UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Mille Lacs Band of Ojibwe, *et al.*,

Plaintiffs-Appellees,

v.

Erica Madore, in her official capacity as Mille Lacs County Attorney; County of Mille Lacs, Minnesota; and Kyle Burton, in his official capacity as Mille Lacs County Sheriff.

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
CIVIL NO. 17-cv-05155-SRN-LIB

BRIEF OF AMICI CURIAE LEECH LAKE BAND OF OJIBWE, BOIS FORTE BAND OF CHIPPEWA, GRAND PORTAGE BAND OF LAKE SUPERIOR CHIPPEWA, AND NATIONAL CONGRESS OF AMERICAN INDIANS IN SUPPORT OF APPELLEES AND IN SUPPORT OF AFFIRMATION OF THE DECISION BELOW

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 29(c)(1), Amici make the following disclosure:

1) For non-governmental corporate parties please list all parent corporations. Answer: None.

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock. Answer: None.

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests. Answer: Counsel for Leech Lake Band of Ojibwe, Bois Forte Band of Chippewa, Grand Portage Band of Lake Superior Chippewa, and National Congress of American Indians are aware of no such corporation.

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STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY OF THE AMICI CURIAE[1]

The Leech Lake Band of Ojibwe ("Leech Lake") is a sovereign Tribal Nation that is a member of the Minnesota Chippewa Tribe with ratified treaties with the United States dating from 1855. There are over 9,500 enrolled members of the Leech Lake Band. The Leech Lake Reservation shares geography with four different counties in Minnesota – Beltrami, Cass, Hubbard, and Itasca Counties. Within the Leech Lake Reservation there are eleven communities represented by Local Indian Councils within three separate districts. The Leech Lake Band of Ojibwe Tribal Police Department operates within the exterior boundaries of the Leech Lake Reservation, enforcing Minnesota criminal law without regard to tribal affiliation on all lands within the Reservation. Leech Lake is committed to protecting the health and welfare of its members, and all of those that live within its reservation.

[1] Pursuant to Fed. R. App. P. 29(a)(2), all parties have consented to the filing of this amici brief. Pursuant to Fed. R. App. P. 29(c)(5), no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici, its members, or its counsel made a monetary contribution to the preparation or submission of this brief.

The Bois Forte Band of Chippewa ("Bois Forte") is a sovereign Tribal Nation that is a member of the Minnesota Chippewa Tribe, with ratified treaties with the United States dating from 1854. There are over 3,300 enrolled members of the Bois Forte Band. The Bois Forte Reservation is situated in northern Minnesota in Koochiching, Itasca, and St. Louis counties. The reservation is divided into three distinct geographic regions—Nett Lake, Vermilion, and Deer Creek. Bois Forte uses all available resources to promote the well-being of its members. It prepares for the future by being a wise steward of its resources and by preserving its sovereignty, cultural identity, and heritage. Bois Forte's relationships with members are characterized by honesty, integrity, and accountability. Bois Forte is committed to protecting the health and welfare of its members, and all of those that live within its reservation.

The Grand Portage Band of Lake Superior Chippewa, commonly known as the Grand Portage Chippewa ("Grand Portage"), is a sovereign Tribal Nation that is a member of the Minnesota Chippewa Tribe, with ratified treaties with the United States dating from 1854. There are over 1,100 enrolled members of the Grand Portage Band. The Grand Portage reservation is situated in the northeastern portion of Cook County,

Minnesota, bordered on the north by Canada, on the south and east by Lake Superior, and on the west by the Grand Portage State Forest. Grand Portage seeks to protect and enhance its lands through comprehensive natural resource management. When making decisions and taking actions today, Ojibwe consider not only the immediate future and outcomes, but also their impact on children seven generations hence. Grand Portage is committed to protecting the health and welfare of its members, and all of those that live within its reservation.

The Minnesota Chippewa Tribe,[2] comprised of the Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, and White Earth Bands, is a federally-recognized tribal government that, through unified leadership, promotes and protects the interests of member Bands and provides quality services and technical assistance to the Band governments (known as Reservation Tribal Councils) and tribal people. https://www.mnchippewatribe.org/; *see Minnesota Chippewa Tribe v. United States*, 11 Cl. Ct. 221, 232 (1986) (the Minnesota Chippewa Tribe "was, in effect, a federation of all Chippewa bands in Minnesota except for the Red

[2] The Minnesota Chippewa Tribe is not an amicus curiae, but three of its constituent Bands are, as outlined above.

