No. 19-0177

In the Supreme Court of Iowa

STATE OF IOWA,
PLAINTIFF-APPELLANT

v.

JESSICA REA STANTON,
DEFENDANT-APPELLEE

ON APPEAL FROM THE IOWA DISTRICT COURT
FOR TAMA COUNTY

HON. RICHARD VANDER MEY

NOS. SMSM013023
STA0021728

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING APPELLANT

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STATEMENT OF INTEREST

This case involves criminal charges filed in Iowa state court by a tribal police officer for crimes alleged to have been committed by a non-Indian on land held by the United States in trust for the Sac and Fox Tribe of the Mississippi in Iowa (Tribe), also known as the Meskwaki Nation. The judicial magistrate determined that a federal statute enacted in 2018 eliminated the State's criminal jurisdiction over all crimes committed on the Tribe's land—even those crimes that do not involve an Indian victim or defendant. State's Pet. for Discretionary Review (State Pet.) Ex. D; see Pub. L. No. 115-301, 132 Stat. 4395 (2018). In the magistrate's view, any charges for criminal conduct on the Tribe's land must be pursued in tribal court or federal court. State Pet. Ex. D.

Criminal jurisdiction over offenses committed in Indian country "is governed by a complex patchwork of federal, state, and tribal law" that often depends on whether the defendant or the victim is an Indian. *Negonsott* v. *Samuels*, 507 U.S. 99, 102 (1993) (quotation marks and citation omitted). The magistrate's decision misreads the recent federal statute, conflicts with longstanding

jurisdictional rules related to Indian country, and has the potential to create a jurisdictional vacuum on the Tribe's land where no sovereign can prosecute state law crimes involving only non-Indians. As one of three sovereigns that exercises criminal jurisdiction in Indian country, and as the holder of title to the Tribe's land, the United States has a strong interest in this Court's interpretation of the recent federal statute addressing the State's jurisdiction on the Tribe's land.[1]

STATEMENT OF ISSUE

Whether the State of Iowa has jurisdiction over crimes committed by a non-Indian defendant against a non-Indian victim, and victimless crimes committed by non-Indians, on the Meskwaki Settlement in Iowa.

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[1] Pursuant to Iowa Rule of Appellate Procedure 6.906(4)(d), the United States certifies that this brief was not authored in whole or in part by a party's counsel, and that no party or party's counsel contributed money to fund the preparation or submission of this brief.

STATEMENT OF THE CASE

A. Procedural History

On January 1, 2019, an officer of the Meskwaki Nation Police Department filed three misdemeanor complaints against defendant Jessica Stanton in the Iowa District Court for Tama County. State Pet. Exs. A-C. The complaints charged Stanton with criminal trespass, in violation of Iowa Code § 716.8(1); possession of drug paraphernalia, in violation of Iowa Code § 124.414; and violation of a no-contact order, in violation of Iowa Code § 664A.7. State Pet. Exs. A-C. According to the State's petition, Stanton is a non-Indian and none of the crimes with which she is charged involves an Indian victim. State Pet. ¶¶ 1, 6. The magistrate dismissed the charges. *Id.* at Ex. D. This Court granted the State's petition for discretionary review. Order (Mar. 7, 2019).

B. Criminal Jurisdiction Over Indian Country In Iowa

1. History of the Tribe's land

The Sac and Fox Tribe of the Mississippi in Iowa (Tribe), also referred to as the Meskwaki Nation, is a federally recognized Indian tribe. See 83 Fed. Reg. 34863-68 (2018). In 1857, the Tribe

purchased land that was then taken into trust for the Tribe's benefit by the Governor of Iowa. See *Sac and Fox Tribe of the Mississippi in Iowa* v. *Licklider*, 576 F.2d 145, 147-148 (8th Cir. 1978). The Tribe continued to purchase land in Tama County with its own funds, and the Governor of Iowa eventually held title to 2720 acres of land in trust for the Tribe. *Ibid.* In 1896, the State transferred the lands to the United States. 1894-1897 Iowa Laws ch. 110 (26th Extra Gen. Assembly). The United States "accept[ed] and assum[ed] jurisdiction over the Sac and Fox Indians of Tama County, in the State of Iowa, and of their lands in said State." Act of June 10, 1896, ch. 398, 29 Stat. 321, 331. These lands, referred to as the Meskwaki Settlement, are currently held in trust by the United States for the Tribe's benefit. See *Licklider*, 576 F.2d at 147. The Meskwaki Settlement therefore constitutes "Indian country." See 18 U.S.C. § 1151(a) (defining Indian country); see *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 511 (1991) (trust land constitutes Indian country if the area has been "validly set apart for the use of the Indians as such, under

the superintendence of the Government") (citation and internal quotation marks omitted).

