

No. 24-2900

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

PRESTON HENRY TOLTH

Defendant-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

**BRIEF OF *AMICUS CURIAE*
GERALD BEGAY, SERAPHINE WARREN-BEGAY, THE COALITION
OF LARGE TRIBES AND THE NATIONAL INDIGENOUS WOMEN'S
RESOURCE CENTER IN SUPPORT OF PLAINTIFF-APPELLANT'S
MOTION FOR REHEARING**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(a)(4)(A), the Coalition of Large Tribes is an inter-tribal Section 17 federal corporation (a way that tribes may organize themselves under the Indian Reorganization Act of 1934) and the National Indigenous Women's Resource Center is a nonprofit organization, both with no parent corporations and in which no person or entity owns stock. Gerald Begay and Seraphine Warren Begay are individuals and therefore have no corporate disclosures to make.

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IDENTITY, INTEREST, AND AUTHORITY TO FILE

Gerald Begay is Ella Mae Begay's son, and her disappearance has caused Gerald significant grief and hardship. This hardship is aggravated by the knowledge that the individual/s responsible for her kidnapping, and likely murder, have yet to be brought to justice. Gerald has serious concerns that the federal system does not prioritize victims or their rights. He is worried that his mother will never be found.

Seraphine Warren-Begay is Ella Mae's niece. Since her disappearance, Seraphine has fought tirelessly to raise awareness about the high rates of Missing and Murdered Indigenous Women and Girls ("MMIWG") and her aunt's specific case. In 2022, Seraphine walked over two thousand and four hundred miles from the Navajo Reservation to Washington, D.C., to demand justice for her aunt. Like her cousin, she is deeply concerned that the federal courts have neglected to consider her aunt's right to justice for the violent crimes committed against her.

The Coalition of Large Tribes ("COLT") represents the interests of the more than 50 Tribal Nations whose land base each exceeds 100,000 acres, encompassing more than 95% of tribal lands and approximately half the Native American population in the country. Violence against women is a crisis of COLT member tribes' reservations, as tribal law enforcement is chronically under-resourced and federal law enforcement often fails to dedicate sufficient resources to searching for missing Native women.

COLT and its member tribes rely on and work closely with the National Indigenous Women’s Resource Center (“NIWRC” and together with Gerald Begay, Seraphine Warren-Begay, and COLT, the “*Amici*”), which is a Native-led nonprofit organization headquartered in Lame Deer, Montana dedicated to ending violence against Native women and children.¹ The NIWRC offers culturally-grounded resources to victims and families, provides technical assistance and training to governmental and organizational allies, and supports the development of policy that strengthens tribal sovereignty. Through this work, the NIWRC has developed expertise in issues regarding the intersection of tribal sovereignty and safety for Native women, including the MMIWG crisis.

SUMMARY OF ARGUMENT

Ella Mae Begay is a mother, auntie, sister, daughter, friend, and matriarch of the Navajo Nation. Like far too many Native women, she was brutally assaulted, kidnapped, and disappeared in her own home on her tribe’s reservation. One of her assailants, Defendant Preston Tolth, has confessed to hitting her in the head with a blunt object and leaving her unconscious on the Navajo Reservation. The question

¹ All parties have consented to the filing of this brief. *Amicus curiae* files this brief in accordance with Federal Rule of Appellate Procedure 29(a)(2). No party’s counsel authored this brief in whole or in part; no party’s counsel contributed money to fund preparing or submitting this brief; and no person other than *Amicus curiae* contributed money that was intended to fund preparing or submitting this brief. See Fed. R. App. P. 29(a)(4)(e).

is not whether Tolth brutally assaulted Ella Mae, but rather, whether federal law enforcement may use his confession to prosecute him for his crimes, *and*, to continue their search to find her.

