No. 18-9526

IN THE

Supreme Court of the United States

JIMCY MCGIRT,

Petitioner,

v.

OKLAHOMA,

Respondent.

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

BRIEF OF *AMICI CURIAE* NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER, TRIBAL NATIONS, AND ADDITIONAL ADVOCACY ORGANIZATIONS FOR SURVIVORS OF DOMESTIC VIOLENCE AND ASSAULT IN SUPPORT OF PETITIONER

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INTEREST OF THE *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. NIWRC's work to eliminate domestic violence against Native women and children is directly implicated by the State of Oklahoma's request that this Court declare the Muscogee (Creek) Reservation disestablished when Congress has not done so.

In reauthorizing the Violence Against Women Act in 2013 ("VAWA"), Congress tethered its restoration of tribal criminal jurisdiction to lands that constitute "Indian country" as defined by 18 U.S.C. § 1151. VAWA, Pub. L. No. 113-4, title IX, § 904(a)(3), 127 Stat. 121 (March 7, 2013) (codified at 25 U.S.C. § 1304(a)(3)). Thus, because the lands within a Tribal Nation's borders—its "reservation"—constitute "Indian country" under § 1151, a judicial decision disestablishing a Tribal Nation's reservation would effectively preclude that Nation from fully implementing VAWA's restored tribal jurisdiction. The NIWRC *Amici*, therefore, offer a unique perspective on the relationship between Congress's 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, *Amici Curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *Amici Curiae* and their counsel, made any monetary contribution toward the preparation or submission of this brief. Both Petitioner and Respondent have filed blanket consents for the filing of all *amici* briefs.

The leading signatory, the NIWRC, is a Native nonprofit organization whose mission is to ensure the safety of Native women 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.

NIWRC is joined by five Tribal Nations that have invested significant resources, time, and effort to ensure that their prosecutions of domestic violence crimes serve to increase the safety of their tribal communities, while simultaneously working to ensure that the rights of the domestic violence defendants in tribal criminal proceedings are respected and enforced.

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. Similar to the Muscogee Creek Nation ("Creek Nation"), the Umatilla Indian Reservation was subject to allotment and is heavily allotted. 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 and has since prosecuted numerous felony cases. In July of 2013, the CTUIR implemented all

necessary provisions of VAWA § 904's special domestic violence criminal jurisdiction ("SDVCJ"), and was approved by the United States for early exercise of that authority in February of 2014. Since implementing § 904 of VAWA, the CTUIR has prosecuted SDVCJ cases for acts of domestic violence committed by non-Indians against Indian women on the Umatilla Indian Reservation while affording those defendants the full panoply of protections called for under VAWA.

The Nottawaseppi Huron Band of the Potawatomi ("NHBP" or the "Tribe") is a federally-recognized American Indian Tribe with nearly 1,500 enrolled tribal citizens that is headquartered on the Pine Creek Reservation, operates administrative and health offices in Grand Rapids, and retains a tribal service area of seven contiguous counties spanning 6,700 square miles throughout what is now called the State of Michigan. The Tribe's Victim Services Department, with its tribal & non-tribal partners, and the support of federal grants & tribal allocations, serves NHBP tribal citizens, tribal citizens/descendants of other federally-recognized Indian Tribes, employees who are not tribal citizens and their dependents, and any individual who falls under the jurisdiction of the NHBP Tribal Police. NHBP has participated in the Intertribal Technical-Assistance Working Group ("ITWG") on Special Domestic Violence Criminal Jurisdiction since its inception, prosecuting VAWA § 904's restored criminal jurisdiction through the NHBP Domestic Violence Code and NHBP Law and Order Code since 2016.

The Pokagon Band of Potawatomi Indians ("Pokagon Band") is a Tribal Nation with approximately 5,800 enrolled citizens and a ten-county service area that includes four counties in Michigan and six counties in

Indiana. The Pokagon Band has trust land in Michigan and Indiana and prosecutes crimes of domestic violence under the Pokagon Band's Code of Offenses. The Pokagon Band has participated in the ITWG since the inaugural meeting and intends to implement VAWA's § 904 restored special domestic violence criminal jurisdiction.

The Sault Ste. Marie Tribe of Chippewa Indians ("Sault Tribe") is a federally-recognized American Indian Tribe with over 44,000 enrolled tribal citizens with a primary service area located in the Upper Peninsula of Michigan, spanning seven counties: Alger, Chippewa, Delta, Luce, Mackinac, Marquette, and Schoolcraft, approximately 8,500 square miles wide. Sault Tribe's Advocacy Resource Center, with its tribal & non-tribal partners, and the support of federal grants & tribal allocations, serves citizens of Sault Tribe, as well as tribal citizens of other federally-recognized Indian Tribes, Sault Tribe employees who are not tribal citizens and their dependents, and any individual who falls under the jurisdiction of Sault Tribe. Sault Tribe has been a member of the ITWG since its inception. In December 2016, Sault Tribe implemented all necessary provisions of SDVCJ found in VAWA § 904 and has since prosecuted SDVCJ cases for acts of domestic violence committed by non-Indians against Indian victims on the Sault Tribe Reservation while ensuring due process and affording those defendants all U.S. Constitutional rights required by VAWA. Sault Tribe is among the Tribes with the highest number of SDVCJ cases prosecuted by Tribes who have enacted this restored jurisdiction.

The Tulalip Tribes ("Tulalip") are the successors in interest to the Snohomish, Snoqualmie, Skykomish, and other allied bands signatory to the 1855 Treaty of

Point Elliott. The Tulalip community is located on a 22,000-acre Reservation bordering on the east to Interstate 5 Corridor, thirty-five miles north of Seattle. This area has recently experienced rapid population growth and development. Tulalip has 4950 enrolled citizens, but most Reservation residents are non-Indian due to the history of allotments. Today, the Tribe or tribal citizens hold approximately 60 percent of the Reservation lands with the balance being in non-Indian ownership. The large number of non-Indian residents on the Tulalip Indian Reservation, the geographic location of the Reservation, and the economic activity on the Reservation generated by the Tulalip Tribes has contributed to an increased number of crimes committed against citizens of the Tulalip Tribes. The Tulalip Tribes and its Tribal Court implemented felony sentencing under the Tribal Law and Order Act of 2010 and has since prosecuted numerous felony cases. The Tulalip Tribes and its Tribal Court were also one of the first three pilot project courts to exercise SDVCJ over non-Indians who commit domestic violence related crimes against Indians.

