

Murdered in Indian Country:

Expanding Tribal Criminal Jurisdiction for the Sake of Indigenous Women

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I. Introduction

On January 7, 2020, 29-year-old Ashlea Aldrich's lifeless body was discovered muddy and naked in a cornfield on the Omaha Reservation in Nebraska.¹ Before she had gone missing, her family had made dozens of calls to tribal police over the years, alleging she was a victim of domestic violence at the hands of her boyfriend.² Her family believes her death was a result of such violence, although the FBI ruled her manner of death accidental.³ Ashlea's family is still searching for answers.

Ashlea is just one of many Indigenous women in the United States to have gone missing and later found dead under suspicious circumstances. In 2016, 5,712 cases of missing and murdered indigenous women and girls were reported.⁴ Indigenous people's rates of murder, rape, and violent crime are all higher than the national averages.⁵ Most violent crime committed against Indigenous women is committed by non-Indians.⁶ Homicide is the third leading cause of

¹ Danielle Davis, *Two Americas: Murdered & Missing Indigenous Women; Why no one Seems to Care*, 3NEWSNOW OMAHA (last updated Oct. 1, 2021, 10:30 AM), <https://www.3newsnow.com/news/national/two-americas/two-americas-murdered-missing-indigenous-women-why-no-one-seems-to-care>.

² Aaron Rasmussen, *Family Claims FBI Botched Investigation of Indigenous Woman's Death*, INVESTIGATION DISCOVERY (May 13, 2021), <https://www.investigationdiscovery.com/crimefeed/murder/family-claims-fbi-botched-investigation-of-indigenous-woman>.

³ *Id.* (Ashlea's father states that when he viewed his daughter's body at the funeral home, "she had a black eye, her nose was swollen and there were little welts all over her." However, it is reported that an FBI agent previously reported no signs of assault before her death. The autopsy report ruled the death "accidental," due to hypothermia and "acute alcohol toxicity" after Ashlea "wandered off." The FBI could not comment on the status of Ashlea's case to Investigation Discovery).

⁴ Annita Lucchesi & Abigail Echo-Hawk, *Missing and Murdered Indigenous Women & Girls*, URB. HEALTH INST. (Nov. 14, 2018), <http://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>.

⁵ Megan K. Olsen, *Indigenous Women Face Murder Rates at 10 Times the National Average*, THE DURANGO HERALD (last updated Nov. 17, 2022), <https://www.durangoherald.com/articles/indigenous-women-face-murder-rates-at-10-times-the-national-average/> (The murder rate is ten times higher than the national average for women living on Indian Reservations).

⁶ *Five Things About Violence Against American Indian and Alaska Native Women and Men*, NAT'L INST. OF JUST. (May 2023), <https://www.ojp.gov/pdffiles1/nij/249815.pdf>. (The National Institute of Justice estimates that 97% of Indigenous women who are victims of violence have experienced at least one violent act at the hands of a non-Indian perpetrator).

death for Indigenous women between 10 and 24 years of age.⁷ Given that Native people only make up 2% of the United States population, this statistic is unsettling.⁸ Moreover, often the violence comes from the woman’s intimate partner.⁹ Intimate partner violence is estimated to have contributed to 55.4% of homicides among Indigenous women from 2003 to 2014.¹⁰ This extreme rate of violence against Native women is referred to as “Missing and Murdered Indigenous Women Epidemic” (MMIW).

This paper discusses the Missing and Murdered Indigenous Women Epidemic. Specifically, it analyzes what contributes to the disparate homicide rate for indigenous women by non-Indian offenders in Indian Country. This paper concludes that to help combat the problem, the federal government should restore tribal criminal jurisdiction over crimes of homicide occurring in Indian Country where the victim is Indian, and the perpetrator is non-Indian.

Part II provides a brief history of colonialism, the use of the Discovery Doctrine in North America, and how the normalization of violence against Native women as a part of “conquest” has led to the violence against Indigenous women we see today. Part III explains how jurisdictional complexities and the lack of prosecution by the federal government contribute to the disproportional number of Indigenous women murdered by non-Indians in Indian Country. Part IV examines how the federal government and specific tribes have addressed the MMIW Epidemic through legislative acts and pilot programs. Finally, Part V proposes restoring tribal

⁷ *Id.*

⁸ *Missing and Murdered Indigenous Women (MMIW)*, NATIVE HOPE (last visited Dec. 2, 2023), <https://www.nativehope.org/missing-and-murdered-indigenous-women-mmiw>.

⁹ Emiko Petrosky et al., *Homicides of American Indians/Alaska Natives—National Violence Death Reporting Systems, United States, 2003-2018*, CTR. FOR DISEASE CONTROL AND PREVENTION MMWR SURVEILLANCE SUMMARIES 2 (Nov. 19, 2021), <https://www.cdc.gov/mmwr/volumes/70/ss/pdfs/ss7008a1-H.pdf> (47.5% of non-Hispanic American Indian/Alaska Native women have experienced “contact sexual violence, physical, violence, or stalking by an intimate partner during their lifetime”).

¹⁰ *Id.*

criminal jurisdiction over non-Indians accused of murdering Indigenous people in Indian Country as a solution to the disparate homicide rate between Indigenous women and other populations.

II. Colonial Roots to Violence Against Indigenous Women Today

Violence against Indigenous Women is not a new phenomenon. Over the last five hundred years, American Indians have experienced war, genocide, conquest, and rape.¹¹ This part explains the concept of the Discovery Doctrine and how settlers' treatment of Indigenous people during colonization can be traced to the MMIW Epidemic today.

The arrival of European settlers and the introduction of the Discovery Doctrine was one of the first actions taken to chip away at Indigenous peoples' livelihood and sovereignty.¹² The United States Supreme Court held that the Discovery Doctrine was an established legal principle and law in *Johnson v. M'Intosh*.¹³ Under the doctrine, European nations automatically receive sovereignty and property rights over vacant lands that the European nation "first discovered," despite Indigenous nations already owning, occupying, and using such land.¹⁴ Land that was not occupied by Christians was considered "vacant" until "discovered" by Christian European

¹¹ SARAH DEER, THE BEGINNING AND END OF RAPE: CONFRONTING SEXUAL VIOLENCE IN NATIVE AMERICA at xv (2015). During the Sand Creek Massacre in 1824, American Troops killed around 230 Cheyenne and Arapaho people—mostly women, children, and the elderly, mutilating their bodies and carrying off body parts as trophies. See *History and Culture: Sand Creek Massacre*, NAT. PARK SERV. (last visited Dec. 5, 2023), <https://www.nps.gov/sand/learn/historyculture/index.htm>; See also Tony Horwitz, *The Horrific Sand Creek Massacre Will be Forgotten No More*, SMITHSONIAN MAGAZINE (Dec. 2014), <https://www.smithsonianmag.com/history/horrific-sand-creek-massacre-will-be-forgotten-no-more-180953403/>. In the 1920's, Osage Indians experienced what is coined the "Reign of Terror," where at least 24 Osage Tribal members were murdered or died under suspicious circumstances, a majority of which were rarely investigated by authorities. See *The Encyclopedia of Oklahoma History and Culture: Osage Murders*, OKLA. HIST. SOC'Y (last visited Dec. 5, 2023), <https://www.okhistory.org/publications/enc/entry.php?entry=OS005>. For an overview of war and genocide American Indians faced, see Jeffrey Ostler, *Genocide and American Indian History*, OXFORD RSCH. ENCYCLOPEDIAS., AM. HIST. (Mar. 2, 2015), <https://doi.org/10.1093/acrefore/9780199329175.013.3>.

¹² Roe Bubar & Pamela Jumper Thurman, *Violence Against Native Women*, 31 SOC. JUST. 70, 73 (2004).

¹³ *Johnson v. M'Intosh*, 21 U.S. 543, 573 (1823).

¹⁴ Robert J. Miller, *The Doctrine of Discovery in American Indian Law*, 42 IDAHO L. REV. 1, 5 (2005).

Nations.¹⁵ An underlying justification fueling the Discovery Doctrine was the assumption that Indigenous tribes were “infidels, heathens, and savages” and therefore held less rights to the lands they occupied.¹⁶ *Johnson* held that the discovery of land by a European nation gave that nation exclusive title against other European nations, subject to “Indian Title,” which was the Native Americans’ rights to occupancy.¹⁷

Indigenous people still occupying the land served as a barrier to European settlers fully conquering the land, and so to conquer the land, the Indigenous people who call it home must be conquered first.¹⁸ As a way to gain the land, settlers utilized violence to wipe out tribal societies and colonize the native people.¹⁹ Rape and overall sexual violence were used “as an explicit tool of conquest.”²⁰ As an example of the use of violence to assert power over Native Americans, an Onondaga chief recalled that during the Revolutionary War, when U.S. soldiers attacked his village, “they put to death all of the women and children, excepting some of the young women,

¹⁵ *Indigenous Title and the Doctrine of Discovery*, INDIGENOUS CORP. TRAINING INC. (Mar. 30, 2023), <https://www.ictinc.ca/blog/indigenous-title-and-the-doctrine-of-discovery>.

¹⁶ DAVID H. GETCHES, ET AL., CASES AND MATERIALS ON FEDERAL INDIAN LAW, 48 (7th Ed. 2017); *From George Washington to James Duane, 7 September 1783*, FOUNDERS ONLINE, NAT. ARCHIVES, (last visited Oct. 29, 2023), <https://founders.archives.gov/documents/Washington/99-01-02-11798> (George Washington called Native Americans “savage as the wolf...”).