While all defendants deserve the full protection of the U.S. Constitution, those rights are not limitless. Here, the law officers respected Tolth's rights. His confession was voluntary. To this day, Ella Mae remains missing. Like countless Native women, her disappearance remains unsolved. Many—from U.S. Presidents to Senators and tribal leaders—continue to propose ideas to solve the MMIWG crisis in the United States.

One thing is certain, though: the crisis will never be solved if confessions, such as Tolth's, are thrown out of court based on interpretations of Supreme Court precedent that create irrational obstacles to the federal law officers working to save Native women's lives. *Amici* respectfully request that this Court grant the United States' motion for rehearing.

ARGUMENT

I. The Unique Factual and Legal Context Present on Tribal Lands Requires Effective Federal Law Enforcement and Federal Investigations of Violent Crimes

a. Native Women Face an Epidemic of Violence in the United States

Despite the federal obligation to provide for public safety on tribal lands, rates of violence against Native women are consistently higher than rates of violence

against other women. Reports from executive branch agencies have concluded for more than two decades that Native women suffer the highest rates of violence in the United States. The earliest such report, published by the Department of Justice, found that American Indians experience per capita rates of violence at twice that of other United States residents.² That finding still held five years later when the report was updated to add, among other findings, that Native women experience violent victimization at more than double the rate of all other women.³ In 2016, a report from the National Institute of Justice determined that more than 4 in 5 Native women have been victims of violence, with over 730,000 Native women, or 1 in 3, having experienced violence within a year of the report.⁴

These reports also find that many Native women do not survive the violence perpetrated against them. According to the CDC, nationally, Native women are murdered at a rate of 4.3 per 100,000, while their white counterparts experience

² Lawrence A. Greenfeld & Steven K. Smith, *American Indians and Crime*, Bureau of Justice Statistics, Office of Justice Programs, U.S. Dep't of Justice, v (1999), <https://bjs.ojp.gov/content/pub/pdf/aic.pdf> (last visited October 16, 2025) at 1.

³ Steven W. Perry, *American Indians and Crime: A BJS Statistical Profile, 1992–2002*, U.S. Dep't of Justice, Bureau of Justice Statistics, v-vi (Dec. 2004), <https://bjs.ojp.gov/content/pub/pdf/aic02.pdf> (last visited October 16, 2025).

⁴ André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings from the National Intimate Partner and Sexual Violence Survey*, Nat'l Inst. of Justice, Office of Justice Programs, U.S. Dep't of Justice at 43-44 (May 2016), <https://www.ncjrs.gov/pdffiles1/nij/249736.pdf> (last visited October 16, 2025).

homicide at a rate of 1.5 per 1000 people.⁵ In 2023, homicide was the third leading cause of death for Native females aged 15-24 and the fourth leading cause of death for Native females aged 25-34.⁶ On some reservations, Native women are killed at a rate 10 times the national average.⁷

Partially on the strength of these statistics, Congress joined in a bipartisan effort to restore tribal criminal jurisdiction with the passage of the Violence Against Women Act (“VAWA”) in 2013.⁸ Affirming the critical role of tribal court convictions in addressing the crisis, the United States Supreme Court in 2016

⁵ Emiko Petrosky et al., Ctrs. for Disease Control and Prevention, *Racial and Ethnic Differences in Homicides of Adult Women and the Role of Intimate Partner Violence — United States, 2003–2014*, 66 MMWR Morbidity and Mortality Wkly. Rep. 741, 742 (2017), <https://www.cdc.gov/mmwr/volumes/66/wr/mm6628a1.htm>.

⁶ National Violent Death Reporting System, <https://www.cdc.gov/nvdrs/about> (data on file with the authors). This data is consistent with 2021 reporting from the National Center for Health Statistics. Melonie Heron, Nat’l Ctr. for Health Stats., 70 Nat’l Vital Stats. Repts. 57 (2021), <https://www.cdc.gov/nchs/data/nvsr/nvsr70.pdf> (last visited October 17, 2025) at 57.

