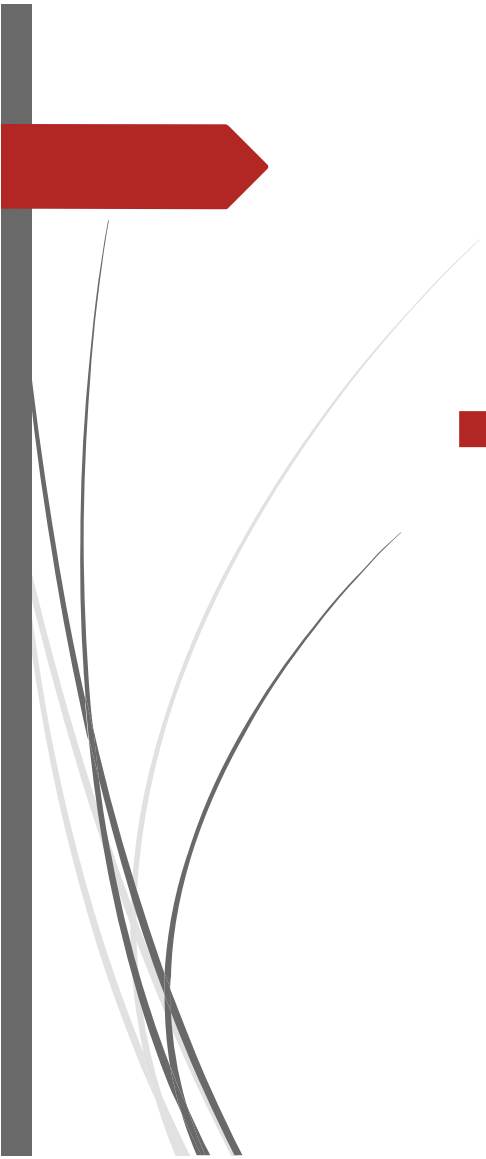


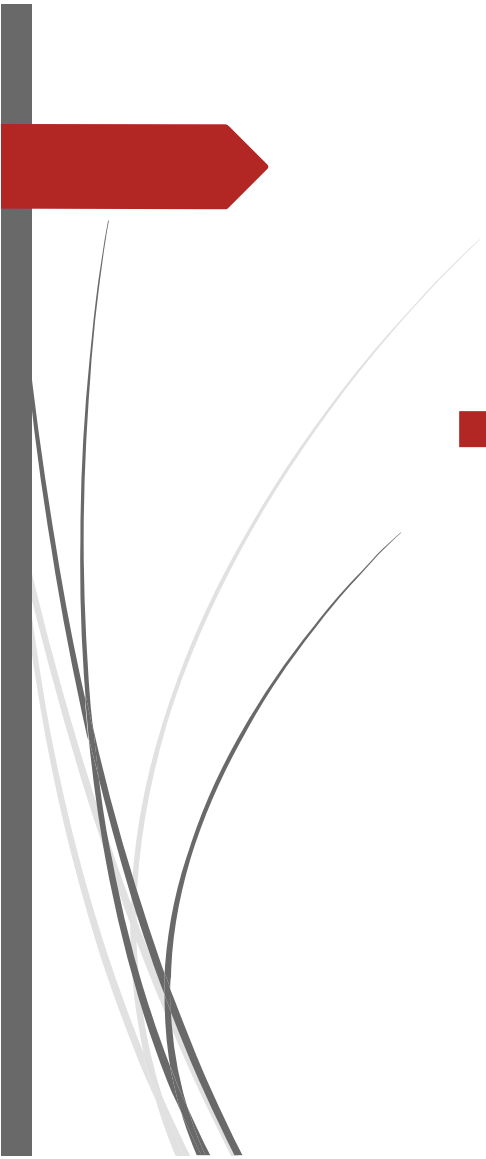


The Need For An Indigenous Indigent Right To Counsel

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Howard University Law School
January 27, 2022

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- ➔ Indigenous persons on Tribal lands are the only citizens or residents of the 50 U.S. states who are not promised Bill of Rights protection.

