NO. 20-1485

In the SUPREME COURT of the UNITED STATES OF AMERICA

JO ELLEN MARY CROSSETT

Petitioner

v.

EMMET COUNTY et al;

Respondent

On Petition for Writ of Certiorari to the

United States Court of Appeals

for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Jo Ellen Mary Crossett

pro se

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231-758-6049

QUESTIONS PRESENTED

Jo Ellen Mary Crossett is an Indian, Native American. She lives on land that was "to be held in common for the Ottawa and Chippewa Indians" in Northern Michigan. A treaty in 1836 set the resevations aside for the Indians, and a treaty in 1855 "guaranteed" and "secured" a homeland for them, after the Indians ceded to the United States government almost 14,000,000. acres. Little Traverse Bay Bands of Indians, a reaffirmed-recognized tribe, or the Federal Government has jurisdiction over her, and any other Indian on the reserve land, not the State of Michigan or local police including Emmet County Sheriff.

In Ms. Crossett's reply brief, in the Court of Appeals for the Sixth Circuit, she applied a new case from this court, *McGirt v Oklahoma,* to her case. The Appellees/Rerspondents, Emmet County et al, consider it a "new" issue, as did the Sixth Circuit, erring by passing over the issue, as did the U.S. District Court.

Ms. Crossett expressed her discontent with local police misconduct on Indians and the poor and she "told on them." Soon she was arrested at her home and taken to jail, four times prosecuted and jailed, cummulating in serving three nine-month jail sentences. Respondents retaliated on her, conspired to maliciously prosecute violating her constitutional rights resulting in twenty-four claims for damages. In District Court defendants primary defense was immunity.

1.)Is Ms. Crossett on Indian land, a reservation established in the 1836 and 1855 treaties, not disestablished with intent by congress, and does Little Traverse Bay Bands or Federals have jurisdiction over her. Did the lower courts err in passing over the "new" Indian jurisdiction isssue, resulting in great injustice?

2.)Did Sixth Circuit err in upholding Summary judgment, though respondents violated Ms. Crossett's constitutional rights and state claim, losing immunity?

3.)Is Ms. Crossett's post-incarceration relief for damages barred by the "favorable termination" theory in *Heck v Humphrey,*?

ALL PARTIES TO THE PROCEEDINGS

Emmet County, MI;

Peter A. Wallin, Sheriff;

Cody Wheat, Deputy;

Fuller Cowell, Deputy;

Wade Leist, Deputy;

James R. Linderman, Prosecutor;

Stuart Fenton, Assistant Prosecutor;

Michael H. Schuitema, Assistant Prosecutor.

Respondents

Jo Ellen Mary Crossett

Petitioner

RELATED CASES

. *Crossett v Emmet County et al,* No. 18-cv-543 United States District Court for the Western District of Michigan. Judgment entered March 16, 2020.

. *Crossett v Emmet County et al.* No. 20-1268, United States Court of Appeals for the Sixth Circuit. Judgment entered November 12, 2020.

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OPINIONS BELOW

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

The opinion of the United States Court of Appeals for the Sixth Circuit appears at Appendix A to the petition and is unpublished.

The opinion of the United States District Court for the Western District of Michigan, Southern Division appears at Appendix B and is unpublished.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit decision was on November 12, 2020. A timely petition for en banc rehearing was denied by the United States Court of Appeals for Sixth Circuit on January 15, 2021. A copy of the order denying rehearing appears at Appendix C. The jurisdiction of this court is invoked, including under 28 U.S.C.;1254(1)

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitutional Amendments : First, Fourth, Eighth, and Fourteenth. See Appendix F

18 U.S.C. ;1151 Definition of Indian Country, Criminal jurisdiction on reservations not affected by Public Law 280. (Michigan is not a PL 280 state.) and General Crimrs Act, 18 U.S.C. ;1152, and Criminal jurisdiction over non-member Indians Public Law 102-137 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") See Appendix G

42 U.S.C.;1983, 1985-Conspiracy See Appendix H

The United States 1836 Treaty of Washington with the Ottawa and Chippewa, See Appendix I

The United States Treaty of Detroit City with the Ottawa and Chippewa See Appendix J

INTRODUCTION

This case presents the court a case for resolving an important Indian jurisdictional issue, as well as important immunity questions, and a chance to address the favorable termination requirement in *Heck v Humphrey,* a requirement that discriminates claimants who are no longer imprisoned. Not only are these issues important to Ms. Crossett, but also to the ones coming along behind her. The Indian jurisdiction issue is extremely important to not only all the Indians residing on the reservations, and the thousands of descendants of Ottawa and Chippewa in Michigan, but also Indians and others throughout the entire United States.

This case is of extreme importance to the Little Traverse Bay Bands of Indians (LTBB) who are the "recognized and reaffirmed tribe" on the reservation. The "tribe" seeks respect of the State of Michigan to abide by treaty reservation boundaries regarding jurisdiction.

The fact Ms. Crossett is an Indian on Indian land supports all of her twenty-four claims for relief against respondents who violated her rights. Emmet County and their sheriff and deputies do not have jurisdiction over her, neither do the prosecutors of Emmet, or State of Michigan.

STATEMENT OF THE CASE

1.) Factual Background

Jo Ellen Crossett saw police misconduct in her neighborhood of North Emmet County, Michigan. Emmet County Sheriff Department(ECSD) and Straits Area Narcotic Enforcement team(SANE) were conducting home raids on Indians(Native Americans) and the poor citizens of the county.

Ms. Crossett asked the sheriff to call her back in numerous phone calls regarding the raids. The sheriff did not call her back. Ms. Crossett sent an email to Emmet County Board of Commissioners addressing her concerns of the violent police raids on Indians and others, and the fact the Indians were being raided and arrested and jailed too. (App. k 61a)

Ms. Crossett wrote, called and emailed everyone she could think of to try to stop the police misconduct , including calling and talking to Charlie McInnis and Toni Drier, Emmet County board members. she asked them for help, to stop the constitutional violations going on at the raids. She was ignored. Some citizens filled the commissioners meetings, but they were ignored. Over a thousand citizens pledged to support the Shame on SANE-peaceful protest and over a hundred people showed up and protested all day at a nearby park across from Emmety County building. The raids continued.

In April of 2015 Ms. Crossett's neighbor, and family member was raided by SANE and ECSD. She was a Native Woman in mourning for her baby she had lost. During the raid police men disturbed the urn bearing his ashes. Ms. Crossett called up the sheriff again asking why he was raiding Indians. She was frightened and upset. She cussed at him and called him names. She told him not to come to her house, that she was an Indian on Indian land. She warned him and warned him that she would sue in federal court

any police who raided her or come to her home to disturb her because she is a law-abiding citizen. She told them they would be in peril of a lawsuit , and that she would tell everyone she could until someone did something to stop the raids. She left her phone number because she wanted him to call her back regarding the SANE raids. He did not call her back. (App. 31a-32a)

At the time, Ms. Crossett was not aware that Sheriff Wallin was the director of SANE, she found out later.

In May of 2015 Sheriff Wallin taped phone calls he had Deputy Fuller Cowell make to Ms. Crossett. Deputy Cowell works for SANE. Cowell questioned her extensively regarding the cussing she did at the sheriff. He asked what she meant when she said police would be in peril if they came to her home. She explained she would call everyone she could until someone did something, and that she would take action in court if police came and bothered her. She told them she had been a battered woman in her past and had PTSD from that time. She told Cowell that she was an Indian on Indian land and that they had no right to disturb her. (voice tape of Cowell)

At the end of the call Cowell eluded to the fact it was cleared up. Ms. Crossett states she will rest easy then. Later, Deputy Wade Leist called Ms. Crossett and questioned her extensively regarding cussing at the sheriff, he got lein information and admitted he went on SANE raids at Indian homes. Ms, Crosett explained she was an Indian on Indian land. (voice tape of Leist)

On May 23, 2015 Sheriff Wallin sent Deputy Wheat and Deputy Cowell to arrest Ms. Crossett at her home, The depities did not have a warrant, they refused to tell her why they were at her home, and would not tell her why she was being arrested. They told her they had a warrant but they did not..

