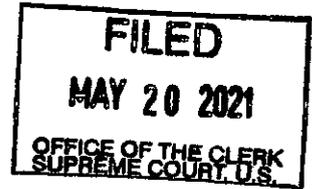


No. 20-1485



In the **SUPREME COURT** of the **UNITED STATES OF AMERICA**

JO ELLEN MARY CROSSETT

Petitioner

v

EMMET COUNTY, MI et al.,

Respondent

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit**

REPLY BRIEF FOR PETITIONER

Jo Ellen Mary Crossett

pro se

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ALL PARTIES TO THE PROCEEDINGS

The Respondents are:

Emmet County, MI

Peter A. Wallin, Sheriff

Cody Wheat, Sheriff Deputy

Fuller Cowell, Sheriff Deputy

Wade Leist, Sheriff Deputy/Detective

James R. Linderman, Prosecutor

Stuart Fenton, Assistant Prosecutor

Michael H. Schuitema, Assistant Prosecutor

Jo Ellen Mary Crossett is the Petitioner

TABLE OF CONTENTS

	Page
All Parties to the Proceedings.....	i
Table of Authorities.....	iii
Petitioner's Reply to Respondents Opposition Brief.....	1
Argument.....	1
1. Indian Jurisdiction Issue	
A. Respondents had no Jurisdiction to Arrest, Prosecute, or Jail Ms. Crossett.....	2
B. The Indian Issue is not new, if so, the Circuits have Exceptions the Sixth Circuit erred.....	3
C. Respondents Side-Step the Jurisdiction Issue, Attacking Ms. Crossett's Indian Status Instead.....	4
2, The Circuit Court Erred in Affirming Summary Judgment for Respondents on the Constitutional Violations Claims.....	8
3. Ms. Crossett's pro se Status and Post-Incarceration Relief.....	11
Conclusion.....	11

TABLE OF AUTHORITIES

	Page
Durant Roll -A Census of Ottawa and Chippewa Indians.....	6
<i>Hope v Pelzer</i> , 536 U.S. 730 (2002).....	9
Indian Civil Rights Act 25 U.S.C.;1301.....	5
Indian Reorganization Act of 1934.....	6
<i>McGirt v Oklahoma</i> , U.S. S. Ct. (2020).....	3,4
Public Law103-137 Language Added to Indian Civil Rights Act	5
Treaty of Detroit.....	2
Treaty of Washington.....	2
<i>Spencer v Kenna</i> , 523 U.S. (1998).....	9

PETITIONER'S REPLY TO
RESPONDENTS' OPPOSITION BRIEF

Petitioner files this reply brief to address arguments and issues made by Respondents in their brief in opposition.

Jo Ellen Mary Crossett(Ms. Crossett) is an Indian. Ms. Crossett lives on Indian land, a reservation. She was on the reservation when she made the phone calls to Emmet County Sheriff Peter Wallin regarding the raiding of Indian homes on the reservation by Emmet County Sheriff Department and Straits Area Narcotics Enforcement team.

Ms. Crossett was on the reservation when Respondents arrested and prosecuted her four times, and jailed her repeatedly, including her serving a nine-month sentence in Emmet County Jail. Respondents actions were unreasonable and violated her constitutional rights.

ARGUMENT

1. INDIAN JURISDICTION ISSUE

The petition should be granted. The Indian jurisdiction issue is not a new issue, and it is certainly not a new claim. Even if it is considered new the circuits have exceptions, and this court has weighed in on new issues.

This court should grant the petition because:

A. Respondents had no jurisdiction to arrest or prosecute Ms. Crossett because she is an Indian on Indian land, a reservation. Ms. Crossett is under Little Traverse Bay Bands of Indians jurisdiction, or federal jurisdiction.

B. The Indian jurisdiction issue is not new. The Sixth Circuit erred in passing over it. If it is considered new, the circuits have exceptions, and this court has addressed the issue. Respondents had chances to argue.

C. Respondents side-step the question whether Ms. Crossett is on Indian land, a reservation. And they decline to argue. Instead, questioning Ms. Crossett's Indian status.

2. The Sixth Circuit erred in affirming summary judgment for respondents on Ms. Crossett's claims for relief. Due to their unreasonable actions, they lost their immunity. Emmet County et al. violated Ms. Crossett's constitutional rights and state law claim.

