IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT
CASE NO. 25-7057

UNITED STATES OF AMERICA,
Plaintiff/Appellee,

v.

ASHLIE NICOLE ROSE MARTIN,
Defendant/Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA,
THE HONORABLE DAVID CLEVELAND JOSEPH, U.S. DISTRICT JUDGE,
PRESIDING
DISTRICT COURT CASE NO. CR-23-59-DCJ

SUPPLEMENTAL BRIEF OF DEFENDANT/APPELLANT

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SUPPLEMENTAL ARGUMENT

IV.

Reversal is required because the district court lacked subject matter jurisdiction to convict and sentence Ashlie Martin for the offense of Conspiracy to Murder.[1]

A. The Major Crimes Act does not provide subject matter jurisdiction for Conspiracy to Murder as alleged in Count One of the indictment because Conspiracy to Murder is not an enumerated offense under 18 U.S.C. § 1153.

Ashlie Martin was charged with Conspiracy to Murder in Indian Country in Count One of an indictment filed on October 3, 2025.[2] (ROA Vol. I at 10). The indictment alleged that Ms. Martin was an Indian and that she violated 18 U.S.C. § 1117, Conspiracy to Murder in Indian Country. (*Id.*) The indictment asserted federal jurisdiction under 18 U.S.C. § 1153, the Major Crimes Act. (*Id.*) Ashlie Martin was convicted after a plea to the charged offense. The district court lacked jurisdiction to charge and convict Ms. Martin of Conspiracy to

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[1] **Standard of Review:** This issue was not raised on direct appeal. The Supreme Court has maintained that "[s]ubject matter jurisdiction can never be waived or forfeited." *Gonzalez v. Thaler,* 565 U.S. 134, 141 (2012). "Indeed, a party may raise [ ] an objection [to subject matter jurisdiction] even if the party had previously acknowledged the trial court's jurisdiction." *Henderson ex rel. Henderson v. Shinseki,* 562 U.S. 428, 435 (2011). "[D]efects in subject-matter jurisdiction require correction regardless of whether the error was raised in district court." *United States v. Cotton*, 535 U.S. 625, 630 (2002). Challenges to the jurisdiction of the Court are reviewed de novo, even when the issue was not raised in the district court. *United States v. Hopson,* 150 F.4th 1290, 1297 (10th Cir. 2025).

[2] Ms. Martin was also charged in Count Two, Murder in Indian Country; Count Three, Murder in Indian Country; and Count Three, Carjacking Resulting in Death. (ROA Vol. I at 13-14). These counts were dismissed on the government's motion when Ms. Martin entered her plea in Count One.

Murder in Indian County under the Major Crimes Act because the crime of Conspiracy to Commit Murder is not one of the enumerated crimes listed in that statute.

Federal jurisdiction over crimes which occur in Indian country is limited because Indian tribes are recognized by the United States government as sovereign nations. W. Canby, American Indian Law in a Nutshell 66-79 (1988); Indian Courts and the Future, 13 (1978). This Court has long recognized the principle that Indian tribes possess an inherent sovereignty except where it has been specifically limited by treaty or act of Congress. Any intrusion into that sovereignty must be clear and explicit. *Washington v. Commercial Passenger Fishing Vessel Ass'n.,* 443 U.S. 658, 690 (1979). The Major Crime Act relevantly (and explicitly) provides:

> Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

18 U.S.C. § 1153(a).

Because of the conflict with tribal sovereignty, the Major Crimes Act is regarded as a limited intrusion of federal power into the otherwise exclusive jurisdiction of tribal courts. *See* 16 Cong. Rec. 934 (1885). "[S]tatutes conferring jurisdiction on federal courts are to be strictly construed, and doubts resolved against federal jurisdiction." *United States ex. Rel. King*

v. Hillcrest Health Ctr., Inc., 264 F.3d 1271, 1280 (10th Cir. 2001). Only crimes specified in the Major Crimes Act are punishable under 18 U.S.C. § 1153.

B. Recently decided Tenth Circuit authority supports Ms. Martin's position that Conspiracy to Murder cannot be prosecuted under the Major Crimes Act.

