No. 14-10154

IN THE

Supreme Court of the United States

STEPHEN L. VOISINE AND WILLIAM E. ARMSTRONG III,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On a Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF OF AMICI CURIAE NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, EASTERN BAND OF CHEROKEE INDIANS, LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS, NOTTAWESEPPI HURON BAND OF THE POTAWATOMI, SEMINOLE NATION, TULALIP TRIBES AND OTHER NATIVE ORGANIZATIONS IN SUPPORT OF RESPONDENT

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INTEREST OF THE AMICI

Petitioner's assertion that 18 U.S.C. § 922(g)(9)'s federal firearm prohibition does not reach all persons convicted of domestic violence crimes compels the *Amici* identified herein to offer their view on the grave danger that Native women will face if § 922(g)(9) is interpreted to exclude reckless criminal conduct.[1]

The leading signatory, National Indigenous Women's Resource Center, Inc. ("NIWRC"), is a Native nonprofit organization whose mission is to ensure the safety of Native women by protecting and preserving the inherent sovereign authority of American Indian and Alaska Native Tribes to respond to domestic violence and sexual assault. NIWRC's Board of Directors consists of Native women leaders from Tribes across the United States; collectively, these women have extensive experience in governmental, programmatic, and educational work to end domestic violence against Native women and their children.

NIWRC is joined by five additional Indian Nations that have invested significant resources, time, and effort to ensure that their prosecutions of domestic violence crimes serve to increase the safety of their tribal communities, while simultaneously working to ensure that the rights of the domestic violence

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[1] Pursuant to Supreme Court Rule 37.6, *Amici Curiae* state that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *Amici Curiae* and their counsel, made any monetary contribution toward the preparation or submission of this brief. On December 18 and 22, 2015, counsel for Respondent and Petitioners, respectively, informed counsel for *Amici* of their consent to the filing of this *amicus* brief.

defendants in tribal criminal proceedings are respected and enforced.

The Confederated Tribes of the Umatilla Indian Reservation ("CTUIR") is a union of three tribes—Cayuse, Umatilla, and Walla Walla—and has 2,965 tribal members. The Umatilla Indian Reservation is about 172,000 acres located in Oregon. The CTUIR was the first jurisdiction in the nation, along with the State of Ohio, to implement the Adam Walsh Act in 2009. In March of 2011, the CTUIR implemented felony sentencing under the Tribal Law and Order Act of 2010 and has since prosecuted numerous felony cases. In July of 2013, the CTUIR implemented all necessary provisions of VAWA § 904's special domestic violence criminal jurisdiction ("SDVCJ"), and was approved for early exercise of that authority in February of 2014. Since implementing § 904 of VAWA, the CTUIR has prosecuted SDVCJ cases for acts of domestic violence committed on the Umatilla Indian Reservation by non-Indians against Indian women.

The Eastern Band of Cherokee Indians is an Indian Nation based in the mountains of Western North Carolina comprised of the descendants of Cherokees who avoided forced removal along the Trail of Tears, or returned from the Indian Territory after the march. About 8,500 Eastern Band Cherokees live on the Eastern Band Cherokee Reservation. On June 15, 2015, the Eastern Band implemented VAWA's § 904's SDVCJ.

Little Traverse Bay Bands of Odawa Indians ("LTBB") is a federally recognized Tribe with a reservation located in Harbor Springs, Michigan. LTBB's population is about 4,500, with 677 Tribal Citizens residing on the LTBB's reservation. On March 7, 2015, LTBB implemented VAWA § 904's

SDVCJ. Accordingly, LTBB may prosecute SDVCJ for acts of domestic violence committed on LTBB's lands. LTBB's definition of "domestic violence" does not articulate a specific *mens rea* and instead relies on the "reasonable person standard." Consequently, LTBB has a strong interest in ensuring this Court's decision respects the deference Congress intended to give to State and Tribal Governments in deciding whether to articulate a particular *mens rea* requirement in creating their own criminal laws.

The Nottawaseppi Huron Band of the Potawatomi ("NHBP" or the "Tribe") is a federally-recognized American Indian Tribe with approximately 1,100 enrolled Tribal Citizens. The Tribe's Health Center serves Tribal Citizens, non-NHBP Citizen Indians/descendants of other federally-recognized Indian Tribes, and employees who are not Tribal Citizens and their dependents. NHBP exercises jurisdiction over Reservation lands upon which the Tribal government facilities, residential housing, parks/recreation facilities, and various economic enterprises are found, all within the borders of what is now called the State of Michigan. The Tribe currently prosecutes crimes of domestic violence under the Nottawaseppi Huron Band of Potawatomi Indians Law and Order Code. NHBP has participated in the Intertribal Technical-Assistance Working Group on Special Domestic Violence Criminal Jurisdiction since its inception and is in the final stages of implementing VAWA § 904's SDVCJ.

The Seminole Nation is a federally recognized Tribe located in present day Oklahoma. Seminole Nation's population is about 18,800 and growing. The Seminole Nation is located in Seminole County Oklahoma. On July 16, 2015, Seminole Nation implemented VAWA §

904's SDVCJ, and as a result, Seminole Nation is now able to prosecute SDVCJ cases for acts of domestic violence committed on Seminole Nation's lands.

The Tulalip Tribes ("Tulalip") are the successors in interest to the Snohomish, Snoqualmie, Skykomish and other allied tribes and bands signatory to the 1855 Treaty of Point Elliott. Tulalip's population is about 4,000 and growing, with 2,500 members residing on the 22,000 acre Tulalip Indian Reservation located north of Everett and the Snohomish River and west of Marysville, Washington. On February 20, 2014, the Tulalip Tribes implemented VAWA § 904's SDVCJ, as a Pilot Project Tribe. Since then, Tulalip has prosecuted SDVCJ for acts of domestic violence committed on Tulalip's lands.