NIWRC is also joined by the American Civil Liberties Union Foundation ("ACLU") and the ACLU of Oklahoma Foundation. The ACLU is a nationwide, nonprofit, nonpartisan organization with more than one million members dedicated to the principles of liberty and equality embodied in the Constitution and this nation's civil rights laws. ACLU National Policy 313 expressly commits the ACLU to protecting the rights of Indian Tribes to self-government and retention of their heritage and land base. The ACLU of Oklahoma Foundation is an affiliate of the national ACLU and shares the same commitment to protecting the rights of Indian Tribes and individuals.

NIWRC is also joined by twenty-seven additional organizations and Tribes that share NIWRC's commitment to ending domestic violence, rape, sexual assault, and other forms of violence 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 the need for an interpretation of "reservation" and "Indian country" under 18 U.S.C. § 1151(a) that ensures Tribal Nations may continue to exercise VAWA's restored criminal jurisdiction to protect all Native women within their borders as envisioned by Congress.

SUMMARY OF THE ARGUMENT

Regardless of the outcome of this case, the State of Oklahoma will maintain criminal jurisdiction over non-Indian-perpetrated crimes committed within the Creek Nation's Reservation where the victim is not an Indian.[3] To be sure, the Court's decision in this case will have *no* effect on whether Oklahoma may continue to exercise criminal jurisdiction over the majority of crimes perpetrated by non-Indians within the border of what is today the Creek Nation Reservation.

The only criminal jurisdiction affected by the outcome in this case is the jurisdiction over crimes com-

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

[3] *See generally, United States v. Antelope,* 430 U.S. 641, 643 n.2 (1977) ("Under *United States v. McBratney*, 104 U.S. 621, 26 L.Ed. 869 (1882), a non-Indian charged with committing crimes against other non-Indians in Indian country is subject to prosecution under state law.").

mitted by or against tribal citizens.[4] And no sovereign has a greater interest in prosecuting these violent crimes than Tribal Nations, particularly where the crime is committed against a Native child. *See 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)).

Today, Native women and children face the highest rates of domestic violence, murder, and sexual assault in the United States. The majority of these crimes are committed by non-Indians. But in 1978, this Court ruled that Tribal Nations could no longer exercise their authority to prosecute crimes committed by non-Indians on tribal lands, absent congressional authorization. *See Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). Subsequent to *Oliphant*, in 2013, Congress restored Tribes' criminal jurisdiction over non-Indians who abuse Native people on tribal lands. *See* Violence Against Women Reauthorization Act of 2013 § 904, 25 U.S.C. § 1304 (2018) ("VAWA 2013").

Congress rendered this restored jurisdiction contingent upon two words: "Indian country." That is, in reauthorizing VAWA, Congress restored tribal jurisdiction over "[a]n act of domestic violence or dating violence that occurs in the *Indian country* of the participating tribe." 25 U.S.C. § 1304(c)(1) (emphasis added). VAWA 2013 states that its use of "[t]he term 'Indian country' has the meaning given . . . in section 1151 of title 18." 25 U.S.C. § 1304(a)(3).

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[4] *See United States v. Bryant*, 136 S. Ct. 1954, 1960 (2016), *as rev'd* (July 7, 2016) ("Most States lack jurisdiction over crimes committed in Indian country against Indian victims.").

In 1948, Congress codified its understanding that "Indian country" includes and is commensurate to a Tribe's reservation in 1948. *See* 18 U.S.C. § 1151(a). Since the passage of 18 U.S.C. § 1151, "Indian country" has consistently referred to lands that include and/or comprise a Tribal Nation's "reservation." Congress took no action to disestablish the Creek Nation Reservation prior to crafting the legal term "Indian country" in 1948, and it has taken no such action since. The State of Oklahoma, however, has asked this Court to conclude that the "territorial boundaries of the Creek Nation no longer constitute an 'Indian reservation' today under 18 U.S.C. § 1151(a)"—even though all parties, including Oklahoma—acknowledge that Congress has never taken legislative action to formally disestablish the Creek Nation's Reservation.

The judicial disestablishment that Oklahoma seeks in this case (and sought in *Carpenter v. Murphy*, No. 17-1107) directly threatens the ability of Tribal Nations to effectively implement the restored tribal criminal jurisdiction in VAWA. Judicial disestablishment of reservations will place both Native women and children at greater risk, since, as this Court has previously noted, "[e]ven when capable of exercising jurisdiction, [] States have not devoted their limited criminal justice resources to crimes committed in Indian country." *United States v. Bryant*, 136 S. Ct. 1954, 1960 (2016), *as rev'd* (July 7, 2016).

Furthermore, adopting Oklahoma's argument would require this Court to disregard the bright-line test outlined in *Nebraska v. Parker*, 136 S. Ct. 1072 (2016). Circumventing *Parker* in this manner, however, would undermine Congress's exclusive authority over the status of reservations, and would ultimately impede

Congress's ability to pass legislation in reliance on "Indian country" as defined in § 1151(a).

To be sure, Oklahoma's suggested departure from *Parker* was not the "Indian country" standard intended by Congress when it re-authorized VAWA in 2013. *See* 18 U.S.C. § 1151(a) (Indian Country includes "all land within the limits of any Indian reservation."). When Congress restored a portion of tribal criminal jurisdiction through VAWA § 904, this Court's conclusion in *United States v. Celestine*—that Congress, and only Congress, can disestablish a reservation—controlled. *See United States v. Celestine*, 215 U.S. 278, 285 (1909) ("[W]hen Congress has once established a reservation, all tracts included within it remain a part of the reservation until separated therefrom by Congress."). Oklahoma has presented no compelling reason to discard over one hundred years of solid precedent. There is none.

To conclude otherwise would undermine Congress's ability to effectuate its trust duties and obligations to Tribal Nations. Congress has repeatedly recognized the connection between tribal sovereignty and safety for Native women as the foundation for the federal government's "trust responsibility to assist tribal governments in safeguarding the lives of Indian women." Violence Against Women and Dep't of Justice Reauthorization Act of 2005 ("VAWA 2005"), Pub. L. No. 109–162, § 901(6), 119 Stat. 3078.

