of restoring the authority of Tribal Nations to protect their children from crimes committed by non-Indians, with Senator Lisa Murkowski recently stating that:

> The Tribal title will further restore and improve the implementation of the special Tribal criminal jurisdiction over non-Indians who commit violent crimes in Native communities, and it will do so by allowing Tribes that exercise this special jurisdiction to charge defendants with crimes that are adjacent to domestic violence, such as violence against children or assault on law enforcement.
>
> I think it is important to know that children were involved in 58 percent of all incidents of domestic violence in these VAWA 2013 cases. This is according to a report by the Federal Government a couple years ago, in 2019. By empowering Tribal courts this way, we can help combat this major public safety issue.

167 Cong. Rec. S9,231-03 (statement of Sen. Lisa Murkowski) (daily ed. Dec. 16, 2021).

The problem, as underscored by Senator Murkowski, is not this Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). Instead, the problem has been the absence of tribal jurisdiction on reservation lands. Congress, however, is committed to providing a

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Nations to define "child violence" to include criminal neglect. *See* VAWA 2022 § 804 (B)(3) (restoring tribal criminal jurisdiction over "violence against a child *proscribed by the criminal law of the Indian tribe* that has jurisdiction over the Indian country where the violation occurs.") (emphasis added).

solution to the problem, and when it comes to which sovereign should exercise jurisdiction in Indian country, this Court should refrain from interfering with Congress's constitutional authority and considered judgment.

IV. Oklahoma Has Not Prioritized the Protection of Native Victims

Oklahoma nonetheless argues that if it is not granted jurisdiction over non-Indians who commit crimes against Indians in Indian country, Oklahoma "will effectively be required to turn their backs on tribal citizens." Pet'r Br. 43-44. Oklahoma's back, however, is already turned on Native victims. It has been for decades.

Off reservation lands, Oklahoma exercises exclusive jurisdiction over crimes committed against tribal citizens. To date, the State of Oklahoma has failed to expend adequate resources to address the crisis of Missing and Murdered Indigenous Women and Girls ("MMIWG"). In fact, in 2017, the Urban Indian Health Institute ("UIHI") found that Oklahoma ranks in the top ten of States with the highest number of MMIWG cases, and Oklahoma City ranks in the top eight of American cities that fail to properly record and investigate MIWG cases.[31]

Moreover, tribal leaders in Oklahoma have frequently noted that Oklahoma gives short shrift to Native victims of violence. In just one disturbing

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[31] Urban Indian Health Institute, *Missing and Murdered Indigenous Women & Girls: A snapshot of data from 71 urban cities in the United States*, 11, 17 (2017), https://www.uihi.org/download/missing-and-murdered-indigenous-women-girls/?wpdmdl=13090&refresh=621e621db98b81646158365.

example of the State's failure to protect a Native woman from fatal domestic violence, Janett Reyna, the former director of the Ponca Tribe of Oklahoma's domestic violence program, was stabbed to death over 41 times in front of her young children in August of 2013 by her ex-husband Luis Octavio Frias,[32] only days after filing a protective order against Frias in Kay County, Oklahoma on August 6, 2013.[33] Prior to Reyna's filing, Frias already had at least two prior arrests in Kay County for domestic abuse and assault and battery.[34] At a 2017 Department of Justice Office on Violence Against Women tribal consultation, Charmain Earl Howe of the Ponca Tribe of Oklahoma commented on Oklahoma's failure to arrest and prosecute Reyna's killer, stating that:

> I know personal stories about victims of violence. The director of our tribal domestic violence program, who helped many victims, lost her own battle with domestic violence. Days after filing for a protective order, she was ambushed by her ex, who stabbed her several dozen times. He murdered her in

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[32] Press Release, U.S. Attorney's Office Western District of Oklahoma, U.S. Marshals Arrest Kay County Murder Suspect Who Fled to Mexico (Feb. 7, 2019), https://www.justice.gov/usao-wdok/pr/us-marshals-arrest-kay-county-murder-suspect-who-fled-mexico.