The aforementioned *Amici* are joined by eighteen Native nonprofit organizations working to strengthen the ability of Tribal Nations and Tribal Courts to end domestic violence against Native women.[2] The *Amici*'s collective experience render them uniquely positioned to offer their perspective on the danger Native women will face if this Court were to exclude reckless acts of domestic violence from § 922(g)(9). Indeed, Petitioner's requested incorporation of a federal *mens rea* requirement into § 922(g)(9) threatens to leave firearms in the hands of individuals who are known to abuse, harm, and threaten the lives of Native women.

[2] The eighteen additional organizational *Amici* are identified and listed in Appendix A to this brief.

SUMMARY OF THE ARGUMENT

> *The next day after my Tribal Court issued my order of protection, I was at work when I saw him pull up in a red truck. My ex-husband walked in to my office and told me: "you promised until death due us part so death it shall be." He was armed with a 9MM gun. If not for my very brave co-worker I would not be alive today. My co-worker prevented my murder by pushing me out of harm's way and took the bullet in his shoulder. Although my ex-husband beat me on numerous occasions, he was never once charged or convicted of having committed a "knowing" or "intentional" crime.*
>
> **Survivor Diane Millich (Southern Ute Indian Tribe)**

Petitioners assert that the phrase "misdemeanor crime of domestic violence" in 18 U.S.C. § 922(g)(9) (the "Lautenberg Amendment") must be interpreted to include only those domestic violence crimes that involve a *mens rea* greater than recklessness. Petitioners are wrong. The text of the statute contains no *mens rea* requirement; accordingly, the analysis should begin and end there.

Instead of limiting § 922(g)(9)'s application to domestic violence crimes labeled as "intentional" or "knowing," Congress left the determination of *mens rea* for States and Tribal Nations to decide. Petitioners, however, offer a myriad of arguments to support their assertion that although Congress did not include a threshold *mens rea* requirement in § 922(g)(9), it intended to. None of Petitioners' arguments are compelling.

Petitioners' primary argument for excluding reckless crimes from § 922(g)(9)'s reach is based on an analysis of archaic nineteenth century laws that carry no analog to current domestic violence crimes. In contrast to the majority of criminal laws in the United States today, the crime of domestic violence has no roots in colonial times, nor is the crime found in traditional English jurisprudence.[3] Until very recently—within the last few decades—most non-tribal jurisdictions in the United States did not consider domestic violence to be a crime.[4] Instead, the law in many States protected a husband's right to abuse his wife.[5] Indeed, States did not begin to pass

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[3] *See* Reva B. Siegel, *"The Rule of Love": Wife Beating As Prerogative and Privacy*, 105 Yale L.J. 2117, 2118 (1996) ("The Anglo-American common law originally provided that a husband, as master of his household, could subject his wife to corporal punishment or 'chastisement' so long as he did not inflict permanent injury upon her.").

[4] *See id*. at 2125, n.25 (1996) (listing "a number of states . . . [that] recognized a husband's prerogative to chastise his wife" under the law); *see also* Machaela M. Hoctor, *Domestic Violence As A Crime Against the State: The Need for Mandatory Arrest in California*, 85 Cal. L. Rev. 643, 647 (1997) ("The criminal justice system has only recently attempted to address this epidemic of domestic violence.").

[5] 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 444-45 (8th ed.1778) ("The husband also (by the old law) might give his wife moderate correction. For, as he is to answer for her misbehavior, the law thought it reasonable to entrust him with the power of restraining her, by domestic chastisement, in the same moderation that a man is allowed to correct his servants or children."); *see, e.g., State v. Black*, 60 N.C. (Win.) 266, 267 (1864) (permitting a husband "to use towards his wife such a degree of force as is necessary to control an unruly temper and make her behave herself; and unless some permanent injury be inflicted to gratify his own bad passions, the law will not invade the domestic forum or go behind the curtain"); *Robbins*

and enforce laws treating the act of domestic violence as an actual "crime" until the late 1970s.[6]

Thus, the articulation of domestic violence as a crime in the late twentieth century constitutes a purposeful departure from, and reversal of, established American jurisprudence. Petitioners, however, assert that § 922(g)(9)'s phrase "misdemeanor crime of domestic violence" must be construed to require the same *mens rea* as nineteenth century common law battery. *See* Pet'r Br. 17 (asserting that the Lautenberg Amendment must require the same *mens rea* as "the common-law misdemeanor of battery [which] required a *mens rea* greater than recklessness"). Perversely, the historical laws that Petitioner relies on criminalized acts of violence perpetrated against strangers, but considered those same violent acts

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v. State, 20 Ala. 36, 39 (1852) ([I]f the husband was at the time . . . provoked to this unmanly act by the bad behavior and misconduct of his wife, he should not be visited with the same punishment as if he had without provocation wantonly . . . .").

[6] *See* Erin R. Collins, *The Evidentiary Rules of Engagement in the War Against Domestic Violence*, 90 N.Y.U. L. Rev. 397, 404 (2015) ("Although a husband's right to subject his wife to corporal punishment had been abrogated by the end of the nineteenth century, rhetoric of marital privacy and domestic harmony continued to frame violence against women as a personal matter that did not concern the criminal justice system until the 1970s.").

lawful when perpetrated against a woman in her home.[7]

The *crime* of domestic violence, therefore, cannot and should not be construed as congruent with nineteenth century laws that protected the *practice* of domestic violence as lawful. Domestic violence is a crime that must be interpreted through the lens of the lawmakers who created it—and not through the lens of archaic laws that failed to recognize its existence.