3. Ms. Crossett's pro se status does not bar her from petitioning this court. Ms. Crossett is a proper party.

1. A. The 1836 Treaty of Washington and the 1855 Treaty of Detroit with the Ottawa and Chippewa Indians established reservations, and congress has

not abolished, diminished, or disestablished with intent the reservation. Ms. Crossett lives on Little Traverse Bay Reservation. (Pet. Appendix, 57a) Respondents do not have jurisdiction over her.(Pet. Appendix, 49a-51a) Ms. Crossett intensively argued the treaties established reservations and that congress never acted with intent to abolish them. Respondents did not address the issue in their opposition brief. The *McGirt v Oklahoma* U.S. 140 S. Ct. (2020) decision is extremely important in Ms' Crossett's case.(Pet. 19)

B. The Indian jurisdiction issue is not new. "Even before she was arrested the first time Ms. Crossett made the police aware she was an Indian on a reservation and the tribe LTBB(Little Traverse Bay Bands) or the federals have jurisdiction over Ms. Crossett, not the State of Michigan or Emmet County." (Pet. 26) Not only was it referred to by Ms. Crossett, but Respondents themselves raised it in their Appellee response brief in the Sixth Circuit. "The Appellees brought up the issue directly to Ms. Crossett in their appellee response brief." (Pet. 28)

Respondents point out in their appellee brief Ms. Crossett's position in the argument of Indian jurisdiction. "It is Crossett's position that the Emmet County Sheriff Department has no jurisdiction or authority to arrest any Native American, including Crossett." Respondents knew her position in the argument because it was not new.(Pet. 28)

pleaded it as a claim for relief in her complaint..." It is a legal fact, the law, not a claim for relief. In fact, it would be less likely to be read if Ms. Crossett had asserted a new claim, which she did not do.

The Sixth Circuit erred in passing over so important an issue. After Appellee-Respondents raised it themselves then Ms. Crossett prepared to reply to them, and then *McGirt* happened, so of course Ms. Crossett included the new case. Respondents brought up the issue whenever they pleased.

(BIO 26) It was only after the *McGirt* case that respondents put on the brakes. Respondents say they had no chances to respond and argue, but common sense shows that they were aware of Ms. Crossett's position through the case and they have had opportunities to argue, they choose not to so far. Instead they side-step the issue of Indian jurisdiction and then attack Ms. Crossett's Indian status itself.

C. Respondents decline to argue that Ms. Crossett lives on LTB Reservation a treaty backed reserve that has not been abolished by congress. But they do decide to argue whether Ms. Crossett is an Indian. "Notably, Crossett offered no specific evidence of membership in a tribe." (BIO 3) Then they go on to say she is not a tribal member. Then they admit she has an Indian card from the Bureau of Indian Affairs, two of them. then they say, "Both certificates expressly stated that they only verified Indian descent and did not verify or

entitle Crossett to actual tribal membership."

First of all, Ms Crossett is a member of Mackinaw Bands of Chippewa and Ottawa Indians, A band that is recognized through the treaties and is a successor tribe from the treaties, Mackinaw Bands does not have federal reaffirmation of that recognition, but they do retain all their rights, aboriginal (Creator) tribal, and treaty rights. Their members are Indians.

Little Traverse Bay Bands is a reaffirmed tribe, they have government to government relations with the United States. Ms. Crossett is also a member of Little Traverse Bay Bands, She has a descendency card from the tribe, and on her BIA card it states that she is a Little Traverse Bay Indian. All BIA cards state the very same words. That it shows descendency, not membership in a tribe, That card too shows Ms. Crossett is an Indian.

What is important here is what words the Indian jurisdiction law speaks. It clearly says Indians. Criminal jurisdiction over non-member Indians Public Law 103-137 Excerpt adding language to the Indian Civil Rights Act 25 U.S.C.;1301 ("...means the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians,") (Pet. Appendix, 49a-51a) The law does not say over tribal members, it says, ALL Indians. Ms. Crossett is an Indian.

Though various agencies list what makes an Indian, the more accurate ones generally list two criteria. That an Indian is a direct descendant from an ancestor on a government roll, and to receive most services one must live on reservation land, where their ancestors lived. There is no one right definition. But most of them contain descendency.

The Indian Reorganization Act of 1934 states who an Indian is, "Persons of Indian descent who are members of any recognized Indian tribe, now under federal jurisdiction, and all persons who are descendants of such members." Descendants are included. The Act then goes on to say, " And all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation..."

Many Indians are not tribal members, yet they still retain their rights. Every Indian is a descendant. To be a descendant is to be an Indian.

Ms. Crossett sent in her tribal enrollment cards from Mackinaw Bands and Little Traverse Bay Bands, along with her BIA card. Ms. Crossett can trace her Indian ancestry back to a 1797 church record from Michilimackinaw. She has census rolls. Her ancestors are on the 1870 Indian Annuity Payment Roll. She has five direct ancestors, five generations on the Durant Roll, the very last Indian census taken in Northern Michigan. A roll very important to LTBB, Mackinaw Bands, and all other bands and Indians on the reserve and

ceded territory. Ms. Crossett lives on Little Traverse Bay/Michilimackinaw reserve. She uses Indian Health Services, medical system for treaty Indians.

Just as membership in a tribe is not necessary to be an Indian, neither does blood quantum make an Indian. Though blood quantum is not a necessity to be an Indian, descendency is. Respondents comment regarding Ms. Crossett's blood quantum. " She did submit two certificates of degree of Indian blood from the Bureau of Indians Affairs--notably blacking out the indication of the percentage of Indian blood." (BIO 3)

Blood quantum is not necessarily relevant in identifying Indians Ms. Crossett has various indications of her blood quantum, The Interior Dept of United States only researched one of Ms. Crossett's ancestors so their numbers show only a portion. Some tribes change enrollment criteria, and that affected quantum. Ms. Crossett has her own estimate, because really, that is all anyones numbers are, an estimate. But descendency makes an Indian, blood quantum makes a tribal member.