2. Criminal jurisdiction in Indian country

Criminal jurisdiction over offenses committed in Indian country "is governed by a complex patchwork of federal, state, and tribal law" that often depends on whether the defendant or the victim is an Indian. *Negonsott* v. *Samuels*, 507 U.S. 99, 102 (1993) (quotation marks and citation omitted).

a. The federal government generally exercises jurisdiction over crimes committed by or against Indians in Indian country pursuant to 18 U.S.C. § 1152. Under that statute, Congress has extended so-called "federal enclave laws"—laws of the United States that define and punish criminal conduct committed "in any place within the sole and exclusive jurisdiction of the United States"—to Indian country. See *United States* v. *Markiewicz*, 978 F.2d 786, 797-798 (2d Cir. 1991). The federal enclave laws define crimes such as arson, 18 U.S.C. § 81; assault, 18 U.S.C. § 113; maiming, 18 U.S.C. § 114; theft, 18 U.S.C. § 661; receiving stolen property, 18 U.S.C. § 662; murder, 18 U.S.C. § 1111; manslaughter,

18 U.S.C. § 1112; and sexual offenses, 18 U.S.C. §§ 2241 *et. seq.* The Assimilative Crimes Act, 18 U.S.C. § 13, which allows the federal government to borrow state law when there is no applicable federal statute, is also extended to Indian country by 18 U.S.C. § 1152. *Williams* v. *United States*, 327 U.S. 711, 713-716 (1946); *Duro* v. *Reina*, 495 U.S. 676, 680 n.1 (1990).

Congress has enacted certain statutory exceptions to the United States' authority to prosecute federal enclave crimes and assimilated state law crimes in Indian country. Section 1152 "shall not extend [1] to offenses committed by one Indian against the person or property of another Indian, nor [2] to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or [3] to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively." 18 U.S.C. § 1152.[2]

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[2] Those exceptions apply only to those laws extended to Indian country by Section 1152—the federal enclave laws and assimilated state laws. The exceptions do not exempt Indians from the general criminal laws of the United States that apply to acts that are federal crimes regardless of where committed, such as bank

In addition to those statutory exceptions, the Supreme Court has announced another exception to the applicability of Section 1152 in Indian country. In *United States* v. *McBratney*, 104 U.S. 621 (1882), the Court held that, absent treaty provisions to the contrary, the States have exclusive jurisdiction over crimes committed in Indian country by a non-Indian against another non-Indian. *Id.* at 624; see *Draper* v. *United States*, 164 U.S. 240, 242-247 (1896); *United States* v. *Wheeler*, 435 U.S. 313, 324 n.21 (1978); *United States* v. *Antelope*, 430 U.S. 641, 643 n.2 (1977); *Williams*, 327 U.S. at 714. The States also have exclusive jurisdiction over "victimless crimes by non-Indians" in Indian country. *Solem* v. *Bartlett*, 465 U.S. 463, 465 n.2 (1984). Accordingly, the authority of the United States to prosecute federal enclave crimes and assimilated state law crimes in Indian country under Section 1152 is limited to cases that involve crimes committed by or against

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robbery, counterfeiting, sale of drugs, and assault on a federal officer. See, *e.g.*, *United States* v. *Young*, 936 F.2d 1050, 1055 (9th Cir. 1991) (per curiam), overruled on other grounds by *United States* v. *Vela*, 624 F.3d 1148 (9th Cir. 2010); *United States* v. *Blue*, 722 F.2d 383, 385-386 (8th Cir. 1983).