Petitioners' insistence that nineteenth century battery laws should limit the scope of § 922(g)(9)'s contemporary application to domestic violence crimes is further belied by Congress' addition of tribal court convictions to the Lautenberg Amendment in 2006.[8] Unlike nineteenth century Anglo-common law, many contemporaneous tribal laws strictly forbade violence against women.[9] The stark contrast between

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[7] *Compare State v. Gibson*, 32 N.C. (1 Ired.) 214, 215 (1849) ("[I]n cases of battery merely, the party, who strikes another, must be guilty, unless he be justified in committing it, as an act of self-defence") *with State v. Oliver*, 70 N.C. 60, 61-62 (N.C. 1874) ("If no permanent injury has been inflicted, nor malice, cruelty nor dangerous violence shown by the husband, it is better to draw the curtain, shut out the public gaze, and leave the parties to forget and forgive.")

[8] In 2006, as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Congress amended § 921(a)(33)(A)(i)) to include domestic violence offenders convicted under tribal law. Violence Against Women and Department of Justice Reauthorization Act of 2005, Pub. L. No. 109–162, § 908(a), 119 Stat. 3083 (2006).

[9] Sarah Deer, *The Beginning and End of Rape: Confronting Sexual Violence in Native America* 21-22 (2015) (noting that domestic violence was not protected as lawful by tribal law and instead, "tribal systems provided a powerful system of social checks and balances that held offenders accountable for their

nineteenth century tribal laws forbidding violence against women and the historic laws in many States that declared domestic violence to be a lawful exception to battery makes clear that in creating § 922(g)(9), Congress did not conceive of domestic violence as a crime rooted exclusively in nineteenth century common-law battery. Instead, in adding tribal court convictions to the Lautenberg Amendment, Congress recognized that Tribal Nations have the inherent right to define domestic violence as a crime within their own jurisdictions.

Furthermore, although tribal jurisdictions historically considered violence against women to be a serious offense, when Congress added tribal court convictions to the Lautenberg Amendment in 2006, federal law prohibited Indian Nations from treating domestic violence as anything more serious than a misdemeanor. That is, the Indian Civil Rights Act ("ICRA") precluded Tribal Courts from imposing a prison term greater than one year for any criminal offense, including domestic violence. 25 U.S.C.

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behavior" when they abused Native women); *see also, e.g.*, Gloria Valencia-Weber & Christine P. Zuni, *Domestic Violence and Tribal Protection of Indigenous Women in the United States*, 1 St. John's L. Rev. 69 (1995), http://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?article=1634&context=lawreview (noting that "[u]nder Navajo common law, violence toward women, or mistreatment of them in any way, is illegal" and that, historically, Lakota law did not tolerate violence against women in the community, and "[a] man who battered his wife was considered irrational and thus . . . [h]e could not be trusted to behave properly. . . . He was thought of as contrary to Lakota law and lost many privileges of life and many roles in Lakota society and the societies within the society.").

§ 1302(7) (2006).[10] Thus, at the time of the 2006 addition of tribal court convictions to the Lautenberg Amendment, Congress knew that because of the one-year sentencing limitation ICRA then imposed, no tribal court conviction could ever qualify for the felony federal firearm prohibition in 18 U.S.C. § 922(g)(1).

Simply put, nothing in the plain text or legislative history of the Lautenberg Amendment supports Petitioners' request for the addition of a federal *mens rea* requirement. Instead, Congress intended to allow States and Tribal Nations to fashion their own criminal laws. Accordingly, many Indian Nations have codified criminal laws that, like the contemporary laws in their neighboring state jurisdictions, recognize domestic violence as a crime that can be committed without a heightened "intentional" or "knowing" *mens rea*, or at a minimum, with a "conscious disregard" for the safety of their intimate partner, known as "recklessness."[11]

Domestic violence is not a crime committed by accident. Although Petitioners attempt to conflate accidental conduct with recklessness, a review of Tribal Codes reveals that tribal domestic violence

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[10] In 2010, Congress passed, and the President signed into law, the Tribal Law and Order Act ("TLOA"). The Tribal Law and Order Act of 2010, Pub. L. No. 111-211, tit. II, 124 Stat. 2258, 2261, amended ICRA to provide that Tribal Courts may impose sentences of up to three years of imprisonment for any one offense if certain requirements are met. *Id.* § 234, 124 Stat. at 2279-80. To date, very few Tribes have been able to implement the full enhanced sentencing authority conditionally granted in TLOA.

[11] A sample of Tribal Codes that demonstrate the variance of tribal law in defining and prosecuting domestic violence crimes are identified and listed in Appendix B, Tribal Codes Addressing Domestic Violence Crimes ("Appendix of Tribal Codes").

crimes are not commensurate with accidents. Appendix B, Tribal Codes Addressing Domestic Violence Crimes ("Appendix of Tribal Codes"). Reckless domestic violence crimes require a "conscious disregard" for the safety of the perpetrator's intimate partner (*see id.*), and consequently, Petitioners attempt to characterize reckless domestic violence crimes as mere accidents cannot be reconciled with actual law.

Domestic violence constitutes a widespread, serious threat to the health and welfare of Indian Nations today. The conclusion that Congress intended to limit § 922(g)(9) to *intentional* acts of domestic violence would severely limit the Lautenberg Amendment's application to convictions in Tribal Courts and would place a large number of Native women in danger. This is not what Congress intended.

ARGUMENT

I. Nothing in the Plain Text of the Statute Renders the Application of § 922(g)(9) Contingent upon a Particular *Mens Rea*

The plain text of the statute makes clear that § 922(g)(9)'s prohibition on firearms applies broadly to "any person" convicted in "any court" of a "misdemeanor crime of domestic violence," leaving the appropriate mental state of the abuser to the prosecuting State or Tribal Government to decide. That is, Congress elected *not* to make § 922(g)(9)'s application contingent upon a finding that the underlying conviction involved, as a requisite element, a particular *mens rea*.