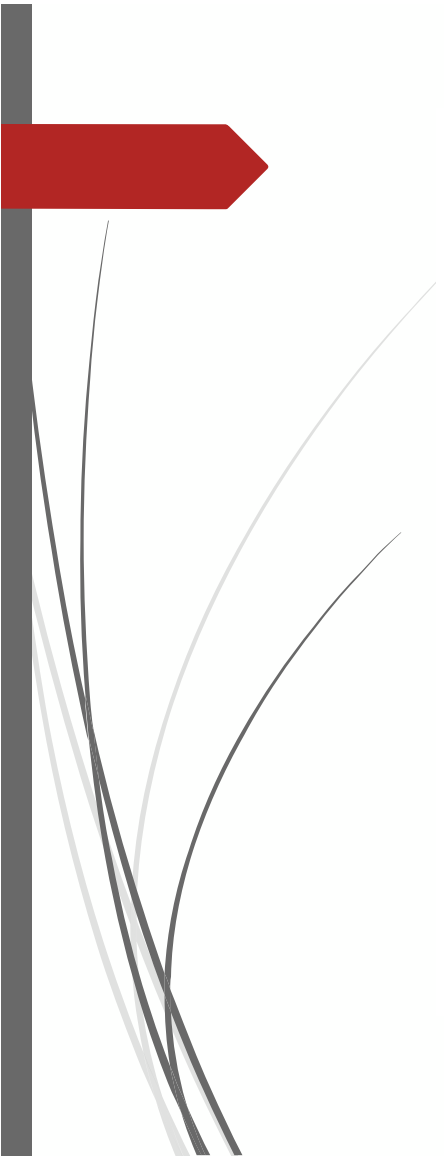
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- Indigenous accuseds on Tribal lands, therefore, generally lack a 6th amendment right to defense counsel.

COMMENTARY

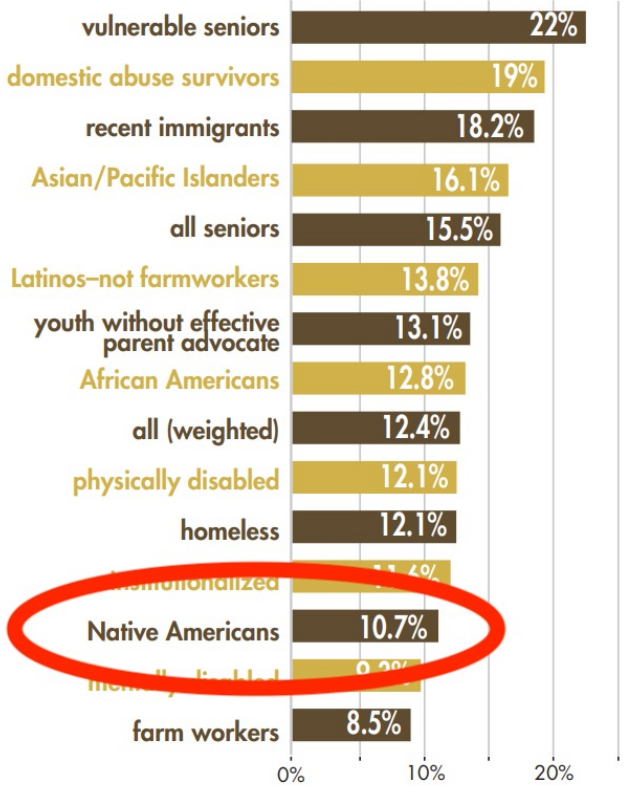
Poor on a Native American Reservation? Good Luck Getting a Lawyer.