Indians that do not fall within a statutory exception. Absent an Act of Congress to the contrary, federal jurisdiction over crimes involving Indians is exclusive of state jurisdiction. *United States* v. *John*, 437 U.S. 634, 651 (1978).

b. Offenses by one Indian against the person or property of another Indian within Indian country "typically are subject to the jurisdiction of the concerned Indian tribe," *Negonsott*, 507 U.S. at 102, but the Indian Major Crimes Act, 18 U.S.C. § 1153(a), gives the federal government jurisdiction over certain serious offenses—such as murder, kidnapping, burglary, and robbery—when an Indian is the perpetrator. Tribal courts do not have criminal jurisdiction over non-Indians. *Oliphant* v. *Suquamish Tribe*, 435 U.S. 191, 209-210 (1978).

c. Within Indian country, absent an act of Congress, state jurisdiction generally extends only to those state-law crimes committed by non-Indians against other non-Indians and victimless crimes committed by non-Indians. See *Duro*, 495 U.S. at 680 n.1. "For Indian country crimes involving only non-Indians, longstanding precedents of [the Supreme] Court hold that state

courts have exclusive jurisdiction despite the terms of § 1152." *Ibid.* (citing *People of New York ex rel. Ray* v. *Martin*, 326 U.S. 496 (1946); *McBratney*, 104 U.S. 621).

3. Federal laws specific to Indian country in Iowa

a. In 1948, Congress expanded the jurisdiction of the State of Iowa over crimes on the Meskwaki Settlement. Congress conferred jurisdiction on the State "over offenses committed by or against Indians on the Sac and Fox Indian Reservation in [Iowa] to the same extent as its courts have jurisdiction generally over offenses committed within said State outside of any Indian reservation." Act of June 30, 1948, ch. 759, 62 Stat. 1161 (1948) (1948 Act). In other words, in addition to the authority already possessed by the State to prosecute crimes involving only non-Indians on the Tribe's land, the State was also given the authority to prosecute crimes involving an Indian defendant or victim.

The 1948 Act further provided that "nothing herein contained shall deprive the courts of the United States of jurisdiction over offenses defined by the laws of the United States committed by or against Indians on Indian reservations." 62 Stat. 1161. The

Supreme Court held with respect to a similar statute enacted for Kansas, see 18 U.S.C. § 3243, that Congress, through these enactments, had conferred plenary jurisdiction on specific States over state-law crimes in Indian country, but that the federal government continued to exercise concurrent jurisdiction over offenses subject to federal jurisdiction under 18 U.S.C. §§ 1152 and 1153. *Negonsott*, 507 U.S. at 105.[3]

b. In 2018, Congress repealed the 1948 Act, thereby eliminating the State of Iowa's authority to prosecute crimes by or against Indians on the Meskwaki Settlement. See Pub. L. No. 115-301, 132 Stat. 4395 (2018) (2018 Act). The 2018 Act provides in full: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of June 30, 1948, entitled 'An Act to confer jurisdiction on the State of Iowa over offenses committed by or against Indians on the Sac and Fox Indian Reservation' (62 Stat. 1161, chapter 759) is repealed." 132 Stat. 4395.

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[3] In addition to Iowa and Kansas, Congress enacted a similar statute for New York. See 25 U.S.C. § 232.

The House Report accompanying the 2018 Act explains Congress's understanding that under the 1948 Act, "all crimes on the Tribe's land, regardless of the Indian status of the offender or victim, fall under the jurisdiction of the State of Iowa." H.R. Rep. 279, 115th Cong., 1st Sess., at 1 (2017). Repealing the 1948 Act, the report explained, would "put crimes committed by or against Indians on the Tribe's lands under federal or tribal jurisdiction in a manner similar to the jurisdictional arrangement in most (but not all) Indian communities." *Id.* at 1-2.