The plain text of the Lautenberg Amendment states:

> It shall be unlawful for *any person* . . . who has been convicted in *any court* of a *misdemeanor crime of domestic violence*, to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

18 U.S.C. § 922(g)(9) (emphasis added). Section 921(a)(33)(A) defines the term "misdemeanor crime of domestic violence" to mean an offense that:

> (i) is a misdemeanor under Federal, State, or Tribal law; and
>
> (ii) has, as an element, the *use or attempted use of physical force*, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

18 U.S.C. § 921(a)(33)(A) (emphasis added). Section 921(a)(33)(A)'s definition of "misdemeanor crime of domestic violence" is void of reference to a *mens rea* requirement.

This omission is particularly telling because Congress affirmatively identified the *actus reus* required in § 922(g)(9). Specifically, Congress limited § 922(g)(9) to acts that have, "as an element, the use or attempted use of physical force. . . ." 18 U.S.C. § 921(a)(33)(A). Congress' decision to articulate the

actus reus renders its silence as to *mens rea* all the more profound. Indeed, this Court has dispensed with the notion that "scienter [i]s a necessary element in the indictment and proof of every crime," and consequently, where Congress elects to criminalize conduct based on an *actus reus* alone, this Court refrains from imposing its own threshold *mens rea*. *See United States v. Balint*, 258 U.S. 250, 251-52 (1922); *see also United States v. Dotterweich*, 320 U.S. 277, 280-81 (1943) (declining to impose a minimum *mens rea* requirement in a provision of the Federal Food, Drug, and Cosmetic Act that barred the interstate transport of mislabeled drugs where Congress defined the *actus reus* but not the *mens rea*). Because the Lautenberg Amendment imposes "penalties [that] serve as effective means of regulation of a public harm," this Court should not interpret the statute's silence as to *mens rea* as a reason to require defendants to evidence some "awareness of some wrongdoing." *Dotterweich*, 320 U.S. at 280-81.

Indeed, if Congress had wanted to impose a threshold *mens rea*, it would have done so explicitly, as it did in the section immediately preceding the bill that established § 922(g)(9). The provision enacting § 922(g)(9) is found at § 658 of the Omnibus Consolidated Appropriations Act of 1997. *See* Omnibus Consolidated Appropriations Act of 1997, Pub.L. No. 104–208, § 658, 110 Stat. 3009, 3009–371 to –372 (1997). Section 657 of that Act amended 18 U.S.C. § 922(q), wherein Congress made it "unlawful for any individual *knowingly* to possess a firearm . . . at a place that the individual knows, or has reasonable cause to believe, is a school zone." *Id.* § 657, 110 Stat. at 3009–369 to –371 (emphasis added).

Thus, Congress has, in other instances, rendered its prohibition on firearms contingent upon a finding of a particular *mens rea*. However, in this instance Congress elected not to. Contrary to Petitioners' assertions, the Lautenberg Amendment's silence regarding a threshold *mens rea* requirement is not an invitation to invent one.

II. Congress Intended for § 922(g)(9) to Apply to All Domestic Violence Convictions, Regardless of the Underlying *Mens Rea*

Even if the text of § 922(g)(9) and § 921(a)(33)(A) could be construed as vague or ambiguous—it cannot—the legislative history and subsequent evolution of the Lautenberg Amendment make clear that Congress did not intend for its firearm ban to apply only to those individuals who commit domestic violence crimes with a *mens rea* greater than recklessness.

A. The Addition of Tribal Court Convictions in 2006 Supports a Plain Text Reading of the Statute

Congress' decision to add tribal court convictions to § 922(g)(9)'s firearm prohibition in 2006—without mention of a specific *mens rea*— further solidifies the plain text reading of the Lautenberg Amendment.

In 2005-2006, Congress addressed the lack of protections for Native women against domestic violence. As part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, Congress amended § 921(a)(33)(A)(i) to include offenders convicted under tribal law. *See* Violence Against Women and Dep't of Justice Reauthorization Act of 2005, Pub. L. No. 109–162, § 908(a), 119

Stat. 3083 (2006). Today, § 921(a)(33)(A)(i) defines § 922(g)(9)'s "misdemeanor crime of domestic violence" to mean "a misdemeanor under Federal, State, or *Tribal law*." 18 U.S.C. § 921(a)(33)(A)(i) (emphasis added).

When Senator McCain introduced the Restoring Safety to Indian Women Act in the 2005-2006 re-authorization of VAWA, Senator McCain explained the congressional purpose behind the new tribal provisions as follows:

> Since 1999, the Department of Justice has issued various studies which report that Indian women experience the highest rates of domestic violence compared to all other groups in the United States. These reports state that one out of every three Indian women are victims of sexual assault; that from 1979 to 1992, homicide was the third leading cause of death of Indian females between the ages of 15 to 34 and that 75 percent of those deaths were committed by a family member or acquaintance. These are startling statistics that require our close examination and a better understanding of how to prevent and respond to domestic violence in Indian Country.

151 Cong. Rec. S4,873 (daily ed. May 10, 2005) (statement of Sen. McCain). Senator McCain further noted that "[d]om-estic violence is a national problem and not one that is unique to Indian Country." *Id.* However, "due to the unique status of Indian tribes," Tribal Governments face numerous legal "obstacles" in working to protect Native women from domestic violence and homicide. *Id.* Congress therefore "intended to remove these" obstacles when it added

the tribal provisions to the 2006 reauthorization of VAWA. *Id.* Nothing in the legislative history supports the notion that Congress intended to limit § 922(g)(9)'s application to tribal domestic violence convictions for crimes committed "knowingly" or "intentionally."

