No. 19-1414

IN THE

Supreme Court of the United States

UNITED STATES,

Petitioner,

v.

COOLEY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER, THE CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION, AND OTHER ORGANIZATIONS 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. The NIWRC's work to eliminate domestic violence against Native women and children is directly implicated by the Ninth Circuit Court of Appeal's decision eliminating the authority of tribal law enforcement to conduct a reasonable suspicion *Terry* stop on a non-Indian traveling within reservation borders. According to the newly articulated Ninth Circuit standard, until or unless tribal law enforcement witness an "obvious" or "apparent" violation of state or federal law, tribal law enforcement remains without the requisite authority to briefly stop and conduct a limited investigation of a non-Indian when there is reasonable suspicion they have committed a crime.

The introduction of this vague, new standard will significantly impede the ability of tribal law enforcement to fully effectuate the restored tribal criminal jurisdiction that Congress recognized and affirmed in the Violence Against Women Reauthorization Act of 2013 ("VAWA" or "VAWA 2013"), Pub. L. No. 113-4, § 904(b)(1), 127 Stat. 54, 121 (2013) (codified at 25 U.S.C. § 1304(b)(1)). The NIWRC *Amici*, therefore, offer a unique perspective on the relationship between Congress's plenary authority over Indian affairs, the inherent sovereign authority

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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. Counsel for both parties have given consent for this *amicus* brief.

of tribal governments to prosecute crimes committed against tribal citizens, and safety for Native women and children.

The leading signatory, the NIWRC, is a Native non-profit 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.

The NIWRC is joined by eleven Tribal Nations that have invested significant resources, time, and effort to ensure that their prosecutions of non-Indian perpetrated 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 Chehalis Reservation is located in southwest Washington in an area that is poor and mostly rural with limited county or state services, including law enforcement that rarely reaches the Chehalis Reservation. The word "Chehalis" means people of the sand, referring to the close proximity that the Upper and Lower Chehalis people lived to the river which 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 VAWA § 904's special domestic violence criminal jurisdiction ("SDVCJ"), 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 Umatilla Indian Reservation was subject to allotment and is heavily allotted, and as a result, contains a large percentage of non-Indian fee land. 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 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 Eastern Band of Cherokee Indians is an Indian Nation based in the mountains of Western North Carolina. The Nation is comprised of the descendants of Cherokees who avoided forcible removal along the Trail of Tears, or returned from the Indian Territory after the march. About 8,500 Eastern Band Cherokees

live on the Eastern Band Cherokee Reservation. On June 15, 2015, the Eastern Band implemented VAWA's § 904's SDVCJ.

The Fort Peck Assiniboine and Sioux Tribes ("Fort Peck Tribes") are located on the Fort Peck Indian Reservation, and are comprised of the Dakota, Lakota and Nakota bands. Located on 2.1 million acres in the extreme northeast corner of Montana bordering the Missouri River, the land base is 110 miles long and 40 miles wide. There are over 10,000 enrolled tribal members with about 6,000 residing on or near the Reservation. The population of the Reservation is 50% Native and 50% non-Native. U.S. Highway 2 and Amtrak cut through the Reservation creating a major transportation route. The Fort Peck Tribes implemented felony sentencing under TLOA in 2012, and implemented VAWA's SDVCJ on March 7, 2015; prosecuting cases for acts of domestic violence committed by non-Indians against Indians.

The Gila River Indian Community ("GRIC") is a federally recognized Tribe located on a 372,000-acre reservation in Pinal and Maricopa Counties of central Arizona, bordering the Phoenix-metropolitan area. The GRIC is composed of members of both the Akimel O'odham (Pima) and the Pee-Posh (Maricopa) Tribes and has a population of approximately 21,000 citizens. 13,000 citizens reside within GRIC boundaries and over 5,000 people are employed by the GRIC. The GRIC implemented VAWA's SDVCJ on August 1, 2018.

The Grand Traverse Band of Ottawa and Chippewa Indians ("GTB") has a population of approximately 4,100; approximately 800 live on the Reservation in the northwestern section of Michigan's Lower Peninsula, and an additional 1,000 live within a six-

county service area including the Benzie, Charlevoix, Grand Traverse, Leelanau, Manistee, and Antrim Counties. In October 2018, the GTB amended their Domestic Violence Ordinance to implement VAWA's SDVCJ and authorize tribal police and justice officials to prosecute domestic violence crimes committed by non-Indians on tribal lands.

The Muscogee (Creek) Nation ("MCN") headquartered in Okmulgee, Oklahoma is the fourth largest Tribe in the United States with approximately 87,000 citizens. The MCN's Reservation consists of over 3 million acres and has a population of approximately 800,000 people. On March 28, 2016, the MCN implemented VAWA's SDVCJ.

The Nottawaseppi Huron Band of the Potawatomi ("NHBP" or the "Tribe") is a federally-recognized Tribe with 1,594 enrolled 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. The NHBP has participated in the Intertribal Technical-Assistance Working Group on SDVCJ since its inception, exercising VAWA § 904's restored criminal jurisdiction through the NHBP Domestic Violence Code and NHBP Law and Order Code since 2016.

The Pascua Yaqui Tribe of Arizona ("PYT") is a federally-recognized Indian Tribe with 23,000 members and was among the first three Tribal Nations to exercise enhanced jurisdiction under VAWA § 904 by implementing all necessary provisions of VAWA § 904's SDVCJ, and was approved by the Department of Justice for early exercise of that authority. The Pascua Yaqui Tribe's Reservation consists of 2,200 acres situated approximately 10 miles southwest of Tucson, Arizona. Since VAWA implementation in February 2014, the Tribe has experienced the most investigations, cases and convictions of non-Indian perpetrators across the country. The Tribe has conducted 73 criminal investigations of 43 different defendants. The Tribe has criminally charged 59 cases resulting in 28 convictions.

The Port Gamble S'Klallam Tribe is a federally recognized, self-governing tribal government located on approximately 1,700 acres on the Kitsap Peninsula in Western Washington. Approximately two-thirds of over 1,300 enrolled members live on the reservaion. The Tribe is a signatory to the 1855 Point No Point Treaty with the United States and was organized pursuant to the Indian Reorganization Act of 1934. The Port Gamble S'Klallam Tribe amended its Domestic Violence Ordinance on September 17, 2018 to implement VAWA's SDVCJ and authorize tribal police and justice officials to prosecute domestic violence crimes committed by non-Indians on tribal lands.