Ms. Crossett was in her nightgown, resting on a Saturday when the

sheriff sent the deputies to arrest her. Deputies Wheat and Cowell parked down the road and came through the woods to her back door, video-taping through her windows, instead of pulling in her driveway and going to the front door.

Ms. Crossett saw Cowell aim a gun at her son's back so she ran out the front door. Ms. Crossett followed orders to step back and put her hands on her head. Deputy Wheat did illegal leg sweeps on her, pushing her on the ground and landing on top of her. Ms. Crossett ssent pictures of the bruising on her body within the days following the arrest May 23, 2015. Wheat hit Ms. Crossett in the head while she was in handcuffs. Ms. Crossett tells the police she is an Indian on Indian land. They do not respond to that.

Ms. Crossett has coronary artery disease. she was breathless and asked for an ambulance, which was delayed because Wheat insisted she was faking her grave vital signs. Eventually she is taken to the hospital and then to jail. She paid $3,000. bond and was released after two days. while in jail Deputy Wheat charged her with three resisting arrest obstructing justice. She was charged with malicious use of cell phone, stemming from when she called the sheriff.

On January 13, 2016 Ms. Crossett went to the courthouse to attend her preliminary exam. But she was arrested again for malicious use of phone, this time concerning the tribe. Her prelim was cancelled and she was arrested and taken to jail and under duress she was coerced to sign her prelim away instead of staying in jail. Ms. Crossett never pled guilty to anything.

Prosecutor Fenton called Ms. Crossett insane, for no apparent reason, though she was not insane. He was the first one to bring up the issue. The next month the attorney Ms. Crossett had hired stopped working for her and called her insane also. Then the prosecutors office, the court, and Ms. Crossett's attorney sent emails back and forth concerning their plan to place an insanity defense on her, without her consent. The court ordered forensic exams. Ms. Crossett had prior traditional healing appointments, she did not attend ther exams. An Arrest

warrant was issued in March of 2016. April 28, 2016 police came and arrested Ms. Crossett at her home. She was kept in jail for a month, though she took the test twenty days in. Ms. Crossett passed the exams. (Pl. Cpl-Ex.9)

Ms. Crossett went to trial in August 2016. Her attorney was ineffective, she was left with a biased jury, the judge did not remove his wife for cause. She was convicted and sentenced to three nine-month sentences which ran concurrent. In December of 2016 she went to trial on the first arrest for cussing at the sheriff. She won, the jury found her not guilty. The next day the prosecutors office dismissed the second case of malicious use of phone.

While in jail Ms. Crossett was not allowed to see a doctor the entire nine month sentence. She was not allowed to use her traditional medicine, oregano oil that she used for heart health, serious stomach issues, and for PTSD, though she had been allowed to use it the month she was in jail for not taking the exams. She was not allowed to use the medicine the entire nine month sentence. She was denied a soy-free diet, though she told them she had a soy intolerance.

Ms. Crossett was stripped naked and searched for drugs during her incarceration. Ms. Crossett gained forty pounds while in jail.

On May 14, 2018 Ms. Crossett filed a timely lawsuit against respondents, seeking damages relief under 42 U.S.C.;1983. (App. H-52a) Ms. Crossett exhausted all appeals in her resisting and obstructing justice convictions.

2,)District Court Proceedings

In the district court proceedings Ms. Crossett brought forth the Indian issue at the Rule 16 conference held before Magistrate Judge Ellen Carmody. (App.D-22a-23a) Respondents motioned for summary judgment, their defense strictly immunity. Magistrate Judge Ellen Carmody issued a Report and Recommendation recommending " the motion be granted and this matter

terminated." (App. E-24a) Ms. Crossett timely objected to the Report and Recommendation. District Judge Janet T. Neff issued an Opinion and Order. "The court denies the objections and issues this Opinion and Order." (App.B-11a)

Ms. Crossett has always maintained she was an Indian on Indian land and that Emmet County police or courts, nor the State of Michigan have jurisdiction over her according to federal law, throughout the case, and before the first arrest. The District court passed over the Indian issue. Neither the magistrate judge nor Judge Neff addressed or ruled on it, though they had chances. Ms. Crossett included it in her complaint, defendants said to send her proofs, Ms. Crossett did. At her deposition defendants spent over a third of the time on the Indian issue. The court did not rule on the issue. Ms. Crossett asks this court to rule on it.

Ms. Crossett brought it up the issue at the only court hearing held in district court, the rule 16 conference held July 16, 2018. The court would not address it, passed over it and then ignored it. Ms. Crossett was concerned because she knew her case would affect the tribe's case. (App. D 22a-23a) LTBB filed a lawsuit for the State of Michigan to respect the reservation boundaries in 2015.

Concerrning the constitutional violations, or underlying violations put forth by defendants, the court mostly addressed Ms. Crossett's evidence, no real analysis was done regarding her claims for relief. Judgment was granted to defendants on the First, Fourth, Eighth, and Fourteenth Amendment violations, and state law claim of Intentional Infliction of Emotional Distress IIED which caused damage to Ms. Crossett. The judge weighed the evidence instead of allowing a jury to.

Ms. Crossett's post-incarceration relief concerning the "favorable termination" requirement in *Heck v Humphrey,* was not addressed except to state that there was no excessive force used at the first arrest. Two of the arrests and prosecutions are not addressed at all. After each paragraph the court states," She again fails to identify any alleged error to be reviewed." (App. B 15a)

Defendants entire defense for summary judgment motion was based on qualified immunity. Every claim of Ms. Crossett's was countered with their immunity covering them. (App. K 61a-64a) Their defense was immunity on every claim. "All of Plaintiff's federal claims are barred by qualified immunity" But as soon as qualified immunity became a word on every tongue, this past summer, then they changed their defense to the lack of underlying constitutional violations, and the courts followed them. More cases approaching this court are trying to avoid talking about qualified immunity, as in Ms. Crossett's case, yet they cling to both prongs of the immunity test. Ms. Crossett invoked 42U.S.C.;1983, 1985 to bring her 24 claims for relief against respondents. There is no immunity defense in that civil rights law.

3.) Circuit Court Proceedings

The Sixth Circuit panel passed over the Indian jurisdiction issue. The panel considered it a new issue. They did not consider the importance of the issue. They completely disregarded the Indian issue, even though other circuits have addressed and ruled on new issues, and this court has decided cases on this very issue. The Sixth Circuit panel states,"we will not consider arguments that are first raised in a reply brief because the defendants did not have a chance to respond."(App.10a) yet the defendants brought up the issue in their appellee response brief. Ms. Crossett was replying to that issue brought up by defendants themselves. She was suppose to reply, and a new case on Indian jurisdiction was decided in this court, pertaining to the Indian jurisdiction issue. *McGirt v Oklahoma,* 591 U.S.(2020)

The three judge panel parroted the District court on every claim, though they chose different words. "Summary judgment on this claim was proper..." (App. 6a) They upheld the judgment on the Amendment Claims, granting immunity to all. "Although mentioning qualified immunity, the defendants focus their arguments on the lack of a constitutional violation, though they do address immunity.

On the qualified immunity theory there is a two-prong test. Appellees in their response brief at the Sixth Circuit referred to the first part of the test, that courts

must decide if the facts make a case for a constitutional violation, and they concentrated on that, yet still admitted that if the court found constitutional violations then they were totally covered by qualified immunity, the second prong that says, "The court must decide whether the right at issue was' clearly established' at the time of the defendant's alleged misconduct." *Pearson v Callahan,* 555 U.S. 223, 232(2009) Summary judgment itself stifles constitutional rights.

The circuit court did not address Ms. Crossett's "post-incarceration relief for damages" considering the "favorable termination" in *Heck,* except to say that her convictions have not been invalidated.

Ms. Crossett petitioned the court for an en banc rehearing, but she was denied the rehearing in an order filed January 15, 2021. (App. C 21a)

REASONS FOR GRANTING THE PETITION

1.) The Indian Jurisdiction Issue

1.) It is not a new issue, and the lower courts errored in passing over it.

Ms. Crossett is an Indian, and she is on Indian land, a reservation set up for the Ottawa and Chippewa of Northern Michigan, "Land to be held in common" according to the 1836 Treaty of Washington. That treaty was negoiated by the United States Government with the various bands of Indians living there, including the Little Traverse Bay Bands, LTBB. (App I 53a-56a) Different reservations were set aside to be permanent homelands for the Indians out of the nearly 14,000,000 acres the bands ceded to the United States.