Lake."). All of the Bands of the Minnesota Chippewa Tribe were impacted by the General Allotment Act of 1887, 24 Stat. 388, which was made applicable to Indian Country in the state of Minnesota through the "act for the relief and civilization of the Chippewa Indians in the State of Minnesota," otherwise known as the "Nelson Act." Act of Jan. 14, 1889, 25 Stat. 642. Each Band also has a strong interest in protecting the health and welfare of their members, and those within their reservations.

The National Congress of American Indians ("NCAI") was established in 1944 and is the nation's oldest and largest organization comprised of Tribal Nations and their citizens. Since 1944, NCAI has advised tribal, federal, and state governments on a range of issues, including improving public safety in Indian Country. NCAI's mission is to educate tribal, federal, and state government officials, along with the general public, about Tribal Nation self-governance, treaty rights, and legal and policy issues affecting Tribal Nations. NCAI has a strong interest in preserving the time-honored principles of Indian law and in ensuring effective responses to crime and violence in Indian country, and against Indigenous people throughout the United States.

ARGUMENT

Amici submit this brief to respectfully request that the Court dismiss this appeal as moot, or to otherwise affirm the decision of the District Court. As explained in more detail *infra*, intervening action of the Minnesota State Legislature has rendered this appeal moot. If the Court determines the appeal is not moot, the District Court's decision should be affirmed, as the Nelson Act did not disestablish reservations and the Mille Lacs Band of Ojibwe maintains inherent law enforcement authority over its reservation.

I. This Matter is Moot as the Minnesota Tribal Nations Have Criminal Authority Over Their Reservations Under Minnesota Law.

As the Mille Lacs Band of Ojibwe describes in its Motion to Dismiss Appeal as Moot, recent amendments to Minnesota law have rendered this matter moot. In particular, Minn. Stat. §§ 626.90-93 were recently amended to eliminate the requirement that the Tribal Nations enter into cooperative agreements with Minnesota counties in order to exercise state criminal

jurisdiction within their reservations.[3] Thus, under Minn. Stat. § 626.90(2)(c), Mille Lacs now has concurrent jurisdiction "over all persons in the geographical boundaries of the Treaty of February 22, 1855, 10 Stat. 1165, in Mille Lacs County, Minnesota." As a result, any decision by this Court about Mille Lacs' jurisdiction or the effect of the Nelson Act on its reservation boundaries (or the Minnesota Chippewa Tribe in general) will not provide "any effectual relief." *United States v. Corrigan*, 6 F.4th 819, 820 (8th Cir. 2021).

The provisions in Minnesota law providing for concurrent Tribal Nation jurisdiction are important for the state of Minnesota and its Tribal Nations. The statutes authorize the respective Tribal Nations to exercise "*concurrent jurisdictional authority* under this section with the local county sheriff *within the geographical boundaries of the tribe's reservation* to enforce state criminal law." *State v. Bellcourt,* 937 N.W.2d 160, 169 (Minn. Ct. App. 2019). Under this arrangement, numerous benefits flow to "both the tribes and the state," such as:

> (1) limiting litigation over jurisdiction to allow parties to focus on substantive issues, (2) enabling states and tribes to reach

[3] As described in Section III below, the Tribal Nations have also always had inherent criminal jurisdiction over their reservations. The Minnesota statutes now authorize Tribal Nations to exercise state criminal jurisdiction as well.

> compromises between competing interests, (3) allowing each side to share resources and limit expenses by reducing administrative and service costs, (4) encouraging economic development on Indian reservations by more clearly defining applicable laws, and (5) filling regulatory gaps where jurisdictional authority is unclear.

State v. Manypenny, 662 N.W.2d 183, 188 (Minn. Ct. App. 2003), *aff'd,* 682 N.W.2d 143 (Minn. 2004). Consistent with United States Supreme Court precedent, "the statute also encourages (1) tribal self-sufficiency by allowing the tribes to participate in the law enforcement of the state, as opposed to making tribal members rely solely on state law enforcement agencies; and (2) economic development by providing additional employment opportunities within tribal boundaries." *State v. Manypenny*, 682 N.W.2d 143, 150 (Minn. 2004).