¹⁷ *Johnson*, 21 U.S. at 585.

¹⁸ Abby Abinanti, et al., *To 'Kee Kkuy' Soo Ney-wo-chek': I Will See You Again in a Good Way: A Year 1 Project to Report on Missing and Murdered Indigenous Women, Girls, and Two Spirit People of Northern California*, SOVEREIGN BODIES INST. (July 2020), https://2a840442-f49a-45b0-b1a17531a7cd3d30.filesusr.com/ugd/6b33f7_c7031acf738f4f05a0bd46bf96486e58.pdf.

¹⁹ Shelby S. Harper & Christina M. Entrekin, *Violence Against Native Women: A Guide for Practitioner Action*, OFF. ON VIOLENCE AGAINST WOMEN & THE NAT. CTR. ON FULL FAITH & CREDIT (Fall 2006), https://bwjp.org/site-resources/violence-against-native-women-a-guide-for-practitioner-action/?gclid=Cj0KCCQjwhfipBhCqARIsAH9msblbf0GV5JiJDpyl393D-p4RmO7s1HUa_cS_oBAu9L6p8ZVNfVH4jEaAmtIEALw_wcB.

²⁰ Abinanti, *supra* note 18; see also Sarah Deer, *Toward an Indigenous Jurisprudence of Rape*, 14 KAN. J. OF L. & PUB. POLICY 121, 131 (2004) (“sexual violence has been described as inextricably linked to conquest and war...the conquest of the North American Continent is not immune to this history”); Catherine E. McKinley & Hannah Knipp, “You Can Get Away with Anything Here... No Justice at All”—*Sexual Violence Against U.S. Indigenous Females and Its Consequences*, 39 GENDER ISSUES 291, PG. # (2021) (“Sexual violence against Indigenous women has long been used as a tool of colonial violence and conquest”); *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence*, AMNESTY INT’L (Apr. 24, 2007), <https://www.amnesty.org/en/documents/amr51/035/2007/en/> (as the nation moved West for more land, European colonizers forcibly relocated many Indigenous people, and committed ‘widespread atrocities’ along the way).

whom they carried away for the use of their soldiers and were afterwards put to death in a more shameful manner.”²¹ Just as European settlers justified the Discovery Doctrine upon Native Americans being “heathens, savages, and infidels,”²² they justified violence perpetrated against native women by casting them as prostitutes²³ and as possessing a “lusty and libertine” nature.²⁴

The underlying principle of the Discovery Doctrine and the rhetoric used by European settlers when speaking of Native Americans not only sanctioned the violence back in colonial history but normalized the treatment of Indigenous women and the violence we see perpetrated against them today. Reem Alsalem, a United Nations Special Rapporteur on Violence Against Women, when discussing the violence Indigenous women face, stated: “This violence is rooted in historic and unequal patriarchal power structures, racism, exclusion, and marginalization enabled by a legacy of colonialism.”²⁵ Minnesota’s MMIW Task Force, created by the Minnesota Legislature, echoes this conclusion, stating: “The root causes of the MMIW injustice include colonization and historical trauma, racism, and objectification of Indigenous women and girls.”²⁶

The derogation and belittlement of Indigenous people taught society that Indigenous women are somehow lesser than or not as important, which normalized violence perpetrated

²¹ Sarah M. S. Pearsall, *Madam Sacho: How One Iroquois Woman Survived the American Revolution*, NAT. ENDOWMENT FOR THE HUMANITIES (June 2015), <https://www.neh.gov/humanities/2015/mayjune/feature/madam-sacho-how-one-iroquois-woman-survived-the-american-revolution>. This happened during the “Sullivan Campaign,” which General George Washington ordered to punish the Iroquois nations allied with the British, to make them “tremble” and prevent the tribes from acting “hostile” toward them. *Id.*

²² Getches, *supra* note 16.

²³ Christine Stark & Eileen Hudon, *Colonization, Homelessness, and the Prostitution and Sex Trafficking of Native Women*, NAT. RESOURCE CTR. ON DOMESTIC VIOLENCE (Jan. 2020), https://vawnet.org/sites/default/files/assets/files/2020-02/NRCDV_ColonizationHomelessnessandProstitution-Jan2020.pdf.

²⁴ Deer, *supra* note 20.

²⁵ UNITED NATIONS, *End Violence Against Indigenous Women and Girls: UN Expert* (June 22, 2022), <https://www.ohchr.org/en/press-releases/2022/06/end-violence-against-indigenous-women-and-girls-un-expert>.

²⁶ Nicole Martin Rogers & Virginia Pendleton, *Executive Summary, Missing and Murdered Indigenous Women Task Force: A Report to the Minnesota Legislature*, WILDER RSCH. (Dec. 2020), https://www.wilder.org/sites/default/files/imports/MMIW-ExecSummary_12-20.pdf.

against native women.²⁷ The MMIW Epidemic is a product of this country's historical treatment of Indigenous people.

III. Modern Factors Contributing to the MMIW Epidemic

In addition to the historical context helping explain the disproportional amount of violence Indigenous women face, modern factors contribute to the problem as well. The United States' jurisdictional makeup over which sovereign entity has authority to prosecute the crime of murder occurring in Indian Country can be complex and leads to delayed investigations and a loss of evidence. Moreover, the lack of prosecution of such crime means many perpetrators will not be held accountable for their heinous acts.²⁸ Perpetrators know they are unlikely to face repercussions and are therefore incentivized to assault and murder Indigenous women in Indian Country.²⁹ This part discusses both factors in turn.

A. Jurisdictional Complexities

This section will address the jurisdictional complexities that exist over crimes commissioned in Indian Country. When a crime is committed in Indian Country, whether the tribe, state, or federal government has jurisdiction over the matter is not an easy question to answer. The answer hinges on 1) whether the victim is Indian or non-Indian, 2) whether the accused is Indian or non-Indian, and 3) whether the alleged crime occurred in Indian Country.³⁰ Often, victims can find themselves in a web of overlapping tribal, state, and federal jurisdiction. This section explains the major legislative acts and case law that created the foundation for the

²⁷ See Deer, *supra* note 20 at 124 (discussing *Gray v. United States*, 394 F.2d 96 (9th Cir. 1968) as an example of how the derogatory stereotypes persisted throughout U.S. History. The 9th Circuit upheld a statute where an American Indian man who raped in Indian Country received a lower penalty if the victim was a native woman).

²⁸ See *Hearing on S. 1763, S. 872, and S. 1192 Before the S. Comm. on Indian Affairs*, 112th Cong. 10 (2011) (Statement of Thomas Perrelli, Assoc. Att'y Gen. of the United States).

²⁹ *Id.*

³⁰ See *supra* note 20; "Indian Country" is defined by federal statute, and generally includes all land within Indian reservations, dependent Indian communities, and individual Indian allotments. 18 U.S.C. § 1151.

current jurisdictional framework governing Indian Country. Although, this paper is specifically concerned with murders of Indigenous women in Indian Country by non-Indian perpetrators, a broader overview of the jurisdictional scheme is necessary to understand its complexities.³¹ Finally, this section explains how the jurisdictional scheme leads to delays in investigations and loss of evidence, ultimately allowing perpetrators to escape punishment.

Historically, native tribes would have had jurisdiction over all crimes committed in Indian Country, including when the accused was non-Indian.³² But over time, the United States Federal Government divested Native Americans of this authority.³³ In 1817, Congress extended federal jurisdiction over offenses committed in Indian Country by non-Indians against Indian victims through the General Crimes Act.³⁴ Under the Act, tribes had concurrent jurisdiction with the federal government.³⁵ In 1885, Congress mandated federal jurisdiction over several enumerated crimes where the accused is Indian, and the victim is an Indian “or other person.”³⁶ The tribal and federal government have “concurrent jurisdiction” in this case.³⁷ Suppose an

³¹ For a more in-depth discussion on tribal jurisdiction prior to the 2013 VAWA Reauthorization, see Allison M. Dussias, *Geographically-Based and Membership-Based Views of Indian Tribal Sovereignty: The Supreme Court’s Changing Vision*, 55 U. PITT. L. REV. 1 (1993).

³² See *U.S. v. Wheeler*, 435 U.S. 313, 322–23 (1978) (recognizing that Native American Nations have “inherent powers of a limited sovereignty” and “like all sovereign bodies,” they had the inherent authority to prescribe laws and punish violations of those laws).

³³ Native American tribes are considered to have a “domestic dependent status,” creating a Trust relationship between the United States federal government and tribes. *Cherokee Nation v. Georgia*, 30 U.S. 1, 17. It has also been held that Congress has “plenary power” to regulate Indian affairs, therefore Congress can divest tribes’ inherent authority. *U.S. v. Kagama*, 118 U.S. 375 (1886); *Wheeler*, 435 U.S. at 332 (“The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the sufferance of Congress and is subject to complete defeasance”).

³⁴ 18 U.S.C. § 1152 (“the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States...shall extend to the Indian Country”).

³⁵ 18 U.S.C. § 1152 (If the tribe has already punished the offender, then the federal government is deprived of this criminal jurisdiction).

³⁶ 18 U.S.C. § 1153. Congress was authorized to extend federal criminal laws over Indian Country under the Major Crimes Act (“MCA”) pursuant to its function as a “guardian” for Indian tribes. *Kagama*, 118 U.S. at 375. Under current law the MCA covers murder, manslaughter, kidnapping, maiming, certain sexual abuse felonies, incest, assault against minors, felony child abuse or neglect, arson, burglary, robbery, and certain crimes within special maritime and territorial jurisdiction of the United States. 18 U.S.C. § 1153.