C. The Charges Filed Against Stanton

According to information contained in the charging documents, on December 31, 2018, Stanton, a non-Indian, arrived at the Tribe's casino on the Meskwaki Settlement with "Joshua," who was protected by a no-contact order. State Pet. Ex. C. Stanton had in her possession a glass pipe that was clear or white in color and contained drug residue. *Id.* at Ex. B. An officer of the Meskwaki Nation Police Department filed three misdemeanor complaints against Stanton in the Iowa District Court for Tama County. The complaints charged Stanton with criminal trespass,

in violation of Iowa Code § 716.8(1); possession of drug paraphernalia, in violation of Iowa Code § 124.414; and violation of a no-contact order, in violation of Iowa Code § 664A.7. State Pet. Exs. A-C. According to the State's petition (State Pet. ¶ 6), none of Stanton's crimes involves an Indian victim.

D. The Magistrate's Decision

Judicial Magistrate Richard Vander Mey immediately dismissed the charges against Stanton. State Pet. Ex. D. In his view, the 2018 Act "removed state jurisdiction for crimes committed on the [Meskwaki] Settlement." *Id.* at 1. "[T]his lack of state jurisdiction," the magistrate explained, "prohibits tribal officers, as well as Iowa peace officers, from initiating state criminal charges for conduct on the [Meskwaki] Settlement regardless of the race or ethnic background of any potential Defendant." *Ibid.* According to the magistrate, "[a]ny charges for conduct upon the Meskwaki Settlement can be pursued in tribal court or federal court." *Ibid.*

ARGUMENT

THE STATE HAS JURISDICTION OVER CRIMES COMMITTED BY A NON-INDIAN DEFENDANT AGAINST A NON-INDIAN VICTIM, AND VICTIMLESS CRIMES COMMITTED BY NON-INDIANS, ON THE MESKWAKI SETTLEMENT

The magistrate concluded that the 2018 Act altogether eliminates the State's criminal jurisdiction in Indian country. That conclusion reflects a misunderstanding of the 2018 Act. The Act eliminated only the State's jurisdiction over crimes on the Meskwaki Settlement that involve an Indian victim or defendant; it did not eliminate the State's jurisdiction to prosecute crimes involving only non-Indians. The magistrate also erred in suggesting that "[a]ny charges for conduct upon the Meskwaki Settlement can be pursued in tribal court or federal court." State Pet. Ex. D. For state-law crimes involving only non-Indians on the Meskwaki Settlement, the State's jurisdiction is exclusive of the federal government and the Tribe.

A. The 2018 Act Does Not Eliminate The State's Jurisdiction Over Crimes That Do Not Involve Indians

Contrary to the magistrate's decision, the 2018 Act did not eliminate all state criminal jurisdiction on the Meskwaki

Settlement regardless of the Indian status of the victim or defendant. The 2018 Act repealed the 1948 Act, which had extended the State's criminal jurisdiction to include "offenses committed by or against Indians" on the Meskwaki Settlement. 62 Stat. 1161. The State had exercised that jurisdiction concurrent with the federal government since 1948. *Negonsott* v. *Samuels*, 507 U.S. 99, 105 (1993). By repealing the 1948 Act, Congress eliminated the State's authority over crimes involving Indians; it did not affect the State's independent authority to prosecute non-Indians who commit crimes against other non-Indians or victimless crimes on the Tribe's land.

The State's authority to prosecute non-Indian-only crimes in Indian country preexisted the 1948 Act. The Supreme Court has described *United States* v. *McBratney*, 104 U.S. 621 (1882), as "stand[ing] for the proposition that States, by virtue of their statehood, have jurisdiction over [crimes involving only non-Indians]" that occur in Indian country. *People of New York ex rel. Ray* v. *Martin*, 326 U.S. 496, 500 (1946); see *Draper* v. *United States*, 164 U.S. 240, 242-243 (1896) ("[W]here a state was admitted

into the Union, and the enabling act contained no exclusion of jurisdiction as to crimes committed on an Indian reservation by others than Indians, or against Indians, the state courts were vested with jurisdiction to try and punish such crimes.").

By its terms, the 2018 Act does not affect this preexisting authority. It specifically repeals the 1948 Act "entitled 'An Act to confer jurisdiction on the State of Iowa over offenses committed *by or against Indians* on the Sac and Fox Indian Reservation.'" 132 Stat. 4395 (emphasis added). By negative implication, the 2018 Act does not affect the State's jurisdiction over crimes that are *not* committed by or against Indians. The State has jurisdiction over such crimes independently from the 1948 Act, which did not address offenses involving neither an Indian offender nor an Indian victim.