The benefits outlined above are particularly important in this case. For example, the District Court, in ruling on standing, highlighted the regulatory gaps resulting from the lapse of concurrent jurisdiction. After the cooperative agreement in this matter lapsed, Mille Lacs officers would conduct criminal investigations and then be thwarted by the County Sheriff. Appellees' Appendix ("Aple.-App.") Vol. 1 at 277; District Court Record Document ("R. Doc.") 217, at 11. In one instance, Mille Lacs officers

investigated a drug overdose, noticed a methamphetamine pipe during the investigation, but then were prevented from further investigation by the County. *Id*. In the end, the County neither arrested the individual nor took custody of the vehicle. *Id*. Once the "criminal element on the reservation found out that [Mille Lacs] no longer had authority, they knew it. And they would blatantly say to [the Mille Lacs] officers, 'You can't even arrest me.'" Aple.-App. Vol. 1 at 282; R. Doc. 217, at 16. After that, gang activity, drug traffic, and all of the associated public safety threats increased on the reservation. Aple.-App. Vol. 1 at 283; R. Doc. 217, at 17.

The recent amendment to Minnesota law addresses the statutory mechanism that led directly to this concerning gap in public safety, and encourages "tribal self-sufficiency by allowing the tribes to participate in the law enforcement of the state, as opposed to making tribal members rely solely on state law enforcement agencies." *Manypenny*, 682 N.W.2d at 150. The Court should heed the state's policy choice and "refrain from publishing advisory opinions or judicial essays on issues of the day." *Hawse v. Page*, 7 F.4th 685, 694 (8th Cir. 2021). It should dismiss this matter as moot now that state law recognizes that Tribal Nations have concurrent jurisdiction.

II. For Over Fifty Years, Courts have Concluded that the Nelson Act Did Not Disestablish Reservations.

To determine whether a reservation has been disestablished, courts look primarily to the Acts of Congress. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2462 (2020). Only Congress can divest a reservation of its status and diminish its boundaries, and its intent to do so must be clear. *Nebraska v. Parker*, 577 U.S. 481, 487–88 (2016). The Supreme Court has cautioned that courts should not "lightly infer" that Congress intended to breach its promises to Tribal Nations. *McGirt*, 140 S. Ct. at 2462. The Court reiterated that "once a reservation is established, it retains that status until Congress explicitly indicates otherwise." *Id*. (citations omitted). The "only step" proper for a court of law in applying that rule is to interpret the relevant federal statutes and to "follow the[ir] original meaning." *Id.* at 2468 (citations omitted). Neither historical events, nor demographics are part of the analysis, as neither "can suffice to disestablish or diminish reservations." *Id*. Instead, to disestablish a reservation, Congress must explicitly express its intent to do so. *Id.* at 2463.

Importantly, states and individuals have no authority to reduce

reservations. *Id*. at 2462. "Just imagine if they did. A State could encroach on the tribal boundaries or legal rights Congress provided, and, with enough time and patience, nullify the promises made in the name of the United States." *Id*.

Courts also "examine all the circumstances surrounding the opening of a reservation." *Parker*, 577 U.S. at 488. When legislation opens reservation land in piecemeal fashion and does not provide a fixed sum for all of the disputed lands, there is generally no disestablishment. *Id*. at 489. Under that circumstance, the reservation is merely "opened" in a manner that allows non-Indian settlers to own land on the reservation. *Id*. But the reservation boundaries remain intact. *Id*. And allotment (such as under the Nelson Act) does not automatically end reservations. *McGirt*, 140 S. Ct. at 2464. "To the contrary, [the Supreme Court] has explained repeatedly that Congress does not disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others." *Id*. The Court in *McGirt* concluded that, while "Congress may have passed allotment laws to create the conditions for disestablishment. . . . to equate allotment with disestablishment would be to confuse the first step of a march with arrival at its destination." *Id*. at 2465.

The Nelson Act must be "interpreted in light of the parties' intentions, with any ambiguities resolved in favor of the Indians," and the words "must be construed in the sense in which they would naturally be understood by the Indians." *Herrera v. Wyoming*, 139 S. Ct. 1686, 1699 (2019) (internal citations omitted). The United States, "as the party with the presumptively superior negotiating skills and superior knowledge of the language in which the treaty is recorded, has a responsibility to avoid taking advantage of the other side." *Washington v. Washington State Com. Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 675–76 (1979). It is the Court's responsibility to see that the terms of the Act "are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the council and in a spirit which generously recognizes the full obligation of this nation to protect the interests of [the Tribal Nation]." *Tulee v. State of Wash.*, 315 U.S. 681, 684–85 (1942).