Instead, the legislative history reveals that Congress considered its addition of tribal court convictions to § 922(g)(9)'s prohibition on firearms to constitute a critical protection for Native women survivors of domestic violence—no matter how the crime may have been prosecuted or labeled. "[A]ll too often," one Senator noted during the debate over § 922(g)(9), "the only difference between a battered woman and a dead woman is the presence of a gun." 142 Cong. Rec. 22,986 (1996) (statement of Sen. Wellstone). As this Court has acknowledged, "'When a gun [i]s in the house, an abused woman [i]s 6 times more likely than other abused women to be killed.'" *United States v. Castleman*, 134 S. Ct. 1405, 1408-09 (2014) (quoting Campbell et al., *Assessing Risk Factors for Intimate Partner Homicide*, DOJ, Nat. Institute of Justice J., No. 250, p. 16 (Nov. 2003)). "Not surprisingly, research has found that the presence of a gun in the home of a convicted domestic abuser is 'strongly and independently associated with an increased risk of homicide.'" *United States v. Booker*, 644 F.3d 12, 25-26 (1st Cir. 2011) (quoting Arthur L. Kellerman, et al., *Gun Ownership as a Risk Factor for Homicide in the Home*, 329 New Eng. J. Med. 1084, 1087 (1993)) (additional internal citation and quotation marks omitted).

Domestic violence and gun access present a uniquely deadly combination because of the crime's intimate dynamics. Over time, domestic violence typically escalates in both frequency and severity since at its

core, "domestic violence is about gaining control of another person."[12] An abuser's need to control his/her intimate partner drives a pattern of recurring, worsening behaviors. The first incident of abuse is usually not the last, and when less abusive acts fail to achieve sufficient control, a perpetrator moves on to more dangerous acts.[13] Section 922(g)(9), therefore, constitutes a critical intervention to ensure that if and when a domestic violence offender resorts to more dangerous acts, a firearm is not at his disposal.

For Native women, however, the lethal threat a gun imposes in the home of a domestic violence perpetrator is especially severe given that guns are involved in over one-third of homicides against Native women (approximately 35 percent).[14] In adding tribal domestic violence convictions to the Lautenberg

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[12] Alafair S. Burke, *Domestic Violence as a Crime of Pattern and Intent: An Alternative Reconceptualization*, 75 Geo. Wash. L. Rev. 552, 569 (2007); *see also* Evan Stark, *Coercive Control: How Men Entrap Women in Personal Life* 5 (2007) (articulating "coercive control" theory of domestic violence, which frames "woman battering . . . as a course of calculated, malevolent conduct deployed almost exclusively by men to dominate individual women by interweaving repeated physical abuse with three equally important tactics: intimidation, isolation, and control").

[13] *See, e.g.,* Natalie Loder Clark, *Crime Begins at Home: Let's Stop Punishing Victims and Perpetuating Violence*, 28 Wm. & Mary L. Rev. 263, 291 (1987) ("The first instance of violence . . . is usually short and not terribly severe . . . . Later in the pattern of violence, however, the same victim faces a serious threat to life and health, and may be . . . too afraid to change the situation alone.").

[14] Ronet Backman et al., *Violence Against American Indian and Alaska Native Women and the Criminal Justice Response: What Is Known*, U.S. Dep't of Justice 23 (2008), https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf.

Amendment's firearm proscription, Senator McCain noted "that Indian women experience the highest rates of domestic violence compared to all other groups in the United States." 151 Cong. Rec. S4,873 (daily ed. May 10, 2005) (statement of Sen. McCain). That is, nationwide, "one in four women are victims of domestic violence." *Id.* Native women, however, experience rates of violence *more than twice* the United States national average.[15] The crisis that Native women face cannot be overstated; on some reservations, Native women are murdered at more than ten times the national average.[16]

Furthermore, perpetrators who rape and sexually assault Native women are far more likely to use a weapon than perpetrators who assault women of other ethnic or racial groups.[17] Between 1992 and 2005, "American Indian and Alaska Native women were over two times as likely to face an armed offender compared to other women" (twenty-five percent for Native women versus nine percent for all races).[18] Given the high rates of abuse, violence, and homicide that Native women experience, the presence of a gun in the home of an individual convicted of abusing a Native woman creates a serious threat that the Native

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[15] *See* Lawrence A. Greenfeld & Steven K. Smith, *American Indians and Crime*, Bureau of Justice Statistics, U.S. Dep't of Justice, NCJ 173386, at v (1999).

[16] *SAVE Native Women Act: Hearing on S. 1763 Before the S. Comm. on Indian Affairs*, 112th Cong. 10 (2011) (statement of Thomas J. Perrelli, Associate Att'y Gen. of the United States) (citing a National Institute of Justice-funded analysis of death certificates), http://www.indian.senate.gov/sites/default/files/upload/files/TranscriptRecord-2.pdf.

[17] Backman, *supra*, at 37.

[18] *Id.*

woman—or her children—will be killed. Congress recognized this threat when it added tribal convictions to § 922(g)(9) in 2006. *See* 151 Cong. Rec. S4,873 (daily ed. May 10, 2005) (statement of Sen. McCain).

Thus, Congress' failure to exclude reckless crimes of domestic violence when it amended § 922(g)(9) to add tribal court convictions further defeats Petitioners' strained interpretation of the statute. The fact that reckless crimes of domestic violence were—and continue to be—routinely prosecuted under "Tribal Law" was and is clear from the face of readily attainable law in numerous Tribal Codes. *See* Appendix of Tribal Codes. Nor can Petitioners claim Congress was oblivious to the existence of tribal prosecutions of domestic violence crimes without a "knowing" or "intentional" *mens rea*, as this Court "assume[s] that Congress is aware of existing law when it passes legislation." *Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990); *Cannon v. Univ. of Chicago*, 441 U.S. 677, 696-97 (1979) ("It is always appropriate to assume that our elected representatives . . . know the law."). Thus, Congress could have added a threshold *mens rea* requirement to ensure that tribal convictions for reckless domestic violence did not trigger the federal firearm prohibition. Instead, Congress maintained the Lautenberg Amendment's exclusive focus on the *actus reus* of domestic violence and once again declined to set a threshold *mens rea* requirement.