The Standing Rock Sioux Tribe consists of the Lakota/Dakota Bands of the Hunkpapa, Blackfeet Yanktonais, and Cuthead. The Standing Rock Sioux Reservation encompasses over 2.3 million acres which straddles the North and South Dakota border. There

are 16,115 enrolled members of the Standing Rock Sioux Tribe, and approximately 8,000 members live within the boundaries of the Reservation. The General Allotment Act opened up the Reservation for settlement by non-Indians and created checker-boarded land ownership within the Reservation. Non-Indians currently comprise approximately 25% of the Reservation population. The Standing Rock Sioux Tribe amended the Code of Justice, incorporating all the necessary provisions of the Violence Against Women Act § 904 to exercise jurisdiction over non-Indians in domestic violence cases. Since that time, several non-Indian defendants have been convicted in the Standing Rock Tribal Court.

The NIWRC is also joined by forty-four non-profit organizations committed to justice and safety for Native women.[2]

Additionally and of note, the Urban Indian Health Institute ("UIHI") is a Public Health Authority and Tribal Epidemiology Center serving Urban Indian Health Programs nationwide. UIHI conducts research and evaluation, collects and analyzes data, and provides disease surveillance to strengthen the health of American Indian and Alaska Native communities. Informed by Native people, UIHI is committed to decolonizing data to ensure that it is more accurate and accessible for partners, providers, policy makers, and health advocates.

The NIWRC is also joined by Yolanda Fraser and Dr. Grace Bulltail. Their 18-year old granddaughter/niece, Kaysera Stops Pretty Places (Crow Tribe citizen) was killed in Big Horn County, Montana in August of 2019. Kaysera's body was found less than

[2] Additional *Amici* are identified in the Appendix.

half a mile off the Crow Reservation. Despite numerous pleas, the Federal Bureau of Investigation has failed to investigate, (falsely) claiming they do not have jurisdiction to do so. The Big Horn County Sherriff's Office refused to interview key witnesses and ignored key suspects identified by those witnesses to the family. Like countless other Murdered and Missing Indigenous Women and Girls ("MMIWG"), federal and county law enforcement have refused to investigate the murder of Kaysera.

The depth of the NIWRC *Amici*'s collective experience in working to end domestic violence and sexual assault renders them uniquely positioned to offer their views on the harm that will result from raising the bar for effectuating a *Terry* stop from reasonable suspicion to "probable-cause-plus" for tribal law enforcement alone.

SUMMARY OF THE ARGUMENT

"'[C]ompared to all other groups in the United States,' Native American women 'experience the highest rates of domestic violence.'" *United States v. Bryant*, 136 S. Ct. 1954, 1959 (2016) (quoting 151 Cong. Rec. 9061 (2005) (remarks of Sen. McCain)). The crisis of violence against Native women has been decried by Members of Congress, the President of the United States, and tribal leaders from Tribal Nations across the United States. Recent efforts to turn the tides of this crisis resulted in the re-authorization of the Violence Against Women Act in 2013, wherein Congress affirmed and recognized three categories of inherent tribal criminal jurisdiction over non-Indians related to domestic violence, often referred to as special domestic violence criminal jurisdiction ("SDVCJ"). *See* Violence Against Women Reauthorization Act of 2013 ("VAWA" or "VAWA 2013"), Pub. L. No. 113-4, § 904, 127 Stat. 54, 121 (2013) (codified

at 25 U.S.C. § 1304 (2018)). As a result, many Tribes across the United States now detain, arrest, investigate, and prosecute *anyone* who commits domestic violence crimes arising in Indian country—regardless of whether the perpetrator is Indian, or the illegal conduct takes place on land held in trust or in fee.

The Ninth Circuit, however, has concluded that Tribal Nations are without the authority to effectuate a reasonable suspicion *Terry* stop on a non-Indian located on a public right of way, within a reservation. The panel's "probable-cause-plus" standard is difficult to understand and will be nearly impossible to consistently implement. Ultimately, if left intact, this standard will preclude tribal law enforcement from fully and effectively implementing the criminal jurisdiction over non-Indians that Congress purposefully restored in 2013.

Requiring tribal law enforcement to ascertain the identity of every individual suspected of committing a crime will directly undermine the health, safety, and welfare of those who live in tribal communities. In 2001, the International Association of Chiefs of Police issued a report concluding that "[w]henever tribal law enforcement officers are forced to make on-the-spot determinations as to whether a suspect is Indian or non-Indian and whether the victim is Indian or non-Indian, public safety in Indian country is severely compromised."[3] This new standard incentivizes criminals to lie about their identity, as a simple state-

[3] *Improving Safety in Indian Country: Recommendations from the IACP 2001 Summit,* Int'l Ass'n of Chiefs of Police (2001), https://www.theiacp.org/sites/default/files/2018-08/ACF1295.pdf (the IACP is the largest law enforcement organization in the world).

ment that an individual is non-Indian, regardless of whether it is the truth, will now strip law enforcement of any authority to detain them for suspected illegal conduct.

Moreover, the underlying legal premise behind the Ninth Circuit's holding—namely, that after *Oliphant*, Tribal Nations exercise *no* criminal jurisdiction over non-Indians—is patently wrong. *See United States v. Cooley*, 919 F.3d 1135, 1142 (9th Cir. 2019) (justifying the new standard on the idea that "[a] tribe has no power to enforce tribal criminal law as to non-Indians, even when they are on tribal land.") (citing *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 195 (1978)). In 2013, Congress restored tribal criminal jurisdiction over non-Indians who abuse Native women on tribal lands. *See* VAWA, 25 U.S.C. § 1304; *see also* 159 Cong. Rec. 1033 (2013) (statement of Sen. Tom Udall) ("Native women should not be abandoned to a jurisdictional loophole. In effect, these women are living in a prosecution-free zone. The tribal provisions in VAWA will provide a remedy."). The Ninth Circuit's decision in no way acknowledges that Congress has, since the Court decided *Oliphant* over forty years ago, acted to restore tribal criminal jurisdiction over non-Indians. The unfortunate irony of the Ninth Circuit's decision is that it will, if left in place, re-open a portion of the jurisdictional loophole that Congress purposefully closed.