In 1855 another treaty was negoiated between the United States and the bands.

The Treaty of 1855 upheld and reaffirmed the reservations established at the Treaty of 1836, it did not disestablish or diminish it. The first part of the question is concerned with if a reservation was established, and was that reservation disestablished by congress. Yes, the treaties of 1836 and 1855 established reservations. Little Traverse Bay/Michilimackinaw reserves were established in the 1836 Treaty of Washington and upheld in the 1855 Treaty of Detroit City. Congress has not disestablished or diminished it, the reservation stands today.

In the Treaty of 1836, Article First, "The Ottawa and Chippewa nations of Indians cede to the United States all the tract of country within the following boundaries..." The text of the treaty then describes the lands ceded, the almost 14,000,000 acres, then the treaty text says, "...all the lands...not hereinafter reserved." The treaty is stating that there are lands set out from the ceded land described, lands reserved for the Indians use.

Article Second, "from the session aforesaid the tribes reserve for their own use, to be held in common the following tracts..." The treaty then goes on to describe various reserves, including one at Little Traverse Bay, LTB reserve. " One tract of 50,000 acres to be located on Little Traverse Bay." What is important are the words, "From the session aforesaid the tribes reserve for their own use, to be held in common the following tracts..." That is a reservation making treaty. The land reserved to be held in common for Indian use, there is no doubt the 1836 treaty of Washington between the United States and the Ottawa and Chippewa established the LTB reservation, The same one Ms. Crossett lives on, and called the sheriff on, the same one she was arrested on.

Article Second also says that the reservations would be good for five years, or until the Indians were removed. The Indians were never removed, and so "retained their homeland." *United States v Michigan,* 471 F. Supp. 192(W.D. Mich, 1979) A fishing rights case concerning the Ottawa and Chippewa. The Indians were not removed and were granted permission to stay on their reservations by the U.S.

Indeed, within ten years the government gave them permission to stay as long as they desired. In fact, because the settlers squatting on the indian reserves were annoying the bands so much, the United States negoiated another treaty with them. The 1855 Treaty of Detroit, a treaty for the Ottawa and Chippewa to secure for them their homelands for good, lands guaranteed by the treaty of 1836. The 1855 treaty set out land for the Indians use, the very same reservations listed in the 1836 treaty.

Ms. Crossett cleaves to the words reservations and reserved in the treaties because it is a possession of land reserved out for Indians. Being on the land is Indian, the land is who we are. There is no Indian without the land. To survive, the Indians needed the land, that is why they fought so hard for it so long ago, and do today.

Article Third names more reservations, and Article Fourth says, "Three hundred dollars per annum for vaccine matter, medicines and the services of physicians to be continued while the Indians remain on their reservations." The Indians are still on the reservation, and that is why Ms. Crossett uses LTBB Indian Health Services Clinic in Petoskey, on the reservation. The article describes monies and goods "to be delivered to Michilimackinac...and also the sum of two hundred thousand dollars in consideration of changing the permanent reservations in articles two and three to reservations of five years only, to be paid whenever their reservations are surrendered." The Indians never have and never will surrender their land. "In consideration of changing the permanent reservations..." Consideration means to ponder on a matter, to think about it, which the Indians did. But they rejected the very idea. After all, the five year deal language was slipped in unbeknownst to the Indians after the treaty was signed by the Indians. Regardless of whether the money was paid, the treaty said, "whenever their reservations are surrendered..." The Indians have not surrendered their reserves.

Article Sixth, "The said Indians bering desirous of making provision for their half-breed relatives, and the President having determined that individual reservations shall not be granted, it is agreed that in lieu thereof, the sum of

the sum of one hundred and fifty thousand dollars shall be set apart as a fund for said half-breeds. No person shall be entitled to any part of said fund unless he is of Indian descent and actually resident within the boundaries described in the first article described in this treaty..."

Some of the Indians, including descendants("half-breeds") were hoping to achieve small individual plots of land within the reserves. But the president did not deem that to be. So in lieu of those small individual plots, money was set aside for them instead. In no way did the text of the treaty refer to the large reserves of land," to be held in common" in Article Second, as the individual reserves.

Michilimackinaw was a very old reservation, alluded to in the Royal Proclamation and the old Northwest Ordinance. Michilimackinaw reserve is referred to throughout the treaties and in a vast amount of literature from the treaty making era. Article Seventh states, "...To do full justice to the Indians, and to further their well being...it is stipulated to renew the present(blacksmith) dilapitated shop at Michilimackinac, and to maintain a gunsmith, and to build a dormitory for the Indians visiting the post...(forts were built at Michilimackinaw) it is agreed to support two farmers and assistants, and two mechanics..."

Article Eighth, "...when the Indians wish it, the United States will remove them..." The Ottawa and Chippewa never wished to be removed and are there today.

Article Twelfth, "All expenses attending the journey of the indians from, and to their homes, and their visit at the seat of government...will be paid by the United States." The Ottawa and Chippewea travelled to Washington because that is the seat of government of the United States. They journeyed from "their homes" The land that became their reservations.

Supplemental Article reiterates again that no individual reserves are allowed, and explains the funds set aside to satisfy those claims.

There should be no doubt that the 1836 Treaty of Washington, between the United States and the Ottawa and Chippewa established reservations, including LTB Reserve. As there is no doubt that the next treaty reaffirmed the reservations.

Respondent Emmet County must agree that the treaties established a reservation and congress has not disestablished it. Emmet County Board of Commissioners published a magizine called Essence of Emmet. Though there are many inaccuracies regarding the Ottawa and Chippewa, they did get some of it right. Regarding the Indians going to Washington in 1836 to negoiate the treaty. "...that fateful trip resulted in the Washington D.C. Treaty of 1836. Odawa of Little Traverse ...ceded to the United States over 13,000,000 acres of land in Michigan. The tribes were to have access to this ceded land for hunting, gathering, fishing...more importantly, reservation lands were selected by the tribes." Emmet County admitted in their publication that reservations were established.

Essence of Emmet goes on to say, " (U.S. Agent Schoolcraft) brought the treaty back(from senate ratification)to Michilimackinaw....where over 4,000 Indians gathered...to witness the event...When the treaty was finally revealed shock, anger and anxiety shot through the island, as a major change was included in the treaty after the Indians left." They are alluding to the term" of five years only" in Article Second of the 1836 Treaty that the senate slipped in later.

Regarding the Treaty of 1855 Essence of Emmet had this to say, " The Detroit Treaty of 1855 finally removed the threat of removal for the Odawa of Northern Michigan." Regarding the allotments in the treaty, the publication says, "...after six years a patent was to be issued...these stipulations included that the lands were not to be part of the public domain since they were selections within a reservation." Essence of Emmet Publication. Remember, this was the 1855 treaty they were talking about, and they were right.

In the 19 years that followed the signing of the Treaty of 1836 settlers continued

pushing their way onto Indian lands, the reservations set aside for Indian use in the 1836 Treaty of Washington. In 1837 Michigan become a state and began forming more counties, some in the North. In 1840 a county was formed, mostly out of reservation land, eventually to be called Emmet. Charlevoix County too formed on reservation land. Settlers kept coming onto the 1836 reserves, despite Indian protests to the government. The state encroached upon the reserves, taking Indian children from the homes and to this day they flagrantly violate the Indian Child Welfare Act, federal law, insisting that Indian families accept the "services" they offer, services that end separating Indian children from their parents and grand parents on the reservation. It is a stealing away of tradition.

The Indians way of life kept changing, dramatically at times. So too did the Indians change, except in one way. They never stopped fighting for their land. That did not change. They fiercely fought for the land. But everywhere they turned, the best fishing grounds taken, their cornfields over taken, the blueberry plains taken. It was hard times for all in the early days of the 1850s. By this time there was sickness among the Indians and money and goods were scarce. Times were lean.