Accordingly, the NIWRC *Amici* agree fully with Petitioner and the Creek Nation that (1) this Court's decision in *Parker* controls; and (2) a simple application of this Court's precedent in *Parker* results in the conclusion that the Creek Nation's Reservation has never been legislatively disestablished.

Furthermore, because Congress rendered the exercise of VAWA's restored jurisdiction contingent upon "Indian country," any judicial disestablishment of an Indian reservation would significantly inhibit the ability of Tribal Nations to exercise this restored jurisdiction and protect their women from domestic violence crimes committed by non-Indians. Many Tribal Nations have reservations that Congress has never disestablished; indeed, many reservations have survived both Allotment and Statehood Acts.[5] If those reservations are suddenly at risk of being removed from the category of lands that constitute "Indian country" under § 1151(a) without congressional action, many Tribal Nations could be precluded from exercising VAWA § 904's restored criminal jurisdiction over crimes committed by non-Indian offenders against their citizens. Such a conclusion would undermine Congress's intent in restoring the inherent right of Tribal Nations to ensure the safety of their women and children living within their borders.

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[5] Courts have repeatedly determined that various reservations have survived both statehood and the Allotment Acts, regardless of the chronology of statehood in relation to the Allotment Acts Congress passed from 1878 to 1906. *See, e.g., Solem v. Bartlett*, 465 U.S. 463 (1984) (concluding that the Cheyenne River Sioux Reservation has not been disestablished); *Nebraska v. Parker*, 136 S. Ct. 1072 (2016) (concluding that the Omaha Reservation has not been disestablished); *Duncan Energy Co. v. Three Affiliated Tribes of Ft. Berthold Reservation*, 27 F.3d 1294 (8th Cir. 1994) (concluding that the Three Affiliated Tribes of Ft. Berthold Reservation has not been diminished); *United States v. Webb*, 219 F.3d 1127 (9th Cir. 2000) (concluding that the Nez Perce Reservation has not been disestablished or diminished); *United States v. Jackson*, 853 F.3d 436 (8th Cir. 2017) (concluding that the Red Lake Reservation has not been diminished).

Because any judicial disestablishment of the Creek Nation Reservation would threaten the safety, welfare, and lives of Native women and children living within the Nation's borders, the NIWRC *Amici* urge this Court to reaffirm its past precedent set forth in *Nebraska v. Parker*, 136 S. Ct. 1072 (2016), and conclude that unless or until Congress disestablishes the Creek Nation's Reservation, the Nation's lands will continue to constitute a "reservation" under 18 U.S.C. § 1151(a).

ARGUMENT

I. The Current Rates of Violence Against Native Women and Children Constitute a Crisis

A. Native Women and Children Suffer the Highest Rates of Violence.

Today Native people, and especially Native women, experience some of the highest rates of violent victimization in the United States.[6] Multiple federal reports have confirmed this reality, and both Congress and the federal courts have acknowledged this disparity.[7] More specifically, Native women face the highest rates of domestic violence and sexual assault in the United States.[8]

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[6] *See, e.g.,* Andre B. Rosay, Nat'l Inst. of Justice, Office of Justice Programs, U.S. Dep't of Justice, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey* 44 (2016), https://www.ncjrs.gov/pdffiles1/nij/249736.pdf.

[7] *See, e.g., United States v. Bryant*, 136 S. Ct. 1954, 1959 (2016), *as rev'd* (July 7, 2016).

[8] Nat'l Inst. Of Justice, U.S. Dep't Of Justice, *Full Report Of The Prevalence, Incidence, And Consequences Of Violence Against*

The most recent reports from the National Institute of Justice ("NIJ") include facts that are sufficiently stunning as to be almost incomprehensible. They conclude that more than 4 in 5 Native people have been victims of violence.[9] Furthermore, Native Americans are more likely to be victims of assault and rape/sexual assault committed by a stranger or acquaintance rather than an intimate partner or family member.[10] Over half (56.1%) of Native women report being victims of sexual violence.[11]

The crisis of violence against Native children cannot be underestimated. Native children experience higher-than-average rates of abuse.[12] Native children have a high rate of victimization at 15.2 per 1,000 American Indian/Alaska Native children.[13] Native youth are also

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Women: Findings From The National Violence Against Women Survey iv (2000), https://www.ncjrs.gov/pdffiles1/nij/183781.pdf ("American Indian/Alaska Native women and men report more violent victimization than do women and men of other racial backgrounds . . .").

[9] Rosay, *supra* note 6, at 43-44.

[10] U.S. Dep't of Justice, Bureau of Justice Statistics, *American Indians and Crime: A BJS Statistical Profile*, *1992-2002*, at V (Dec. 2004), https://www.bjs.gov/content/pub/pdf/aic02.pdf.

[11] Rosay, *supra* note 6, at 43.

[12] Att'y Gen.'s Advisory Comm. on American Indian/Alaska Native Children Exposed to Violence, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Dep't of Justice, *Ending Violence So Children Can Thrive* 6 (2014), https://www.justice.gov/sites/default/files/defendingchildhood/pages/attachments/2014/11/18/finalaianreport.pdf ("American Indian and Alaska Native children suffer exposure to violence at rates higher than any other race in the United States.").

[13] U.S. Dep't of Health and Human Services, Admin. for Children and Families, Admin. on Children, Youth and Families, Chil-

2.5 times more likely to experience trauma compared to their non-Native peers.[14] The trauma in tribal communities is so significant that Native youth suffer Post-Traumatic Stress Disorder ("PTSD") at rates equivalent to soldiers returning from the wars in Afghanistan and Iraq.[15]

Of all Natives who have suffered violence, nearly 90 percent have experienced violence perpetrated by a non-Indian.[16] As detailed below, Congress has concluded that the inability of Tribal Nations to prosecute the non-Indians who commit the majority of violent crimes against tribal citizens has contributed significantly to the incredibly high levels of violence committed against Native women and children on tribal lands.