Consistent with these principles, Courts have long determined that the Nelson Act did not disestablish Chippewa reservations in Minnesota. In 1971, the United States District Court for the District of Minnesota decided *Leech Lake Band of Chippewa Indians v. Herbst*, 334 F. Supp. 1001 (D. Minn. 1971), a formative case on this issue. In *Herbst*, the Court addressed whether

Chippewa tribal members could fish, hunt, and harvest rice on the public lands and waters of the Leech Lake reservation without complying with Minnesota game and fish laws. *Id*. at 1002. The State of Minnesota argued, as the County does here, that the Nelson Act "disestablished the Leech Lake Reservation," and therefore extinguished any rights to hunt, fish, and gather. *Id*. The Court disagreed, and noted that, while the question arose regarding member rights on Leech Lake, the decision affects the rights of all of the Minnesota Chippewa Tribe Bands. *Id*. at 1003.

After a two-day trial with 19 witnesses and many exhibits, *id*. at 1002, the Court highlighted the extensive evidence regarding tribal members' understanding of the promises that the United States made when negotiating agreements under the Nelson Act. *Id*. at 1003. Similar to the history with Mille Lacs, the Leech Lake members testified about the long-held understanding that the Nelson Act did not divest them of their right to hunt and fish on their reservation. *Id*.

In addressing disestablishment, the Court noted that the Nelson Act permitted Leech Lake members to accept allotments on their current reservation rather than moving to White Earth, and that less than one-fourth of the Leech Lake members actually moved to White Earth. *Id*. at 1004. The

Court then noted that Congress has continued to recognize Leech Lake and its reservation. *Id*. at 1005. The Court concluded that the Leech Lake reservation was not disestablished. *Id*. at 1006.

Following the *Herbst* decision, Leech Lake and Minnesota entered into a settlement agreement in 1973, which was later codified into Minnesota law on April 23, 1973. Minn. Stat. § 97A.151; *State v. Forge*, 262 N.W.2d 341, 344 (Minn. 1977) (citing Minn. Stat. § 97.431 (repealed 1986, current Statute Minn. Stat. § 97A.151)). This agreement recognized Leech Lake's right to hunt, fish, and gather on the reservation and provided that the state would collect a licensing fee to fish on the reservation that would be remitted to Leech Lake. *Forge*, 262 N.W.2d at 344.

Six years after the *Herbst* decision, in 1977 the Minnesota Supreme Court was again faced with the argument that the Nelson Act disestablished the Leech Lake reservation and, again, the Court's answer was that it did not. *Forge*, 262 N.W.2d at 341. In particular, the Court highlighted section 3 of the Nelson Act, which provided:

> That any of the Indians residing on any of said reservations may, in his discretion, take his allotment in severalty under this act on the reservation where he lives at the time of the removal herein provided for is effected, instead of being removed to and taking such allotment on White Earth Reservation.

Id. at 346 (quoting 25 Stat. 643). In discussing disestablishment, the Court noted that in 1944 the Minnesota Supreme Court had already concluded that the Leech Lake reservation "remained intact." *Id*. at 347. Had Congress intended disestablishment, the Court concluded, "it could have, and would have, expressed this intention with more definiteness" and would not have permitted Leech Lake to remain on the reservation. *Id*.

Two years later, the Minnesota Supreme Court addressed whether the Nelson Act disestablished the White Earth reservation. *State v. Clark*, 282 N.W.2d 902 (Minn. 1979). The state again argued that the Nelson Act disestablished Chippewa reservations in Minnesota – this time the White Earth reservation. *Id*. at 905. Again, the Court ruled that it did not. Pointing to *State v. Forge*, *supra*, the Court denied the claim. *Id*. Utilizing the principles outlined above, the Court confirmed that the Nelson Act lacked the requisite intent regarding White Earth. *Id*. at 906.