Nothing in the plain text or legislative history of the 2006 amendment, therefore, supports the notion that in adding tribal court convictions to § 922(g)(9), Congress intended to limit the statute's firearm prohibition to those tribal court convictions that contain the requisite intentional *mens rea* element to

establish nineteenth century common-law battery. Petitioners' argument that reckless crimes of domestic violence must be excluded from the Lautenberg Amendment's firearm prohibition holds grave consequences for Indian Nations and the Native women they seek to protect. Because Native women face rates of domestic violence and abuse higher than any other group or population in the United States, allowing their abusers to possess firearms will significantly increase the likelihood that their lives will be taken.

B. Congress Intended for the "Misdemeanor Crime of Domestic Violence" Standard to Apply to Crimes Not Covered by Armed Career Criminal Act's Felony Firearm Prohibition

Petitioners' argument that § 922(g)(9) does not cover reckless crimes of domestic violence is further undermined by the fact that Congress enacted the Lautenberg Amendment to fill a specific void. Prior to the enactment of the Lautenberg Amendment, § 922(g)(1) of the Armed Career Criminal Act ("ACCA") "prohibited firearm possession by convicted felons." *United States v. Armstrong*, 706 F.3d 1, 4 (1st Cir. 2013), *granted, judgment vacated*, 134 S. Ct. 1759 (2014). However, as Congress noted, in most jurisdictions, "acts of serious spouse abuse are not even considered felonies." 142 Cong. Rec. S8,831 (daily ed. July 25, 1996) (statement of Sen. Lautenberg). Petitioners' addition of a stringent *mens rea* to § 922(g)(9) would, therefore, render the Lautenberg Amendment's firearm proscription inapplicable to many domestic violence criminals whose crimes do not fall within the scope of § 922(g)(1) simply because they are prosecuted as misdemeanors and not felonies. This is not what Congress intended.

Specifically, ACCA § 922(g)(1) states that it is unlawful for anyone "who has been convicted in any court of[] a crime punishable by imprisonment for a term exceeding one year" to possess, ship, transport, or receive firearms. 18 U.S.C. § 922(g)(1); *see also United States v. Castleman*, 134 S. Ct. 1405, 1409 (2014) ("While felons had long been barred from possessing guns, many perpetrators of domestic violence are convicted only of misdemeanors."); *Johnson v. United States*, 559 U.S. 133, 152-53 (2010) (Alito, J., dissenting) ("Congress recognized that many people who engage in serious spousal or child abuse ultimately are not charged with or convicted of felonies," and Congress therefore enacted the Lautenberg Amendment "to keep firearms out of the hands of such abusers.") (citations omitted).

Congress thus acted to close a "dangerous loophole" and "establish[ ] a policy of zero tolerance when it comes to guns and domestic violence." 142 Cong. Rec. S8,831-32 (daily ed. July 25, 1996) (statement of Sen. Lautenberg). In closing the loophole left open in the ACCA, Congress defined the scope of § 922(g)(9)'s firearm prohibition as applicable to all "misdemeanor crime[s] of domestic violence" and specifically declined to repeat or incorporate § 922(g)(1)'s threshold "felony" standard.

Prior to 2006, this "dangerous loophole" was even more evident in the absence of any federal firearm prohibitions for individuals convicted of abusing Native women. Before the addition of tribal court convictions to § 921(a)(33)(A) and § 922(g)(9) in 2006, the ACCA's felony limitation, coupled with the tribal sentencing limitations imposed by federal law, prevented any federal firearm prohibition from applying to individuals convicted in Tribal Courts of

abusing Native women. At the time of the ACCA's enactment (and again at the time of the Lautenberg Amendment), ICRA precluded Tribal Courts from imposing a prison term greater than one year for any criminal offense. 25 U.S.C. § 1302(7) (2006).[19] Consequently, tribal convictions for domestic violence could not, as a matter of law, fall within ACCA § 922(g)(1)'s pre-existing prohibition for felons convicted of "a crime punishable by imprisonment for a term exceeding one year," nor did tribal convictions qualify for § 922(g)(9)'s prohibition. *See* 18 U.S.C. § 921 (effective Sept. 30, 1996 to Jan. 4, 2006) ("[T]he term 'misdemeanor crime of domestic violence' means an offense that—(i) is a misdemeanor under Federal or State law"); *see also United States v. First*, 731 F.3d 998, 1007 (9th Cir. 2013) ("The first decade after its enactment, § 921(a)(33)(A) did not include tribal convictions within the ambit of its proscription.").

Thus, before 2006, no federal law prohibited an individual convicted of domestic violence in a Tribal Court from possessing, shipping, transporting, or receiving firearms. This legal framework allowed perpetrators to abuse Native women and "escape felony charges until they seriously injure[d] or kill[ed] someone." 151 Cong. Rec. 9,062 (2005) (statement of Sen. McCain).

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[19] In 2010, Congress passed, and the President signed into law, the Tribal Law and Order Act ("TLOA"). The Tribal Law and Order Act of 2010, Pub. L. No. 111-211, tit. II, 124 Stat. 2261, amended ICRA to provide that Tribal Courts may impose sentences of up to three years of imprisonment for any one offense if certain requirements are met. *Id.* § 234, 124 Stat. at 2279-80. To date, very few Tribes have been able to implement the full enhanced sentencing authority conditionally granted in TLOA.

In enacting the Lautenberg Amendment and the 2006 amendment to include tribal convictions, Congress decisively went beyond the ACCA's "violent felony" standard to ensure that *all* individuals convicted of domestic violence, "no matter how [their crime] is labeled" (142 Cong. Rec. S10,378 (daily ed. Sept. 12, 1996) (statement of Sen. Lautenberg)), would be prohibited from possessing firearms. *See United States v. Armstrong*, 706 F.3d at 5, *vacated*, 134 S. Ct. 1759 (2014) ("Whereas the ACCA seeks to protect society at large from a diffuse risk of injury or fatality at the hands of armed, recidivist felons, § 922(g)(9) addresses an acute risk to an identifiable class of victims—those in a relationship with a perpetrator of domestic violence.") (citation and quotation marks omitted).