³⁷ 18 U.S.C. § 1153.

offense included under the Major Crimes Act is also contained in the respective tribe’s tribal code. In that case, both the tribal government and federal government may choose to prosecute the offense.³⁸ When the federal government has jurisdiction over a matter, the federal government may apply state law when no federal criminal statute covers the alleged offense.³⁹

Since tribes and the federal government shared concurrent jurisdiction and the federal government had jurisdiction over specific offenses in Indian Country, states historically did not exercise criminal jurisdiction over Indians in Indian Country.⁴⁰ In 1953, however, Congress enacted “Public Law 280,” which transferred federal criminal jurisdiction over all offenses occurring in Indian Country involving Native Americans to certain state governments.⁴¹ So, in areas where PL 280 applies, states would have jurisdiction over crimes the federal government would originally have jurisdiction, such as crimes committed by non-Indians.⁴² And, although PL 280 states were delegated broad criminal jurisdiction, the jurisdiction was concurrent with tribes’ inherent criminal jurisdiction unless other law abrogated the tribes’ jurisdiction.⁴³ In addition, tribes could request that the Federal Government assume concurrent criminal jurisdiction with

³⁸ Emily J. Hanson, *Missing and Murdered Indigenous People (MMIP): Overview of Recent Research, Legislation, and Selected Issues for Congress*, CONGRESSIONAL RESEARCH SERVICE (July 3, 2023), <https://purl.fdlp.gov/GPO/gpo176521>.

³⁹ 18 U.S.C. § 13 (The Assimilative Crimes Act, which was made applicable to Indian Country under the Major Crimes Act, 18 U.S.C. § 1153)

⁴⁰ But states did have jurisdiction over offenses by non-Indians against Non-Indians even if crime occurred in Indian Country. *See* U.S. v. McBratney, 104 U.S. 621 (1881).

⁴¹ 18 U.S.C. § 1162 (Congress granted California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska upon statehood this jurisdiction). Other states also had a choice to “opt-in” and obtain PL 280 Jurisdiction. 18 U.S.C. § 1321.

⁴² 18 U.S.C. § 1162

⁴³ *Id.*; Jerry Gardner & Ada Pecos Melton, *Public Law 290: Issues and Concerns for Victims of Crime in Indian Country*, TRIBAL COURT CLEARINGHOUSE (last visited Dec. 7, 2023), <https://www.tribal-institute.org/articles/gardner1.htm>; Walker v. Rushing, 898 F.2d 672, 675 (8th Cir. 1990) (“Nothing in the wording of Public Law 280 or its legislative history precludes concurrent tribal authority”).

states operating under PL 280.⁴⁴ Therefore, it is possible to have a situation where there is federal, state, and tribal jurisdiction concurrently.⁴⁵

In 1978, tribes were stripped of having any jurisdiction over non-Indians committing crimes in Indian Country. The United States Supreme Court in *Oliphant v. Suquamish Indian Tribe* held that tribal courts do not have “inherent sovereign authority” over non-Indians who commit crimes in Indian Country.⁴⁶ Under *Oliphant*, if the perpetrator is non-Indian, but the victim is Indian, the tribe has no jurisdiction over the matter. In addition, the Supreme Court recently held that states have concurrent jurisdiction with the federal government over non-Indians who commit crimes in Indian Country against Indians.⁴⁷

When tribal authorities *do* have jurisdiction, their power is limited. The Indian Civil Rights Act of 1968 (“ICRA”) limited the penalties tribal courts can impose for any offense, including murder.⁴⁸ Under ICRA, tribes can only impose, at a maximum, one year’s imprisonment and a \$5,000 fine.⁴⁹ The Tribal Law and Order Act of 2010 (TLOA) partially amended ICRA, allowing for punishments of up to three years imprisonment per offense and fines of up to \$15,000.⁵⁰

However, to implement the enhanced sentencing provided by the TLOA, tribes must comply with strict procedural requirements.⁵¹ This “compliance” tribes are required to do is

⁴⁴ 28 CFR § 50.25 (2022).

⁴⁵ *Id.*

⁴⁶ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

⁴⁷ *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022).

⁴⁸ 25 U.S.C. § 1302.

⁴⁹ *Id.*

⁵⁰ *Indian Arts & Crafts Amendments*, Pub. L. No. 111-211, 124 Stat. 2280 (2010) (codified at 25 U.S.C. § 1302). Part of TLOA’s purpose was to reduce the amount of violent crime in Indian country and combat sexual and domestic violence against women. Pub. L. No. 111-211, 124 Stat. 2263. Congress explicitly found that providing public safety in Indian Country is part of the United States trust obligation to Indian tribes. Pub. L. No. 111-211, 124 Stat. 2262.

⁵¹ *Indian Arts & Crafts Amendments*, Pub. L. No. 111-211, 124 Stat. 2280 (2010) (codified at 25 U.S.C. § 1302). In order to utilize the enhanced sentencing provisions, tribes must make their laws publicly available, provide effective legal assistance to defendants and provide counsel to indigent defendants, tribal judges must be licensed to practice

easier said than done. In order to comply, some tribal governments would be forced to redesign their criminal justice system to implement the requirements.⁵² Logistically, it is difficult for tribes to achieve compliance.⁵³ The United States Government Accountability Office surveyed 109 tribes two years after TLOA was enacted and found that none were exercising TLOA's enhanced sentencing authority.⁵⁴ 96% of these tribes reported challenges in exercising authority due to funding limitations, and 64% reported implementing half of the requirements but faced challenges implementing the remaining conditions.⁵⁵ Moreover, even if a tribe could exercise the enhanced sentencing provisions, tribes may defer to federal or state prosecutors for more serious crimes, like murder, because federal or state prosecutors can impose harsher sentences than tribes.⁵⁶

While the TLOA gave tribes the potential ability to impose enhanced sentences, the Act did not grant or restore jurisdiction to tribes. The Violence Against Women 2013 Reauthorization, however, granted tribes concurrent jurisdiction with the federal government over non-Indians in specific circumstances.⁵⁷ The Violence Against Women Act (VAWA) was originally enacted into law in 1994 to address, as the name suggests, violence against women in

law, and the tribal courts must be "courts of record". *Id.* Moreover, the enhanced sentences cannot be imposed unless the defendant has 1) previously been convicted of the same or similar offense, or 2) is under prosecution for a felony. *Id.*

⁵² Catherine M. Redlingshafer, *An Avoidable Conundrum: How American Indian Legislation Unnecessarily Forces Tribal Governments to Choose Between Cultural Preservation and Women's Vindication*, 93 NOTRE DAME L. REV. 393, 412 (2017).

⁵³ U.S. GOV'T ACCOUNTABILITY OFF. REP. TO CONGRESSIONAL REQUESTERS, *Tribal Law and Order Act: None of the Surveyed Tribes Reported Exercising the New Sentencing Authority, and the Department of Justice Could Clarify Tribal Eligibility for Certain Grant Funds* (May 30, 2012) <https://www.gao.gov/assets/gao-12-658r.pdf>.

⁵⁴ *Id.* at 7.

⁵⁵ *Id.* (for example, some tribes reported challenges with the costs of providing a licensed judge with sufficient legal training).

⁵⁶ U.S. GOV'T ACCOUNTABILITY OFF. REP. TO CONGRESSIONAL REQUESTERS, *Missing or Murdered Indigenous Women, New Efforts are Underway but Opportunities Exist to Improve the Federal Response*, 10 (Oct. 2021) <https://www.gao.gov/assets/gao-22-104045.pdf>.

⁵⁷ *Violence Against Women Reauthorization Act of 2013*, Pub. L. No. 113-4, 127 Stat. 120 (2013).

the United States.⁵⁸ Specifically, the Act addresses domestic violence, dating violence, sexual assault, and stalking.⁵⁹ The 2013 Reauthorization gave Indian tribes “Special Domestic Violence Criminal Jurisdiction (SDVCJ).⁶⁰ SDVCJ restored to tribes their inherent criminal jurisdiction over non-Indians who committed domestic violence, dating violence, or certain protection order violations in Indian Country.⁶¹ This “special” jurisdiction allowed tribes to exercise jurisdiction over non-Indian offenders for the first time since the Supreme Court’s holding in *Oliphant*.⁶² However, tribes had to comply with certain requirements, such as providing defendants specific rights, to exercise the SDVCJ.⁶³ Tribes could only exercise this jurisdiction over perpetrators who have “sufficient ties” to the tribe, including working or living on the reservation, and could not exercise jurisdiction over a crime where the perpetrator was a stranger to the victim.⁶⁴

In 2022, Congress reauthorized VAWA and recognized “Special Tribal Criminal Jurisdiction” (STCJ) over a new enumerated list of crimes, expanding on the original set of offenses listed in the 2013 reauthorization, and eliminated the “sufficient ties” requirement.⁶⁵ However, just like with the 2013 Reauthorization, participating tribes must follow strict guidelines in order to utilize the power granted by VAWA. Tribes must provide defendants specific rights outlined in the TLOA, and tribes must protect defendant’s rights under ICRA,

⁵⁸ Monica N. Modi et al., *The Role of Violence Against Women Act in Addressing Intimate Partner Violence: A Public Health Issue*, 23 J. OF WOMEN’S HEALTH 3, PG. # (2014).