Not to be deterred, the State pointed to more recent Supreme Court decisions, such as *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977), and *DeCoteau v. District County Court*, 420 U.S. 425 (1975), to assert that the law had changed. *Clark*, 282 N.W.2d at 907. The Minnesota Supreme Court,

however, noted that its decisions were consistent with Supreme Court precedent. *Id*. "Each of the four decisions agrees that the standard to be applied in resolving the disestablishment issue is whether a clear congressional intent to terminate the reservation is discernible either from the face of the act, the surrounding circumstances, or the act's legislative history." *Id*. This was "precisely the standard" the Minnesota Supreme Court had applied. *Id*. As a result, the Court followed its precedent and concluded that the Nelson Act did not disestablish the White Earth reservation. *Id*.

In 1982, this Court was then faced with the question of whether the law had changed such that collateral estoppel should not be applied against the counties in Minnesota. *White Earth Band of Chippewa Indians v. Alexander*, 683 F.2d 1129, 1134 (8th Cir. 1982). This Court concluded that the Minnesota Supreme Court had "applied the correct standard to resolve the disestablishment issue." *Id*. Because the Minnesota Supreme Court applied the correct standard, the "legal change" exception to collateral estoppel was not available. *Id*. With regard to the decisions that determined reservations had not been disestablished by the Nelson Act, this Court concluded those decisions were binding. *Id*.

The disestablishment question arose again in 1998 with regard to the

Grand Portage Band of Chippewa. In addressing whether the Plaintiff in *Melby v. Grand Portage Band of Chippewa*, 1998 WL 1769706 (D. Minn. 1998), failed to properly exhaust his tribal court remedies, the Court addressed the Plaintiffs' argument about disestablishment. Noting that Courts are unwilling to extrapolate a "specific Congressional purpose of diminishing reservations" from surplus land acts, the Court concluded that the Nelson Act did not disestablish the Grand Portage reservation. *Id*. at *7. Rather, the Nelson Act "reserved parcels of land for Indians who elected to remain on the reservation. Such language does not amount to the requisite clear Congressional intent needed to abolish a reservation." *Id*. at *8.[4]

The Court should not let the questionable land speculation of the late

[4] No case has held that the Nelson Act effectuated a disestablishment. There are cases that determined some portions of some reservations in Minnesota were *diminished* by the Nelson Act, *United States v. State of Minn*., 466 F. Supp. 1382 (D. Minn. 1979) (Nelson Act terminated Red Lake hunting and fishing rights in ceded areas, which *diminished* the Reservation); *White Earth Band of Chippewa v. Alexander*, 683 F.2d 1129 (8th Cir. 1982) (four northern parcels of White Earth *diminished*). Those cases left the reservations involved as permanent homelands, albeit diminished. There has been no case holding that the Nelson Act disestablished a reservation – that is no holding of an intent in the Nelson Act to deprive a tribe of its permanent homeland. The cases holding that the Nelson Act did not disestablish reservations control with regard to Mille Lacs, and are overwhelmingly supported by *McGirt*.

1800s determine this matter, but rather honor the promises that were made to Mille Lacs. To rule otherwise would be "the rule of the strong, not the rule of law." *McGirt*, 140 S. Ct. at 2474.

III. The District Court Properly Recognized Mille Lacs' Inherent Law Enforcement Authority Over Crimes Occurring on the 1855 Treaty Lands.

In this case, the District Court conducted a thorough analysis of the scope of inherent tribal law enforcement authority. The District Court relied on this Court's decision in *Walker v. Rushing*, 898 F.2d 672, 674 (8th Cir. 1990), for the well-established principle that "[a]n Indian Tribe's power to punish members who commit crimes within Indian country is a fundamental attribute of the tribe's sovereignty." In *Walker*, this Court further held that "[n]othing in the wording of Public Law 280 or its legislative history precludes concurrent tribal authority." *Id*. at 675, citing F. Cohen, *Cohen's Handbook of Federal Indian Law* 344 (1982 ed.).