Before 1855 came along eveveryone knew something had to be done to save the Indians and their land. From the president of the United States to the Indians themselves, and to the Catholic priests working among them. The government figured that if Indians would live like settlers it would save them, and help them to hold their land better. It was the era of assimilation. The Indians were frantic to keep the land for the generations to come, every day saw more land eaten up by settlers. So the Ottawa and Chippewa made another treaty with the United States. The 1855 Treaty of Detroit City. (App J 57a)

In the 1850s the bands remained on their reserves, it had been 19 years since the Treaty of Washington. Every year saw more settlers on the reservation which was highly disruptive to the Indians. The Indians went to the treaty to secure their homeland, and that they achieved. The 1855 Treaty reaffirmed the reservations

set up in the 1836 Treaty.

Article 1. of the 1855 Treaty ,"The United States will withdraw from sale for the benefit of said Indians as hereinafter provided, all the unsold public lands within the State of Michigan embraced in the following descriptions to wit" The U.S. was withdrawing from sale land that was the very same 1836 Treaty reservations set aside for Indian use 19 years before. The land in the "discriptions" was the reservations of the 1836 Treaty. The land was still reservation land then, congress had not disestablished it. The 1855 treaty upheld the reservations in the 1836 treaty. The Treaty did not abolish or diminish the reservation, in fact, it secured and guaranteed a homeland for the Indians. It too was a reservation treaty. After all, the government knew they could not take back the land "given" to the Indians in the 1836 Treaty. The "townships" and parts of were "given" to the Ottawa and Chippewa, the very reservations, "land to be held in common." The 1855 Treaty is also consistent with an allotment treaty. An allotment treaty is consistent with continued reservation status, according to this court.

Article 1. Says, "...for the benefit of said Indians..." regarding the land. The text is clear, for the benefit of the Indians. That indicated land for their use. Article First through Eighth list the lands sert aside for the Indians benefit. The same boundaries set up in the 1836 Treaty, for the Indians use. Though desribed in eight parts, some of the discriptions contain more than one reserve.(App 57a-60a)

Because of the rapid encroachment of settlers on the reserves, the United States, again secured the homeland. The rest of Article 1 then goes on to allot up the tracts of land, giving 80 acres to every male with a family, and 40 acres to single men, etc. The lots were "to be selected and located within the severtal tracts of lands hereinbefore described, under the following rules and regulations. "The U.S. will give to each Ottawa and Chippewa Indian..." It went on to say, "Each Indian entitled to land under this article may make his own selection of any land within the tract reserved herein for the band to which he may belong..."(App 58a)

The text of the 1855 Treaty is clear. The Indians by "rule and regulation" made his selection of land from the reservations set aside in the 1836 Treaty. The very reserves again were being given to the bands, in the allotment supposed to be taking place. The treaty language plainly says that "any land within the tract reserved herein for the band to which he may belong..." The tract reserved was stating that the treaty was reserving the land again for the Indians, the land reserved earlier.

The U.S. knew the settlers were eating up the land at an alarming rate, and the State of Michigan certainly did nothing to stop them. So the government set apart the land again for the Indians. The Fourth part of Article 1 describes LTB Reservation. "For the Cross Village, Middle Village, L'arbre Croche and Bear Creek bands..." The treaty then names the numbered townships which comprise LTB Reservation. Under whatever name it is called, Michilimackinaw, or LTB Reserve, it is one block of land, end to end comprising an Indian Reservation for the Ottawa and Chippewa.(App 57a)

Whether the treaty talks of the 1836 Treaty reservations being "the land within the tract reserved herein..." or if the treaty is referring to the lands described in Article 1, they are for basic purpose, one and the same. Clearly, the treaty states that it is land reserved for the Indians. " reserved herein" indicates land set aside again for the Indians, reaffirming the 1836 reserves.

The treaty goes on to say," After selections are made, as herein provided, the persons entitled to the land may take immediate possession thereof, and the U.S. will thenceforth and until the issuing of patents as hereinafter provided, hold the same in trust for such persons..." The Indians were already in possession of it, so they did not have to move. The land had been still in their possession from the earlier treaty. "Certificates shall be issued,,,and shall contain a clause expressly prohibiting the sale...of the lands described herein"(App 58a) The U.S. knew that the land being allotted up was an Indian Reserve, that is why they worded the treaty carefully, to allow for federal oversight, which is also indicated by Article 2

language. Setting up "blacksmith shops" again, farming implements, schools and teachers, "cattle, building materials" and more. The U.S. crafted the treaty carefully being aware that the land alloted up to the Indians were their reservations from the last treaty. "The U.S. will hold the same(land) in trust for such persons." Simply trying to stop the settlers who were persistently tresspassing on the reservation. The treaty then goes further, " Certificates shall be issued...guaranteeing and securing to the holders their possession..." There the United States secured and guaranteed the reservation to the Indians, the land as their posession, as it was for hundreds of years previous to the 1836 Treaty of Washington which also secured and guaranteed their homeland. The U.S. was a fairly new government in 1836, and even in 1855. Yet, it was the U.S, who "secured and guaranteed" the Ottawa and Chippewa homeland. And if those words are not powerful enough, the paragraph is not over. The treaty then goes on to say, regarding the certificates that secured and guaranteed the possession of reserves lots to the Indians, "...such certificates shall not be assignable and shall contain a clause expressly prohibiting the sale or transfer by the holder of the land described herein." The next paragraph alludes to patents, but still leaves discretion up to the president of U.S. and Federal oversight agents. (App 58a)

Article 5 says, "the tribal organization of said Ottawa and Chippewa Indians...is hereby dissolved..." That refers to the large artificial tribes they put the various kinship bands of Ottawa and Chippewa into so the government could better treat with them. The Indians on the reserves were always formed in smaller bands that were loosely federated into some bigger bands. Article 5 is dissolving the two big tribes back into the smaller bands that always were on the reservation. In no way did Article 5 ever dissolve the Indian bands.(App 60a)

Regarding the patents, the Indians were sick with grief at the thought of losing their reservation to settlers, they embraced any ideas that would uphold their possession of the homeland. They knew the 1836 treaty reserved their lands for them, yet the ideas of patents, titles, allotments, anything keeping the land for

future generations, that was their main concern. Strengthening their ownership, sure, whatever they thought would help them to continue to keep their homeland.

The U.S. may have "returned the remaining lands to market, reversing the withdrawl of lands," but that did not end reservation status, just as allotment does not. As this court noted in *Solem v Bartlett,* 465 U.S. 463, 470(1984) "Once a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until congress explicitly indicates otherwise." Congress has not abolished, diminshed or disestablished the LTB Reservation, it stands today. The Indians called it home, they did not necessarily care what others called the reservation: reserve parcels, allotments, patents, titles, certificates, homesteads, farms, aforesaid tracts.

Only congress, with a blantant intent can abolish a reservation. Congress has not done that. Respondents, or no one can point to any clearly articulated piece of congressional intent to disband the treaty reserves of the Ottawa and Chippewa. The Ottawa and Chippewa were totally successful at achieving reservations in the 1836 and 1855 Treaties. The allotment period lasted for years with federal oversight, of course.

The Ottawa and Chippewa could not have abolished the reserves had they wanted to, only congress may abolish a reservation. The settlers could not, the Indians could not, and neither could the State of Michigan. The bands did not travel to Lansing Michigan to negoiate the treaties, they went to Washington, and then to Detroit. The federal government they called their father. The state could never be in a filial position over the bands, they do not have the power to be in that position. The constitution does not allow it. Indians belong to the constitution, not the state.

In applying *McGirt v Oklahoma*, "Once federal reserves are established only congress can diminish or disestablish it. Doing so requires a clear expression of congressional intent. " The majority in this court was addressing the fact that Oklahoma thought allotment had ended the Creek Nation 's reservation, though cases decided in this court do not support that idea. "Missing from the allotment era agreement with the Creek however is any statute evincing anything like the present and total surrender of all tribal interests in the affected lands. And this court has already rejected the argument that allotments automatically ended reservations."