The deliberate addition of tribal court convictions to the Lautenberg Amendment in 2006 only serves to further separate the purpose of ACCA's felony prohibitions from the Lautenberg Amendment's domestic violence prohibitions. Indeed, Petitioners' interpretation would remove many Native women survivors of domestic abuse from § 922(g)(9)'s protection—a result Congress never intended.

C. In Crafting the Lautenberg Amendment's "Misdemeanor Crime of Domestic Violence" Standard, Congress Rejected 18 U.S.C. § 16's "Crime of Violence" Standard

Petitioners further ask this Court to apply its prior decision in *Leocal*, where the Court concluded that Congress did not intend for the "crime of violence" standard in 18 U.S.C. § 16 to reach individuals convicted of a crime committed with recklessness. *See*

Leocal v. United States, 543 U.S. 1, 10 (2004). Petitioners assert that the holding in *Leocal* regarding "recklessness" must control here because "following *Leocal*, almost all federal courts of appeals have held that crimes involving reckless conduct do not meet the definition of 'use . . . of physical force.'" Pet'r Br. 10. Because the words "use . . . of physical force" appear in § 921(a)(33)(A)(ii), Petitioners assert that this Court's decision in *Leocal* limits the scope of § 922(g)(9)'s firearm prohibition to individuals convicted of intentional or knowing acts of domestic violence.

However, none of the appellate courts Petitioners cite have considered the term "use . . . of physical force" within the context of § 922(g)(9). That is, no appellate court has concluded that "use" in the context of a federal criminal domestic violence statute precludes reckless conduct. When viewing the words "use . . . of physical force" in isolation, Petitioners' argument may seem plausible. But when considered in the context of a late twentieth century statute that was initially predicated on state jurisdictions that, until very recently, did not conceive of domestic violence as a crime, it becomes clear that Petitioners' reliance on the repetition of four words from a separate federal statute overlooks the plain language of the Lautenberg Amendment, as well as its fundamental purpose.

As this Court noted in *Leocal*, "when interpreting a statute featuring as elastic a word as 'use,' the Court construes language in its context and in light of the terms surrounding it." *Leocal*, 543 U.S. at 2. The context of § 922(g)(9) is unique and separates the statute's use of the word "use" from other statutes that do not deal with domestic violence. As Congress noted, "[b]y their nature, acts of domestic violence are

especially dangerous and require special attention." 142 Cong. Rec. S8,832 (daily ed. July 25, 1996) (statement of Sen. Lautenberg). In contrast to other crimes of violence, domestic violence "crimes involve people who have a history together and perhaps share a home or a child. These are not violent acts between strangers, and they don't arise from a chance meeting." *Id*.

The *Leocal* Court's conclusion that the phrase "use . . . of physical force" precludes reckless conduct for purposes of 18 U.S.C. § 16's enumerated crimes—crimes that do not necessarily implicate intimate relationships and have long been recognized as crimes in American jurisprudence—does not support the conclusion that the phrase "use . . . of physical force" eliminates reckless conduct for purposes of the Lautenberg Amendment. In *Leocal*, this Court cautioned that "[i]n construing . . . § 16, we cannot forget that we ultimately are determining the meaning of the term 'crime of violence.'" *Leocal*, 543 U.S. at 11.

In contrast, when Congress created the standard for the Lautenberg Amendment, Congress specifically rejected the term "crime of violence" found in 18 U.S.C. § 16. Instead, Congress replaced that language with the term "misdemeanor crime of domestic violence," a term Congress considered to be "broader." *See* 142 Cong. Rec. S11,877 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg); *see also* 18 U.S.C. § 922(g)(9) (prohibiting the possession of firearms for anyone "who has been convicted in any court of a *misdemeanor crime of domestic violence*") (emphasis added). Senator Lautenberg explained the distinction as follows:

> [T]he revised language includes a new definition of the crimes for which the gun ban will be imposed. Under the original version, these were defined as crimes of violence . . . . [but here we] agree[d on] a new definition of covered crimes that is more precise, and probably broader.

142 Cong. Rec. S11,877 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg).

Although the *Leocal* Court interpreted the word "use" within the context of what Congress considered to be a "crime of violence," this Court has yet to construe "use" within the context of what Congress has defined to be a "misdemeanor crime of domestic violence." *See, e.g., Johnson v. United States*, 559 U.S. 133, 143-44 (2010) (considering the phrase "the use . . . of physical force" in a separate provision, 18 U.S.C. § 924(e)(2)(B)(i), and declining to extend the Court's holding and "decide that the phrase has the same meaning in the context of defining a misdemeanor crime of domestic violence.").

D. Congress Did Not Intend to Limit the Lautenberg Amendment to Common-Law Battery

In an attempt to further distract from the plain text of the Lautenberg Amendment, Petitioners assert that because "the common-law misdemeanor of battery required a *mens rea* greater than recklessness" (Pet'r Br. 17), § 922(g)(9) must be interpreted as applying only to domestic violence crimes with an equivalent *mens rea*. In support of this proposition, Petitioners cite a series of state court decisions wherein common-law battery was held to require an intentional *mens rea*. *See* Pet'r Br. 16-17. The perversity of this line of

argument, however, is that these very same laws precluded the criminal prosecution of a husband for abusing his wife.[20]

Contemporary laws criminalizing domestic violence therefore mark an important and intentional shift away from traditional American jurisprudence. This shift was not yet complete at the time of the Lautenberg Amendment, since in 1996 "only about one-third of the States had criminal statutes that specifically proscribed domestic violence." *United States v. Hayes*, 555 U.S. 415, 427 (2009) (citation omitted). It is unfathomable that, at that time, Congress intended for its use of the words "use . . . of physical force" in defining the term "misdemeanor crime of domestic violence" to render the statute's application equivalent to a nineteenth century regime that deemed domestic violence to be lawful.