B. Native Women and Children are More Likely to be Murdered than any Other Population in the United States.

On some reservations, Native women experience homicide at a rate 10 times the national average.[17]

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dren's Bureau, *Child Maltreatment* 2018 at x (2020), https://www.acf.hhs.gov/sites/default/files/cb/cm2018.pdf.

[14] Att'y Gen.'s Advisory Comm. On American Indian/ Alaska Native Children . . ., *supra* note 12, at 38.

[15] *Id.* at 38, ("[O]ne report noted that AI/AN juveniles experience post-traumatic stress disorder (PTSD) at a rate of 22 percent. Sadly, this is the same rate as veterans returning from Iraq and Afghanistan and triple the rate of the general population.").

[16] Rosay, *supra* note 6, at 46 (Violence is defined as "psychological aggression by intimate partners," "physical violence by intimate partners," stalking, or "sexual violence.").

[17] U.S. Dep't of Justice, *Native women experience homicide at a rate 10 times the national average* (Nov. 29, 2019), https://www.justice.gov/archives/ovw/blog/protecting-native-american-and-alaska-native-women-violence-november-native-american.

According to the Centers for Disease Control and Prevention ("CDC"), nationally, Native women are murdered at a rate of 4.3 percent, while their white counterparts experience homicide at a rate of 1.5 percent.[18] The crisis has garnered the attention of both Congress and the Executive Branch, as the President recently announced his creation of a Task Force to address the crisis of Missing and Murdered Indigenous Women. *See* Executive Order 13898: Establishing the Task Force on Missing and Murdered American Indians and Alaska Natives (Nov. 26, 2019).

One of the largest barriers to addressing the crisis of missing and murdered indigenous women is that when a Native woman goes missing on tribal lands, there is more often than not a jurisdictional barrier to launching the investigation and search-and-rescue effort that could ensure her safety. This barrier hinges entirely on the determination as to whether the land where the victim was last seen constitutes "Indian country," as defined by 18 U.S.C. § 1151(a).

If a Native victim goes missing within the borders of a reservation that Congress has never disestablished, the Tribal Nation has jurisdiction to investigate the crime, and, hopefully, rescue the victim. But if that same reservation is judicially disestablished, suddenly, tribal law enforcement are required to undertake a lengthy legal analysis concerning the trust/restricted/fee status of the parcel of land where the victim went missing to determine whether that land constitutes "Indian country" under 18 USC § 1151(a) *before* deter-

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[18] Centers for Disease Control and Prevention, *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014* (2017), https://www.cdc.gov/mmwr/volumes/66/wr/mm6628a1.htm.

mining whether the Tribe has the requisite jurisdiction to investigate the crime.[19] The time lost to this analysis can cost a Native victim his or her life.

It is no answer to say, as Oklahoma does, that these crimes will be effectively prosecuted by the State. More often than not, State law enforcement fails even to investigate—let alone arrest—the perpetrators who murder Native women and children. As recent studies have shown, when jurisdiction over the crime has been assigned to a State, "1 in 4 alleged murderers of an Indigenous woman or girl were never held accountable, and over one third of murder cases were wrongfully classified as accidental, exposure, natural causes, overdose, or suicide without an adequate and thorough investigation."[20] *See also United States v. Bryant*, 136 S. Ct. 1954, 1960 (2016), as revised (July 7, 2016). ("Even when capable of exercising jurisdiction, [] States have not devoted their limited criminal justice resources to crimes committed in Indian country.").

And although this is the rare case where the State chose to prosecute, the Court should not mistake this for the norm. According to the advocates working on

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[19] *See* Amnesty Int'l, *Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA* 34 (2007), http://www.amnestyusa.org/pdfs/mazeofinjustice.pdf ("If it's a parcel of property in a rural area, it may take weeks or months to determine if it's Indian land or not; investigators usually cannot determine this, they need attorneys to do it by going through court and title records to make a determination.").

[20] Sovereign Bodies Institute and Brave Heart Society, *Zuya Wicayuonihan Honoring Warrior Women: A study on missing & murdered Indigenous women and girls in states impacted by the Keystone XL Pipeline* 11 (2019), https://2a840442-f49a-45b0-b1a1-7531a7cd3d30.filesusr.com/ugd/6b33f7_27835308ecc84e5aae8ffbdb7f20403c.pdf.

the ground to secure prosecutions of these crimes, "[i]n Oklahoma, prosecution of sexual assault is last, least and left behind."[21]

Judicially disestablishing reservations, therefore, threatens to place criminal jurisdiction over the crimes committed against the most vulnerable victims in the hands of the sovereign least likely to prosecute.

II. Congress Responded to this Crisis by Restoring Tribal Jurisdiction

In 2013, in direct response to this crisis, Congress restored the criminal jurisdiction of Tribal Nations to arrest and prosecute non-Indians who commit crimes of domestic violence, dating violence, or violations of protective orders on tribal lands. *See* 25 U.S.C. § 1304(c). The incredibly high rates of violence perpetrated against the citizens of Tribal Nations focused front and center in both the Senate and House discussions surrounding the 2012-2013 reauthorization of VAWA. For instance, the majority report for the Senate Committee on the Judiciary acknowledged that:

> Another significant focus of this reauthorization of VAWA is the crisis of violence against women in tribal communities. These women face rates of domestic violence and sexual assault far higher than the national average. A regional survey conducted by University of Oklahoma researchers showed that nearly three out of five Native American women had been assaulted by their spouses or intimate

[21] *See* Amnesty Int'l, *supra* note 19, at 62 (quoting Jennifer McLaughlin, Sexual Assault Specialist, Oklahoma Coalition Against Domestic Violence and Sexual Assault, September 2005) (additional quotation marks omitted).

> partners, and a nationwide survey found that one third of all American Indian women will be raped during their lifetimes.

S. Rep. No. 112-153, at 7-8 (2012).[22]

Congress identified the loss of tribal criminal jurisdiction over non-Indian crimes on tribal lands as a major contributing factor to these incredibly high rates of violence, stating that "[u]nfortunately, 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).