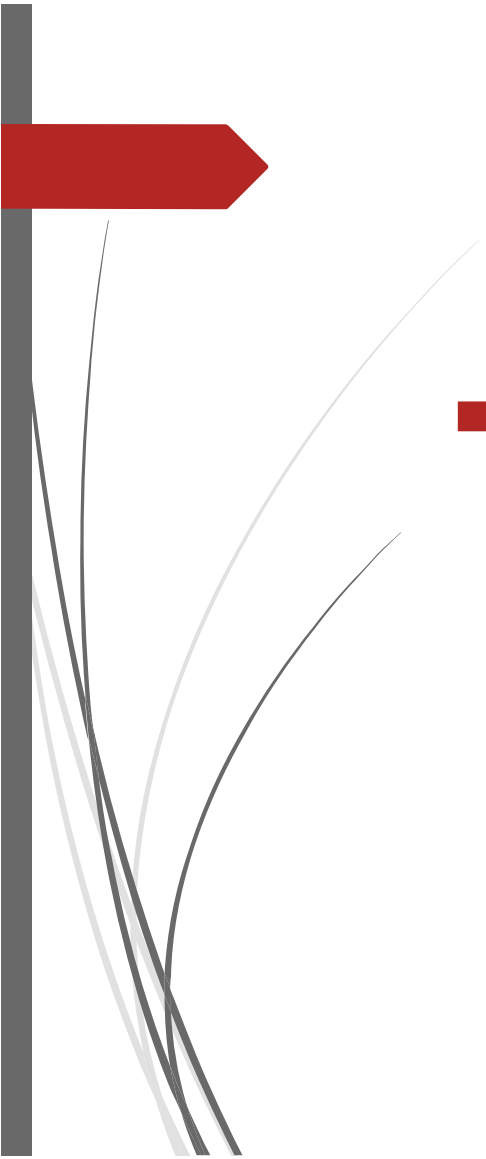


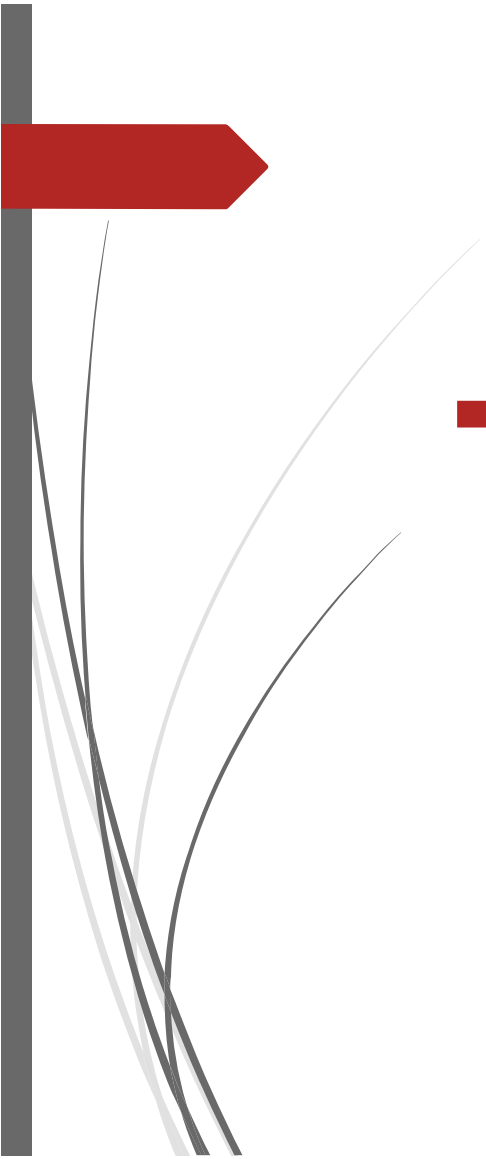
A courtroom at the Justice Center for the People on the Pine Ridge Indian Reservation. DOMINIQUE ALAN FENTON