The District Court further concluded that tribal law enforcement authority extends across a Tribe's Indian Country (as defined in 18 U.S.C. § 1151, as encompassing "all land within the limits of any Indian reservation …") to detain suspects and investigate crimes that have a direct effect on the health or welfare of the Tribe. Appellants' Appendix ("Aplt.-App.") at 1575-

76; R. Doc. 349, at 69-70; citing *United States v. Cooley*, 141 S. Ct. 1638 (2021), and *Montana v. United States*, 450 U.S. 544 (1981). The District Court's decision with regard to the geographic scope of a Tribe's inherent law enforcement authority is sound and should be affirmed by this Court. The so-called "second exception" in *Montana v. United States*, recognizes a Tribe's inherent civil jurisdictional authority over non-member conduct that threatens or has a direct effect on the health or welfare of a Tribe throughout the reservation. 450 U.S. at 566. There, a tribal hunting and fishing regulation on the Crow Reservation applied generally to its Reservation, including non-Indian fee land. *Id*. at 544. The *Montana* Court found that there was no allegation "that such non-Indian hunting and fishing so threaten the Tribe's political or economic security as to justify tribal regulation." *Id*. It was held that the conduct in question did not satisfy the second exception. *Id*. at 567. However, subsequent cases applying *Montana*, including *Cooley*[5], found

[5] *See Water Wheel Camp Recreational Area, Inc. v. LaRance*, 642 F.3d 802, 819 (9th Cir. 2011) (Montana's second exception would apply to "[non-member's] unlawful occupancy and use of tribal land [that] not only deprived the [Tribes] of its power to govern and regulate its own land, but also of its right to manage and control an asset capable of producing significant income."); *see also FMC Corporation v. Shoshone-Bannock Tribes*, 942 F.3d 916, 935 (9th Cir. 2019) (Tribal jurisdiction exists under second

Montana's second exception was met based on the severity of the non-member conduct. Threats to a Tribe's health or welfare can occur anywhere within a Tribe's reservation, not just on trust land. Reservation-based criminal activity is perhaps one of the greatest conceivable threats to a Tribe's health and welfare.

In *Cooley*, the Court applied the second *Montana* exception to the exercise of tribal police authority to investigate and detain a criminal suspect for conduct arising on the Crow Reservation. 141 S. Ct. 1638 (2021). There, the Court reasoned that "an initial investigation of non-Indians' violations of federal and *state* laws to which those non-Indians are indisputably subject protects the public without raising similar concerns of the sort raised in our cases limiting tribal authority." *Cooley*, 141 S. Ct. at 1645 (quoting Brief for United States 24–25) (internal quotations omitted) (emphasis added).

Importantly, the Supreme Court in *Cooley* made a point to note "that 3.5 million of the 4.6 million people living in American Indian areas in the 2010 census were non-Indian." *Cooley*, 141 S. Ct. at 1645 (quoting Brief for

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exception due to hazardous waste being stored on the reservation. "Threats to tribal natural resources, including those that affect tribal cultural and religious interests, constitute threats to tribal self-governance, health and welfare.").

Former United States Attorneys as Amici Curiae 24). This disparity in population demographics highlights the need of tribal law enforcement to be able to protect the public regardless of whether a criminal suspect is a tribal member.

Of course, the criminal jurisdictional authority recognized in *Cooley* and as applied by the District Court in the present case is not "unfettered" as Appellants would have this Court believe. Brief of Appellants Erica Madore and Kyle Burton at 35-36. The District Court here conducted a detailed and nuanced analysis of the scope of non-Indian criminal investigations and detainment by tribal police officers. Aplt.-App. at 1544-1573; R. Doc. 349, at 38-67. The District Court also relies on this Court's opinion in *United States v. Terry*, 400 F.3d 575, 580 (8th Cir. 2005), for the requirement that tribal police officer detention and investigation of non-Indian criminal suspects must comply with the Fourth Amendment's prohibition against unreasonable searches and seizures. Aplt.-App. at 1549; R. Doc. 349, at 43. Here, the District Court's holdings on the scope of inherent tribal law enforcement authority to investigate violations of tribal, state, and

federal law comport with Supreme Court and this Court's precedent.[6]

It is critical that Tribal Nations are able to provide local, community-based law enforcement services to their reservations free from the types of restrictions that Mille Lacs County asks this Court to impose. Tribal Nations