Though *McGirt* relies on the Major Crimes Act, The General Crimes Act Ms. Crossett relies on, should apply. Indian land includes ,"All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent." *McGirt* explains that the Creek Nation's reservation had been alloted up, as happened to the Ottawa and Chippewa. "...The land described in the parties treaties, once undivided and held by the tribe, is now fractured into pieces. While these pieces were initially distributed to tribe members, many were sold and now belong to persons unaffiliated with the nation." That is exactly what happened to the Ottawa and Chippewa. After the 1855 Treaty the Indians were taxed and lost their "Reserve parcels" to the State and County. This describes LTB Reservation, it too has been fractured to bits. Those are the exact circunstances the bands find themselves in.While the treaty language in the 1836 and 1855 treaties established reserves for the bands, the land was traded, sold, stolen, swindled, or otherwise sold or taken from the Indians. The "pieces" of the treaty reserves were "initially distributed" to the bands, yet much of it now belongs to "persons unaffliated with the bands of Indians."

The majority then goes on to say, "to determine whether a tribe continues to hold a reservation there is only one place to look, the acts of congress." No one can point to any act of congress that disestablished the LTB Reservation. "only congress can divest a reservation of its land and diminish its boundaries...under our constitution, states have no authority to reduce federal reservations lying within their borders."

In *McGirt,* the majority, "Oklahoma claims congress ended the Creek Reservation during the so-called "allotment era"-a period... Missing from the allotment era agreement with the Creek however is any statute evincing anything like the 'present and total surrender of all tribal interests' in the affected lands." The Ottawa and Chippewa's reservation was alloted up, yet in the same treaty their homeland was secured and guaranteed to them. Congress did not abolish the reservation.

"This court long ago held that the legislature wields significant constitutional authority when it comes to tribal relations, possessing even the authority to breach its own promises and treaties. But that power belongs to congress alone." *McGirt* referring to *Lonewolf v Hitchcock,* 187 U.S. 553, 566568(1903)

"Disestablishment of a reservation requires a clear expression of its intention to do so. Commonly with an explicit reference to cession, or other language evidincing the present and total surrender of all tribal interests, " *McGirt,* referring to *Nebraska v Parker,* 577 U.S. 481(2016) No one can come up with a true act of congress that intentionally disestablished the Ottawa and Chippewa reservation. The various Acts, allotments, opening up the reserves to settlers, parcels, breaking it up and giving the smaller plots to Indians, none of it abolished the reservation.

An action that set aside land, used for Indian purpose. *Oklahoma Tax Commission v Citizen Band, United States v John,* 437 U.S. 634(1978) That is what the treaties did for the Ottawa and Chippewa. The treaties did not use words such as, "the reserves are abolished", or any words affirmatively disestablishing the treaty reserves. In *McGirt,* "...to equate allotment with disestablishment would confuse the first step of a march with arrival at its destination." The 1855 Treaty did not include language that abolished reserves. In fact, the language used is the opposite, "Securing" homes for the Indians is not in line with abolishing reserves. *Mattz v Arnet,* 412 U.S. 481(1973) Affirming that absense of disestablishment language is compatible with ongoing reservations. *Seymour v Superintendent of Washington State Penitentary,* 368 U.S. 351(1962)

"Once a reservation is established it retains that status until congress explicitly indicates otherwise." *Solem v Bartlett,* 465 U.S. 470(1984) Congress has not abolished or diminished LTB Reservation, there is no decree anywhere that congress proclaimed the reserves defunct.

In *McGirt,* "Under our constitution States have no authority to reduce federal reservations lying within their borders." The State of Michigan and local governments do not respect the reservation boundaries. "It would also leave tribal rights in the hands of the very neighbors who might be least inclined to respect them." The State of Michigan and local governments continue to this day arresting and jailing Indians on their reservation. "State courts generally have no jurisdiction to try Indians for conduct committed in Indian Country."*Negonsott v Samuels,* 507 U.S. 99 102-103(1993) Yet, Michigan and Emmet County disrespect federal law.

McGirt says, "The land described in the parties treaties, once undivided and held by the tribe, is now fractured into pieces. While these pieces were initially distributed to tribe members, many were sold and now belong to persons unaffiliated with the nation..." That is what happened to LTB Reservation. After the 1855 Treaty the allotment era went on for years. In the 1880s settlers came to the reservations in droves. The settlers were moving onto the reserves at around the same time "Resorters" were flocking to the area's breathtaking beauty. Summer residents, but now they are staying year round.

One of the most important circumstances of the 1855 treaty was the urge for the Indians to continue the homeland, to keep the land for the next seven generations. The Indians did anything possible to keep the land, they jumped through hoops, signed treaties, visited Washington, the seat of government. The land was what they wanted. And that is what they got. Though the reservations were eyed by greedy settlers, the land was not needed for a state, the Indians had already given land for the State in 1836, and Michigan became a state the following year. Federal oversight was still on the reserves. As late as 75 years after the 1836 Treaty the

United States did a count, a census of Indians left on the reservations. The Durant Roll was created in 1910, including supplemental roll. Thousands of Indians, Ottawa and Chippewa are listed. Ms. Crossett's ancestors are listed, some under Little Traverse, and some under Mackinaw Bands. The U.S. sent special Indian Agent Horace B. Durant to count the Indians for annuities. This census enumerated the Ottawa and Chippewa and all the known descendants found living on the reserves on March 4, 1907 until 1910. The 1870 annuity payment roll was conducted by James B. Long United States Army.

Just because the State took jurisdiction, and they do not want to give it up now, the United States did not ever extinguish tribal governments or disestablish legal courts of the tribes. Just because some of the land has transferred to non-Indians, that has not abolished the reserve. "This 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." *McGirt v Oklahoma,* " As *Solem* explained, "Once a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until congress explicitly indicates otherwise," *McGirt* citing *United States v Celestine,* 215 U.S.278(1909)

McGirt says, "Because there exists no equivilent law terminating what remained, the Creek Reservation survived allotment." There is no law terminating LTB Reserve. The Ottawa and Chippewa also survived allotment. In *Seymour,* "This court long ago rejected the notion that the purchase of lands by non-Indians is inconsistant with reservation status."

The Indians continued to live on their reserves, though the years following the 1855 Treaty saw more and more settlers and the opening of the land to homesteaders. Still, the Indians stayed on their reserves, trying to navigate unlawful taxation, less resources, and State and local government interference. Slowly and steadily the State of Michigan took over legal jurisdiction of the Indians, unlawfully going where they do not belong. The State, and County of Emmet

overstepped their bounds by placing Indians under their jurisdiction.

The demographics, and what happened to the land does not disestablish a reservation. "Evidence of the subsequent treatment of the disputed land...has limited interpretive value." *South Dakota v YanktonsSioux Tribe,* 522 U.S. 329 355(1998) Many non-Indians live on the Ottawa and Chippewa reserves today. There can be advantages to living on a reservation, if persons choose to.

In *McGirt,* "If congress wishes to withdraw its promises, it must say so. Unlawful acts performed long enough and with sufficient vigor, are never enough to amend the law." Just because the State and County assumed jurisdiction over Indians on Indian land, and have done so for decades, it is not enough "to amend the law."

McGirt explains how the states, including Oklahoma and Michigan exerted jurisdiction over Indians so consistently that people forget the land was once a reservation, yet that still does not disestablish or abolish a reservation.

"A state exercises jurisdiction over Native Americans with such persistence that the practise seems normal. Indian landowners lose their titles by fraud or otherwise in sufficient volume that no one remembers whose land it once was. All this continues for long enough a reservation that was once beyond doubt becomes questionable and then even far-fetched. *McGirt v Oklahoma*

The 1836 Treaty of Washington created reservations for the Ottawa and Chippewa, and the Treaty of 1855 upheld their homeland. "The most authoritive evidence of the Creeks relationship to the land...lies in the treaties and statutes that promised the land to the tribe in the first place."

"The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this nation's history." *Rice v Olson,* 324 U.S. 786, 789(1945)

In *McGirt,* "Oklahoma is far from the only state that has overstepped its authority in Indian Country. Other(states)made similar mistakes in the past. But all that only underscores further the danger of relying on state practises to determine the meaning of federal MCA."