Furthermore, the panel's decision results in much confusion. Take for instance a tribal law enforcement officer working on the Pascua Yaqui Reservation, where officers have the authority to arrest and prosecute non-Indians who commit domestic violence crimes. If a Pascua Yaqui law enforcement officer has reasonable suspicion that the driver of a vehicle on the

reservation is committing a crime of domestic violence, must the officer ascertain the suspect's Indian status before effectuating the *Terry* stop? The Ninth Circuit's decision provides no clarity, despite the fact that Congress has passed a law recognizing the officer's full authority to arrest non-Indians who commit domestic violence crimes on the Pascua Yaqui Reservation.

Equally confounding is the Ninth Circuit's new "probable-cause-plus" standard for routine traffic stops effectuated by tribal law enforcement. In the decision below, the panel concluded that if, in the course of ascertaining the identity of a non-Indian suspect to determine whether the officer has jurisdiction to detain in the first place, it becomes "apparent" or "obvious" to tribal law enforcement that a violation of federal or state law has been committed, "the [tribal] officer may detain the non-Indian for a reasonable time in order to turn him or her over to state or federal authorities." *United States v. Cooley*, 919 F.3d 1135, 1142 (9th Cir. 2019) (citations and quotations omitted). But even the Ninth Circuit acknowledged that it has "not elaborated on when it is 'apparent' or 'obvious' that state or federal law is being or has been violated." *Id.* Such a rule does not exist under any state or federal doctrine, and is not taught in any law enforcement training academy. It is unworkable, inarticulate, and inappropriate to uniquely expect tribal law enforcement officers, many of whom are trained at state law enforcement academies, to implement this amorphous mandate.

Consider this: under this vague and ambiguous "obvious" or "apparent" standard, if a law enforcement officer is patrolling Fort Peck's Reservation—where the Tribe has implemented VAWA's SDVCJ—and he sees a Native woman with severe bruising on her face

and extremities, does that make the situation sufficiently "apparent" or "obvious" to detain her non-Indian husband for questioning? Or must the officer wait until the Native woman suffers a more severe injury, such as a stab wound or broken leg, or a homicide, before the commission of the crime becomes sufficiently "obvious" to justify detainment or an investigation? According to the Department of Justice, "calls related to domestic disputes and domestic related incidents represented the highest number of fatal types of calls for service and were also the underlying cause of law enforcement fatalities for several other calls for service."[4] Forcing tribal law enforcement to wait to intervene until domestic violence becomes "obvious" or "apparent" will cost lives.

For the Tribes that have implemented VAWA 2013's SDVCJ, the decision below threatens to unconstitutionally remove the inherent authority Congress has specifically affirmed. Congress's decision to recognize and affirm tribal criminal jurisdiction over non-Indians 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's considered judgment in this execution of the federal government's trust responsibility

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[4] Nick Breul & Mile Keith, *Deadly Calls and Fatal Encounters, Analysis of U.S. Law Enforcement Line of Duty Deaths When Officers Responded to Dispatched Calls for Service and Conducted Enforcement (2010–2014)*, Homeland Security Digital Library, 4 (2020), https://www.hsdl.org/?view&did=794863.

should not be disturbed. *See United States v. Jicarilla Apache Nation*, 564 U.S. 162, 173–75 (2011); *see also Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978) (whether Tribal Nations should "be authorized to try non-Indians" is a "consideration[] for Congress to weigh . . .").

As Members of Congress and tribal leaders have collectively recognized, truly solving the crisis of violence in Indian Country requires significant collaboration among tribal, state, and federal authorities. This is particularly true when it comes to addressing the crisis of MMIWG. As Congress and President Trump noted in passing and signing Savanna's Act this past October, intergovernmental cooperation is the one sure path to effectively addressing the MMIWG crisis plaguing Indian Country. And yet, the Ninth Circuit's decision, if left in place, will preclude the ability of tribal law enforcement to effectively partner with state and federal authorities to effectively address the high rates of crime on reservations and to engage as equal partners in the effort to address the MMIWG crisis. This is not only demoralizing; it is deadly.

As Judge Collins perceptively noted in his dissent to the denial of *en banc* review, "[r]aising the bar for tribal investigations of non-Indian misconduct on fee lands from reasonable suspicion to 'probable-cause-plus' is a very big deal, and one that literally may have life-or-death consequences for many of the hundreds of thousands of persons who live on Indian reservations located within this circuit." Dissent, 76a.

The Court should reverse the Ninth Circuit's decision.

ARGUMENT

I. REPLACING REASONABLE SUSPICION WITH THE AMBIGUOUS "OBVIOUS" OR "APPARENT" STANDARD WILL JEOPARDIZE THE LIVES OF NATIVE WOMEN

A. On Reservations, Native Women Face the Highest Rates of Violent Crime in the United States

Today Native people experience some of the highest rates of violent victimization in the United States.[5] This Court took notice of this high rate of violence in *United States v. Bryant*,[6] when Justice Ginsburg acknowledged that:

> "[C]ompared to all other groups in the United States," Native American women "experience the highest rates of domestic violence." 151 Cong. Rec. 9061 (2005) (remarks of Sen. McCain). According to the Centers for Disease Control and Prevention, as many as 46% of American Indian and Alaska Native women have been victims of physical violence by an intimate partner. . . . American Indian and Alaska Native women "are 2.5 times more likely to be raped or sexually assaulted than women in the United States in general." . . . ."[7]

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

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

[7] *Id.*

In May 2016, the National Institute of Justice ("NIJ") issued yet another report confirming American Indians suffer from unacceptable high rates of violent crime.[8] The report concludes that more than 4 in 5 Native people report having been victims of violence, and over half (56.1 percent) of Native women report being victims of sexual violence.[9]

For over two decades, federal reports have consistently concluded that Native women suffer the highest rates of violence in the United States.[10]

i. The Majority of These Crimes are Committed by non-Indians

Many experts have concluded that the myriad rules and regulations restricting tribal criminal authority constitute a significant part of the high crime rates in Indian Country. One such restriction is this Court's determination in 1978 that Tribal Nations may no longer exercise criminal jurisdiction over non-Indians, unless or until Congress acts to restore the jurisdiction the Court eliminated. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978) ("[T]hese are considerations for Congress to weigh . . . .").