⁵⁹ *Id.*

⁶⁰ *Violence Against Women Act (VAWA)*, NAT. INDIGENOUS WOMEN’S RES. CTR. (last visited Dec. 7, 2023), <https://www.niwrc.org/policy-center/vawa>.

⁶¹ *Id.*

⁶² *See Oliphant*, 435 U.S. at 191.

⁶³ *Violence Against Women Reauthorization Act of 2013*, Pub. L. No. 113-4, 127 Stat. 122 (2013).

⁶⁴ *Id.* For a brief overview of the law under the 2013 Reauthorization of VAWA, *see VAWA 2013 And Tribal Jurisdiction Over Crimes of Domestic Violence*, U.S. DEP’T OF JUST. (last visited Dec. 5, 2023), <https://www.justice.gov/sites/default/files/tribal/legacy/2014/02/06/vawa-2013-tribal-jurisdiction-over-non-indian-perpetrators-domesticviolence.pdf>.

⁶⁵ 25 U.S.C. § 1304 (The additional crimes include assault of tribal justice personnel, child violence, obstruction of justice, sexual violence, sex trafficking, and stalking). Unfortunately, there is no data detailing how many tribes have successfully implemented STCJ under the 2022 Reauthorization of VAWA at this point in time.

which largely tracks the U.S. Constitution’s Bill of Rights.⁶⁶ These strict requirements present the same barriers to Native American tribes as discussed above.⁶⁷ As of March 2022, only 31 of the 574 federally recognized tribes have implemented SDVCJ under the 2013 VAWA.⁶⁸

Under this jurisdictional framework, tribes will not have jurisdiction over a non-Indian accused of murdering an Indian in Indian Country. Although 50-70% of perpetrators who commit violence against Native Women are non-Indian, the local tribal authority will have no power to prosecute the crime.⁶⁹ This reality presents a problem, as tribal officers typically are the first responders to investigate a crime committed in Indian Country but must determine who has jurisdiction over the matter.⁷⁰ This leads to multiple or overlapping criminal investigations that may never move forward.⁷¹ A tribe may ask outside agencies, such as the FBI, for assistance, but that also means the tribe relies on agents who are “far away, overburdened, and who usually don’t have a relationship with the community.”⁷² These complicated jurisdictional overlaps can lead to confusion regarding who has the authority to investigate and prosecute these crimes,

⁶⁶ 25 U.S.C. § 1304; 25 U.S.C. § 1302; *see also* U.S. DEP’T OF JUST., *2013 and 2022 Reauthorization of the Violence Against Women Act (VAWA)* (last visited Dec. 7, 2023), <https://www.justice.gov/tribal/2013-and-2022-reauthorizations-violence-against-women-act-vawa>.

⁶⁷ *See* Emma Cueto, *In Indian Country, a ‘Maze of Injustice’ Persists for Women*, LAW360 (Sept. 15, 2019, 8:02 AM), <https://www.law360.com/articles/1197831> (for the 2013 VAWA reauthorization, most tribes had not been able to qualify to take full advantage of the legislation. Five years after its reauthorization, only 18 federally recognized tribes had been approved to exercise the special VAWA jurisdiction).

⁶⁸ U.S. DEP’T OF JUST. OFFICE ON VIOLENCE AGAINST WOMEN, *2022 Update on the Status of Tribal Consultation Recommendations* (Sept. 2022), https://www.justice.gov/d9/2023-06/2022_tribal_consultation_update_report_final.pdf.

⁶⁹ Hanson, *supra* note 38; Megan Mallonee, *Selective Justice: A Crisis of Missing and Murdered Alaska Native Women*, 38 ALA. L. REV. 93, 102 (2021); Jennifer L. Hartman, *Seeking Justice: How VAWA Reduced the Stronghold Over American Indian and Alaska Native Women*, 27 VIOLENCE AGAINST WOMEN 52, 56 (2021) (Noting that tribes can have their own constitutions and corporate charters, but cannot prosecute non-Indians who commit violence crimes in Indian Country); *see also* Sierra Crane-Murdoch, *On Indian Land, Criminals Can Get Away With Almost Anything*, THE ATLANTIC (Feb. 22, 2013), <https://www.theatlantic.com/national/archive/2013/02/on-indian-land-criminals-can-get-away-with-almost-anything/273391/> (The *Oliphant* decision has created a “jurisdictional tangle that often makes prosecuting crimes in Indian Country prohibitively difficult”). Unless, of course, the tribe qualifies for SDVCJ, and the crime falls under such jurisdiction. 25 U.S.C. § 1304.

⁷⁰ Cueto, *supra* note 67 (According to a National Congress of American Indians Report in 2018).

⁷¹ *Id.*

⁷² *Id.*

leading to a loss of time or delayed investigations and ineffective use of resources.⁷³ Delays in investigations then lead to a loss of evidence.⁷⁴ The Tribal Law and Order Act Commission in 2012 provided a telling assessment of the issues the complex jurisdictional framework presents: “Any delays, miscommunications, service gaps, or policy gaps—unintentional or otherwise [due to the jurisdictional scheme]—threaten public safety...the impact of federally imposed jurisdiction may likely be increased crime.”⁷⁵

Furthermore, whichever government entity has jurisdiction over the crime may ultimately decline to prosecute the alleged perpetrator.⁷⁶ This lack of enforcement is another contributor to the disparate rate of Indigenous women being murdered.

B. *Lack of Enforcement*

The lack of criminal prosecutions and enforcement observed in Indian Country makes it easy for criminals to get away with committing crimes against Indigenous women, and criminals know it.⁷⁷ Criminal Justice being delivered in Indian Country is dependent upon the identified government entity being willing and able to fulfill its responsibilities due to Indian Country.⁷⁸

⁷³ Hanson, *supra* note 38 at 21. Not only does it cause confusion among law enforcement, but for tribal members whose loved one has been missing or murdered. Tribal members must decide who they should report the case to, and the jurisdictional issues can act as a barrier in the reporting process. See Matthew Sutter et al., *LB154 Report: Prevalence of Missing Native American Women and Children in Nebraska; Barriers to Reporting and Investigating; and Opportunities for Partnerships*, 8 (May 21, 2020).

⁷⁴ Nicole Martin Rogers & Virginia Pendleton, *Missing and Murdered Indigenous Women Task Force: A Report to the Minnesota Legislature*, WILDER RSCH. 27 (Dec. 2020), https://www.wilder.org/sites/default/files/imports/MMIW_TaskForceReport_12-20.pdf.

⁷⁵ INDIAN LAW & ORDER COMMISSION, *A Roadmap for Making Native America Safer: Report to the President & Congress of the United States*, 25 (Nov. 2013), https://www.aisc.ucla.edu/iloc/report/files/A_Roadmap_For_Making_Native_America_Safer-Full.pdf.

⁷⁶ Mallonee, *supra* note 69.

⁷⁷ See Jenni Monet, *Prosecuting Non-Native Americans*, ALJAZEERA AM. (Feb. 22, 2014, 8:00 PM) (For example, a white man lured an Indigenous woman of the Tulalip Tribe into his vehicle, drove onto tribal land, and proceeded to beat and rape the woman, leaving her for dead. The victim recalls how the perpetrator told her how he would get away with his crimes because tribal police could not legally arrest him) <http://america.aljazeera.com/articles/2014/2/22/prosecuting-non-nativeamericans.html>; U.S. GOV'T ACCOUNTABILITY OFF. R. TO CONGRESSIONAL REQUESTERS, *Indian Country Criminal Justice: Departments of the Interior and Justice Should Strengthen Coordination to Support Tribal Courts* (Feb. 2011) <https://www.gao.gov/assets/gao-11-252.pdf>.

⁷⁸ *A Roadmap for Making Native America Safer*, *supra* note 75.

The federal government has historically refused to prosecute many of the crimes it had jurisdiction over that occurred in Indian Country. Typically, a tribal law enforcement agency, the Federal Bureau of Investigation, or criminal investigators from the Bureau of Indian Affairs investigate crimes occurring in Indian Country and then presents the case to the United States Attorney's Office (USAO).⁷⁹ The U.S. Attorney's Office then decides whether to pursue the case or decline prosecution.⁸⁰ The declination rate has reduced over the last decade, which is an improvement.⁸¹ Nonetheless, in 2021, USAOs declined to prosecute 18% of cases referred from Indian Country.⁸² Of that 18%, homicide made up 7.9%.⁸³ A "lack of evidence" is the most cited reason why USAOs declined to prosecute cases in Indian Country.⁸⁴

The lack of enforcement and prosecution of such violent crime makes Indigenous women even more vulnerable targets. Lisa Brunner, a member of the White Earth Ojibwe Nation in Minnesota, has said, "We have always known that non-Indians can come onto our land and they can beat, rape murder us and there is nothing we can do about it."⁸⁵ The failure to arrest and

⁷⁹ Hartman, *supra* note 69.

⁸⁰ Hartman, *supra* note 69.

⁸¹ See *Indian Country Criminal Justice*, *supra* note 77 (from 2005-2009, 50% of violent crimes committed in Indian Country were declined prosecution by the federal government).

⁸² U.S. DEP'T OF JUST., *Indian Country Investigations and Prosecutions Report*, 4 (2021)

<https://www.justice.gov/d9/2023-08/2021-indian-country-investigations-and-prosecutions-report.pdf>.