⁷ Office on Violence Against Women, U.S. Dep’t of Just., *Protecting Native American and Alaska Native Women from Violence: November is Native American Heritage Month* (Nov. 29, 2019), <https://www.justice.gov/archives/ovw/blog/protecting-native-american-and-alaska-native-women-violence-november-native-american> (last visited October 17, 2025).

⁸ *Violence Against Women Act Anniversary*, 160 Cong. Rec. S1374 (daily ed. Mar. 10, 2014) (statement of Sen. Patrick Leahy acknowledging his bipartisan collaboration with Senators Crapo and Murkowski and Congressman Cole to restore tribal jurisdiction over non-Indians who commit acts of domestic or dating violence).

acknowledged that “American Indian women experience battery at a rate of 23.2 per 1,000, compared with 8 per 1,000 among Caucasian women.”⁹ The Ninth Circuit has similarly observed that “[v]iolence against Native American women in Indian Country has reached alarming rates” with “studies suggest[ing] that Native American women experience certain violent crimes at two and a half times the national average.”¹⁰

b. Rates of Violence Against Native Women in the Ninth Circuit are Extremely High

While rates of violence against Native women are high across the United States, they are exceedingly high in the Ninth Circuit. According to the National Institute of Justice, States within the Ninth Circuit represent five of the top seven states with the most unsolved American Indian and Alaska Native missing person cases published in the National Missing and Unidentified Persons System (“NamUs”).¹¹

One of the Ninth Circuit’s States with the highest rates of violence against

⁹ *U.S. v. Bryant*, 579 U.S. 140, 144 (2016), *as rev’d* (July 7, 2016) (quoting VAWA Reauthorization Act, § 901, 119 Stat. 3077).

¹⁰ *United States v. Lamott*, 831 F.3d 1153, 1154 (9th Cir. 2016).

¹¹ National Institute of Justice, American Indian/Alaska Native Missing Persons Cases, Unresolved Cases Published in NamUs as of August 1, 2021, https://namus.nij.ojp.gov/sites/g/files/xyckuh336/files/media/document/namus-stats-ai_an-report-august-2021.pdf.

Native women is Alaska. In 2021, then Senate Committee on Indian Affairs Vice-Chairman Senator Lisa Murkowski acknowledged the crisis of violence, stating: “In Alaska, the rates of violence experienced by Alaska Natives are horrific Alaska Native women are over-represented by nearly 250 percent among women domestic violence victims in our Country.”¹² Recent studies from Alaska show an even more pronounced disparity: a survey of homicides in Alaska from 1976 to 2016 found that 29% of homicide victims were AI/AN, even though AI/AN persons represent only 16% of the State population.¹³

Montana has the fifth highest rate of MMIWG in the country.¹⁴ Former United States Senator Jon Tester acknowledged the high rates of violence against

¹² Restoring Justice: Addressing Violence In Native Communities Through VAWA Title IX Special Jurisdiction, Hearing Before the S. Comm. on Indian Affairs, S. Hrg. 117-158 (Dec. 8, 2021)(Statement of Senator Lisa Murkowski), <https://www.indian.senate.gov/wp-content/uploads/documents/CHRG-117shrg46826.pdf> at 3.

¹³ Dep’t. of Just., Dep’t. of the Interior, Federal Law Enforcement Strategy to Prevent and Respond to Violence Against American Indians and Alaska Natives, Including to Address Missing or Murdered Indigenous Persons (July 2022) at 11, <https://www.justice.gov/tribal/page/file/1553226/dl?inline> (citing Andrew Gonzalez, “Homicide in Alaska: 1976-2016,” Alaska Justice Information Center, University of Alaska Anchorage, 2020.)