Ms. Crossett asserts the General Crimes Act is also included. Though *McGirt* centered around the Major Crimes Act, Ms. Crossett asserts The General Crimes Act, GCA applies equally. The Indian Jurisdiction Law covers both. Indian Country, as defined by congress includes, "all land within the limits of any Indian reservation...not withstanding the issuance of any patent, and including any rights-of-way running through the reservation." U.S.C. 1151(a)

"The U.S. noting that many states have asserted criminal jurisdiction over Indians without an apparent basis in a federal law." *McGirt,* in brief for U.S. as Amicus Curiae in *Carpenter v Murphy,* (Letter from Secretary of the Interior) 2018

In the years following the opening of the reserves to more settlers, the Ottawa and Chippewa continued stepping out of the shadows of those dark days and into the light of advancement. Today, LTBB has a strong woman as Tribal Chairperson, and her co-chair is also a strong leader. The tribe has vast enterprises on the reservation, including a casino that employs hundreds of employees, generating money for programs for elders, youth, healthcare, a new hospital is in the works. The tribe has a full range of courts, prosecutors, judges, and social workers. Yet the State of Michigan refuse to give up jurisdiction over the Indians, defying federal law and Indian jurisdiction. Just because a state jumps in unlawfully with false jurisdiction, it does not mean it should be so.

In 1994 the United States reaffirmed the recognition of Little Traverse Bay Bands of Odawa Indians. They now have acknowledgment of their government to government relations with the United States, as a soverign nation.

Emmet County Sheriff Department and the State of Michigan still exert jurisdiction over Indians. The State must stop breaking federal law and respect LTB Reservation boundaries. The State and local police bullied their way onto the reservation, defying federal law jurisdiction, arresting and jailing Indians.

Regarding jurisdictional gaps on Indian land. "Many tribal courts across the country were absent or ineffective during the early part of the last century, yielding just the sort of gaps oklahoma would have us believe impossible. Indeed, this might be why so many states joined Oklahoma in prosecuting Indians without proper jurisdiction." *McGirt v Oklahoma*

Michigan too, "joined Oklahoma in prosecuting Indians without proper jurisdiction." They still do. "The judicial mind abhors a vacuum, and the temptation for state prosecutors to step into the void was surely strong." *McGirt v Oklahoma* Ms. Crossett asks this court to grant Certiorari in her case. "...the magnitude of a legal wrong is no reason to perpetuate it." *McGirt v Oklahoma* "...unlawful acts performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right." *McGirt*

The Ottawa and Chippewa gave up almost 14,000,000 acres of land, which was over a third of Michigan, a giant swath of land. They retained a miniscule amount of land as their reservation, less than 1% of the amount given away. The injustices abound against Indians on the reservation. Perhaps if the police had not been so zealous and outrageous in attacking Indian families over and over, raiding their homes, confiscating cash and goods for auction, the situation of jurisdiction may have went on. But Ms. Crossett spoke up, She told the police, before they came to her home and seized her, she told the courts, prosecutors, govenors, anyone who might listen and help the Indians. When she told, then they came and arrested and jailed her four times, trying to shut her up because she would not stop talking about Indian jurisdiction.

2. The Indian jurisdiction issue not new. The lower courts erred by passing over it.

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, or the federals have jurisdiction over Ms. Crossett, not the State of Michigan or Emmet County. It was included in her complaint. Defendants said to send proofs, which she did. Over a third of the deposition of Ms. Crossett was spent on the topic. It was brought up in every brief. Page 50 of deposition- "I believe they should have jurisdiction if they don't, I believe they do have it." Ms. Crossett's answer in regards to the issue. Page 85 of deposition. "Is it your understanding that the Emmet County Sheriff Department has no jurisdiction over the area where your house is located?" Attorney Haider Kazim questioned Ms. Crossett. She Answered, "Right, yes." He said, "Based on what? " Ms. Crossett said, " The treaties. Northwest Ordinance." He asked in regards to State or County jurisdiction. Ms. Crossett answered, "No, they have no right to ever interfere in Indian matters. Or to disturb an Indian...they are not allowed to arrest you. The 1968 Indian Bill of Rights,,," Mr. Kazim, "What does that say?" Ms. Crossett, "If you are an Indian on Indian land you either go to tribal court or federal court." Mr. Kazim, "...your understanding of those treaties, that the State or the County does not have any authority to arrest a Native American on Native American land." Ms. Crossett, "On a reservation." Mr. Kazim , "How did the deputy interfere in Indian matters when he came to your home?" Ms. Crossett said, "Because I am an Indian on Indian land" Much of deposition taken up with it.

Ms. Crossett brought it up at the only hearing in Western District Court of Michigan. Rule 16 Conference with Magistrate Judge Ellen Carmody. (App D 22a-23a) The judge passed over the issue, as did Judge Janet T. Neff at the court.

In *McGirt V Oklahoma,* The majority say, "The Creek Nation participates because Mr. McGirt's personal interests wind up implicating the tribe's." Ms. Crossett had the same concerns because LTBB had a case in District Court and Ms. Crossett wanted to address the issue. But that court passed over the issue.(App 23a) The Judge asks Ms. Crossett if there was anything " further from your point of view

Ms. Crossett, that we should take up at this time?" Ms. Crossett answered, "Your honor, I am a Native American and there's three things. I am a Native American. I am on Indian land. This county seat, Petoskey sits on Indian Land." The magistrate judge said she did not see the relevance of the issue. She said to talk to the mediator about it. The issue was passed over. Though the Supremacy Clause in the constitution says every judge should know and follow the treaties.

Ms. Crossett was concerned with the Indian issue. "...I would ask that those issues, being an Indian on Indian land, could be separated out, not settled." The Judge then said, " If it dosen't get resolved, and you would like to discuss it with me, I will take it up...Im not sure I think it has relevance," Again the issue was passed up.(App 23a) Ms. Crossett continued to bring it up in all her briefs to that court, but the issue was not taken up again by the court.

In the Sixth Circuit Court of Appeals, that court too passed over it, saying it was a new issue, so they could not consider it because Appellees did not have a chance to answer it. "Crossett argues for the first time in her reply brief that Michigan officials lacked jurisdiction to arrest and prosecute her because she is an Indian on Indian lands. But we will not consider arguments that are first raised in a reply brief because the defendants did not have a chance to respond." It was not a new issue, but even if it was they were wrong to pass over it. The Appellees did respond, and have chances to. The Appellees brought it up in their Appellee Response Brief. Ms. Crossett was doing what she was suppose to do, reply to defendants response brief.

"Reply briefs reply to arguments made in the response brief." *Novo Steel SA v U.S. Bethlehem Steel Corp.*, 248 F. 3d 1261, 1274(Federal Cir. 2002) Regarding raising issues for the first time in a reply brief. Ms. Crossett replied. They had every opportunity to argue more, for their position.

Ms. Crossett was preparing her reply brief for the circuit court before judgment. This court decided *McGirt v Oklahoma,* and Ms. Crossett included that in her brief. The Circuit erred by passing over the issue, whether thought of as new, or not.

Other circuits and this court have considered new issues.

The Appellees brought up the issue directly to Ms. Crossett in their Appellee Response Brief. "According to Crossett Michigan is an entire reservation according to the Northwest Ordinance." Appellees then go on to say, "Despite the land being ceded. As a consequence of Michigan being a "reservation" it is Crossett's position that the Emmet County Sheriff Department has no jurisdiction or authority to arrest any Native American, including Crossett." Plain as day. Respondents knew Ms. Crossett's position, because it was not a new argument or controversy. Throughout the case, and even before that first arrest respondents knew Ms. Crossett's position on the issue.

Though Ms. Crossett does not dispute their words, she would remind the court that the 1836 and 1855 reservation treaties were also included in her position, as indicated in the first part of this brief.

Again, in Appellee's brief, "The deputies cancelled the ambulance. Crossett then warned the deputies that they cannot arrest her, because she is a Native American." On the next page, "She again told Wheat that her Native American rights made the arrest illegal." And then, "It is Crossett's position that the ECSD has no jurisdiction or authority to arrest Ms. Crossett..."

Regarding new issues, there is a "general rule " "It is the general rule that the appellate court does not consider an issue not passed upon below. *Singleton v Wulff,* 428 U.S. 106, 120. "Certain exceptions apply, however, and this court has deviated from the general rule in exceptional cases or particular circumstances, or when the rule would produce a plain miscarriage of justice." *Scottsdale Ins. Co., v Flowers,* 513 F. 3d 546(6th Cir. 2008) Quoting *Foster v Barlow,* 6 F. 3d 405, 407(6th Cir. 1993)

In *Singleton,* "This general policy is justified by two main goals; First, the rule eases appellate review by having the district court first consider the issue. Second, the rule ensures fairness to litigants by preventing surprise issues from appearing on appeal.