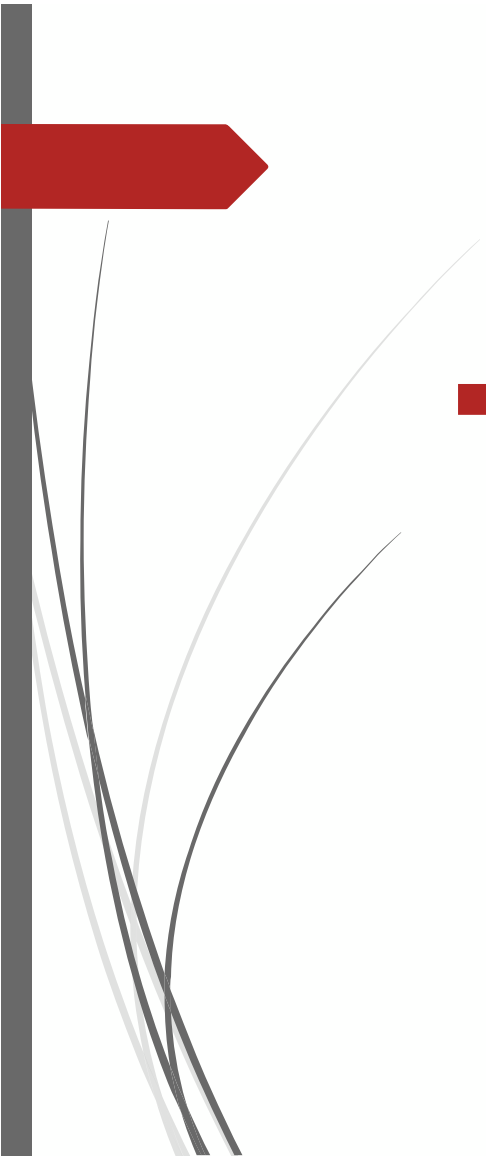


Legal assistance rates by demographic cluster group



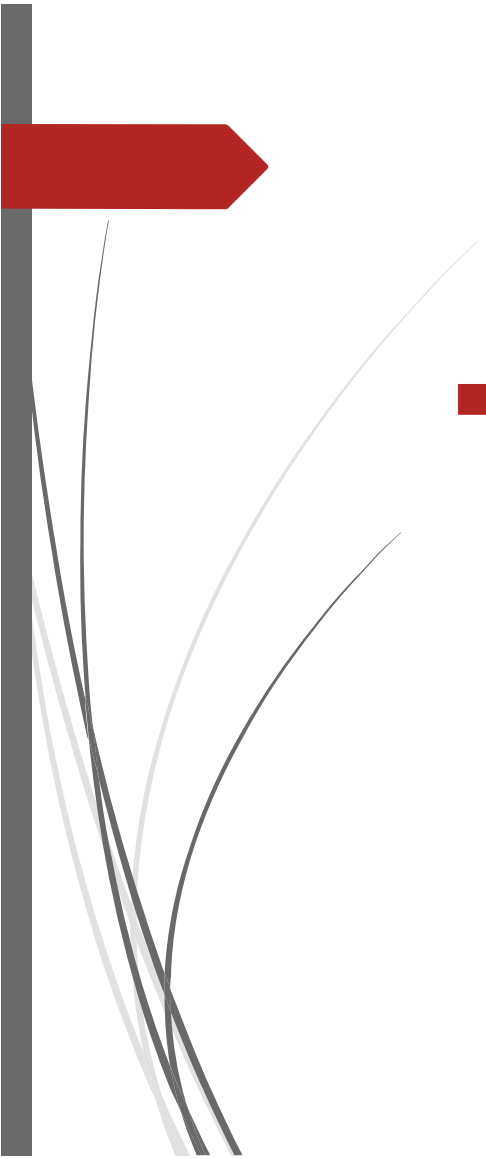
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- In 1884, an Indigenous person—though born in the U.S. and not living on a reservation — was not considered citizen under the 1866 Civil Rights Act and 14th Amendment unless “naturalized.” Elk v. Wilkens, 112 U.S. 94 (1884).