The elimination of this category of tribal criminal jurisdiction has created significant challenges for law

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[8] Rosay, *supra* note 5, at 2.

[9] Rosay, *supra* note 5, at 43–44.

[10] The earliest report of this nature is Lawrence A. Greenfeld & Steven K. Smith, *American Indians and Crime*, U.S. Dep't of Justice Bureau of Justice Statistics (1999), https://www.bjs.gov/index.cfm?ty=pbdetail&iid=387. This report was updated in 2004. *See American Indians and Crime: A BJS Statistical Profile, 1992–2002*, U.S. Dep't of Justice, Bureau of Justice Statistics, at V (Dec. 2004), https://www.bjs.gov/content/pub/pdf/aic02.pdf.

enforcement, especially because the rate of non-Indian violence committed against Native people is so incredibly high.[11] This statistic is not surprising given that "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."[12] To be sure, 96 percent of American Indian and Alaska Native victims of sexual violence experience violence by a non-Indian perpetrator, while only 21 percent experience violence committed by a Native partner.[13]

Thus, if left in place, the Ninth Circuit's disparate *Terry* stop standard for non-Indians committing crimes on tribal lands threatens to have a large impact on tribal communities, where the rates of non-Indian perpetrated violence are already quite significant.

ii. Many Reservations in the Ninth Circuit Consist Largely of non-Indian Fee Lands

If left intact, the Ninth Circuit's "probable-cause-plus" standard will have far-reaching implications for the simple reason that many reservations across the United States contain significant portions of non-Indian fee land.

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[11] Rosay, *supra* note 5, at 46 (concluding that of all American Indians who have suffered violence, around 90 percent have experienced violence perpetrated by a non-Indian).

[12] S. Rep. No. 112-153, at 9 (2012).

[13] *Research Policy Update: Violence Against American Indian and Alaska Native Women*, National Congress of American Indians, 2 (Feb. 2018), https://www.ncai.org/policy-research-center/research-data/prc-publications/VAWA_Data_Brief__FINAL_2_1_2018.pdf.

Although the Ninth Circuit suggests its decision is limited to a unique circumstance arising on non-Indian fee lands located within the Crow Reservation, a review of the reservations located within the Ninth Circuit reveals otherwise. Many reservations contain significant segments of non-Indian fee land. For instance, on the Blackfeet Reservation in Montana, 40 percent of the 1.5 million acres comprising the Reservation constitute non-Indian fee lands.[14]

This is likewise the case with the Tribal Nations implementing VAWA 2013's recognized tribal criminal jurisdiction over non-Indians. For example, on the Suquamish Indian Tribe's Reservation, where the Tribe has implemented VAWA 2013, approximately 43 percent of the lands on the Reservation are owned by non-Indians.[15] And on the Umatilla Reservation, one of the first Tribes to implement VAWA, approximately 48 percent of the Tribe's reservation lands are currently owned by non-Indians.[16] Nearly half of the 22,000 acres that comprise the Tulalip Reservation in Washington are owned by non-Indians.[17] And on the

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[14] *The Blackfeet Nation has Long, Epic History*, Univ. of Montana Dep't of Geography, http://www.umt.edu/this-is-montana/columns/stories/blackfeet.php (last visited Dec. 7, 2020).

[15] *Frequently Asked Questions*, Suquamish Tribe, https://suquamish.nsn.us/home/about-us/faqs/ (last visited Dec. 3, 2020).

[16] *Land Management*, Confederated Tribes of the Umatilla Indian Reservation, https://ctuir.org/departments/economic-and-community-development/land-management/ (last visited Dec. 3, 2020).

[17] *SDVCJ Today, Tulalip Tribes of Washington*, Nat'l Congress of American Indians, https://www.ncai.org/tribal-vawa/for-tribes/vawa-sdvcj-implementing-tribes/tulalip-tribes-of-washington (last visited Dec. 17, 2020); *see also Frequently Asked Questions*, Tulalip Tribes, https://www.tulaliptribes-nsn.gov/Base/File/TTT-PDF-WhoWeAre-FAQ (last visited Dec. 3, 2020).

Chehalis Reservation, approximately 36 percent of the lands on the Reservation constitute non-Indian fee lands.[18]

The checkerboard nature of the reservations in the Ninth Circuit is not unique or particular to the western United States. For instance, in North and South Dakota, the Standing Rock Sioux Tribe, a Tribe that began exercising SDVCJ on May 1, 2016,[19] governs a Reservation containing 1.4 million acres in non-Indian fee status.[20] Likewise, on the Omaha Tribe of Nebraska's Reservation, only 27,828 of 200,000-acres remains in restricted or trust status.[21] On the Crow Creek Sioux Reservation in South Dakota, Indian trust lands account for just 42 percent of the 295,000-acre Reservation.[22] And on the Lower Brule

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[18] Frazier Meyer, *Planning for the Future: Acquisition Protects Tribe's Natural Resources, Way of Life,* Chehalis Tribal Newsletter, 1 (March 2019), https://www.chehalistribe.org/newsletter/pdf/2019-03.pdf.

[19] *SDVCJ Today, The Standing Rock Sioux Tribe in North and South Dakota*, Nat'l Congress of American Indians, https://www.ncai.org/tribal-vawa/sdvcj-today/the-standing-rock-sioux-tribe-in-north-and-south-dakota (last visited Dec. 7, 2020).

[20] *Standing Rock Agency*, U.S. Dep't of Interior, https://www.bia.gov/regional-offices/great-plains/north-dakota/standing-rock-agency (last visited Jan. 6, 2021); *see also Data-Standing Rock*, North Dakota Studies, https://www.ndstudies.gov/curriculum/high-school/standing-rock-oyate/data-standing-rock#heading0 (last visited Jan. 6, 2021).

[21] *See Nebraska v. Parker*, 136 S. Ct. 1072, 1076–80 (2016); *see also Winnebago Agency*, U.S. Dep't of Interior, https://www.bia.gov/regional-offices/great-plains/nebraska/winnebago-agency (last visited Dec. 29, 2020).

[22] *Crow Creek Agency*, U.S. Dep't of Interior, https://www.bia.gov/regional-offices/great-plains/south-dakota/crow-creek-agency (last visited Dec. 30, 2020).