As Representative Tom Cole of Oklahoma noted, Native women "in many ways [are] the most at-risk part of our population. One in three Native American women will be sexually assaulted in the course of her lifetime. The statistics on the failure to prosecute and hold accountable the perpetrators of those crimes are simply stunning." 159 Cong. Rec. H678-79 (daily ed. Feb. 27, 2013) (Statement of Rep. Cole). And as Representative Sheila Jackson Lee of Texas noted, VAWA was passed to "address[] a gaping jurisdictional hole by giving tribal courts concurrent jurisdiction over Indian and non-Indian defendants who commit domestic violence offenses against an Indian in Indian

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[22] The restoration of tribal criminal jurisdiction in VAWA 2013 was a bi-partisan effort. *See Violence Against Women Act Anniversary*, 160 Cong. Rec. S1374 (daily ed. Mar. 10, 2014) (statement of Sen. Patrick Leahy acknowledging his bipartisan collaboration with Senators Crapo and Murkowski, as well as Congressman Cole, to restore tribal jurisdiction over non-Indians who commit acts of domestic or dating violence).

country." 159 Cong. Rec. E217-03, E218 (daily ed. Feb. 28, 2013) (statement of Rep. Jackson Lee).

In its 2013 re-authorization of VAWA, Congress explicitly cited *Oliphant* as recognizing Congress's constitutional authority to restore tribal criminal jurisdiction. *See* S. Rep. 112-153, at 213 (2012) (statement of Senate Comm. on the Judiciary Majority) ("[T]he 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 suggested that Congress has the constitutional authority to decide whether Indian tribes should be authorized to try and to punish non-Indians.") (citing 435 U.S. at 206–12).

But Congress could not restore this jurisdiction by merely defining the categories of covered crimes alone. Because of the complicated history and framework surrounding the intersections of criminal jurisdiction and tribal law, Congress took great care to define precisely *where* tribal criminal jurisdiction over non-Indian domestic violence offenders would be restored.

Congress defined the "where" to be "Indian country," as previously defined in 18 U.S.C. § 1151, "Indian country defined." VAWA § 904(a)(3) states that "[t]he term 'Indian country' has the meaning given the term in section 1151 of Title 18." 25 U.S.C. § 1304(a)(3); *see also* S. Rep. No. 112-153, at 9 (noting that § 904 jurisdiction "covers those offenses when they occur in Indian country . . . ."); S. Rep. 112- 153, at 10 (stating that "this jurisdictional expansion is narrowly crafted and satisfies a clearly identified need").

Congress selected the term "Indian country" to demarcate where a Tribal Nation could (and could not)

exercise VAWA's restored jurisdiction because "Indian country" is a term that has "a precise meaning under Title 18 of the U.S. Code." 159 Cong. Rec. at H795 (daily ed. Feb. 28, 2013) (statement of Rep. Hastings).

Thus, although Congress made clear that VAWA's restored tribal jurisdiction "would not cover off-reservation crimes," *id.* at H738, Congress selected the legal term "Indian country" to make certain that VAWA 2013 would restore tribal jurisdiction over domestic violence crimes occurring on "all private lands and rights-of-way within the limits of every Indian reservation." *Id.* at H795 (statement of Rep. Hastings).

If this Court were to adopt Oklahoma's argument and discard *Parker*'s adherence to Congress's exclusive authority over the disestablishment of reservations, VAWA § 904's reference to "Indian country" would have a much narrower application now, in 2020, than it did when Congress reauthorized VAWA in 2013. Such a conclusion would undermine Congress's constitutional authority over Indian affairs, and ultimately, would bring dire consequences to Native women and the Tribal Nations who seek to protect them.

III. Tribes are Successfully Implementing VAWA § 904 across "Indian country" to Protect Native Women from Non-Indian-Perpetrated Violence

Currently, at least twenty-five Tribal Nations are implementing VAWA § 904's restored tribal criminal

jurisdiction and now arrest and prosecute non-Indians who commit domestic violence crimes within their respective "Indian country" territorial boundaries.[23]

A. The Creek Nation was One of the First Tribes to Implement VAWA § 904.

The Creek Nation was one of the first Tribes to implement VAWA § 904's restored tribal criminal jurisdiction. The Creek Nation's 2016 implementation of VAWA is deeply rooted in Creek culture, law, and tradition.

In the early 1800s, prior to the Creek Nation's forced removal, non-Indian desire for Creek land resulted in high levels of violence against Creek Nation citizens.[24] As a result, the Creek Nation understood that it must exercise its inherent criminal jurisdiction over all perpetrators of violence on Creek lands, including non-Indians.

Long before Oklahoma came into existence, the Creek Nation codified its laws outlawing rape and sexual assault against women on Creek Nation lands. If a person raped a woman on Creek Nation lands—regardless of whether that person was Indian or not—the Creek Nation had authority to arrest and

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[23] National Congress of American Indians (NCAI), *VAWA 2013's Special Domestic Violence Criminal Jurisdiction (SDVCJ) Overview* (June 2019), http://www.ncai.org/tribal-vawa/overview/VAWA_Information_-_Technical_Assistance_Resources_Guide_Updated_November_11_2018.pdf.

[24] Tribal leaders spoke out about these abuses; for instance, in 1764, a Creek leader formally complained to the British that white men were engaged in the sexual exploitation of Native women. *See* Sharon Block, Rape and Sexual Power in Early America 3 (2006).

prosecute the individual who committed the crime. The resulting Creek Nation law read:

> And be it farther enacted if any person or persons should under take [sic] to force a woman and did it by force, it shall be left to the woman what punishment she Should [be] satisfied with to whip or pay what she say it be law.[25]

As indicated by the use of the term "person" to refer to offenders, as opposed to "citizen," "Indian," or "Native," the law's application was not limited to Creek Nation citizens or American Indians. Moreover, the law stipulated that the victim was to be consulted regarding the proper punishment for the perpetrator who committed the crime against her. No state or federal law during that time period allowed a woman to participate in the legal system to fashion a remedy for the violent crime she endured.