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- In 1886, Theodore Roosevelt delivered a speech in New York in which he said: “I don’t go so far as to think that the only good Indians are the dead Indians, but I believe nine out of every 10 are. And I shouldn’t like to inquire too closely into the case of the tenth.”

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- ➔ In 1896, SCOTUS holds the 5th Amendment grand jury right does not "operat[e] upon" "the powers of local self-government enjoyed" by Tribes and, therefore, does not protect Tribal citizens on Tribal lands. Talton v. Mayes, 163 U.S. 376, 383-84 (1896).

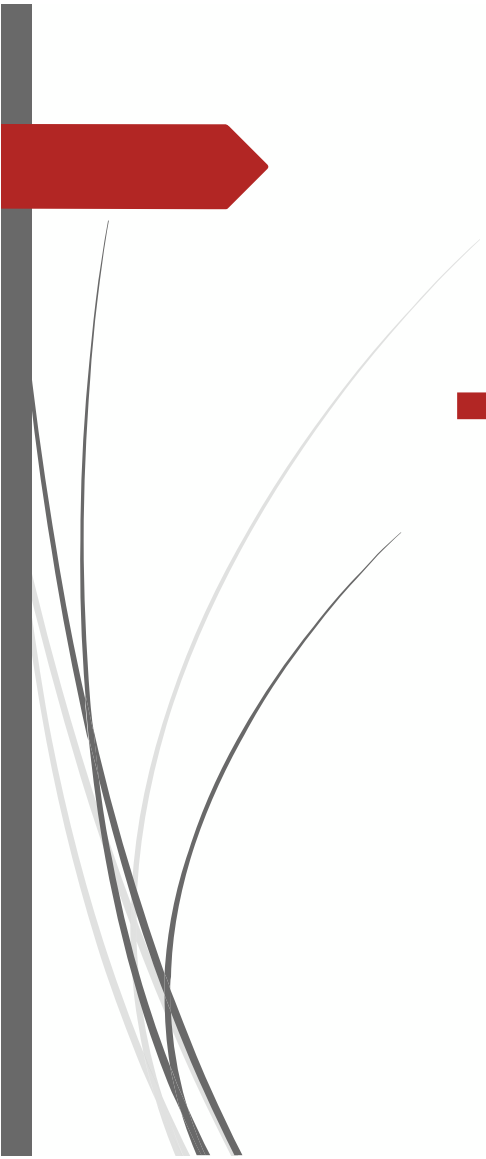
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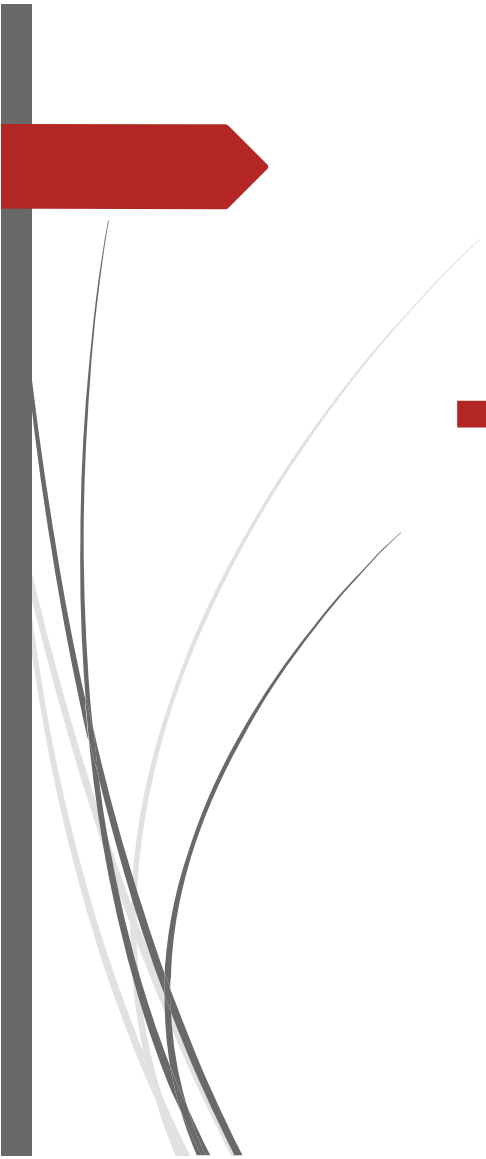
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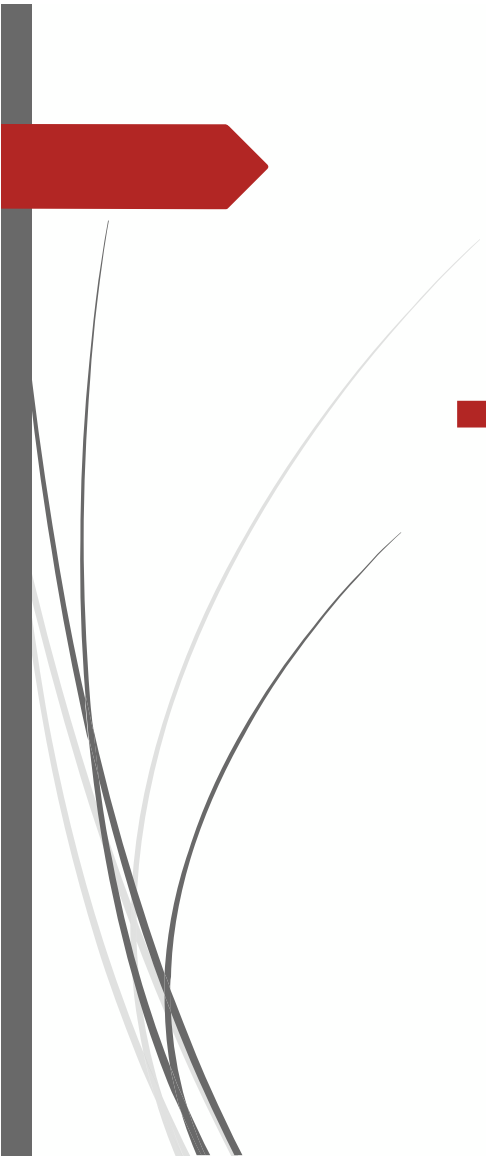
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- In 1968, Congress passed the Indian Civil Rights Act (ICRA) to “secur[e] for the American Indian the broad constitutional rights afforded to other Americans” and “protect individual Indians from arbitrary and unjust actions of tribal governments.”