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[6] The District Court also highlighted the Special Law Enforcement Commissions ("SLECs") that were issued to Band police officers pursuant to a Deputation agreement between Mille Lacs and the Bureau of Indian Affairs pursuant to 18 U.S.C. § 1162(d) and 25 U.S.C. § 2804. Similarly, deputation agreement statutes were discussed in *Cooley* for the point that they provide tribes the ability to enforce federal law. *Cooley*, 141 S. Ct. at 1645. These SLECs confer "federal authority to investigate violations of applicable federal law within the Mille Lacs [1855] Indian Reservation" on Mille Lacs police officers. Aplt.-App. at 1580; R. Doc. 349, at 74. This extension of federal authority to the tribal police officers includes the authority to enforce the Indian Country Crimes Act (18 U.S.C. § 1152, commonly referred to as the General Crimes Act), which applies all general federal criminal laws to Indian Country for offenses committed by non-Indians against Indians or against the Tribe. One of those general federal criminal laws is the Assimilative Crimes Act (18 U.S.C. § 13), which provides federal criminal jurisdiction over violations of state law committed on reservations when no specific federal criminal statute applies. Under this statutory framework, and contrary to the County's Opinion and Protocol, the Mille Lacs SLEC officers have authority to enforce Minnesota state criminal laws against non-Indians on the reservation. *See, e.g., Williams v. United States*, 327 U.S. 711 (1946) (Assimilative Crimes Act would have allowed assimilation of Arizona state law on reservation except that the specific crime in question was already covered under federal law); *see also, United States v. Billadeau*, 275 F.3d 692 (8th Cir. 2001) (overturning dismissal of intoxicated driving on the reservation by a non-Indian by reaffirming 8th Circuit precedent that state criminal laws are assimilated on the reservation via the General Crimes Act).

should not have to rely on the consent of outside agencies before they can enforce the laws on their reservations. That authority is at the center of a Tribe's inherent, retained sovereign authority – to protect the health and welfare of all of those within their reservations by adopting and enforcing their own laws on their reservations. [7]

The State of Minnesota recognized the need for local law enforcement authority in Indian County in Minnesota when amending Minn. Stat. § 626.90(2)(c) to recognize Mille Lacs' concurrent jurisdiction with Mille Lacs County. The United States Congress likewise understands this need across Indian Country. In adopting the Tribal Law and Order Act in 2012, Congress found that "tribal law enforcement officers are often the first responders to crimes on Indian reservations; and [that] tribal justice systems are often the most appropriate institutions for maintaining law and order in Indian country." Pub. L. No. 111-211, § 202, 124 Stat. 2258 (2010). Further, Congress

[7] The U.S. Department of Justice recognizes the need for strong relationships between the police and the community, not just in Indian Country – but in all communities. *Importance of Police-Community Relationships and Resources for Further Reading*, U.S. Department of Justice (https://www.justice.gov/file/1437336/download) ("Strong relationships of mutual trust between police agencies and the communities they serve are critical to maintaining public safety and effective policing.").

found that:

> … the complicated jurisdictional scheme that exists in Indian country— (A) has a significant negative impact on the ability to provide public safety to Indian communities; (B) has been increasingly exploited by criminals; and (C) requires a high degree of commitment and cooperation among tribal, Federal, and State law enforcement officials … [and Tribal Nations] have faced significant increases in instances of domestic violence, burglary, assault, and child abuse as a direct result of increased methamphetamine use on Indian reservations.

Id.[8]

These congressional findings to The Tribal Law and Order Act (TLOA) describe a reality that exists in Indian County, including the Mille Lacs Reservation. They highlight the need for broad recognition of tribal police authority on reservations and are directly in line with the District Court's findings on standing. *Supra* at 7. Indeed, county officers in this matter were "'advised that they could arrest tribal police officers if they' violated the [p]rotocol." Aple.-App. Vol. 1 at 273; R. Doc. 217, at 7. This caused Mille Lacs officers "to not be able to effectively do [their] jobs because guys were afraid

[8] *See* Congress' full findings in § 202 of the Tribal Law and Order Act, as well as the findings of Congress in § 801 within the Violence Against Women Reauthorization Act of 2022 ("VAWA of 2022"), Pub. L. No. 117-103, § 801, 136 Stat. 896 (2022). VAWA of 2022 recognizes the inherent authority of American Indians and Alaska Natives to exercise criminal jurisdiction over non-Indians for certain offenses.