Following forced removal to Indian Territory, the Creek Nation reconstituted its national and local governments and justice systems, rekindled its ceremonial fires, and continued its efforts to protect citizens from violence. After the Civil War, the Creek Nation ratified a constitution in 1867, creating six districts within the Reservation itself, extending to the external borders of the 1866 Treaty. Well into the late 19th century, the Creek Nation criminal courts maintained a healthy criminal docket, which included prosecutions for rape, battery, and other violent crimes.[26]

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[25] *Id.*

[26] Documents from the Creek Nation courts in the late 19th century were transcribed and codified in 2005. Known collectively as the Mvskoke Law Reporter (Mvskoke Vhakv Oh-Kerkuecv), volumes 5-7 include Creek Nation District Court and the Creek Nation Supreme Court decisions starting in 1870. This Reporter

In 2016, the National Council of the Creek Nation passed NCA Bill 16-038, the Protection from Domestic and Family Violence Act ("PDFVA"), to "offer victims the maximum protection from further violence that the law can provide." Section 3-102(A). The PDFVA constitutes a comprehensive 67-page law that includes provisions implementing VAWA § 904's restored criminal jurisdiction. The legislative history embedded within the bill indicates that the Creek Nation worked on the legislation for two years prior to enactment.[27]

The Creek Nation defined the scope of its restored "Indian country" jurisdiction as extending throughout its 1866 Treaty reservation boundary. *See* Title 27, Sec. 1-102 of the Muscogee (Creek) Nation Code of Laws. Specifically, the PDFVA states that the Creek Nation's restored jurisdiction "shall extend to all the territory defined in the 1866 Treaty with the United States." *Id.*

Thus, the PDFVA itself, facilitated by Congress's 2013 re-authorization of VAWA, contemplates a comprehensive reach of territorial jurisdiction, meaning that the Creek Nation has, in its implementation of VAWA 2013, interpreted VAWA's reference to § 1151's "Indian country" as including the entirety of the Creek Nation's Reservation—a reservation that has never been disestablished by Congress.

On December 18, 2018, the Creek Nation convicted its first non-Indian offender under the PDFVA. The offender was convicted of one count of Domestic Abuse in the Presence of a Child and one count of Violation

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indicates that murder, rape, and assault were prosecuted in all districts.

[27] *See* PDFVA Sec. 1(D).

of a Protective Order. *See Muscogee (Creek) Nation v. Martinez-Juarez*, No. CRF 2018-56, (Dis. Ct. of the Muscogee (Creek) Nation 2018). To date, half of the Creek Nation's PDFVA prosecutions have involved crimes of domestic violence committed in the presence of a child. As is so often the case, when a woman is not safe in her home, neither are her children.

B. Other Tribal Nations Have Implemented VAWA § 904 with Great Success Throughout "Indian Country."

As of June 2019, the 25 Tribal Nations that have implemented SDVCJ have collectively reported 237 arrests of non-Indian abusers leading to 95 convictions.[28]

The Pascua Yaqui Tribe ("PYT") was among the first three Tribal Nations to exercise enhanced jurisdiction under VAWA § 904. The PYT has had great success in exercising its restored inherent authority to protect Native women within the Tribe's reservation borders, or its slice of "Indian country." The PYT's reservation consists of 2,200 acres situated approximately ten miles southwest of Tucson, Arizona.[29] Indeed, 15 percent to 25 percent of the PYT's criminal domestic violence docket consist of cases arising under the restored

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[28] This list includes six Tribes in Oklahoma: the Choctaw Nation, the Seminole Nation, the Sac and Fox Nation, the Kickapoo Tribe, the Cherokee Nation, and the Muscogee (Creek) Nation. *See* U.S. Dep't of Justice, Office on Violence Against Women, *2019 Update on the Status of Tribal Consultation Recommendations* 16 (August 2019), https://www.justice.gov/file/1197171/download.

[29] National Congress of American Indians (NCAI), *VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five-Year Report* 42 (March 20, 2018), http://www.ncai.org/resources/ncai-publications/SDVCJ_5_Year_Report.pdf.

jurisdiction in VAWA 2013.[30] The majority of VAWA 2013 defendants are in support programs, and all are able to access resources made available through the Pascua Yaqui Pre-Trial Services Division.[31] In 2017, the first jury trial conviction of a non-Indian defendant under VAWA § 904 occurred in the Tribal Court before a diverse jury representative of the combined Pascua Yaqui and non-Indian community.[32] PYT's law states that the Tribe's geographical exercise of VAWA § 904's restored jurisdiction "shall extend to . . . . the boundaries of this Reservation." *See* 3 PYTC § 1-1-20(A)-(B); 3 PYTC § 1-1-50.

Tulalip, located west of Marysville, Washington, sits on a 22,000-acre reservation, of which only 12,500 acres are held in federal trust status. Roughly 76 percent of Tulalip's total reservation population is non-Indian.[33] On February 20, 2014, Tulalip implemented VAWA's restored criminal jurisdiction as one of the first three Pilot Project Tribes. The Tulalip

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[30] *See id.*

[31] *See* Alfred Urbina & Melissa Tatum, *Considerations In Implementing VAWA's Special Domestic Violence Criminal Jurisdiction And TLOA's Enhanced Sentencing Authority: A Look At The Experience Of The Pascua Yaqui Tribe* 11 (Oct. 2014), https://www.google.com/url?client=internal-element-cse&cx=017965204092416682557:h2dgyshyzaa&q=http://www.ncai.org/tribal-vawa/getting-started/Practical_Guide_to_Implementing_VAWA_TLOA_letter_revision_3.pdf&sa=U&ved=2ahUKEwilksTe8bnnAhUBCawKHT25DYEQFjAAegQIBBAC&usg=AOvVaw0OayNpX4AEHXS1A88zbFQa.

[32] *See* PR Newswire, *Conviction In Indian Country Prosecuted At Tucson, Arizona's Pascua Yaqui Tribal Court* (May 23, 2017), https://www.prnewswire.com/news-releases/first-non-indian-jury-trial-conviction-in-indian-country-prosecuted-at-tucson-arizonas-pascua-yaqui-tribal-court-300462521.html.

[33] *See* NCAI, *supra* note 29, at 44.

Court operates a separate Domestic Violence Court docket where non-Indian domestic violence cases are handled, along with a specialized prosecutor and Tribal Court Public Defense Clinic in partnership with the University of Washington. Since implementation, Tulalip has had 25 VAWA 2013-related arrests with 16 convictions.[34] All defendants are required to undergo Tribe-sponsored batterer intervention programs. Tulalip law states that the Tribe's exercise of VAWA § 904's restored jurisdiction will be commensurate with the Tribe's Reservation, or "Indian Country," as defined by 18 U.S.C. 1151(a). *See* 4 TTC, ch. 4.25, § 4.25.100(21).