¹⁴ Annita Lucchesi & Abigail Echo-Hawk, *Missing and Murdered Indigenous Women & Girls: A snapshot of data from 71 urban cities in the United States*, Urban Indian Health Institute (2018) at 11, <https://www.uihi.org/wp-content/uploads/2018/11/Missing-and-Murdered-Indigenous-Women-and-Girls-Report.pdf>

Indigenous women in his home State, stating: “Indigenous peoples—particularly women—are far more likely to experience violence, and human trafficking rates in Indian Country are exponentially higher than other parts of the United States.”¹⁵ Indigenous Montanans make up only 6.6 percent of the State’s population, yet they are four times more likely to go missing than non-Indigenous Montanans.¹⁶

To be sure, none of the States in the Ninth Circuit are free from this epidemic of violence against Native women,¹⁷ and thus, Native women living in the Ninth Circuit depend on federal law enforcement to—to the fullest extent permitted under the U.S. Constitution—protect them from the criminals that seek to take their lives.

¹⁵ Press Release, U.S. Senator For Montana Jon Tester, *Tester Statement on Opening of Billings Missing and Murdered Indigenous Persons Cold Case Team Office* (Aug. 6, 2020), <https://perma.cc/9A3K-4YQ2>; see also, Press Release, Steve Daines U.S. Senator for Montana, *We Must Shed Light on Missing and Murdered Indigenous Women Crisis* (April 4, 2019), <https://perma.cc/2VVV-SQHU>.

¹⁶ Montana Dep’t of Justice, *The Landscape in Montana: Missing Indigenous Persons* at 3 (2020), <https://dojmt.gov/wp-content/uploads/Missing-Indigenous-Persons-Data-Presentation.pdf>.

¹⁷ See, e.g., Taaqtam Muuy’Muy’K, Hidden Bodies, MMIWG2 & MMIP of Central & Southern California; 27, https://www.sovereign-bodies.org/_files/ugd/6b33f7_dfc5aca915ab40b3a07bcbf350ead7b1.pdf (“Ninety-one percent of missing and murdered Indigenous children (age 18 or under) in Southern California are girls. There are no statistically significant thematic issues among cases of missing and murdered Indigenous girls in the region, suggesting the primary reasons for their overrepresentation in the data is because they are Indigenous and because they are girls”).

c. Tribes and Individual Indians Must Rely on Federal Law Enforcement

The incredibly high rates of violence that Native women face are exacerbated by the complex jurisdictional maze both federal and tribal sovereigns must navigate to determine which sovereign investigates and prosecutes when a Native person goes missing or is victimized. Current federal law dictates that, before a sovereign may exercise criminal jurisdiction over a crime committed in Indian country, the sovereign must determine (1) the status of the land where the crime was committed; (2) whether the perpetrator is Indian; and (3) whether the victim is Indian.¹⁸ Discerning these factual predicates to the exercise of jurisdiction impedes law enforcement's ability to promptly launch an investigation and search-and-rescue effort when a Native woman goes missing on tribal lands.¹⁹

In 1978, the U.S. Supreme Court determined that Tribal Nations could no longer prosecute crimes committed by non-Indians against Indians unless and until

¹⁸ See *McGirt v. Oklahoma*, 591 U.S. 894, 898 (2020); *United States v. Cooley*, 593 U.S. 345, 352-53 (2021); *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022).

¹⁹ See Amnesty Int'l, *Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA* 34 (2007), <https://www.amnestyusa.org/wp-content/uploads/2017/05/mazeofinjustice.pdf> ("If it's a parcel of property in a rural area, it may take weeks or months to determine if it's Indian land or not; investigators usually cannot determine this, they need attorneys to do it by going through court and title records to make a determination.").

Congress restores their jurisdiction to do so.²⁰ In so holding, *Oliphant* stripped Tribal Nations of the authority to prosecute the majority of violent crimes committed against Native women and children. And as a result, Native women and Ninth Circuit Tribal Nations largely have no choice but to rely on federal law enforcement.