Sioux Tribe's Reservation, roughly 27 percent of the Reservation constitutes non-Indian fee lands.[23]

The Ninth Circuit's unworkable standard, if left in place, will complicate the implementation of VAWA's restored tribal criminal jurisdiction over non-Indians in many Tribal Nations across the country, leaving Native women less protected in most.

iii. Many Reservations Are Home to Significant non-Indian Populations

The impact of the Ninth Circuit's decision on policing reservations cannot be understated given the significant number of non-Indians living on reservations. In all, there are 26 VAWA-implementing Tribal Nations, many of which are located on reservations where the population is predominantly non-Indian.

For instance, on the Umatilla Reservation, just over 51 percent of the residents are non-Indians.[24] On Chehalis's Reservation, non-Indians make up 43 percent of the population.[25] Likewise, the Tulalip

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[23] *Lower Brule Agency*, U.S. Dep't of Interior, https://www.bia.gov/regional-offices/great-plains/south-dakota/lower-brule-agency (last visited Dec. 30, 2020).

[24] *SDVCJ Today, The Confederated Tribes of the Umatilla Indian Reservation (CTUIR) in Oregon,* Nat'l Congress of American Indians, http://www.ncai.org/tribal-vawa/get-started/the-confederated-tribes-of-the-umatilla-indian-reservation-ctuir-in-oregon (last visited Dec. 17, 2020).

[25] *SDVCJ Today, Confederated Tribes of the Chehalis Reservation*, Nat'l Congress of American Indians, http://www.ncai.org/tribal-vawa/sdvcj-today/confederated-tribes-of-the-chehalis-reservation (last visited Dec. 17, 2020).

Tribes' Reservation in Washington has a population that is 76 percent non-Indian.[26]

This is also the case on reservations outside of the Ninth Circuit. For example, there are 231,000 individuals living within the border of the Choctaw Nation Reservation, of whom 79 percent are non-Indian.[27] The Seminole Nation Reservation in Oklahoma is 25 percent Indian and 75 percent non-Indian.[28] The municipality of Pender, Nebraska, located on the Omaha Indian Reservation, is home to a total population of just over 1,000 people, roughly 97 percent of whom are non-Indian.[29]

The Ninth Circuit's disparate standard for tribal law enforcement effectuating *Terry* stops of non-Indians suspected of committing a crime on reservation lands further jeopardizes the security of Native women living in their homes. It is precisely because of such arbitrary divisions in the application of law that Native women remain the most vulnerable population in the United States.

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[26] *SDVCJ Today, Tulalip Tribes of Washington*, Nat'l Congress of American Indians, https://www.ncai.org/tribal-vawa/for-tribes/vawa-sdvcj-implementing-tribes/tulalip-tribes-of-washington (last visited Dec. 17, 2020).

[27] *SDVCJ Today*, *The Choctaw Nation in Oklahoma*, Nat'l Congress of American Indians, https://www.ncai.org/tribal-vawa/sdvcj-today/the-choctaw-nation-in-oklahoma (last visited Dec. 29, 2020).

[28] *SDVCJ Today*, *The Seminole Nation in Oklahoma*, Nat'l Congress of American Indians https://www.ncai.org/tribal-vawa/sdvcj-today/the-seminole-nation-in-oklahoma (last visited Dec. 21, 2020).

[29] *Pender, Nebraska*, City-Data.com, http://www.city-data.com/city/Pender-Nebraska.html#b (last visited Dec. 30, 2020).

iv. The Crisis of MMIWG Requires Tribal Authority to Undertake *Terry* Stops for non-Indians Traveling Across Reservations

The fact that Native women are more likely to be murdered than any other American population further underscores the inequities created by the Ninth Circuit's decision. The third leading cause of death among American Indian and Alaska Native women is murder,[30] and on some reservations, women are murdered at a rate ten times higher than the national average.[31] 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.[32]

Recognizing the extraordinary rates at which Native women go missing and are murdered, the executive and legislative branches have taken critical steps to mitigate this crisis. On November 26, 2019, President Trump signed Executive Order 13,898, creating a Task Force on Missing and Murdered American Indians and Alaska Natives.[33] The same day, President Trump

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[30] 151 Cong. Rec. 9061-62 (2005) (statement of Sen. John McCain) ("[H]omicide was the third leading cause of death of Indian females between the ages of 15 to 34 . . . .").

[31] Ronet Bachman et al., *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What is Known*, U.S. Dep't of Justice, 5 (2008), https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf.

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

[33] Exec. Order No. 13,898, 84 Fed. Reg. 66,059 (Dec. 2, 2019).

declared by proclamation that "[t]hese horrific acts, committed predominantly against women and girls, are egregious and unconscionable."[34] As a result, the President declared May 5th "Missing and Murdered American Indians and Alaska Natives Awareness Day" to "reaffirm our commitment to ending [this] disturbing violence."[35] And on October 10, 2020, President Trump signed into law S. 227, Savanna's Act, which directs the Department of Justice to implement new protocols to address the MMIWG crisis, and S. 982, the Not Invisible Act, which directs the DOJ and the Department of the Interior to establish a joint commission on violent crime in Indian Country.[36]

Congressional leaders have also taken action to recognize and eliminate factors which exacerbate the MMIWG crisis. In March 2019, the House Subcommittee on Indigenous Peoples held a hearing on MMIWG where *Amici*'s Counsel testified on the need for intergovernmental cooperation to address MMIWG, noting that it is "not unusual for Indian peoples to travel between urban areas and tribal lands, [and thus] cross jurisdictional agreements [are necessary to] maximize efforts to prevent abductions and homicides" in Indian Country.[37]

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[34] Proclamation No. 10,026, 85 Fed. Reg. 27,633 (May 8, 2020).

[35] *Id*.

[36] Savanna's Act, S. 227, 116th Cong. (2020); Not Invisible Act of 2019, S. 982, 116th Cong. (2020).