Not all tribes use blood quantum. Mackinaw Bands do not. Sault Saint Marie Tribe of Chippewa Indians do not use blood quantum. The point is that Ms. Crossett is an Indian. Respondents chose not to argue the real issue, Ms. Crossett is on Indian land, a reservation. An indication they have no valid arguments.

2. The Sixth Circuit erred by affirming summary judgment to Respondents on Ms. Crossett's claims for relief because Respondents violated her constitutional rights. All 24 claims of Ms. Crossett are valid and not only standing alone, but they are supported by the Indian jurisdiction. Not only was the first arrest warrantless misdemeanor for swearing on the phone, but police had no jurisdiction to come disturb her and seize her.

Defendants brushed over the constitutional violations. A reasonable person can see her rights were violated. Their actions were unreasonable. They lost any immunity they may have had.

Ms. Crossett 's petition should be granted on the constitutional violations also. There was no probable cause in any of her arrests. Respondents have no immunity because they violated her rights repeatedly. The record speaks for itself. A clean record at the age of 56 until Emmet County, Michigan Sheriff Department sent deputies to Ms. Crossett's home to seize her, rough her up so she would shut up about the unlawful raids on Indians and the poorer population in North Emmet County, on the reservation.

The list of violations is long and Ms. Crossett's claims are valid. (Pet. 33) The reasonableness theory should be pursued more when contemplating clearly established and underlying constitutional violations. This court established that violations are present in a case without the same facts

present. *Hope v Pelzer*, 536 U.S. 730(2002) Police officers are given "fair notice" that violations can occur without identical facts. (Pet. 31)

3. Ms. Crossett's first arrest was obtained with excessive force. The favorable termination theory does not apply to Ms. Crossett regarding the resisting arrest charges. *Spencer v Kenna*, 523 U.S. (1998) supports Ms. Crossett's post-incarceration relief. Though Respondents did not address it in their brief, it is an extremely important issue.

Ms. Crossett's pro se status does not bar her from filing and arguing a petition in this Court. Ms. Crossett is the proper party in her case. She went through the outrageous violation of her constitutional rights, it is her case. Ms. Crossett is competent. Respondents mention her competency three times. Respondents brought up sundry items that must be addressed. They state a reversed way of thinking regarding the District Court passing over the Indian issue. "And, of course, Crossett herself was asking that any such question not be addressed, in order that the tribe's case would deal with the matter." (BIO 4) That is not a correct statement. Ms. Crossett did not ask such a thing. Nor did she ask for it not be settled in the manner they are speaking. The judge brought up mediation and a settlement conference. Ms. Crossett said she would not want to jeopardize the tribe's status by settling the Indian issue during mediation or a settlement conference, not that she

did not want the judge to address it. Of course she wanted the judge to address the issue, but the Court passed over the issue, Ms. Crossett did not. That is the reason Ms. Crossett raised it to the District Court, because she needed the court to address Indian jurisdiction.

Ms. Crossett fought the Indian jurisdiction issue in the County for years, they just didnt arrest her until she told on them and she talked about Indian jurisdiction. She was arrested before the tribe filed their lawsuit.

The case is Ms. Crossett's. It is here, and it is now. She is the proper party to deal with it. She asked every judge in every court to deal with it, all declined, and now it is brought before this Court.

In the District Court the judge asked Ms. Crossett if there were any other issues to bring fourth. Ms. Crossett said yes, she was an Indian on Indian land and that she was on a reservation, and so is Emmet County. (Pet. 6) Had Ms. Crossett not wanted the judge to address it, she never would have brought it up to her in the first place. Some of the words seemed somewnat garbled or changed in the transcript, but Ms. Crossett remembers exactly what she said and meant.

Respondents claim Ms. Crossett is "ill-equipped" to argue the status of Native American lands or legal jurisdiction issues. Perhaps.

Respondents presume to be walking a mile in the tribe's moccasins, knowing how they feel. "Indeed, the tribe would doubtless be aghast at the notion of Crossett presuming to litigate the tribe's interests." (BIO 6) Ms. Crossett is litigating her own interest too.

If the Tribe is dismayed because Ms. Crossett is fighting for Indian treaty rights, they certainly have not indicated such to Ms. Crossett.

They say, "With regards to the lands of the Little Traverse Bay Bands ..."

Yes, the land is Little Traverse Bay Bands. The land is also for Ms. Crossett and Mackinaw Bands, it is land held in common, the same as traditions are held in common, for all Ottawa and Chippewa, Odawa and Ojibwa.

CONCLUSION

The Court should grant the Petition for Certiorari.

Respectfully Submitted,

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DATE: May 20, 2021

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