United States v. Hopson, 150 F.4th 1290 (10th Cir. 2025) addressed a prosecution under 18 U.S.C. § 1153(a) where the defendant was indicted and tried for felony assault resulting in serious bodily injury. The jury acquitted the defendant of the charged offense but convicted him of the lesser offense of misdemeanor assault. This Court vacated the defendant's conviction because misdemeanor simple assault is not an enumerated crime under the Major Crimes Act. *Id.* at 1320.

The *Hopson* Court first applied the negative implication canon – *expressio unius est exclusion alterius*[3] – to conclude that the absence of misdemeanor assault from the list of enumerated crimes "strongly suggests that offense was intentionally *excluded,* not necessarily included." *Id.* at 1304. *See Navajo Nation v. Dalley,* 896 F.3d 1196, 1213 (10th Cir. 2018)(quoting *Seneca-Cayuga Tribe of Okla. v. Nat'l Indian Gaming Comm'n,* 327 F.3d 1019, 1034 & n.24 (10th Cir. 2003)); *Esteras v. United States,* 606 U.S. 185, 195 (2025)(observing "the *expressio unius* canon has particular force" where "the statute includes 'an established series,' such that any 'omission' from that series necessarily 'bespeaks a negative implication'" (quoting *Chevron U.S.A. Inc. v. Echazabal*, 536 U.S. 73, 81 (2002)).

[3] "When one or more things of a class are expressly mentioned, others of the same class are excluded."

This Court did not stop with the *expressio unius* canon. Adding an offense not included in the list of enumerated crimes "would require [this Court] to abandon fundamental principles of tribal sovereignty and federal jurisdiction that are directly relevant to any prosecution under the Act. The Supreme Court has explained, 'the enumeration in the [Major Crimes Act] of certain offenses as applicable to Indians in the reservations, carries with it some implication of a purpose to exclude others.'" *Hopson,* 150 F.4th at 1305, citing *United States v. Quiver,* 241 U.S. 602, 606 (1916). Because of the unique trust relationship between the United States and Indian tribes, provisions in both treaty and non-treaty matters should be "construed liberally" in favor of tribal jurisdiction. *County of Oneida v. Oneida Indian Nation,* 470 U.S. 226, 247 (1985); *see also White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 143-44 (1980)(finding "[a]mbiguities in federal law have been construed generously in order to comport with …traditional notions of sovereignty and with the federal policy of encouraging tribal independence").

The Act is a "carefully limited intrusion of federal power into the otherwise exclusive jurisdiction of the Indian tribes to punish Indians for crimes committed on Indian land." *United States v. Antelope,* 430 U.S. 641, 642 (1977)(quoting *Keeble v. United States,* 412 U.S. 205, 209 (1973)). The Supreme Court has implemented a "deeply felt and traditional reluctance …to expand the jurisdiction of the federal courts through a broad reading of jurisdictional statutes." *Romero v. Int'l Terminal Operating Co.,* 358 U.S. 354, 379 (1959)(superseded by statute, as indicated in *Miles v. Apex Marine Corp.*, 498 U.S. 19 (1990)). It is well-established that the Act cannot be expanded by implication to offenses not enumerated by Congress. *See genreally*

Welch v. Tx. Dep't of Highways & Pub. Transp., 483 U.S. 468, 474 (1987)("The jurisdiction of the federal courts is carefully guarded against expansion by judicial interpretation.").

This Court must follow the precedential authority of the *Hopson* decision.

C. Conspiracy to Murder does not become a major crime under the Act simply because Murder is an enumerated offense.

Conspiracy is not a derivative penalty provision that can be tacked on to an underlying felony for jurisdictional purposes. There is no authority in the Tenth Circuit for the notion that Conspiracy to Murder becomes an enumerated crime under the Major Crimes Act simply because Murder is an enumerated offense under the Act. It is black-letter law that conspiracy is a crime all its own; "the commission of the substantive offense and a conspiracy to commit it are separate and distinct offenses." *Pinkerton v. United States,* 328 U.S. 640, 643 (1946). *See also United States v. Felix,* 503 U.S. 378, 391 (1992)(noting "the established doctrine that a conspiracy to commit a crime is a separate offense from the crime itself"). The government does not disagree; after all, it filed separate counts for conspiracy and murder in the indictment.

