

No. 05-1614

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**In the Supreme Court of the United States**

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RUSSELL MEANS, PETITIONER

*v.*

NAVAJO NATION, ET AL.

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*ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT*

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**BRIEF FOR THE UNITED STATES IN OPPOSITION**

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### QUESTIONS PRESENTED

The Indian Civil Rights Act of 1968, 25 U.S.C. 1301, 1302, restores to Indian Tribes their inherent power to try misdemeanor criminal offenses committed by non-member Indians in Indian country. The questions presented are:

1. Whether those provisions of the Indian Civil Rights Act of 1968 violate equal protection.

2. Whether those provisions of the Indian Civil Rights Act of 1968 violate due process.

3. Whether the assertion of Tribal jurisdiction in this case violates the Treaty with the Navajo Indians, June 1, 1868, 15 Stat. 667.

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**OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1-23) is reported at 432 F.3d 924. The opinion of the district court is unreported.

**JURISDICTION**

The judgment of the court of appeals (Pet. App. 24) was entered on December 13, 2005. A petition for rehearing was denied on March 22, 2006 (Pet. App. 25). The petition for a writ of certiorari was filed on June 16, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

**STATEMENT**

1. "Criminal jurisdiction over offenses committed in Indian country is governed by a complex patchwork of federal, state, and tribal law." *Negonsott v. Samuels*,

507 U.S. 99, 102 (1993) (internal quotation marks and citations omitted). The United States may prosecute federal crimes of nationwide applicability to the same extent in Indian country as elsewhere. The Indian Country Crimes Act, 18 U.S.C. 1152, provides that, with certain specified exceptions, federal criminal laws that apply in enclaves under exclusive federal jurisdiction also apply within Indian country. One exception is that offenses committed by one Indian against the person or property of another Indian are not subject to prosecution under Section 1152. The Indian Major Crimes Act, 18 U.S.C. 1153, enumerates 14 offenses that, if committed by an Indian in Indian country, are subject to the same laws and penalties that apply in areas of exclusive federal jurisdiction.

State authority to prosecute crimes involving Indians in Indian country is generally preempted as a matter of federal law. *Negonsott*, 507 U.S. at 103. States, however, possess jurisdiction over crimes committed by non-Indians against non-Indians in Indian country. *United States v. McBratney*, 104 U.S. 621 (1881). In addition, Congress has granted a number of States authority to exercise general jurisdiction over crimes committed by or against Indians in Indian country. See, e.g., Act of Aug. 15, 1953, ch. 505, 67 Stat. 588 (18 U.S.C. 1162).

Indian Tribes "possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status." *United States v. Wheeler*, 435 U.S. 313, 323 (1978). Tribes have inherent sovereign power to prosecute their own members for violations of tribal law. *Id.* at 326. By virtue of their dependant status, however, Tribes have been divested of their inherent power to prosecute non-Indians.