[37] *Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women (MMIW): Exploring Solutions to End the Cycle of Violence, Hearing Before the H. Subcomm. On Indigenous Peoples of the U.S., of the H. Comm. on Nat. Res*., 116th Cong. 26 (2019) (written response of Mary Kathryn Nagle, Nat'l Indige-

Investigations undertaken exclusively by the federal government, in Indian Country, often take a long time. Often there are few FBI agents assigned to a particular reservation, and their office may be far away.[38] The Bureau of Indian Affairs ("BIA") police, too, historically have proved unreliable in exercising federal jurisdiction to protect Native women because, as noted by the Director of the BIA, "[o]n many reservations, there is no 24-hour police coverage. [Federal p]olice officers often patrol alone and respond alone to both misdemeanor and felony calls."[39]

Tribal Nations cannot rely upon federal authorities alone to solve the MMIWG crisis. Indeed, in a statement of support for Savanna's Act, Senator Lisa Murkowski noted the MMIWG crisis illuminates a need "for greater partnerships between law enforcement at all levels."[40] That is precisely what Savanna's Act achieves, as it requires each and every United States Attorney to:

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nous Women's Resource Center), https://www.congress.gov/116/meeting/house/109101/documents/CHRG-116hhrg35582.pdf.

[38] Kevin K. Washburn, *American Indians, Crime, and the Law*, 104 Mich. L. Rev. 709, 720–21 (2006), https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1543&context=mlr.

[39] *Law Enforcement in Indian Country: Hearing Before the S. Comm. On Indian Affairs*, 110th Cong. 6 (May 17, 2007) (statement of W. Patrick Ragsdale, Director, Bureau of Indian Affairs).

[40] Office of Sen. Lisa Murkowski, *Murkowski, Cortez Masto Reintroduce Savanna's Act: Bill Calls for Law Enforcement Focus on Missing and Murdered Indigenous Women*, Press Release (Jan. 28, 2019), https://www.murkowski.senate.gov/press/release/murkowski-cortez-masto-reintroduce-savannas-act.

> [D]evelop regionally appropriate guidelines to respond to cases of missing or murdered Indians that shall include . . . guidelines on *inter-jurisdictional cooperation* among law enforcement agencies at the Tribal, Federal, State, and local levels . . . .

Savanna's Act, 25 U.S.C.§ 5704(a) (2020) (emphasis added).

As a result of the Ninth Circuit's decision, however, United States Attorneys will now need to create two sets of MMIWG guidelines: one set applicable to state and federal law enforcement, who have the authority to effectuate a routine *Terry* stop, and another set applicable to tribal law enforcement who can only detain a non-Indian if it is "obvious" that the suspect has murdered or kidnapped a Native woman. The Ninth Circuit's "probable-cause-plus" standard significantly undermines the "inter-jurisdictional cooperation" among tribal, state, and federal law enforcement that Congress envisioned in passing Savanna's Act.

The Ninth Circuit's decision in this case is even more alarming as it specifically addresses tribal law enforcement's authority in the epicenter of the MMIWG Crisis. The highway where Crow law enforcement detained Mr. Cooley runs through Big Horn County—a county infamous for the 32, and counting, missing or murdered American Indian women or girls whose families *have not seen justice*.[41] According to a study by the Montana Department of Justice, released on May 5, 2020, Indigenous Montanans are four times

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[41] Letter from Families and Allies of Missing and Murdered Indigenous Peoples to County, State and Federal Officials (Feb. 24, 2020), https://2a840442-f49a-45b0-blal-7531a7cd3d30.filesusr.com/ugd/6b33f76c8263241726421799288 1a7a 78blfU0.pdf.

more likely to go missing than non-Indigenous Montanans.[42] Sixty percent of all missing Indigenous persons in Montana over the three-year period were female.[43]

The Montana Attorney General's study revealed that Big Horn County had nearly double (per capita) the number of missing persons than the next highest county.[44] Big Horn County, a reservation county, maintains a per capita missing person rate of 11.81 for 2017–2019, which is nearly three times higher than its neighboring county, Yellowstone County, which is a non-reservation county.[45] The Montana Attorney General's office noted Big Horn and other reservation counties in Montana were considered "stand out[s]" with respect to missing persons cases which merit "additional analysis."[46] Diminishing the authority of tribal law enforcement to effectuate *Terry* stops in Big Horn County will impede ongoing efforts to address the MMIWG crisis.

The MMIWG crisis on the Crow Reservation, where Mr. Cooley was detained, is acute and intergenerational. For example, in 2013, Crow tribal member Harriet Wilson was murdered in Billings, Montana, her great-grandmother Rose Old Bear was murdered in Hardin in the 1950s, and her great-aunt was murdered outside Hardin in the 1970s; all of their

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[42] *The Landscape in Montana: Missing Indigenous Persons*, Montana Dep't of Justice, 3 (2020), https://dojmt.gov/wp-content/uploads/Missing-Indigenous-Persons-Data-Presentation.pdf.

[43] *Id*. at 5.

[44] *Id.* at 13.

[45] *Id*.

[46] *Id*.

murders remain unsolved.[47] The MMIWG crisis has reached such an extreme that the Crow Tribe declared a state of emergency in November 2019, citing the BIA's "routinely demonstrated [] lack of interest in fulfilling a trust responsibility to provide proper public safety services."[48]

In a November 2019 letter to the Director of the FBI, Senator Tester expressed dismay at the FBI's refusal to assist in solving the murder of Kaysera Stops at Pretty Places, a Crow tribal citizen whose body was found less than one mile off the Crow Reservation in Hardin, Montana, ten days after her eighteenth birthday.[49] Senator Tester specifically noted that the federal government's trust and treaty responsibility to keep Native communities safe requires cooperation with "Tribes, state and local law enforcement."[50]

If left in place, the Ninth Circuit's "probable-cause-plus" standard will preclude cross-jurisdictional

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[47] *Zuya Winyan Wicayvonihan Honoring Warrior Women: A Study on Missing & Murdered Indigenous Women and- Girls in States Impacted by the Keystone XL Pipeline*, Sovereign Bodies Institute, 11 (2019), https://2a840442-f49a-45b0-b1a1-7531a7cd3d30.filesusr.com/ugd/6b33f7_27835308ecc84e5aae8ffbdb7f20403c.pdf.

[48] Briana Monte, *Lack of Law Enforcement Enrages Community Members on Crow Reservation*, KULR-8 News (November 21, 2019), https://www.kulr8.com/news/local/lack-of-law-enforcement-enrages-community-members-on-crow-reservation/article_256d158e-0cea-11ea-ad66-538ed3d8a313.html (quoting Crow Chairman A.J. Not Afraid).