The legislative history of the 2018 Act supports the view that Congress did not intend to eliminate all state criminal jurisdiction over the Tribe's land. The House Report accompanying the 2018 Act explains that under the 1948 Act, "all crimes on the Tribe's land, regardless of the Indian status of the offender or victim, fall

under the jurisdiction of the State." H.R. Rep. 279, at 1. The report explains that the 2018 Act "would rescind [the 1948] Act and thereby put crimes committed by or against Indians on the Tribe's lands under federal or tribal jurisdiction in a manner similar to the jurisdictional arrangement in most (but not all) Indian communities." *Id.* at 1-2. Later in the report, Congress indicated its background understanding that "[c]rimes committed in Indian Country in which the offender and victim are non-Indian are under state jurisdiction." *Id.* at 2. The legislative history thus reinforces what the text of the statute makes clear: Congress eliminated only the State's jurisdiction over crimes involving Indians.

B. The Magistrate's Decision Would Create A Jurisdictional Vacuum On The Tribe's Land

If the magistrate's decision is not reversed, it has the potential to create a jurisdictional vacuum on the Tribe's land where no government—state, federal, or tribal—could prosecute crimes that involve only non-Indians. The magistrate suggested that "[a]ny charges for conduct upon the Meskwaki Settlement can be pursued in tribal court or federal court." State Pet. Ex. D. But the applicable jurisdictional rules clarify that neither the Tribe nor the United

States can prosecute crimes involving only non-Indians in Indian country.

Take, for example, a sexual assault in the hotel on the Meskwaki Settlement involving a non-Indian victim and non-Indian perpetrator, a fight at the Tribe's casino between two non-Indian patrons, or a drunk-driving offense committed by a non-Indian on the Tribe's land.[4] Tribal courts do not have criminal jurisdiction over non-Indians, and the Tribe could not prosecute any of those offenses. *Oliphant* v. *Suquamish Tribe*, 435 U.S. 191, 209-210 (1978). Nor could the federal government. The federal enclave laws extend to Indian country and cover both assault and sexual assault, 18 U.S.C. §§ 113, 2241-2242; and state drunk-driving laws would be assimilated into federal law on the Tribe's land pursuant to 18 U.S.C. § 13. But under the rule of *McBratney*, the United

[4] In this case, further analysis may be required on remand to determine whether any of the charges against Stanton involved an Indian victim. But the magistrate dismissed the charges not because he determined that an Indian victim was involved, but because he determined that the 2018 Act eliminated all state criminal jurisdiction over the Meskwaki Settlement. State Pet. Ex. D. That decision is incorrect and requires reversal.

States' authority to prosecute federal enclave crimes and assimilated state law crimes on the Tribe's land is limited to cases that involve an Indian victim or defendant. 104 U.S. at 624. Where no Indian is involved, criminal jurisdiction falls exclusively to the State. *Ibid.*; *Draper*, 164 U.S. at 242-243; *United States* v. *Wheeler*, 435 U.S. 313, 324 n.21 (1978); *United States* v. *Antelope*, 430 U.S. 641, 643 n.2 (1977); *Williams* v. *United States*, 327 U.S. 711, 714 (1946); *Solem* v. *Bartlett*, 465 U.S. 463, 465 n.2 (1984). The lack of any other sovereign that could prosecute state-law crimes involving only non-Indians on the Meskwaki Settlement further reinforces that Congress did not intend to eliminate the State's jurisdiction over such crimes when it repealed the 1948 Act.

CONCLUSION

The judgment of the District Court for Tama County should be reversed.

STATEMENT REGARDING ORAL ARGUMENT

The State has requested oral argument in this case. If oral argument is granted, the United States intends to request leave to participate in the argument as amicus curiae.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 3,326 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1). This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced, 14-point Century Schoolbook typeface using Microsoft Word.

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CERTIFICATE OF SERVICE

I certify that, on the 3rd day of April, 2019, I served this document on all parties to this case by electronically filing the foregoing with the EDMS system on this same date.

Respectfully submitted,

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