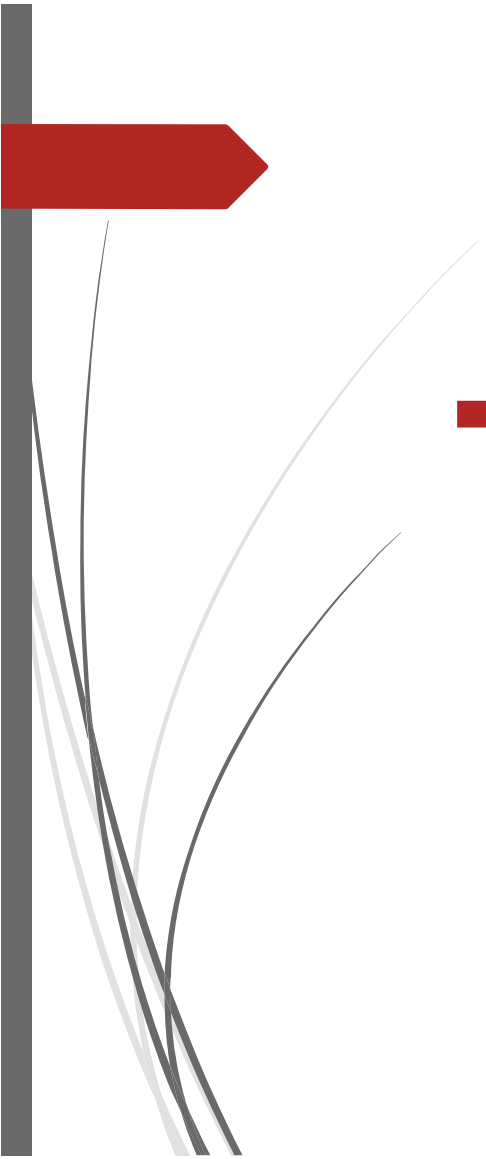
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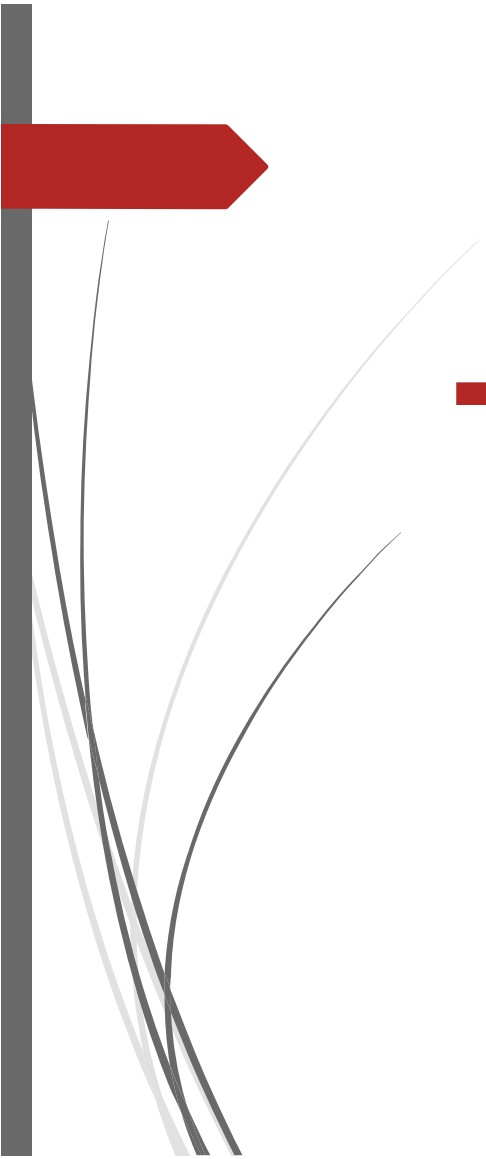
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- But Congress did not mirror all of the U.S. Bill of Rights in ICRA, leaving out the grand jury indictment requirement (5th) and right to appointed counsel (6th). U.S. v. Bird, 287 F.3d 709, 713 (8th Cir. 2002) (“The right to an attorney in tribal court is guaranteed by the [ICRA] but only at the expense of the defendant.”).