[49] *November 20, 2019 Letter from Senator Jon Tester to FBI Director Christopher Wray*, Pipestem & Nagle, P.C., http://www.pipestemlaw.com/wp-content/uploads/2019/11/2019-11-20-Director-Wray_FBI_-MMIW-Cases-in-Big-Horn-County_-Tester.pdf (last visited Jan. 12, 2021).

[50] *Id*.

cooperation, and ultimately, will exacerbate the MMIWG crisis that both the executive and legislative branches of the federal government are working to resolve.

B. The Ninth Circuit's Decision Unconstitutionally Intrudes on Congress's Exclusive Authority over Indian Affairs

In addition to jeopardizing the safety of Native women in their own homes, the Ninth Circuit's decision unconstitutionally infringes on Congress's exclusive authority over Indian affairs. If the authority of tribal law enforcement to effectuate a *Terry* stop on tribal lands should be limited, that is a question for Congress—not the courts—to address.

i. Only Congress can Limit a Tribe's Authority to Police and Protect Lives on Tribal Lands

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). Congress's authority derives, in part, from the unique trust relationship between Tribal Nations and the United States. *United States v. Jicarilla Apache Nation*, 564 U.S. 162, 175 (2011) ("Throughout the history of the Indian trust relationship, we have recognized that the organization and management of the trust is a sovereign function subject to the plenary authority of Congress.").

In contrast to the individual States, the authority of Tribal Nations is not limited by the U.S. Constitution. *See, e.g., United States v. Lara*, 541 U.S. 193, 205

(2004) ("[T]he Constitution does not dictate the metes and bounds of tribal autonomy. . . ."). Instead, "Indian nations ha[ve] always been considered as distinct, independent political communities . . . ." *Talton v. Mayes*, 163 U.S. 376, 383 (1896) (citations and quotations omitted). Accordingly, Tribal Nations "remain 'separate sovereigns pre-existing the Constitution.'" *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 788 (2014) (citing *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (1978)). And as a result, "unless and until Congress acts, the tribes retain their historic sovereign authority." *Id.* (citing *United States v. Wheeler*, 435 U.S. 313, 323 (1978) (internal quotations omitted); *see also id.* at 803 ("[A] fundamental commitment of Indian law is judicial respect for Congress's primary role in defining the contours of tribal sovereignty.").

Indeed, this Court has consistently described Congress's powers as both "plenary and exclusive." *United States v. Lara*, 541 U.S. 193, 200 (2004); *see also, Santa Clara Pueblo*, 436 U.S. 49, 60 (1978) ("[P]roper respect . . . for the plenary authority of Congress in this area cautions that [the courts] tread lightly"). It is clear, therefore, that federal courts do not have the authority to place limitations on tribal authority absent congressional authorization.

Indeed, as discussed further below, the federal government's "trust responsibility to assist tribal governments in safeguarding the lives of Indian women" has compelled Congress to affirm and recognize 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. Given Congress's clear affirmation of tribal authority in VAWA and

other recently passed statutes, the Ninth Circuit's decision undermines the effect of multiple pieces of enacted legislation and should be overturned.

ii. Congress is Currently Affirming Tribal Authority, Not Restricting It

The Ninth Circuit's infringement on Congress's exclusive authority is not without consequence. For the past fifty years, Congress has consistently taken action to affirm tribal authority—not restrict it. Repeatedly, Congress has recognized its own trust duty and obligation to respect and uphold this authority because of the connection between sovereignty and safety for Native women. *See* Violence Against Women and Dep't of Justice Reauthorization Act of 2005, Pub. L. 109-162, tit. IX, § 901, 119 Stat. 3077 ("Congress finds 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.").[51] The Ninth Circuit's decision, therefore, not only infringes on Congress's exclusive authority over Indian affairs, it also undermines Congress's trust duty and treaty obligation to address the epidemic of violence against Native women in the United States.

In 2013, in direct response to the crisis of non-Indian perpetrated violence against Native women, Congress

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[51] *See also* Tribal Law and Order Act of 2010, Pub. L. No. 111-211, tit. II, § 202, 124 Stat. 2262-63 ("Congress finds that the United States has distinct legal, treaty, and trust obligations to provide for the public safety of Indian country[,] . . . and [thus Congress has a duty to] effectively provide public safety in Indian County[] to reduce the prevalence of violent crime in Indian country and to combat sexual and domestic violence against American Indian and Alaska Native women").

"recogniz[ed] and affirm[ed] the inherent power" 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), 1304(d)(4). In re-authorizing VAWA in 2013, Congress specifically identified the loss of tribal criminal jurisdiction over non-Indian crimes on tribal lands as a major contributing factor to the incredibly high rates of violence against Native women, 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 Senator Tom Udall further explained:

> Here is the problem: Tribal governments are unable to prosecute non-Indians for domestic violence crimes. They have no authority over these crimes against Native American spouses or partners within their own tribal lands . . . Non-Indian perpetrators often go unpunished. Yet over 50 percent of Native women are married to non-Indians, and 76 percent of the overall population living on tribal lands is non-Indian.

159 Cong. Rec. 1033 (2013) (statement of Sen. Tom Udall).

Congress took great care to ensure that VAWA's affirmation of tribal jurisdiction would not be limited to only those lands held in trust, but instead, would extend to the bounds of the reservation, including all lands—even non-Indian fee land—located inside the reservation. Congress defined the "where" to be

"Indian country," as previously defined in 18 U.S.C. § 1151, "Indian country defined." 25 U.S.C. § 1304(a)(3) ("The term 'Indian country' has the meaning given the term in section 1151 of Title 18."). Thus, although Congress made clear that VAWA's restored tribal jurisdiction "would not cover off-reservation crimes," 159 Cong. Rec. 1940 (2013), Congress selected the legal term "Indian country" to make certain that VAWA 2013 would recognize tribal jurisdiction over domestic violence crimes occurring on "all private lands and rights-of-way within the limits of every Indian reservation." *Id.* at 1999 (statement of Rep. Doc Hastings). This encompasses state highways, including the one at issue in this case.