[33] *See Janett Reyna v. Luis Octavio Frias*, No. PO-2013-00071 (Kay Cty. Okla. Aug. 6, 2013).

[34] *See State of Oklahoma v. Luis Octavio Frias*, No. CM-2009-00864 (Kay Cty. Okla. August 10, 2009); *State of Oklahoma v. Luis Octavio Frias*, No. CM-2002-00734 (Kay Cty. Okla. October 7, 2002).

> front of her children over 4 years ago, and *he has not yet been brought to justice*.[35]

Furthermore, although it is well documented that Native women face rates of domestic violence and assault higher than any other population, Oklahoma frequently refuses to allow Native advocates with subject matter expertise to participate on the State's committees and commissions designed to combat domestic violence. For instance, on May 31, 2001, Governor Frank Keating signed H.B. 1372 into law, creating the Oklahoma Domestic Violence Fatality Review Board ("DVFRB"), housed within the Office of the Attorney General, with the goal of reducing domestic violence deaths in Oklahoma.[36]

Prior to 2019, the DVFRB's authorizing legislation mandated that the board be comprised of eighteen members, none of whom were required to be Native.[37] Thus, for nearly twenty years, Native victims had no representation on the board. Oklahoma Tribes and Native domestic violence advocates asked the Attorney General to place a Native advocate on the board, but he refused, as he was not statutorily required to do so. Tribal leaders and Native advocates, however, did not give up, and finally, in 2019, the Oklahoma legislature passed an amendment to the law requiring that the DVFRB include at least one Native person on Board.[38] This amendment came only

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[35] U.S. Department of Justice Office on Violence Against Women, *2017 Tribal Consultation Report* 47 (2017), https://www.justice.gov/ovw/file/1046426/download (emphasis added).

[36] Okla. Stat. tit. 22 § 1601 (2001).

[37] Okla. Stat. tit. 22 § 1602 (2009) (H.B. 2091).

[38] *See* Okla. Stat. tit. 22 § 1602 (2021); Muscogee Nation, *Muscogee (Creek) Nation witnesses Governor sign bill at Capitol*

after years of advocacy and support by the Muscogee (Creek) Nation Prosecutor's Office and Family Violence Prevention Program Office, the Native Alliance Against Violence, and resolutions from the Muscogee (Creek) Nation National Council and the Executive Committee of the Inter-Tribal Council of the Five Civilized Tribes.[39] H.B. 2091 was not publicly supported by the Attorney General's Office or the DVRFB.

And in general, Oklahoma does not have a good track record when it comes to protecting women from domestic violence and sexual assault. For instance, according to Governor Stitt's own crime victim report released on September 1, 2021, the State's "clearance rates" for rape are woefully lacking. In 2018, only 22% of reported rapes were cleared.[40] In 2019 the rate was 17.4%, and in 2020, the rate was 18%.[41] These incredibly low clearance rates are concerning for Native victims since judicially created concurrent state jurisdiction would effectively prevent the application of important federal victim's rights that Indian victims would otherwise possess. That, of course, would violate Oklahoma's Enabling Act which reads:

(Aug. 8, 2019), https://www.muscogeenation.com/muscogee-creek-nation-witnesses-governor-sign-bill-at-capitol/.

[39] Muscogee (Creek) Nation, Executive Branch FY 2019 3rd Quarterly Report to Muscogee (Creek) Nation National Council, 8-9 (2019), https://www.muscogeenation.com/wp-content/uploads/PR/FY19%203rd%20quarterly%20report%20Final.pdf.

[40] Ricky Adams and Bryan Rizzi, *Crime in Oklahoma 2020*, Oklahoma State Bureau of Investigation, Office of Criminal Justice Statistics 4-2 (2021), https://osbi.ok.gov/file/10091/download?token=8SuW41G8.