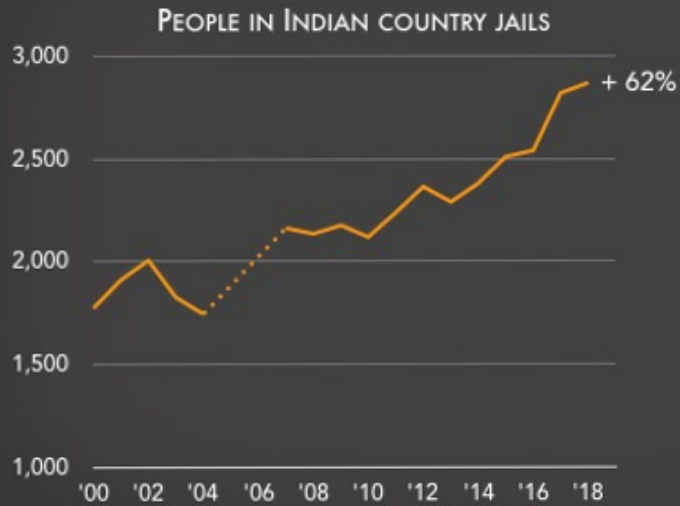
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- In 1978, Justice Thurgood Marshall wrote an opinion that held ICRA did not afford Indigenous persons a federal right of action or waive Tribal sovereign immunity, with one exception: *habeas corpus*. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978).