In addition to affirming tribal criminal jurisdiction over non-Indians, Congress continues to pass legislation requiring coordination between state, federal, and tribal law enforcement, in an effort to address the high rates of violent crimes committed in Indian Country. Most recently, on October 10, 2020, Congress passed Savanna's Act. *See* Pub. L. No. 116-165. Savanna's Act was named for the pregnant, 22-year-old citizen of the Spirit Lake Tribe, Savanna LaFontaine-Greywind who was abducted and killed by a non-Indian couple in 2017 for her yet-to-be-born child. In passing Savanna's Act, Congress mandated the development of "guidelines on inter-jurisdictional cooperation among law enforcement agencies at the Tribal, Federal, State, and local levels[,]" to ensure more appropriate responses from law enforcement agencies in cases of missing or murdered Indians. 25 U.S.C. § 5704(a)(1). By mandating intergovernmental cooperation in Savanna's Act, Congress specifically sought "to empower Tribal governments with [the] resources and information necessary to effectively respond to

cases of missing and murdered Indians." Savanna's Act, Pub. L. No. 116-165.

This inter-jurisdictional cooperation among tribal, state, and federal law enforcement will be impossible, however, if the Ninth Circuit's "probable-cause-plus" standard is left in place. To be clear, the Ninth Circuit's decision threatens the effective implementation of Savanna's Act, and ultimately, undermines Congress's goal to address the crisis of MMIWG.

On the same day that President Trump signed Savanna's Act into law, he also signed the Not Invisible Act of 2019. *See* Pub. L. No. 116-166. The Not Invisible Act reflects the President's and Congress's ongoing actions aimed at empowering Tribes to better protect their communities on tribal lands and throughout their "Indian country" jurisdiction. Specifically, the Not Invisible Act was enacted to "improve engagement among law enforcement, tribal leaders, federal partners, and service providers[,]. . . . [and] to coordinate efforts across [federal] agencies and establish[] a commission of tribal and federal stakeholders" tasked with making recommendations to the federal government on "combating the epidemic of disappearances, homicide, violent crime and trafficking of Native Americans and Alaska Natives."[52] Ultimately, Congress and President Trump believed the Not Invisible Act would lead to an "increase [in] intergovernmental coordination to [better] identify and combat violent crime within Indian lands and of

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[52] Office of Sen. Lisa Murkowski, *Murkowski's Bipartisan Legislation Addresses Crisis of Missing, Murdered, and Trafficked Indigenous Women Signed Into Law*, Press Release (Oct. 10, 2020), https://www.murkowski.senate.gov/press/release/murkowskis-bipartisan-legislation-addressing-crisis-of-missing-murdered-and-trafficked-indigenous-women-signed-into-law.

Indians." Not Invisible Act of 2019, Pub. L. No. 116-166.

This coordination, however, will not come to fruition if the inherent investigative authority of tribal police officers is limited to those crimes where it is "obvious" that the non-Indian is committing a crime. When it comes to the MMIWG and the lives of our Native women and girls, by the time the crime is "obvious," a murder has often already occurred.

For these reasons, holding tribal law enforcement to the Ninth Circuit's disparate "obvious" or "apparent" standard will not only infringe on Congress's exclusive authority over Indian affairs and policy goals in combatting violence against Native women, it will also, ultimately, cost Native women and girls their lives.

CONCLUSION

The Ninth Circuit's decision below should be reversed and remanded.

Respectfully submitted,

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January 15, 2021

APPENDIX

APPENDIX

List of Additional *Amici Curiae*

The following organizations respectfully submit this brief as *amici curiae* in support of Petitioner:

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

The **Alliance of Tribal Coalitions to End Violence**
(www.atcev.org/)

The **American Indian Community House**
(www.aich.org/)

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

Call to Safety
(www.calltosafety.org/)

Casa de Esperanza
(www.casadeesperanza.org/)

Crushing Colonialism
(www.crushingcolonialism.org/)

First Peoples Worldwide
(www.colorado.edu/program/fpw/)

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

Herring Pond Wampanoag Tribe, Inc.
(www.herringpondtribe.org/)

The **Hope Shores Alliance**
(www.hopeshores.org/)

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

The **Indian Land Working Group**
(www.indianlandworkinggroup.org/)

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

The **Indigenous Idaho Alliance**

Integrated Concepts, Inc.
(www.iconceptsinc.com/)

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

Missing and Murdered Indigenous Women, Girls, and Two-Spirit Advocacy Group of North Carolina
(www.mmiwnc.com)

Missing and Murdered Native Americans

MMIW USA
(https://mmiwusa.org/)

The **Montana Coalition Against Domestic and Sexual Violence**
(www.mcadsv.com/)

Montana Women For. . .
(montanawomenfor.org/)

The **National Center on Domestic Violence, Trauma & Mental Health**
(www.nationalcenterdvtraumamh.org/)

The **National Domestic Violence Hotline**
(www.thehotline.org/)

The **National Native American Bar Association**
(www.nativeamericanbar.org/)

Native Alliance Against Violence
(www.oknaav.org/)

New Hope Inc.
(www.new-hope.org/)

New Wave Feminists
(www.newwavefeminists.com/)

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

N.O.I.S.E Northeastern Oklahoma Indigenous Safety and Education Foundation

P&S Legal Advocacy, PLLC
(www.pslegalok.com/)

The **Red Earth Women's Society**

San Pasqual Native Women's Resource Center
(www.sanpasqualbandofmissionindians.org/)

Sexual Assault Services Organization
(www.durangosaso.org/)

The **South Dakota Network Against Family Violence and Sexual Assault**
(www.sdnafvsa.com/)

The **Tribal Law and Policy Institute**
(www.home.tlpi.org/)

Violence Free Colorado
(www.violencefreecolorado.org/)

Voice of Witness (voiceofwitness.org/)

The **Wabanaki Women's Coalition**
(www.wabanakiwomenscoalition.org/)

The **Washington Coalition of Sexual Assault Programs**
(www.wcsap.org/)

The **Washington State Coalition Against Domestic Violence**
(wscadv.org)

Where All Women Are Honored
(www.whereallwomenarehonored.org/)

The **Wisconsin Coalition Against Sexual Assault**
(www.wcasa.org/)

The **Wyoming Coalition Against Domestic Violence and Sexual Assault**
(www.wyomingdvsa.org/)