⁸³ *Id.* at 34 (Notably, Assault made up 27.4% and Sexual Assault 20.8%); Interestingly enough, although prosecutors are declining less cases, the number of homicide cases declined is slightly increasing. See *Indian Country Investigations and Prosecutions Report*, U.S. DEP'T OF JUST. 37 (2017), <https://www.justice.gov/tribal/page/file/1113091/download> (6.8% of declined cases); See *Indian Country Investigations and Prosecutions Report*, U.S. DEP'T OF JUST. 33 (2019), <https://www.justice.gov/otj/page/file/1405001/download> (7.2% of declined cases).

⁸⁴ *Indian Country Investigations* (2021), *supra* note 82 (56% of declinations were due to "insufficient evidence"). Loss of evidence can be attributed to the jurisdictional complexities and inter-agency relationships, which cause delays in investigations. See Rogers & Pendleton, *supra* 74 ("The delay is the biggest issue...the longer you delay, the more you lose evidence and ability to track someone") See also Adam Creppelle, *Tribal Courts, The Violence Against Women Act, and Supplemental Jurisdiction: Expanding Tribal Court Jurisdiction to Improve Public Safety in Indian Country*, 81 MONT. L. REV. 59, 73 (2020) (Cultural differences leading to trust and communication problems can also make evidence collection being more challenging, explaining why there may be such a lack of evidence in these cases).

⁸⁵ *New Law Offers 'Sliver' of Protection to Abuse*, TWIN CITIES PIONEER PRESS (last updated Nov. 3, 2015, 4:23 AM), <https://www.twincities.com/2014/02/15/new-law-offers-sliver-of-protection-to-abused-indian-women/>.

prosecute perpetrators “emboldens attackers” to repeat and escalate their violent attacks against Indigenous women.⁸⁶ The Government Accountability Office has even acknowledged that non-Indians “may be more likely to commit crimes in Indian Country” because they are aware tribes lack criminal jurisdiction, and they will likely evade the attention of federal prosecutors.⁸⁷

The jurisdictional framework for crimes in Indian Country is a tangled web of federal, state, and tribal authority that leads to uncertainty, confusion, and delays in investigation. Tribes are unable to prosecute non-Indian offenders accused of murdering Indigenous victims within Indian Country under the current framework. In addition, federal prosecutors' failure to prosecute crimes in Indian Country has made Indigenous Women a target for violence by non-Indians because they know they won't be held accountable. These realities are primary contributors to the disparate murder rate of Indigenous women. In recent years, the United States has recognized the need to combat the MMIW epidemic and has attempted to do so through legislation.

IV. Federal and Tribal Responses to Missing and Murdered Indigenous Women

Recently, the federal government and several tribes have acted in response to the MMIW Epidemic. The Federal Government has enacted several pieces of legislation, and tribes have taken advantage of “Pilot Programs” authorized under VAWA to assert jurisdiction over non-Indians in certain situations. This section explores the responses by both the federal government and tribes.

A. Federal Response

The Federal Government has made efforts to address the Missing and Murdered Indigenous Women Crisis through Legislative Enactments and Executive Orders. These efforts

⁸⁶ See Hearing on S. 1763, S. 872, and S. 1192, *supra* note 28.

⁸⁷ *Indian Country Criminal Justice*, *supra* note 77 at 14.

include the Operation Lady Justice Task Force, Savanna’s Act, and the Not Invisible Act of 2019. This section explains each Act’s primary purpose and analyzes its impact. While these actions demonstrate the federal government’s acknowledgment of the problem, acknowledgment is practically the extent of what the legislation accomplishes.

i. *Operation Lady Justice Task Force*

Operation Lady Justice Task Force (OLJ) was a two-year task force formed under an executive order by Former President Donald Trump in 2019.⁸⁸ OLJ’s primary purpose was to “enhance the operation of the criminal justice system” and address the MMIW crisis.⁸⁹ The task force held listening sessions to discuss problems and solutions, developed model protocols, standard operating procedures and best practices, created a Cold Case Team, and educational or outreach campaigns.⁹⁰

However, the task force was not very “Indian-centric.”⁹¹ OLJ allowed for little participation and communication from affected families and MMIW grassroots organizations.⁹² MMIW advocates reported that there was a lack of outreach for families and advocates to participate or testify in the listening sessions, barriers for tribal families and community members to access information from OLJ or attend sessions, and no point of contact for affected families to connect with the cold case review teams established by OLJ.⁹³ Notably, advocates reported

⁸⁸ U.S. DEP’T OF JUST.: OFF. OF JUST. PROGRAMS, *Operation Lady Justice Task Force Accomplishments Fact Sheet* (May 2020), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/operation-lady-justice-task-force-accomplishments-fact-sheet>.

⁸⁹ *Id.*

⁹⁰ U.S. DEP’T OF JUST., Presidential Task Force on Missing and Murdered American Indians and Alaska Natives: Operation Lady Justice, *Final Report to the President, Activities and Accomplishments of Operation Lady Justice* (April 25, 2022) <https://www.justice.gov/media/1226361/dl?inline>.

⁹¹ Mallonee, *supra* note 69 at 118 (Native Americans expressed that both the task force was inadequate, in part because the eight officials comprising of the task force were neither tribal leaders or survivors).

⁹² Hanson, *supra* note 38 at 25.

⁹³ *Id.* (OLG communications were delivered used listservs and government websites that are ineffective at reaching tribal members and families, and it was difficult to participate in virtual meetings because strong internet connections were required, which many tribal communities do not have). For more reading about tribal internet

that participants were only given three and a half minutes to testify and share their stories.⁹⁴ This was insufficient time to share their stories and communicate the tragic losses of loved ones.⁹⁵ Without Native voices on the task force and little input from survivors, it is unclear how a task force can develop effective solutions to combat the MMIW crisis. Moreover, the stated goals of the task force are relatively vague,⁹⁶ and much of the information created through the task force is only available online on government websites, which is a barrier to tribal communities that do not have secure internet connections.⁹⁷ Therefore, the Task Force acknowledges the crisis, but neglects to deeply consider Indigenous people's input and provide specific goals and resources accessible to Native communities to help resolve the crisis.

ii. *Not Invisible Act 2019 & Savanna's Act*

The Not Invisible Act and Savanna's Act were both enacted in 2020.⁹⁸ The Not Invisible Act's primary purpose is to address the MMIW Crisis and human trafficking of Indigenous people, specifically by increasing collaboration amongst federal, local, and tribal agencies.⁹⁹ The

access and what has been termed the "digital divide," see Brian Howard & Traci Morris, *Tribal Technology Assessment: The State of Internet Service on Tribal Lands*, AM. INDIAN POL'Y INST. ARIZ. STATE UNIV. (2019).

⁹⁴ Hanson, *supra* note 38 at 25.

⁹⁵ *Id.*

⁹⁶ Examples of the stated goals, include: "Conduct appropriate consultations with tribal governments on the scope and nature of the issues regarding missing and murdered AI/AN," and "Address the need for greater clarity concerning roles, authorities, and jurisdiction throughout the lifecycle of cases involving missing or murdered AI/AN" See Presidential Task Force on Missing and Murdered American Indians and Alaska Natives, *supra* note 90 at 7; The executive director of the Sovereign Bodies Institute, a research and service organization tailored toward violence against Indigenous people, stated that the OJ's goals are "too vague to make a meaningful difference" and "feels like a matter of convenience in an election year." Stephanie Ebbs, *Trump Administration Launches Task Force on Missing, Murdered Indigenous Peoples: 'Operation Lady Justice'*, ABCNEWS (Jan. 29, 2020, 4:27 PM), <https://abcnews.go.com/Politics/trump-administration-launches-task-force-missing-murdered-indigenous/story?id=68617962>.

⁹⁷ See Hanson, *supra* note 38 at 25 (noting many tribal communities do not have strong internet access); See Howard & Morris, *supra* note 93 at 9 (It was estimated that in 2016 "approximately 32 percent of American Indian and Alaska Native households lacked access to a computer with a broadband internet subscription").

⁹⁸ U.S. DEP'T OF JUST., *Savanna's Act* (last visited Dec. 7, 2023), <https://www.justice.gov/tribal/mmip/SavannasAct#:~:text=Signed%20into%20law%20in%20October,and%20local%20law%20enforcement%20agencies.>; see U.S. DEP'T OF JUST., *Not Invisible Act* (last visited Dec. 7, 2023), <https://www.justice.gov/tribal/not-invisible-act>.

⁹⁹ NAT. INDIGENOUS WOMEN'S RES. CTR., *Murdered and Trafficked Native Women* (last visited Oct. 31, 2023) <https://www.niwrc.org/restoration-magazine/june-2019/not-invisible-act-2019-legislation-increase-coordination->

Not Invisible Act required a joint commission on violent crime in Indian Country tasked with creating recommendations to improve identification, reporting, and responses to missing, murdered, or trafficked Native Americans.¹⁰⁰ Savanna’s Act also aims to increase coordination between law enforcement agencies, clarify law enforcement agencies’ responsibilities, improve data collection and reporting on MMIW, and provide tribal governments with resources to address the crisis.¹⁰¹

It is unclear how impactful these enactments are on the MMIW Crisis due to slow execution and minimal progress toward fulfilling the acts’ requirements. A study from the Government Accountability Office released in October 2021 reported that the Department of Justice and Department of Interior failed to implement certain requirements to increase intergovernmental coordination—meaning the two laws remained unfulfilled past their statutory deadlines.¹⁰² While the two laws could be powerful tools to curb violence against Indigenous women, the goals of the legislation will not be fulfilled unless statutory requirements are timely implemented. A review of the Savanna’s Act progression reveals missed deadlines and stalled

[efforts#:~:text=Restoration%20Magazine-.The%20%E2%80%9CNot%20Invisible%20Act%20of%202019%2C%E2%80%9D%20Legislation%20to%20Increase,Murdered%20and%20Trafficked%20Native%20Women.](#)

¹⁰⁰ Hanson, *supra* note 38 at 26.