When Congress fails to include a conspiracy offense in a substantive criminal statute, the omission should be considered intentional. In *United States v. Bilfulco,* 447 U.S. 381 (1980), the Supreme Court considered the penalties allowed for conspiracy to distribute drugs, a violation of 21 U.S.C. § 841. The Court held that special parole terms could not be imposed as part of the sentence for conspiracy drug offenses, even though special parole terms did apply to the substantive drug offenses. *Id.* at 400-401. The government argued that "there can be no uncertainty about Congress'" intent to authorize a special parole term as a penalty for a conspiracy offense, whenever that penalty is authorized for the offense that was the target of

the conspiracy." *Id.* at 387. The Court's answer to that argument was simple and straight-forward: If Congress wanted the special parole term to apply to conspiracy offenses, it would have said so. *See also United States v. Bourdon,* 624 F.2d 77 (9th Cir. 1980)(following *Bifulco's* rationale in case of conspiracy to import marijuana, a violation of 21 U.S.C. § 963).

Similarly, mandatory minimum sentences that apply to substantive drug offenses do not apply to corresponding conspiracy offenses. *United States v. Montoya,* 891 F.2d 1273, 1293-94 (7th Cir. 1989); *United States v. Giltner,* 889 F.2d 1004, 1009 (11th Cir. 1989); *United States v. Rush,* 874 F.2d 1513, 1514 (11th Cir. 1989). These courts concluded that the statutory language was clear – mandatory minimum sentences did not apply to conspiracy drug offenses. The courts rejected the government's argument that the "better" policy was to punish both conspiracy and substantive offenses equally. *See United States v. Price*, 990 F.2d 1367 (D.C. Cir. 1993)(Sentencing Commission lacked authority to create sentencing guidelines for career offenders that applied to conspiracy offenses because conspiracy was not listed in the statute that directed them to create those guidelines for certain substantive offenses).

After the *Price* decision, the Sentencing Commission amended U.S.S.G. § 4B1.1 to include inchoate crimes. If Congress wants Conspiracy to Commit Murder to be a major crime, it can amend § 1153.

D. Absent evidence of diversity of Indian status, there can be no jurisdiction under the General Crimes Act.

The government may argue that even if this Court lacks subject matter jurisdiction under 18 U.S.C. § 1153, it should nonetheless affirm because jurisdiction *could* have been alleged under the General Crimes Act, 18 U.S.C. § 1152. In this case, the General Crimes Act

requires evidence not only that Ms. Martin was an Indian but that at least one of her parents was non-Indian. *See* F. Cohen, Handbook of Federal Indian Law, 301 n. 157 (1982), cited in *United States v. Torres,* 733 F.2d 449, 457-58 (7th Cir. 1984). "[S]ection 1152 applies when 'the defendant is an Indian and the victim is a non-Indian, or vice-versa.'" *United States v. Walker,* 85 F.4th 973, 979 (10th Cir. 2023)(quoting *United States v. Prentiss,* 256 F.3d 971, 974 (10th Cir. 2011)(en banc).

It would be wrong for this Court to assume that the alleged jurisdiction arises from 18 U.S.C. § 1152 when the indictment specifically alleged that jurisdiction was based on 18 U.S.C. § 1153. There was no allegation of diversity of Indian status in the indictment and no evidence presented of the Indian status of the victims at the change of plea hearing. The only allegation of Indian status in the indictment was that Ashlie Martin was Indian, and Ms. Martin testified that she was an enrolled member of the Choctaw Nation with some degree of Indian blood when she entered her plea. (ROA Vol. I at 196) Ms. Martin never agreed that there was diversity of Indian status between herself and the victims. As the government alleged jurisdiction under 18 U.S.C § 1153, there was no need to allege or present evidence of the Indian status of Curtis Martin or Sherrie Pyron.