The issue was no surprise to Appellees, and grave injustice will be done if this court too passes over it. Ms. Crossett understands the rule "ensures fairness to litigants by preventing surprise issues from appearing on appeal." *Rice v Jefferson Pilot Fin. Ins. Co.,* 578 F. 3d 450, 454(6th Cir. 2009) Quoting *Scottsdale Ins., Co.*

In the Sixth Circuit regarding matters raised first time on appeal. They look at whether the issue is a question of law, if the resolution is clear beyond doubt, whether failure to take up the issue would result in injustice, and the parties rights to have the issue considered by both courts. *Pinney Dock & Transport Co., v Penn Central Corp.,* 838 F. 2d 1445 (6th Cir. 1988) Later, in *Fifth Third Bank v Lincoln Fin Secur Co., (*6th Cir. 2011)The court applied these factors, The question of law and whether its clear beyond doubt. Ms. Crossett has not added or changed facts or claims, it is law. The prejudice rationale does not apply "The new issue depends only on facts in the record." *Sheffield Comm Corp., v Clemente,* in the Second Circuit on hearing new issue. In the Tenth Circuit, "The general waiver rule is not absolute and we may depart from it." *Sussman v Patterson,* 108 F. 3d 1206(10th Cir. 1997) The Eighth Circuit, "Appellate courts should not circumvent parties from improving arguments presented..." *Universal Title Co., v United States,* 942 F. 2d 1311, (8th Cir. 1991) In the Fifth Circuit, "...to avoid a miscarriage of justice, raises an issue of law."*Batiansila v Advanced Cardiovasul Sys.,*952 F. 2d 893(5th Cir.1992) In the Fifth Circuit, "The presumptiom against retroactivity is merely a tool of statutory interpretation, not a sepertate claim for relief." *Lopez Ventura v Sessions,*

"The court may review an issue not raised below in exceptional circumstances or when application of the rule against considering new issues on appeal would result in a miscarriage of justice." *United States v Chesney,* 86 F. 3d 564 567(6th Cir. 1996)

This court has weighed in. "Once a claim is properly presented, a party can make any argument in support of that claim on appeal." *Yee v Escondido,* 503 U.S. 519, 534(1992) Ms. Crossett has properly presented her claims, and the Indian Jurisdiction Issue supports all her claims, and is not new. *Turner v City of Memphis,* 369 U.S. 350(1962) New issues addressed where injustice might result.

2. Respondents violated Ms. Crossett's constitutional rights and State claim, losing immunity, and the Circuit court erred in affirming summary judgment for them.

The *McGirt* case and Indian issue support all 24 claims of Ms. Crossett. Respondents had no jurisdiction to come to her home and take her. The arrests, jailings, prosecutions were unlawful under Indian federal law. Defendants dispute that they violated Ms. Crossett's constitutional rights many times. Ms. Crossett faithfully sent proof, but much was discarded at the lower courts. Any "reasonable" person can see her rights were violated, and it caused injury to her. All of the Constitutional violations had been "clearly established". *Harlow v Fitzgerald,* 457 U.S. 800 (1982) The case for qualified immunity.

It is unreasonable to not bring a warrant to a misdemeanor arrest. It is unreasonable to believe officers were not retaliating on her for using her First Amendment rights to tell on them to try to get the violations to stop.

At the May 23, 2015 arrest, Deputies Wheat and Cowell should have known it was unreasonable to hit a defenseless woman in the head while shes in handcuffs already, or to do illegal leg sweeps during the arrest. It was unreasonable to use excessive force by pointing tasers at her heart, and to point a gun at her son's back, and a taser at his chest. While all the time she is asking why they're there, where is a warrant, she states over and over she is an Indian on Indian land, the arrest is unlawful and when Wheat hit her Cowell failed to intervene.There was no probable cause to arrest her, she uttered no threats, *Virginia v Black,* 538 U.S.343(2003) *Watts v United States,* 394 U.S. Ms. Crossett did not utter any threats in the phone calls to the sheriff, and no one can produce any evidence showing she did.

Though the circuit court said that defendants claimed there were no underlying constitutional violations, bareley mentioning qualified immunity, or any other immunity, not so, the defendants entire defense for summary judgment was based on qualified, governmental, or absolute prosecutorial immunity.(App k 61a-63a)

At summary judgment in the district court defendants defense was immunity, they later changed it to "lack of underlying violation" in the circuit court. As soon as qualified immunity became a word on many lips, they shied away from it, though keeping it in the background.

Perhaps this court could keep in mind that the theory of immunity has been stretched beyond the breaking point. Time has changed some things, qualified immunity should be one of them. Recent police misconduct is in the news, it is everywhere, this is what qualified immunity has wrought. A blanket protection for police, when they commit the most outrageous acts that even a child could figure out they should not be shielded from liability.

Though *Harlow* says police officers are "shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Though some claim it means, in a nutshell, that a plaintiff would have to find a case exactly matching all the facts in her case, Ms. Crossett reads the last part and applies it. "...of which a reasonable person would have known." Our constitutional amendments have been around for well over a hundred years, or more.

The reasonablness theory should be front and center when applying qualified immunity, under Harlow or other law, to civil litigation. under "clearly established" the plaintiff is expected to find a twin case to her own, with a mirror image of the facts. Ms. Crossett does not see through a glass darkly. Instead of being reasonable, the whole notion is unreasonable.

Ms. Crossett hopes this court will use her case to rein in qualified immunity. It was not in the text of the Civil Rights Act of 1871. Exactly 150 years ago, to the day, April 20, 1871 The Act was born. *Hope v Pelzer,* 536 U.S. 730(2002) This court clearly says that officers are given, "fair notice" that violations occur without identical facts in a case being present. This court in *Kiesela v Hughes,* 138 S. Ct. 1148(2018) In Justice Sotomayor's dissent, "One side approach to qualified

immunity transforms the doctrine into an absolute shield for law enforcement officers." Ms. Crossett asks this court to reconsider the cases that support the "Clearly established" rule of law under immunity. The 42;U.S.C.;1983 intent has been buried under a mountain of civil rights cases that have been thrown aside because of "clearly established" doctrine.

On Ms. Crossett's First Amendment claims the Circuit Court erred by affirming summary judgment on Ms. Crossett's claims. Ms. Crossett's speech was protected, She did not threaten anyone. "The First Amendment prohibits government officials from retaliating against individuals for enjoying "Protected speech." *Lozman v City of Riviera Beach,* 585 U.S.(2018) Ms. Crossett told on police, and cussed at them, she only used protected speech. (App F 48a) And she was only arrested for the content of her speech. Which defined under the First Amendment is protected. Ms. Crossett never threatened anyone with bodily harm. *Kennedy v City of Villa Hills,* 635 F. 3d 210(6th Cir. 2011) A fact-finder determines if personal insults motivated an arrest. "A fact-finder could believe the insults by Kennedy motivated the arrest." Ms. Crossett cussed at Sheriff Wallin because he refused to call her back.

Respondents were motivated by her protected content of speech. *Holzmer v City of Memphis,* 621 F. 3d 512(6th Cir. 2012) This court ruled that indivduals have a First Amendment right to verbally challenge police officers, "Freedom of individuals verbally to challenge or oppose police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." *Thurairajah v City of Fort Smith,* (8th Cir. 2019) "...individuals often have a First Amendment right to utter profanity even directed at police."

There was no probable cause to arrest Ms. Crossett. None that is convincing can be produced by anyone. "If the police did not have probable cause to arrest Novak then he may bring a claim of retaliation." *Novak v City of Parma.* "A person may not be arrested for dfisorderly conduct as a result of activity which annoys only the police." *Fox v Desoto,* 489 F. 3d 227, 236(6th Cir. 2007)

Respondents lost their immunity on Ms. Crossett's First Amendment Claims. They also lost their immunity on her Fourth Amendment Claims. The four arrests and jailings, excessive force and failure to intervene, unlawful strip search and her four malicious prosecution claims. There was no probable cause in any of the arrests, as Ms. Crossett proved. "It is well settled that officers must have probable cause before arresting a suspect." *Jones v City of Elryia,* 947 F. 3d 105(6th Cir. 2020) As Ms. Crossett explained over and over in her briefs. The word "peril" was not a physical threat, she meant to tell on them and sue them. The Circuit court erred.