The CTUIR, located in Eastern Oregon, has a 172,000-acre reservation as well as various treaty-fishing sites held in trust along the Columbia River that constitute its "Indian country."[35] It also is among the first three Tribes to implement VAWA 2013 and received early authorization to exercise enhanced jurisdiction on February 20, 2014, along with the PYT and the Tulalip Tribe.[36] Since implementation, the CTUIR has made 18 arrests with 14 convictions and four dismissals.[37] After 2006, and before VAWA 2013 implementation in 2014, there were only two non-Indian domestic violence cases committed against CTUIR citizens that were reported to police and prosecuted by the United States. Implementation has not only increased prosecutions, it has increased the reporting of non-Indian domestic violence crimes

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[34] *Id*.

[35] *Id*. at 45.

[36] *Id*.

[37] *Id*.

by Indian victims as victims learn that reporting crimes now results in arrests and prosecutions. VAWA 2013 crimes represent about 27 percent of all domestic violence criminal cases at CTUIR. All defendants undergo a tribally-run batterer intervention program. The CTUIR's law states that the Tribe's exercise of VAWA § 904's restored jurisdiction will be commensurate with the Tribe's Reservation, or "Indian Country," as defined by 18 U.S.C. 1151(a). *See* CTUIR Crim. Code, ch. 1 § 1.02 (B).

The Eastern Band of Cherokee Indians ("EBCI"), located in the Great Smokey Mountains in western North Carolina, exercises jurisdiction throughout its portion of "Indian country" on its 57,000-acre reservation. The EBCI has been exercising VAWA's restored jurisdiction since June of 2015, and has, as of August 2018, made 25 arrests with 12 convictions.[38] EBCI law states that the Band's exercise of VAWA § 904's restored jurisdiction will be commensurate with the Band's Reservation, or "Indian Country," as defined by 18 U.S.C. 1151(a). *See* EBCI Code, ch. 14, art. IX, § 14-40.1(e).

Notably, of the 25 Tribal Nations that have implemented VAWA, no fewer than 20 define "Indian country" within their own tribal code to include the entirety of their "reservation" or the entirety of their "territorial" boundary, consistent with a plain reading of 18 U.S.C. § 1151(a)'s "Indian country" that Congress utilized in VAWA § 904.

For example, the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation implemented VAWA's Special Domestic Violence Criminal Jurisdiction in Title 7 of the Fort Peck Tribes Comprehensive Code of

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[38] *See* NCAI, *supra* note 29, at 51.

Justice ("Fort Peck CCJ"), which states in pertinent part:

> The Fort Peck Tribal Court is vested with jurisdiction to enforce this section against any person who has committed an act of Dating Violence, Domestic Violence or Violation of a Protection Order against an Indian victim within the *Indian country* of the Assiniboine and Sioux Tribes provided the defendant has sufficient ties to the Fort Peck Tribes.

7 Fort Peck CCJ § 249(a) (emphasis added). Furthermore, the Fort Peck CCJ specifically defines "Indian country" to have "the meaning given the term in section 1151 of title 18, United States Code." *Id.* at § 249(b)(3).

Additionally, the Nottawaseppi Huron Band of Potawatomi ("NHBP") in Michigan does not specifically cite to 18 U.S.C. § 1151, however, the Tribe quotes the language within § 1151(a)-(c) to define the scope of "Indian country" pertaining to its VAWA implementation. *See* 7 NHBP Code § 7.4-8.

Judicial disestablishment of reservations, therefore, would significantly compromise the majority of participating Tribes' implementation of VAWA § 904, as well as the clear congressional intent behind VAWA's passage. *See also* 159 Cong. Rec. H677-01, H678-79 (daily ed. Feb. 27, 2013) (Rep. Tom Cole noting that VAWA 2013 was intended to restore "the jurisdictions of tribal courts over non-Indian offenders," as that is what Tribal Nations "need to keep their citizens protected from the scourge of domestic violence").

IV. Departure from the *Parker* Framework Would Undermine Congressional Certainty in Passing "Indian Country" Legislation and Would Undermine the Ability of Tribal Nations to Implement VAWA § 904

To date, the *Parker* framework has provided a predictable test for Tribes implementing VAWA § 904 and for Congress, as Congress continues to pass legislation that relies on "Indian country" to include extant reservations that Congress has never disestablished.[39] Abandoning the *Parker* framework, therefore, would undermine Congress's exclusive authority regarding Indian affairs and the inherent sovereignty of Tribal Nations.

A. The *Parker* Framework Fundamentally Recognizes the Authority Congress Relied upon to Restore Tribal Authority in VAWA 2013.

A departure from *Parker*, effectuated through a judicial declaration that the Creek Nation's Reservation has been disestablished, would undermine Congress's

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[39] *See e.g.,* 6 U.S.C. § 601; 10 U.S.C. § 284; 15 U.S.C. § 375(7); 15 U.S.C. § 632; 15 U.S.C. § 1175; 15 U.S.C. § 1243; 15 U.S.C. § 1245; 16 U.S.C. § 3371; 16 U.S.C. § 3377; 18 U.S.C. § 1164; 18 U.S.C. § 1460; 18 U.S.C. § 1151; 18 U.S.C. § 1152; 18 U.S.C. § 1153; 18 U.S.C. § 1154; 18 U.S.C. § 1156; 18 U.S.C. § 3488; 18 U.S.C. § 3113; 18 U.S.C. § 2252; 18 U.S.C. § 2252A; 18 U.S.C. § 2265(e); 18 U.S.C. § 2266; 18 U.S.C. § 2346; 18 U.S.C. § 3242; 18 U.S.C. § 3559; 18 U.S.C. § 3598; 18 U.S.C. § 5032; 21 U.S.C. § 387; 25 U.S.C. § 1304; 25 U.S.C. § 1616e-1; 25 U.S.C. § 1684; 25 U.S.C. § 1903; 25 U.S.C. § 2801; 25 U.S.C. § 3202; 25 U.S.C. § 3653; 25 U.S.C. § 4302; 28 U.S.C. § 543; 28 U.S.C. § 1442; 28 U.S.C. § 1738B; 33 U.S.C. § 1377; 33 U.S.C. § 2269; 34 U.S.C. § 12291; 42 U.S.C. § 608; 42 U.S.C. § 654; 42 U.S.C. § 6945; 42 U.S.C. § 10101(19); 49 U.S.C. § 40128.

ability to exercise its exclusive authority over Indian affairs.