to proactively patrol and initiate traffic stops." Aple.-App. Vol. 1 at 279; R. Doc. 217, at 13. When they approached a DWI, they "wouldn't be able to make that arrest. Our protocol was to have the county come deal with it." Aple.-App. Vol. 1 at 282; R. Doc. 217, at 16. This made it "more difficult for Band officers to address drug crimes and overdoses," *id*., which in turn "increased the drug availability, and people from out of town, people who we did not know came and with them they brought drugs, and the gang activity also increased." Aple.-App. Vol. 1 at 283; R. Doc. 217, at 17. Things became significantly worse. "In the last several months I have witnessed numerous drug deals and use right out in the open. . . In the past, it would be a very rare occasion I would not see Tribal Officers out and about monitoring these obscure areas, I would see them on foot working together, checking out the various parts of the reservation likely only known to locals." Aple.-App. Vol. 1 at 286; R. Doc. 217, at 20. It resulted in a "much less safe area." *Id*.

This reality demonstrated a need to vindicate the federal policies of encouraging tribal self-governance and self-determination. *See* Geoffrey D. Strommer, Stephen D. Osborne, *The History, Status, and Future of Tribal Self-Governance Under the Indian Self-Determination and Education Assistance Act*,

39 Am. Indian L. Rev. 1, 1 (2015) (describing the current federal policies). It is critical to ensure that Tribal Nations can provide all citizens on reservations the same protections of life, liberty, and property as federal, state, and local governments provide citizens elsewhere. Tribal Nation officers must react instantly in all situations, relying on their experience and training to observe, assess, and determine whether there is reasonable suspicion to act further.

For example, with respect to traffic stop encounters, the Supreme Court has stressed that "'[t]he risk of harm to both the police and the occupants [of a stopped vehicle] is minimized…if the officers routinely exercise unquestioned command of the situation.'" *Arizona v. Johnson*, 555 U.S. 323, 330-31 (2009) (quoting *Maryland v. Wilson*, 519 U.S. 408, 414 (1997) (in turn quoting *Michigan v. Summers*, 452 U.S. 692, 702-703 (1981), and *citing Brendlin v. California*, 551 U.S. 249, 258 (2007)). On many reservations, there is no 24-hour police coverage. Police officers often patrol alone and respond alone to both misdemeanor and felony calls. Tribal Nation police officers are placed in great danger because back up is sometimes miles and hours away, if available at all. *Law Enforcement in Indian Country before the Senate Comm. On Indian Affairs*, 110th Cong. 110-106 (2007) (Statement of W. Patrick

Ragsdale, Director, BIA, DOI, at 6); *see also Contemporary Tribal Governments: Challenges in Law Enforcement Related to the Rulings of the U.S. Supreme Court before the Senate Comm. On Indian Affairs*, 107th Cong. 107-605 (2002). The ability of Tribal Nations to protect all of those on its reservations is immensely important.

CONCLUSION

For the above reasons, Amici respectfully request that the Court dismiss this appeal as moot, or to otherwise affirm the decision of the District Court.

DATED this 26th day of September, 2023.

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CERTIFICATE OF COMPLIANCE

The undersigned certify, pursuant to Fed. R. App. P. 29 and 8th Cir. R. 29A, that the attached **BRIEF OF AMICI CURIAE LEECH LAKE BAND OF OJIBWE, BOIS FORTE BAND OF CHIPPEWA, GRAND PORTAGE BAND OF LAKE SUPERIOR CHIPPEWA, AND NATIONAL CONGRESS OF AMERICAN INDIANS IN SUPPORT OF APPELLEES AND IN SUPPORT OF AFFIRMATION OF THE DECISION BELOW:**

1) complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B)(1) and Fed. R. App. P. 32(g)(1) as it contains 5,589 words, excluding parts of the brief exempted by Fed. R. App. P. 32(f);

2) complies with typeface requirements of Fed. R. App. P. 32(a)(5)(A) as it uses proportionally spaced typeface Book Antiqua font in 14-point font;

3) The electronic version of the foregoing brief submitted to the Court pursuant to 8th Cir. R. 28(A) was scanned for viruses and the scan showed the electronic version of the foregoing is virus free.

/s/ Michael S. Carter
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CERTIFICATE OF SERVICE

I hereby certify that on September 26, 2023, I electronically filed the foregoing with the Clerk of Court for the United States Court of Appeals for the Eighth Circuit via the Court's appellate CM/ECF system. Participants in the case who were registered CM/ECF users were served by the CM/ECF system at that time.

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