The federal government, however, often does not bring charges against perpetrators in Indian country.²¹ As one academic noted: “high declination rates are attributed in part to a lack of federal resources and focus, the vast distances U.S. agents must travel, cultural or language difficulties, lack of evidence, and witness issues.”²² Another researcher highlights that federal prosecutors and investigators lack ground level knowledge and are not “the first responders when crimes occur.”²³

The panel’s decision in this case adds yet another hurdle Ella Mae and her family must jump through a long, twisted maze in search of justice. Native victims and their families hope and wish for federal law enforcement to take the murder of

²⁰ See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978), superseded by statute, *United States v. Lara*, 541 U.S. 193, 207 (2004).

²¹ See Ed Hermes, *Law & Order Tribal Edition: How the Tribal Law and Order Act Has Failed to Increase Tribal Court Sentencing Authority*, 45 Ariz. St. L.J. 675, 679 (2013).

²² *Id.* at 680.

²³ 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 U. L.J. 811, 821 (2017).

their loved one seriously. They do not expect that in one of the few instances where the FBI actually investigates a Native woman's disappearance, the evidence will be thrown out on grounds the detectives had no reason to anticipate.

II. *Mosley* Should Not be Interpreted to Create Irrational Obstacles to Law Enforcement Investigations of MMIWG Crimes on Reservations

If left undisturbed, the panel's decision threatens to “transform the *Miranda* safeguards into wholly irrational obstacles to legitimate police investigative activity.” *Michigan v. Mosley*, 423 U.S. 96, 102 (1975). As Judge Bennett's dissent persuasively articulates, the officers in this case complied with all applicable Ninth Circuit and Supreme Court precedents: they waited *six days* to re-initiate questioning, they informed Tolth of his rights under *Miranda*, and although the officers eventually lied to Tolth, they did so *after* he voluntarily relinquished his right to counsel during the interrogation—thus engaging in investigative conduct that conforms with this Court's decision in *United States v. Orso*, 266 F.3d 1030, 1034-35 (9th Cir. 2001).

The panel's expansion of *Miranda* and *Mosley* to now include an inquiry into the law officer's intent or motive for questioning creates a new element that will give rise to irrational obstacles to law officers seeking to locate MMIWG—investigations that are already plagued by a lack of federal resources,²⁴ complex rural landscapes,

²⁴ U.S. Department of Justice, Tribal Public Safety & Criminal Justice Funding Consultation Report (Jan. 2025) at 2, www.justice.gov/tribal/media/1385416/dl

a jurisdictional maze, and incredibly high rates of violent crime. If and when federal law enforcement *do* investigate the homicide of a Native woman, such as Ella Mae, that investigation should not be precluded by an interpretation of *Miranda* that does not conform with Supreme Court precedent.

CONCLUSION

Amici support the United States’s request that this Court grant rehearing.

Respectfully submitted this 7th day of November 2025.

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(“[T]he current federal funding levels and mechanisms do not adequately meet Tribes’ public safety and criminal justice needs.”); *see also* Examining Native Communities’ Priorities for the 119th Congress, Hearing Before the S. Comm. on Indian Affairs, S. Hrg. 119–32 (Statement Of Hon. Mark Macarro, President, National Congress Of American Indians) at 5, www.indian.senate.gov/wp-content/uploads/CHRG-119shrg59783.pdf?utm_source=chatgpt.com (“[T]he funding shortfall is \$3 billion.”).

CERTIFICATE OF COMPLIANCE

I certify that this Motion complies with Fed. R. App. P. 32(a)(5) and (6) because it is in proportionately spaced font and has a typeface of 14 points. I further certify that this Motion complies with the type-volume limitation of Circuit Rule 29-2(c)(2) because it contains 2,778 words, excluding the cover, table of contents, table of authorities, certificates of compliance and service, and signature blocks.

GREENBERG TRAURIG, LLP

s/ Jennifer H. Weddle

Jennifer H. Weddle

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system on November 7, 2025. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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