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). That is, "Indian nations ha[ve] always been considered as distinct, independent political communities . . . ." *Talton v. Mayes*, 163 U.S. 376, 383 (1896) (citation and quotation marks omitted). One attribute of sovereignty that Tribal Nations maintain today is the "power to prescribe and enforce internal criminal laws." *United States v. Wheeler*, 435 U.S. 313, 326 (1978); *see also United States v. Lara*, 541 U.S. 193, 204 (2004) (affirming Tribal Nations' "authority to control events that occur upon the tribe's own land").

Congress's decision to restore tribal criminal jurisdiction over non-Indian-perpetrated crimes committed in § 1151's "Indian country," therefore, 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.,* 134 S. Ct. 2024, 2030 (2014) (The Court has "consistently described [Congress's authority] as 'plenary and exclusive' to 'legislate [with] respect to Indian tribes.'") (quoting *Lara*, 541 U.S. at 200).

Indeed, the federal government's "trust responsibility to assist tribal governments in safeguarding the lives of Indian women" compelled Congress to restore tribal criminal jurisdiction over non-Indian domestic violence offenders in "Indian country." Violence Against Women and Dep't of Justice Reauthorization Act of 2005 ("VAWA 2005"), Pub. L. No. 109–162, § 901(6), 119 Stat. 3078. Congress's considered judgment in this execution of the federal government's trust responsi-

bility should not be disturbed. *See United States v. Jicarilla Apache Nation*, 131 S. Ct. 2313, 2323 (2011).

B. Judicial Determinations That Certain Reservations Have Been Disestablished Would Jeopardize Tribal Sovereignty and Safety for Native Women and Children.

When a Tribal Nation cannot protect its women and children, the entire nation is placed in jeopardy. Women and children perpetuate the existence of all tribal communities, as women give life to the nation's future citizens, and a Tribal Nation's children, ultimately, will hold all the critical leadership positions in tribal government. *See 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)).

As explained above, Congress rendered the restoration of criminal jurisdiction in VAWA contingent upon the location of where the crime is committed, and defined this location to be § 1151's "Indian country." If Tribal Nations with reservations that have never been disestablished are suddenly without one, however, they will be left with no restored criminal jurisdiction over domestic violence crimes unless they can establish that the domestic violence crime they seek to prosecute took place on lands that are held in trust or are in restricted status. Arresting perpetrators and prosecuting domestic violence crimes is already challenging enough without this jurisdictional barrier, as these cases often involve complex fact patterns of

actions, violence, and manipulative communications that take place in myriad ways and in myriad places.[40]

Congress passed VAWA 2013 to address the crisis resulting from a jurisdictional loophole. Any abandonment of the *Parker* framework would place the certainty of "Indian country" in jeopardy, and ultimately, would further expand a loophole that Congress took pains to fix—a loophole that continues to leave Native women and children largely unprotected.

Furthermore, judicial disestablishment of reservations would only exacerbate the crisis of missing and murdered in Indian Country. When a Native woman or child goes missing, the ability of tribal law enforcement to investigate any possible underlying crimes, or undertake a search and rescue effort, is contingent upon a lengthy legal analysis to determine the legal status of the land from which the victim disappeared. Judicial disestablishments of reservation lands will only further complicate this complex analysis, and render the provision of justice for Native women and children all the more attenuated.

The judicial disestablishment of a reservation, therefore, is more than a question of authority or precedent.

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[40] *See, e.g.,* Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 Geo. Wash. L. Rev. 552, 569 (2007); *see also* Evan Stark, Coercive Control: How Men Entrap Women in Personal Life 5 (2007) (articulating the "coercive control" theory of domestic violence, which frames "woman battering . . . as a course of calculated, malevolent conduct deployed almost exclusively by men to dominate individual women by interweaving repeated physical abuse with three equally important tactics: intimidation, isolation, and control.").

For far too many Native women and children, it is a question of life or death.

CONCLUSION

If the Creek Nation's Reservation is to be disestablished, it is a task for Congress, and not this Court. The *Parker* framework should not be discarded. The decision of the Oklahoma Court of Criminal Appeals should be reversed.

Respectfully submitted,

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February 11, 2020

APPENDIX

APPENDIX

STATEMENTS OF *AMICI CURIAE*

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

The **Alaska Native Women's Resource Center**
(www.aknwrc.org)

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

The **Battered Women's Justice Project**
(www.bwjp.org)

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

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

End Domestic Abuse Wisconsin
(www.endabusewi.org)

FaithTrust Institute
(www.faithtrustinstitute.org)

The **Georgia Coalition Against Domestic Violence**
(www.gcadv.org)

HUSH No More
(www.hushnomorenow.org)

The **Idaho Coalition Against Sexual & Domestic Violence**
(www.engagingvoices.org)

The **Illinois Coalition Against Domestic Violence**
(www.ilcadv.org)

The **Indian Law Resource Center**
(www.indianlaw.org)

Integrated Concepts Inc.
(www.iconceptsinc.com)

The **Iowa Coalition Against Sexual Assault**
(www.iowacasa.org)

Keweenaw Bay Indian Community Transitional Home Programs & Services
(www.ojibwa.com)

The **Maine Coalition to End Domestic Violence**
(www.mcedv.org)

The **Minnesota Coalition Against Sexual Assault**
(www.mncasa.org)

The **National Clearinghouse for the Defense of Battered Women**
(www.ncdbw.org)

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

Pouhana O Na Wahine

Scotts Valley Band of Pomo Indians

Sovereign Bodies Institute
(https://www.sovereign-bodies.org)

Uniting Three Fires Against Violence
(www.unitingthreefiresagainstviolence.org)

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

The **Virginia Sexual and Domestic Violence Action Alliance**
(www.vsdvalliance.org)

The **Washington State Native American Coalition Against Domestic Violence and Sexual Assault**

Wiconi Wawokiya, Inc.
(www.wiconiways.org)