The second malicious phone charge was on the tribe, which they dismissed after she won at trial on the first malicious use of phone. The mental tests were scheduled on a day of other traditional appointments. Excessive force was present at the first arrest which negates the three resisting and obstructing charges, clear in the police cam videos. The deputy hit Ms. Crossett in the head, Sheriff Wallin testified at court that he sent them out to Ms. Crossett's home to arrest her for "swearing on the phone." Ms. Crossett was illegally leg swept twice during that arrest. *Lawler v City of Taylor,* 268 F. (6th Cir. 2008) "It is objectively unreasonable to do a leg sweep to take down a person not actively resisting at the moment." Ms. Crossett knew the arrest was unlawful, all of them, because she was an Indian on Indian land." Wheat admitted at trial that he struck Ms. Crossett in the head.

The strip search done when Ms. Crossett was doing her nine month jail term was not done uniformly. "It makes sense to do the search iniformly." *Florence v Board of Chosen Freeholders City of Burlington,* "The search was not reasonably related to the legitimate intent to keep drugs out of the jail." Only a few were searched, not even the inmates bringing in drugs, yet Ms. Crossett was searched.

On the malicious prosecution claims respondents lost their immunity. Three of the four cases terminated favorably for Ms. Crossett, and so does the three resisting charges when excvessive force is considered. She was maliciously prosecuted because she told on them. Her claims are not barred by *Heck v Humphrey,*

"*Heck* does not bar a plaintiff 'not in custody' "*Spencer v Kenna,* 523 U.S. (1998) because Ms. Crossett is not in jail does not mean she should not get relief.

Deputy Wade Leist investigated, knew there was no probable cause in the first investigation, investigated the second malicious use of phone, and then called her up demanding information for LEIN. He helped maliously prosecute her. Ms. Crossett should win those claims under, *Miller v Maddox,* 138 S. Ct. 2622(2018) and *Skyes v Anderson,* 625 (6th Cir. 2010) and *Barnes v Wright,* (6th Cir. 2006)

Ms. Crossett's Eighth Amendment claims should not have been terminated, the circuit court erred. During the first arrest Ms. Crossett could have died or had a heart attack. Coronary artery disease is extremely serious. Ms. Crossett was in heart attack mode. She had "A sufficient serious medical need."*Blackmore v Kalamazoo County,* 390 F. 3d 890(6th Cir. 2004) "Pretrial detainees may not be punished at all." *Bell v Wolfish,* 441 U.S. 520 (1979) The circuit conflicts with this court. *Kingsley v Hendrickson,* 135 S. Ct((2015)

In jail Ms. Crossett was denied her medicine, not allowed to see a doctor the entire nine month sentence. She was a heart patient, had severe PTSD, had cancer causing H. Pyloria and she had a bad soy intolerance, which caused her pain everyday. *Estelle v Gamble,* 429 U'S'(1976) "The Eighth Amendment requires the government to provide medical care to whom its punishing by incarceration." *Farmer v Brennan* ruled that "serious harm" to an inmate through deliberate indifference violates their constitutional rights. Respondents lost their immunity.

The circuit court erred in terminating Ms. Crossett's due process and abuse of process claims. The respondents did violate Ms. Crossett's due process rights and they lost any immunity doing it. The May 23, 2015 arrest violated due process, therte was no warrant, she was an Indian on Indian land, there was excessive force present during the arrest. She was arrested at her prelim which wasd cancelled and she was forced to sign it away. Prosecutor Fenton falsely accused her of being insane before Ms. Crossett's lawyer or the county brought it up. Ms. Crossett never

pled guilty to anything, because she was not guilty of anything. The Sixth Circuit held that, "A Fourteenth Amendment due process violation can occur when the state takes an individual into its custody and then fails to adequately ensure her safety and well-being." *Davis v brady,* 143 (6th Cir. 1998) *Deschaney v Winnebago County Dept. of Soc Serv.* Ms. Crossett suffered more every day she spent in jail.

Ms. Crossett's conspiracy claim under 42U.S.C.;1985 is valid and the Sixth Circuit erred by terminating it under summary judgment. Ms. Crossett has shown how respondents lost their immunity. One of the underlying constitutional violations was the January 13, 2016 arrest at her prelim to get her to sign away her prelim, or to attempt to get her to plead guilty to the resisting arrest felonies, at which they were unsuccessful. Though coerced to sign away her prelim for the second time in one case, Ms. Crossett has never pled guilty to anything. Their plan was to shut her up because she told on their misconduct. Because one of the conspirators was Ms. Crossett's own attorney the intracorporate scheme does not apply. Ms. Crossett has shown she satisfied the elements in *Robertson v Lucas,* 753 F. 3d 606(6th Cir. 2014) And *United Brotherhood of Carpenters v Scott,* 463 U.S. 825(1983) And *Maxwell v Dodd,* (6th Cir. 2011) And on the First Amendment right violation conspiracy, *Jacobs v Alam,* 915 F. 3d 1029, 1039 (6th Cir. 2019) And *Griffin v Breckenridge,* 403 U.S. 88(1971) On racially motivated conspiracies. The elements for her state law claim, Intentional Infliction of Emotional Distress, IIED under *Havenbush v Powelson,* 217 Mich App 228 551N.W. L 2d 206(1996) And *Doe v Mills,* 212 Mich App 73, 91 536 N.W. 2d824(1995) And *Graham v Ford,* 237 Mich App 670(2009) Ms. Crossett's list of outrageous acts by respondents are long. Top of that list is having first the prosecutors call her, an innocent woman, insane, and then all of them picked it up and they treated her as unstable, even though she passed all the exams. She was arrested and jailed four times, strip searched for no reason, excessive force was used, She was blantantly ignored on the Indian issue. She was forced to keep unethical attorneys, The judge put his own wife on her jury, she was left with biased persons who knew her on her jury. She did not resist arrest, yet she was hit in the head while in handcuffs, and left with massive bruising.

Emmet County lost their governmental immunity. They had a "policy or custom" in place. They allowed the constitutional violations year after year. Allowing ECSD and SANE to raid Indian and the poor citizens of Emmet County. Ms. Crossett warned them that they had no jurisdiction over Indians, She begged the Emmet County Board of Commissioners for help, she was ignored, so was the violations they allowed over and over, year after year. Ms. Crossett satisfied the claim under *Monell v Dept. of Soc Serv NY,* 436 U.S. 658(1978) And the four under *Wright v City of Euclid,* (6th Cir. 2020) And *Jackson v City of Cleveland,* 925 F. 3d 793, 828(6th Cir. 2019) "Prior instances of unconstitutional conduct demonstrating that the municipality had ignored a history of abuse and was clearly on notice..." Ms. Crossett showed the "pattern" in *Pembaur v City of Cincinnati,* and *Connick v Thompson,* The "actions" of the board caused Ms. Crossett to suffer. All three Prosecutors lost their immunity and violated Ms. Crossett's rights. False statements and improper behavior is not covered under immunity. *Imbler v Pachtman,* 424 U,S, 409(1976) They knew Ms. Crossett was not insane, yet all three prosecutors treated her as though she was a cracked pot, though they had no problem throwing her in jail. They ignored the fact they had no jurisdiction to prosecute her. They knew her cussing was not a crime, yet they prosecuted her.

3. Ms. Crossett's post-incarceration relief for damages is not barred by the favorable termination theory in *Heck v Humphrey,* 512 U,S, 477(1994) In *Spencer v Kenna,* 523 U.S.(1998) ",,,A former prisoner, no longer in custody may bring a 1983 action establishing the unconstitutionality of a conviction of confinement without being bound to satisfy a favorable termination requirement that it would under *Heck. It* is clear beyond doubt how Ms. Crossett's case should be resolved. Her case needs consideration to avoid a "Miscarriage of justice." Should justice die before it is born? Ms. Crossett respectfully prays the court grants her petition for a writ of certiorari.

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