[41] *Id.*

> Nothing contained in the said constitution shall be construed to limit or impair the rights of person or property pertaining to the Indians. . . or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise . . . .[42]

A judicial grant of state concurrent jurisdiction over crimes involving Indian victims would, as both a practical and legal matter, limit and impair an Indian victim's federal rights[43] as state exercise of authority will often prohibit federal prosecution.[44]

No sovereign is ever perfect in providing for public safety, but, given Oklahoma's conduct since its inception in 1907, Native victims and advocates are

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[42] Okla. Enabling Act, 34 Stat. 267 § 1.

[43] *See, e.g.*, 18 U.S.C. § 403; 18 U.S.C. § 3771; 18 U.S.C. § 3509; 18 U.S.C. § 3663A(a)(2) (stating that victims in every federal criminal case have the following rights: notification of significant actions and proceedings pertaining to their cases; notification of crime victim compensation; access to emergency funds; accompaniment to all criminal proceedings by a victim advocate or other person providing support; notification of a defendant's release; and the opportunity to provide an impact statement prior to the defendant's sentencing detailing the physical, psychological, and economic impact of the crime upon themselves and their families.). If Native victims in Oklahoma are to lose these rights codified under federal law, then that should be a question for Congress—not the courts.

[44] *See* U.S. Department of Justice, Justice Manual § 9-2.031, https://www.justice.gov/jm/jm-9-2000-authority-us-attorney-criminal-division-mattersprior-approvals#9-2.031 (the *Petite* Policy prohibits subsequent federal prosecution in most cases where a State has exercised criminal jurisdiction over the same crime).

skeptical with respect to the veracity of Oklahoma's assertion that its current motivation is to protect Native victims.

V. *McGirt* Did Not Create a Public Safety Crisis

Oklahoma's campaign to overturn *McGirt* began on July 9, 2020. The crisis of non-Indian violence against Native victims, however, began long before this Court issued its seminal ruling affirming the continued existence of the Muscogee (Creek) Nation's Reservation. Although Oklahoma has argued that this Court's decision in *McGirt* has led to an "ongoing crisis in the criminal-justice system in Oklahoma," that "endanger[s] public safety," Pet'r Br. at 3–4, the public safety crisis that Native women and children experience stems from hundreds of years of federal law and policy. Not *McGirt*.

In November 2013, the Tribal Law and Order Act's Indian Law and Order Commission ("Commission") submitted a report and recommendations to the President and Congress focused on remedying "the high rates of violent crimes that have plagued Indian country for decades."[45] The Commission's research led the Commission to conclude that:

> Criminal jurisdiction in Indian country is an indefensible maze of complex, conflicting, and illogical commands, layered in over decades via congressional policies and court decisions, and without the consent of Tribal nations.

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[45] *See* Troy A. Eid, Indian Law and Order Commission, *A Roadmap for Making Native America Safer*, i (Nov. 2013), https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf.

> Ultimately, the imposition of non-Indian criminal justice institution in Indian country extracts a terrible price: delayed prosecutions, too few prosecutions, and other prosecution inefficiencies; trials in distant courthouses; justice systems and players unfamiliar with or hostile to Indians and tribes; and the exploitation of system failures by criminals, more criminal activity, and further endangerment of everyone living in and near Tribal communities.[46]

The Commission attributed the aforementioned issues to "the archaic system in place, in which Federal and State authority displaces Tribal authority and often makes Tribal law enforcement meaningless."[47]

In fact, the Commission found that when tribal courts and law enforcement "are supported—rather than discouraged—from taking primary responsibility over the dispensation of local justice, they are often better, stronger, faster, and more effective in providing justice in Indian country than their non-Native counterparts located elsewhere."[48] If anything, the Court's decision in *McGirt* serves to alleviate the public safety crisis for Native victims living on the Muscogee Reservation, as the decision confirms that the Muscogee (Creek) Nation may exercise criminal jurisdiction over non-Indians who commit any of VAWA 2022's "covered crimes" *anywhere* within the Muscogee Reservation borders—as opposed to solely on the tiny

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[46] *Id*. at 15–17.