¹⁰¹ *Id.* Savanna’s Act is named after a member of the Spirit Lake Tribe, Savanna LaFontaine-Greywind, who was brutally murdered. Savanna was 22 years old and 8 months pregnant when her neighbor abducted her, attempted an at-home C-section on Savanna to steal her baby, and dumped Savanna’s body in the Red River. Nai Remy, *Missing and Murdered Indigenous People: The Story of Savanna Lafontaine-Greywind*, KX NEWS (last updated Oct. 19, 2023, 4:29 PM), <https://www.kxnet.com/news/top-stories/missing-and-murdered-indigenous-people-the-story-of-savanna-lafontaine-greywind/>.

¹⁰² *Missing or Murdered Indigenous Women*, *supra* note 56 at 39 (as an example, the Report stated the Attorney General as of October 15, 2021, had not appointed members to the joint commission under the Act, although they were required to do so by Feb. 7, 2021). Eventually, the commission was created, and a final report was released in November 2023. *See also* U.S. DEP’T OF JUST., *Not One More: Findings & Recommendations of the Not Invisible Act Commission*, 34 (Nov. 1, 2023) (The DOJ also missed the deadline for consulting with tribes, tribal organizations, and urban Indian organizations on how to improve tribal data relevant and access to databases, but the DOJ subsequently conducted consultations with tribes a few months after the deadline.) https://www.justice.gov/d9/2023-11/34%20NIAC%20Final%20Report_version%2011.1.23_FINAL.pdf; *see Missing or Murdered Indigenous Women*, *supra* note 56 at 38.

implementation.¹⁰³ Due to this, there is no available data or findings as to the Act’s impact in addressing violence against Indigenous women.¹⁰⁴

While the Not Invisible Act also experienced delayed implementation, a Commission under the Act was eventually formed, and it released its findings and recommendations on November 1, 2023.¹⁰⁵ The Commission made key findings and recommendations, including a declared “Decade of Action and Healing” to improve interagency partnership in addressing the MMIW crisis, increased funding for tribal programs such as tribal criminal justice systems, and improved investigatory resources in all cases of missing or murdered indigenous people.¹⁰⁶

Most significantly, the Commission recognized that the jurisdictional framework surrounding crime in Indian Country “poses significant challenges to public safety and the effectiveness of the [Missing and Murdered Indigenous Women] response.”¹⁰⁷ The Commission recommended that Congress ultimately restore criminal jurisdiction over non-Indians to tribes and address the sentencing limitations imposed upon tribal courts under ICRA.¹⁰⁸ The Commission recommended solutions that aim to address the MMIW epidemic directly. However, it is unclear whether the federal government will utilize these recommendations,¹⁰⁹ although it should. The federal government should restore jurisdiction completely over to tribes for crimes that occur in Indian Country—at least for the crime of homicide—where the perpetrator is non-

¹⁰³ N. PLAINS RES. COUNS., *Congress Stalls Progress on Savanna’s Act* (June 2, 2022), <https://northernplains.org/congress-stalls-progress-on-savannas-act/>; see U.S. GOV’T ACCOUNTABILITY OFF. REP. TO CONGRESSIONAL REQUESTERS *supra* note 56 at 38.

¹⁰⁴ See Christina Herrera, “Enough is Enough:” *How Canada and the United States’ Lackluster Responses to the Indian Residential School Genocide Inform the Stalled Progression of the Missing and Murdered Indigenous Women Epidemic*, 44 WOMEN’S RIGHTS L. REP. 104, 131 (2022) (noting there is “virtually no analysis of either Act’s progress”).

¹⁰⁵ U.S. DEP’T OF JUST., *supra* note 102.

¹⁰⁶ *Id.* at 12, 17.

¹⁰⁷ *Id.* at 14.

¹⁰⁸ *Id.* at 134.

¹⁰⁹ The TLOA Commission ten years ago recommended restoration of tribal criminal jurisdiction, and the United States has yet to do this. *A Roadmap for Making Native America Safer*, *supra* note 75 at 9.

Indian, and the victim is Indian. Time will tell if the Federal Government heeds this advice. Savanna's Act and the Not Invisible Act are two pieces of legislation serving as important milestones for the United States acknowledging there is a problem. Still, it remains to be seen to what extent the two laws helped combat the problem of Missing and Murdered Indigenous Women in the United States.

B. Tribal Response

Tribes are prohibitively constrained in their ability to address the problem of non-Indian offenders perpetrating violence against Indigenous women in Indian Country.¹¹⁰ Nonetheless, certain tribes have been able to participate in "Pilot Programs" under the VAWA reauthorizations and exercise criminal jurisdiction over non-Indians accused of Domestic Violence crimes. This section discusses the Pascua Yaqui Tribe's utilization of special domestic violence jurisdiction under the 2013 VAWA reauthorization and its implications for further improvement.

The Pascua Yaqui Tribe, located in Tucson, Arizona, was the first tribe to convict a non-Indian defendant for domestic violence assault in approximately forty years.¹¹¹ The Pascua Yaqui Tribe accomplished this through the 2013 VAWA Pilot Program, which allowed the Tribe to exercise its Special Domestic Violence Jurisdiction.¹¹² From 2014 to 2021, the Tribe conducted 101 criminal investigations involving domestic violence, with 80 cases being charged in tribal court, resulting in 37 convictions.¹¹³ The pilot program has demonstrated that tribal jurisdiction

¹¹⁰ As previously discussed, tribes have no jurisdiction over non-Indians accused of crimes in Indian Country, except in limited circumstances. See discussion *supra* Part III.A.

¹¹¹ Alfred Urbina & Melissa Tatum, *On-the-Ground VAWA Implementation: Lessons From the Pascua Yaqui Tribe*, AM. BAR ASS'N (Nov. 1, 2016), https://www.americanbar.org/groups/judicial/publications/judges_journal/2016/fall/onthe_ground_vawa_implementation_lessons_from_the_pascua_yaqui_tribe/.

¹¹² *Id.*

¹¹³ Shondiin Silversmith, *Pascua Yaqui Tribe Awarded Grant to Support Domestic Violence Prosecution Efforts*, AZ MIRROR (Dec. 21, 2021, 12:15 PM), <https://www.azmirror.com/2021/12/21/pascua-yaqui-tribe-awarded-grant-to-support-domestic-violence-prosecution-efforts/>.

over non-Indian perpetrators in the realm of domestic violence is vital.¹¹⁴ While the Pascua Yaqui Tribe has seen success, exercising SDVJ is not easy due to the hefty compliance requirements. The Tribe reported that complying with the 2013 VAWA Reauthorization is complex and requires an expensive and robust criminal justice system—something not all tribes can afford.¹¹⁵

The pilot program demonstrates how restoring tribes’ inherent sovereignty over specific crimes can be beneficial. The exercise of SDVCJ has “been critical to increasing public safety and justice across Indian Country.”¹¹⁶ However, the SDVJ under VAWA 2013 and STCJ under 2022 VAWA only cover a handful of criminal actions.¹¹⁷ The enumerated crimes are not the only acts of violence committed against Indigenous women in Indian Country.¹¹⁸ To fully honor tribal sovereignty and help address the MMIW Crisis, the federal government should expand tribal criminal jurisdiction to crimes that fall outside domestic violence, such as murder. The Federal Government should restore tribal criminal jurisdiction for homicides occurring in Indian Country—which brings me to my final point.

V. Addressing the MMIW as it Relates to Murdered Indigenous Women

While there have been considerable efforts in recent years to address the MMIW epidemic broadly or in the realm of domestic violence, the federal government must take significant action to address the specific issue of Indigenous women being murdered by non-

¹¹⁴ Urbina & Tatum, *supra* note 111. The Choctaw Nation of Oklahoma increased its SDVCJ cases from 5 to 54 in one year after *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) which held over half the state of Oklahoma was Indian Country. The number of domestic violence cases being investigated and prosecuted in Indian Country under SDVCJ highlight that these crimes weren’t being prosecuted before implementation of SDVCJ. U.S. DEP’T OF INTERIOR *Restoring Justice: Addressing Violence in Native Communities through VAWA Title IX Special Jurisdiction* (Dec. 8, 2021), <https://www.doi.gov/ocl/vawa-provisions>.

¹¹⁵ Urbina & Tatum, *supra* note 111.

¹¹⁶ *Restoring Justice*, *supra* note 114 (Wizipan Garriott, Principal Deputy Assistant Secretary for Indian Affairs stated that expanding tribal criminal jurisdiction beyond domestic violence crime would be a significant step toward ending the MMIW crisis).

¹¹⁷ *Violence Against Women Reauthorization Act of 2013*, Pub. L. No. 113-4, 127 Stat. 120 (2013); 25 U.S.C. § 1304.

¹¹⁸ *Indian Country Investigations* (2021), *supra* note 82 at 34 (Other crimes occurring in Indian Country, for example, include homicide, fraud, drug, and alcohol offenses).

Indians in Indian Country. This paper concludes that the best solution to addressing the problem of Indigenous women being murdered by non-Indians in Indian Country is to restore criminal jurisdiction over non-Indians who commit murder in Indian Country back to the tribe.¹¹⁹ This part explains why complete tribal restoration of criminal jurisdiction for homicide is the preferable solution. Finally, this section identifies and acknowledges the concerns accompanying the task of restoring criminal jurisdiction, including tribal capacity to manage an higher rate of criminal matters, sentencing limitations upon tribes exercising this restored jurisdiction, and due process concerns for non-Indian defendants. This paper concludes the advantages stemming from restoration of tribal jurisdiction outweigh these concerns.