Given the absence of an allegation or evidence of the Indian status of the victims, the government may attempt to argue that the "disparity of Indian status" rule does not apply in this case because Conspiracy to Murder is not a crime against the person of another. *See* 18 U.S.C. § 1152. The Eighth Circuit has logically concluded that if there is no "victim" of an offense, the government need not prove disparity of Indian status. In *United States v. Thunder*

Hawk, 127 F.3d 705, 706-09 (8th Cir. 1997), the court found that there was no "victim" of driving under the influence, and therefore, D.U.I. is not a crime against the person of another. Unlike driving while intoxicated, where the danger is to society, the Conspiracy to Murder charge in this case named two specific victims. The district court awarded restitution under 18 U.S.C. § 3663A (ROA Vol. III at 45), which applies when there are identifiable victims who have suffered a physical injury. 18 U.S.C. § 3663A(c)(1)(B).

In *United States v. Torres,* 733 F.2d 449, 457-58 (7th Cir. 1984), the government filed a Conspiracy to Murder count under 18 U.S.C. § 1152. The Seventh Circuit implicitly recognized that Conspiracy to Murder was a crime against the person of another. The court held, "In order to prosecute under 18 U.S.C. § 1152, the Government must prove, as a jurisdictional requisite, that the crime was in violation of a Federal enclave law, and that the crime occurred between an Indian and a non-Indian within Indian country." *Id.* at 454. Conspiracy to Murder is a crime against the person of another because the ultimate objective in every murder conspiracy is to kill the victim. "The character and effect of a conspiracy – including the one charged here – is not to be judged in the abstract by viewing its separate parts, but must be looked at as a whole." *United States v. Chimurenga,* 760 F.2d 400, 404 (2d. Cir. 1985), citing to *United States v. Patten,* 226 U.S. 525, 544 (1913). As borne out by the murder of Ms. Martin's parents, the likelihood that the planned crime will be committed becomes more probable when a conspiracy exists. *Id.* The danger to the victim of a conspiracy is real.

Before a Conspiracy to Murder count can proceed under 18 U.S.C. § 1152, the government must allege that at least one of the victims is non-Indian, which it has not done.

E. 18 U.S.C. § 1117, as charged, is not a crime of nationwide applicability.

In *United States v. Begay,* 42 F.3d 486, 487 (9th Cir. 1994), the court held that conspiracy under 18 U.S.C. § 371 was a crime of nationwide applicability because the situs of the conspiracy is not an element of the offense. Unlike 18 U.S.C. § 371, 18 U.S.C. § 1117 is not a crime of nationwide applicability because 18 U.S.C. § 1111 (as alleged) must be committed within the special maritime and territorial jurisdiction of the United States. If this case were tried before a jury, the jury would be instructed that territorial jurisdiction is an element of the offense.

Had the government believed § 1117 to be a crime of nationwide applicability, there would have been no need to allege jurisdiction under 18 U.S.C. § 1153. If this Court were to adopt *Begay,* and the government charged Ms. Martin under 18 U.S.C. § 371, the penalty would be limited to a five-year prison term.

CONCLUSION

Ms. Martin's conviction should be reversed and remanded to the district court with instructions to dismiss Count One. Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

1. This document complies with the type-volume limitation of this Court's August 17, 2026 order. The brief does not exceed ten pages in 13-point Garamond font.

Date: August 27, 2026.

s/ *Stuart W. Southerland*

CERTIFICATE OF DIGITAL SUBMISSION AND PRIVACY REDACTION

I hereby certify that the digital version of this brief is an exact copy of any paper copy required to be submitted to the court. It has been scanned by the most recent version of Symantec Endpoint Protection and according to the program is free of viruses. All required privacy redactions have been made.

s/ *Stuart W. Southerland*

CERTIFICATE OF SERVICE

I hereby certify that on the 27th day of August, 2026, I electronically filed this brief in the Tenth Circuit using the ECF System, which transmitted a Notice of Docket Activity to the following ECF registrants:

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