[47] *Id*. at ix.

[48] *Id*. at 17.

fraction of Reservation lands that remain held in trust.[49]

To be sure, the continued existence of a treaty reservation is not the problem. Treaty reservations are not the reason Native women and children are more likely to be abused, assaulted, and/or murdered than any other population in the United States. Native women and children are victimized more often than any other U.S. population for the simple reason that the sovereign with the most significant interest in preserving their safety and welfare, their Tribal Nation, has been stripped of the jurisdiction necessary to protect them. If Oklahoma truly cared about the safety and welfare of Native victims, Oklahoma would join Tribal Nations in advocating for Congress to fully and completely restore the inherent authority of Tribal Nations to prosecute any and all crimes committed against Native women and children on tribal lands.

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[49] Sarah Deer and Mary Kathryn Nagle, *McGirt v. Oklahoma: A Victory for Native Women*, Geo. Wash. L. Rev. On the Docket (Oct. Term 2019), https://www.gwlr.org/mcgirt-v-oklahoma-a-victory-for-native-women/ (noting that "the judicial disestablishment of an entire reservation would render a Tribal Nation unable to fully exercise the criminal jurisdiction that Congress restored.").

CONCLUSION

The Oklahoma Court of Criminal Appeals' decision below should be affirmed.

Respectfully submitted,

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April 4, 2022

APPENDIX

APPENDIX

STATEMENTS OF *AMICI CURIAE*

The following Tribal Nations and organizations respectfully submit this brief as *amici curiae* in support of Respondent.

Alaska Native Women's Resource Center (aknwrc.com)

Alliance Absolute Justice Women's Division (Absolutejustice.us)

Alliance of Tribal Coalitions to End Domestic Violence (www.atcev.org)

American Indian Development Associates, LLC (https://www.aidainc.net)

Americans for Indian Opportunity (www.aio.org)

Arizona Coalition to End Sexual and Domestic Violence (www.acesdv.org)

Chinook Indian Nation (www.chinookNation.org)

Coalition to Stop Violence Against Native Women (www.csvanw.org)

Colorado Coalition Against Sexual Assault (www.ccasa.org)

Community Against Violence (TaosCAV.org)

Courageous Educational Services LLC (www.courageousparent.com)

Family Violence Appellate Project (www.fvaplaw.org)

First Nations Women's Alliance (www.nativewoman.org)

Institute for Indian Development, Inc. (no website available)

Legal Voice (www.legalvoice.org)

Mending the Sacred Hoop (www.mshoop.org)

Minnesota Indian Women's Sexual Assault Coalition (www.miwsac.org)

Montana Coalition Against Domestic and Sexual Violence (www.MCADSV.com)

The **Montana Native Women's Coalition** (www.themnwc.org)

National Alliance to End Sexual Violence (endsexualviolence.org)

National Center for Victims of Crime (victimsofcrime.org)

National Coalition Against Domestic Violence (ncadv.org)

National Organization for Women Foundation (https://now.org/now-foundation/)

Native Women's Society of the Great Plains (https://www.nativewomenssociety.org/)

New York State Coalition Against Sexual Assault (www.nyscasa.org)

Red Wind Consulting (www.red-wind.net)

Reporter in Residence (www.mississippicir.org)

Soaring Eagle Consulting (www.soaring-eagle-consulting.com)

Strengthening Nations (www.strengtheningnations.org)

StrongHearts Native Helpline
(strongheartshelpline.org)

Theresa's Fund (www.domesticshelters.org)

Unified Solutions Tribal Community Development Group, Inc.
(www.unified-solutions.org)

Vermont Network Against Domestic and Sexual Violence (www.vtnetwork.org)

Waking Women Healing Institute
(www.wakingwomenhealingint.org)

Wisconsin Coalition Against Sexual Assault
(www.wcasa.org)

Wisdom International: Help2Others
(https://www.wisdominternational.org/)

Women and Children's Center of the Sierra
(waccs.org)