A. Restoring Tribal Criminal Jurisdiction over non-Indians Accused of Murder

To address the high murder rate of Indigenous women by non-Indian offenders within Indian Country, the federal government should restore tribal criminal jurisdiction over non-Indians accused of murdering an Indigenous person in Indian Country. Specifically, the jurisdictional scheme over homicide should be structured so that tribes have concurrent jurisdiction with the federal government. That way, the federal government can assume jurisdiction should tribes decline to exercise it. Restoring tribal jurisdiction is a solution that goes

¹¹⁹ This author considered increased funding to the federal government as a potential solution but concluded that increased funding to tribes in conjunction with restoring tribal jurisdiction would be a more workable solution. A primary component to the MMIW epidemic is the lack of enforcement due to a lack of evidence. *See* discussion, *supra* Part III.B. This can be attributed to the jurisdictional complexities and delays in investigations. *See supra* Part III.A. While increased funding to the federal government could help, it would be more beneficial to provide the funding to tribal authorities who can respond more promptly to crimes occurring in Indian Country. *See Hearing on S. 1763, S. 872, and S. 1192, supra* note 28 (“Federal Law Enforcement resources are too far away and stretched thin”); The geographical complexities for investigators to arrive at a crime scene are amplified due to many reservations being in extremely rural locations. *Missing and Murdered: Confronting the Silent Crisis in Indian Country: Hearing Before the S. Comm. on Indian Aff.*, 115th Cong., 2nd sess. 38 (Dec. 12, 2018) (Statement of Hon. Amber Crotty, Delegate, Navajo Nat. Council).

to the very root of the problem.¹²⁰ This section summarizes why restoration of tribal jurisdiction over the crime of homicide is the best solution.

The Federal Government should restore Criminal Jurisdiction over non-Indian defendants accused of murder in Indian Country to the tribes, especially considering restoration of tribal criminal jurisdiction has been a proposed solution to the MMIW Epidemic throughout the years.¹²¹ The Tribal Law and Order Commission in 2012 requested that Congress and the President “recognize tribal governments’ inherent authority to provide justice in Indian Country.”¹²² The TLOA Commission called for all Indian tribes and nations to be restored criminal jurisdiction over all offenders in Indian Country.¹²³ Most recently, the Not Invisible Act Commission’s final report echoes the sentiment that tribal criminal jurisdiction should be restored:

As a Commission, we recognize that Tribal nations have the strongest interest in prosecuting crimes occurring on their lands and are best positioned to do so effectively. Consequently, any comprehensive effort to address the MMIP and [Human Trafficking] crisis must encompass the restoration of Tribal authority to prosecute all crimes that occur on their lands.¹²⁴

Although Commissions enacted through law have recommended complete tribal criminal jurisdiction, the federal government has yet to do this. Given the federal government has restored tribal criminal jurisdiction through incremental expansions,¹²⁵ the federal government should do

¹²⁰ Mary Kathryn Nagle, *Lawmakers Can Address the MMIW Crisis. Will They?*, HIGH COUNTRY NEWS (June 18, 2019), <https://www.hcn.org/issues/51.12/tribal-affairs-restoring-tribal-criminal-jurisdiction-is-the-first-step-to-stopping-crisis> (Advocates worry that recent legislation, such as the re-authorization of VAWA and the Not Invisible Act, may not “address the actual roots of the crisis, particularly when it comes to the theft of tribal jurisdiction over non-Indians”).

¹²¹ INDIAN LAW & ORDER COMMISSION, *supra* note 75; U.S. DEP’T OF JUST., *supra* note 102.

¹²² INDIAN LAW & ORDER COMMISSION, *supra* note 75 at 9.

¹²³ *Id.* at 9 (the Commission found that federally imposed jurisdiction may lead to increased crime in Indian Country).

¹²⁴ U.S. DEP’T OF JUST., *supra* note 102 at 34.

¹²⁵ *E.g.*, 25 U.S.C. § 1304.

another “incremental expansion” and provide tribes with jurisdiction over non-Indians accused of murdering an Indigenous victim in Indian Country.

Restoring tribal jurisdiction not only simplifies the jurisdictional maze created by years of case law and statutory schemes, but it also helps diminish the problem of communication failures and delays in investigation.¹²⁶ The jurisdictional complications and law enforcement’s delayed responses are two “significant shortcomings” in addressing the MMIW epidemic.¹²⁷ Restoring tribal criminal jurisdiction alleviates both. Tribal law enforcement is already on the ground and can respond appropriately when they know they have the jurisdiction and authority to do so.¹²⁸ Moreover, victims would be more likely to report to their local tribal law enforcement if they knew they had jurisdiction, and witnesses could be more inclined to testify in tribal court.¹²⁹

Most importantly, the restoration of criminal jurisdiction recognizes tribal sovereignty. Indigenous tribes are sovereign entities pre-dating the United States and have been recognized to possess the inherent right to govern themselves.¹³⁰ Asserting authority over non-Indians accused of murder within Indian Country is part of this inherent sovereignty.¹³¹ Restoring criminal jurisdiction allows tribes to demonstrate their inherent sovereignty and protect their people. As

¹²⁶ INDIAN LAW & ORDER COMMISSION,, *supra* note 75 at 69 (the distrust between non-Indian law enforcement and tribal communities have contributed to communication failures and frequent conflict, but having the locally based tribal police force in charge could do better, as tribal members would have more trust in their community law enforcement). For an example demonstrating the difference in criminal case outcomes when tribes do have jurisdiction, see Mary K. Mullen, *The Violence Against Women Act: A Double-Edged Sword for Native Americans, Their Rights, and Their Hopes of Regaining Cultural Independence*, 61 ST. LOUIS UNIV. L.J. 811, 824-26 (2017) (hypothetical in the context of special jurisdiction under VAWA).

¹²⁷ *Missing and Murdered: Confronting the Silent Crisis in Indian Country*, *supra* note 119 at 38.

¹²⁸ Cueto, *supra* note 67 (tribal officers are typically the first responders, but currently they must wait and determine which entity has jurisdiction, causing delay). As we have seen with the VAWA Reauthorization, restoring jurisdiction to tribes leads to prosecutions of crimes that were not previously being prosecuted by the U.S. Government. *Restoring Justice*, *supra* note 114.

¹²⁹ INDIAN LAW & ORDER COMMISSION,, *supra* note 75 at 4. Non-tribally administered criminal justice programs have diminished crime-fighting capacities, resulting in victims disinclined to report, and witnesses hesitant to testify. *Id.* Presumably, then, having tribes administer criminal just over non-Indians would have the opposite effect.

¹³⁰ U.S. DEP’T OF JUST., *supra* note 102 at 35.

¹³¹ *Id.* at 147. (current federal Indian law has been criticized as taking away this inherent authority of tribal nations to enforce the laws on their land).

we have seen with tribes exercising SDVJ under VAWA, Native American tribes will put forward their best efforts to protect their people and not allow victims to languish without any sort of redress.¹³²

B. *Concerns Accompanying Restoration of Tribal Criminal Jurisdiction*

While restoring tribal criminal jurisdiction over the non-Indians who commit homicide in Indian Country would address the problem, such action does implicate particular concerns that must be addressed, notably: tribes' capacity to handle such crime, what limits, if any, would be placed on tribal authority over such offense, and due process concerns for non-Indian defendants. This part analyzes each concern and explains why these concerns should not stop tribes from exercising criminal jurisdiction over non-Indians accused of murder in Indian Country.

i. *Tribes' Capacity to Take on More Criminal Investigations & Prosecutions*

One concern with expanding tribal criminal jurisdiction over homicide committed by non-Indians is whether tribal law enforcement is equipped to handle the influx of cases stemming from such restoration. As the expansion of jurisdiction under VAWA has illustrated, some tribes may not have the resources to implement a fully operating criminal judiciary system.¹³³ However, the fact that some tribes may not have these resources should not prohibit tribes from the ability to exercise criminal jurisdiction. An "opt-in" option would be appropriate for tribes with this expansion of criminal jurisdiction. Some tribes may not have a high homicide rate or problem and may decide they do not need to exercise such jurisdiction. Tribes can assess their resources and whether there is a demand for tribes to exercise their authority over these kinds of

¹³² See discussion *supra* Part IV.B.

¹³³ Cueto, *supra* note 67; Redlingshafer, *supra* note 52 at 412; Urbina & Tatum, *supra* note 111.

cases.¹³⁴ This further supports tribes' inherent sovereignty as it gives them a choice whether to exercise authority or not.

Moreover, for tribes that choose to take advantage of the expanded jurisdiction, increased funding and resources help alleviate the concern for tribes' ability to handle homicide cases.¹³⁵ Granting jurisdiction and providing increased funding directly to tribes helps equip tribes with the necessary resources and helps alleviate some workload from Federal agents who are already "stretched thin."¹³⁶ While increased funding may be an expensive solution for the federal government to alleviate this concern, the federal government has a trust obligation to protect Indigenous people, and their protection is of the utmost importance.¹³⁷ Any hesitance due to cost should not cause Indigenous women to be left unprotected.

ii. *Sentencing Limitations on Tribal Authorities*

The next primary concern is what limits would be placed upon tribal authorities in sentencing non-Indians accused of murder. ICRA, as amended by the TLOA, limits the penalties tribal courts can impose for any offense to three years imprisonment per offense and up to \$15,000 in fines.¹³⁸ However, if these are the penalties a tribe can impose on a defendant convicted of murder in Indian Country, expanding tribal criminal jurisdiction in this area would

¹³⁴ Urbina & Tatum, *supra* note 111 (The Pascua Yaqui Tribe recommends that tribes, for purposes of jurisdiction under VAWA, should consider several factors in deciding whether to exercise jurisdiction).