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- In 2010, Congress amended ICRA to allow Tribes increased sentencing power if indigent Indigenous defendants are afforded the right to appointed counsel. 25 U.S.C. § 1302(c). By 2015, only 32 Tribes exercised that enhanced power and presumably afforded that right.

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- According to the 2018 U.S. Census, Indigenous Americans have the highest poverty rate among all minority groups, at 25.4% (Black, 20.8%; Hispanic, 17.6%; White, 8.1%).

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- ▶ In comparison to White citizens in Washington State, Indigenous people are:
 - ▶ Stopped more frequently by law enforcement in two metro cities (5.8x and 2.6x)
 - ▶ Searched more frequently in those two cities as well as by the Washington State Patrol
 - ▶ Arrested more frequently in all four years examined (2017, 2.3x; 2018, 1.7x, 2019, 2.6x; 2020, 2.6x)

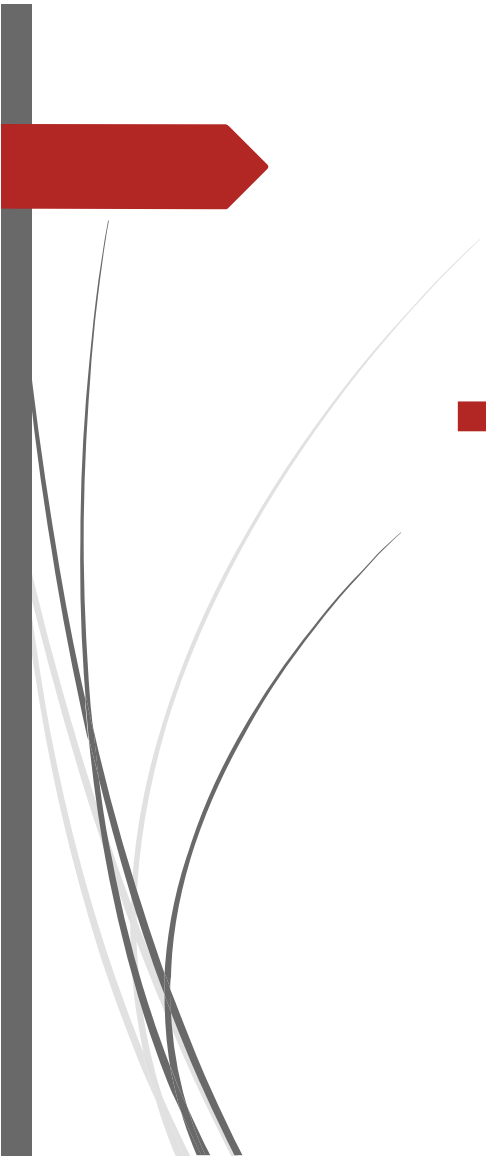
Incarceration in Indian Country jails and Native incarceration in local jails has exploded since 2000



Sources: Bureau of Justice Statistics series *Jails in Indian Country, 2000-2018*, *Jail Inmates at Midyear 2013*, and *Jail Inmates 2019*.

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- Indigenous human rights generally, and the indigent right to counsel specifically, must be amplified in social justice movements.

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Thank You

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