¹³⁵ See, e.g., Beau Yarbrough, *\$16 Million in Grants to Help Tribes Investigate Murdered, Missing Indigenous People*, SAN BERNARDINO SUN (July 24, 2023, 1:36 PM), <https://www.sbsun.com/2023/07/24/16-million-in-grants-to-help-tribes-investigate-murdered-missing-indigenous-people/> (funding can help tribes "identify, collect case-level data, publicize, investigate, and solve cases involving missing Indigenous persons").

¹³⁶ See *supra* note 28.

¹³⁷ *Seminole Nation v. U.S.*, 316 U.S. 286 (1942) ("this Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people"); NAT'L INDIGENOUS WOMEN'S RESOURCE CENT., *18th Annual Tribal Government-to-Government Consultation on Violence Against Women: Priority Issues to Address Violence Against Indian Women*, RESTORATION MAG. 46 (June 2023), <https://www.niwrc.org/sites/default/files/files/magazine/restoration.20.2.pdf>. (Noting that with regard to the VAWA Reauthorization, tribes "cannot meaningfully exercise restored jurisdiction and make Indian Country Safer if the federal government does not live up to its trust responsibility to provide public safety funding and resources to Tribal Nations").

¹³⁸ 25 U.S.C. § 1302.

serve no purpose. Tribes would instead defer to federal or state prosecutors to handle the case because federal and state courts could enhance harsher sentences than tribes can.¹³⁹ Therefore, for expanded tribal criminal jurisdiction to be effective, penalty limitations cannot be imposed upon tribal courts. TLOA and ICRA will necessarily need to be amended to reflect this. There needs to be additional flexibility allotted to prosecutors and tribal courts to administer justice in criminal cases.¹⁴⁰ ICRA affords defendants similar protections as the Eighth Amendment, prohibiting cruel and unusual punishment, excessive bail, or excessive fines.¹⁴¹ Therefore, removing the sentencing caps currently imposed on tribes should not implicate any concerns for cruel and unusual punishment by tribes. Not having sentencing limitations allows tribes to impose harsher sentences if they deem such sentencing to be appropriate and is necessary if tribal criminal jurisdiction over non-Indians accused of homicide is to be restored.¹⁴²

iii. Non-Indian Defendants' Due Process Rights

Finally, the primary concern in expanding tribal criminal jurisdiction over non-Indian defendants regards these defendants' due process rights. While ICRA requires tribes to provide certain protections to defendants that almost mirror the United States Bill of Rights¹⁴³, there is expressed concern that non-Indians would not receive the same protections in tribal court as they

¹³⁹ Under the federal murder statute, an individual convicted of first-degree murder can be sentenced to death or life in prison. 25 U.S.C. § 1111. State laws have similar sentencing ability. *See, e.g.*, NEB. REV. STAT. § 28-105, § 28-303 (First degree is a Class 1 or 1A felony in Nebraska, meaning a convicted individual can be sentenced to death or life in prison).

¹⁴⁰ Gregory S. Arnold, *Tribal Law and Order Act and Violence Against Women Act: Enhanced Recognition of Inherent Tribal Sovereignty Creates Greater Need for Criminal Defense Counsel in Indian Country*, THE FED. LAWYER 6 n. 12 (2014).

¹⁴¹ 25 U.S.C. § 1302(7).

¹⁴² The TLOA actually encourages tribes to utilize alternatives to incarceration or correctional options. Christine Folsom-Smith, *Enhanced Sentencing in Tribal Courts: Lessons Learned from Tribes*, THE NAT'L TRIBAL JUD. CTR. (2015) <https://www.bja.gov/Publications/TLOA-TribalCtsSentencing.pdf>.

¹⁴³ The difference between ICRA and the U.S. Constitution's Bill of Rights is that ICRA does not provide a right to a jury trial in civil cases, a tribe is not obligated to provide a lawyer for an indigent defendant under ICRA, and ICRA's guarantee of free exercise of religion does not prevent a tribe from establishing a religion. *Compare* 25 U.S.C. § 1302, *with* U.S. CONST. amend. I-X.

would in Federal or State Court.¹⁴⁴ There is an assumption that non-Indians would be treated unfairly in tribal court.¹⁴⁵ However, studies indicate this should be a minimal concern because it has been demonstrated that tribal courts have been even-handed in handling cases where non-Indian defendants appear for civil matters.¹⁴⁶ Moreover, this concern should be further put at ease given that federal courts have the authority to review whether a defendant has been accorded the rights required, and to review tribal decisions resulting in the defendant's incarceration.¹⁴⁷

Nonetheless, to alleviate this concern, the federal government could impose requirements similar to those that VAWA requires for tribes exercising STCJ.¹⁴⁸ However, it has been illustrated that the requirements are a barrier to tribes desiring to exercise jurisdiction.¹⁴⁹ Therefore, if the federal government chooses to require certain compliance before tribes can exercise jurisdiction over non-Indians accused of murder, the federal government needs to provide increased funding and resources to tribes so that they can implement any imposed

¹⁴⁴ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 194 (1978) (“defendants are entitled to many of the due process protections accorded to defendants in federal or state criminal proceedings. However, the guarantees are not identical”); *Duro v. Reina*, 495 U.S. 676 (1990) (the ICRA guarantees “are not equivalent to their constitutional counterparts”).

¹⁴⁵ Bethany Berger, *Justice and the Outsider: Jurisdiction Over Nonmembers in Tribal Legal Systems*, 37 ARIZ. ST. L.J. 1047, 1050 (2005).

¹⁴⁶ *Id.* at 1051 (For example, the Navajo Nation, though appearing to be vulnerable to intruding upon personal liberty because it has no constitution and had all Navajo judges with only one in six having a law degree, the court is “numerically balanced” in its decision making. 47.4% of nonmembers win when they appear before the tribal court and 52.6% lose. Berger notes that “A less comprehensive review of decisions from other tribal court systems reveals a similar effort to decide issues fairly, even where it requires ruling against tribal members or the tribe itself.”).

¹⁴⁷ *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 67 (1978) (federal court review of tribal criminal proceedings can be accomplished through a writ of habeas corpus under 25 U.S.C. § 1303).

¹⁴⁸ For tribes to exercise Special Tribal Criminal Jurisdiction, tribes must afford the defendant all applicable rights under ICRA, the right to a trial by an impartial jury that does not systematically exclude non-Indians, and “all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of...the tribe to exercise...jurisdiction over the defendant.” 25 U.S.C. § 1304(d). Although this may cause tribes to model the Western Idea of criminal justice systems, it at least allows tribes to regain the “authority to provide improved access to justice for tribal members.” Angela R. Riley, *Crime and Governance in Indian Country*, 63 U.C.L.A. L. REV. 1564, 1574 (2016).

¹⁴⁹ See Cueto, *supra* note 67; see Mullen, *supra* note 126 at 829 (“While VAWA allows Native Americans to try non-natives in tribal court, it does so only under Anglo-American procedures, expecting tribal courts to have enough funding to have criminal procedures similar to Anglo-American criminal procedures”).

requirements.¹⁵⁰ This solution equips tribes with the ability to exercise jurisdiction and still offer some assurance to the federal government that tribal courts afford non-Indians basic due process protections.

VI. Conclusion

Homicide is the third leading cause of death for Indigenous women between 10 and 24 years of age.¹⁵¹ The Missing and Murdered Indigenous Women Epidemic is a real problem facing the United States today, which stemmed from the violence Indigenous people experienced during colonization. This paper discussed how jurisdictional complexities and a lack of prosecution of violent crime against Indigenous women contributed to the disparate amount of violence and murder Indigenous women receive and analyzed federal and tribal responses to the epidemic. While the federal government has implemented some legislation to combat the issue, a more assertive response is necessary for the sake of murdered indigenous women.

The federal government should restore jurisdiction completely over to tribes for homicides occurring in Indian country where the victim is Indian, and the perpetrator is non-Indian. While there may be concerns regarding defendants' due process rights in tribal court, tribes' sentencing limitations, and tribes' ability to handle more severe cases such as homicide, this paper identified reasons as to why that concerns should be alleviated and thus restoring tribal criminal jurisdiction can still be accomplished.

¹⁵⁰ As we have seen with the VAWA Reauthorization, tribes need additional funding in order to implement the criminal justice systems required to exercise their restored jurisdiction. National Indigenous Women's Resource Center, *supra* note 137 (The federal government needs to provide public safety funding and resources to Tribal Nations because "many tribes are limited by a lack of flexible, consistent, and sustainable funding for their justice systems").

¹⁵¹ *Five Things About Violence Against American Indian and Alaska Native Women and Men*, NAT'L INST. OF JUST. (May 2023), <https://www.ojp.gov/pdffiles1/nij/249815.pdf>.

Restoring tribal criminal jurisdiction to tribes over non-Indians accused of murdering an Indigenous person reiterates tribes' inherent authority and eliminates jurisdictional confusion, thereby minimizing the risk of delayed investigations and lost evidence, and thus leading to better results for Indigenous women living in Indian Country.