Petitioners' reading of § 922(g)(9) is even further constrained in light of Congress's 2006 decision to add tribal court convictions to the Lautenberg Amendment's firearm prohibition. Tribal laws criminalizing domestic violence trace their roots not to common-law battery, but rather, to "indigenous legal systems" that "were victim centered" and "generally provide[d] more protection and healing to victims than the American system."[21]

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[20] *See* Siegel, *supra*, at 2123 (noting that under nineteenth century common-law, the then prevailing law in many States held that "[a]s master of the household, a husband could command his wife's obedience, and subject her to corporal punishment or chastisement if she defied his authority.") (citation and quotation marks omitted).

[21] Deer, supra, at 22.

This Court has previously concluded that federal statutes prohibiting convicted criminals from possessing firearms must be construed as "'consistent with the prerogatives of the States in defining their own [criminal] offenses.'" *Taylor v. United States*, 495 U.S. 575, 582 (1990) (quoting S.Rep. No. 98–190, at 20 (1983)). By adding tribal court convictions to the Lautenberg Amendment in 2006, Congress likewise intended for § 922(g)(9) to be construed as consistent with the prerogatives of Tribal Nations in defining their own domestic violence criminal offenses. Nineteenth century common-law battery laws are not consistent with contemporaneous tribal laws that prohibited violence against Native women, and as such, common-law battery does not constitute a permissible substitute for the plain language of the Lautenberg Amendment.

III. Tribal Codes that Prosecute for Reckless Crimes of Domestic Violence Fall Well-Within § 922(g)(9)'s Intended Scope

As the Appendix of Tribal Codes demonstrates, tribal laws—like state laws—vary from jurisdiction to jurisdiction. There is no "one size fits all" definition of domestic violence in Indian country with regards to *mens rea*. *See* Appendix of Tribal Codes. Of course, Congress never intended to impose a "one size fits all" *mens rea* standard to § 922(g)(9)'s application, as demonstrated by Congress' decision to make the statute applicable to all misdemeanor crimes of domestic violence.

Furthermore, many of the Tribal Codes that allow for the prosecution of reckless domestic violence crimes establish a threshold "conscious disregard"

element that places tribal domestic violence convictions well above the description of domestic violence Congress itself used to describe § 922(g)(9)'s scope. *See* Appendix of Tribal Codes. Whereas Congress described § 922(g)(9)'s "misdemeanor crime of domestic violence" as occurring when the perpetrator's "emotions get the best of him" and "[h]e loses control" (142 Cong. Rec. S11,876 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg)), many Tribal Codes limit their prosecutions of domestic violence crimes to conduct implicating a "conscious disregard" for the safety and welfare of the perpetrator's intimate partner. *See* Appendix of Tribal Codes.

In contrast to crimes committed with a lesser *mens rea* such as negligence, "recklessness requires conscious disregard of a risk of a harm that the defendant is aware of—a volitional requirement absent in negligence." *United States v. Trinidad–Aquino*, 259 F.3d 1140, 1146 (9th Cir. 2001). Consequently, convictions for reckless domestic violence crimes in Tribal Courts fall well-within the Lautenberg Amendment's intended scope.

For example, the Pascua Yaqui's Tribal Code ("Pascua Yaqui Code") defines a crime of domestic violence to be "any act or attempt[] to commit [] an offense defined in Title 4" of the Pascua Yaqui Code within the context of an intimate relationship, as defined in § 3-10(A)(1)-(4). *See* 4 Pascua Yaqui Tribal Code ("PYTC"), tit. 4, ch. 3, § 3-10(A), (1)-(4).[22] Assault, which is included in Title 4, is defined as as "[i]ntentionally, knowingly or *recklessly* causing any physical injury to another person." 4 PYTC § 1-

[22] The Pascua Yaqui Tribal Code ("PYTC") is available online at: http://www.pascuayaqui-nsn.gov/_static_pages/tribalcodes/docs/4_PYTC/2_Sex_Offenses.pdf.

130(A)(1). (emphasis added). The Pascua Yaqui Code defines "recklessly" as:

> [M]ean[ing] with respect to a result or to a circumstance described by a statute defining an offense that a person is aware of and *consciously disregards a substantial and unjustifiable risk* that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

Id. § 1-41(A)(3). (emphasis added).

The Confederated Tribes of the Umatilla Indian Reservation Criminal Code ("Umatilla Code") allows for the prosecution of domestic violence crimes predicated on an underlying crime defined in the Umatilla Code committed within the context of an intimate relationship, as defined in Chapter 1, § 1.01.[23] *See* Confederated Tribes of the Umatilla Indian Reservation Criminal Code ("CTUIRCC"), §§ 1.01, 1.02(B). The Umatilla Code, therefore, does not preclude the prosecution of a domestic violence crime simply because it was committed with recklessness. For instance, the crime of assault is defined as "[i]ntentionally, knowingly or *recklessly* caus[ing]

[23] The Confederated Tribes of the Umatilla Indian Reservation Criminal Code ("Umatilla Code") is available online at: http://ctuir.org/system/files/Criminal%20Code.pdf.

physical injury. . . ." *Id.* § 4.74(A)(1) (emphasis added). "Recklessly" is defined as:

> [W]hen . . . a person is aware of and *consciously disregards a substantial and unjustifiable* risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Id. § 4.05(A)(9) (emphasis added).

These Tribal Code definitions of "recklessness"—as well as those listed in the Appendix of Tribal Codes—establish a more stringent *mens rea* threshold than the domestic violence Congress described in creating § 922(g)(9). In articulating the underlying conduct that would fall within the Amendment's reach, Senator Lautenberg characterized the usual course of events surrounding a crime of domestic violence as occurring:

> [W]hen things get rough and the stresses of life build, [and the defendant] loses his temper because *his emotions get the best of him*. He *loses control*, flies into a rage and then strikes out violently at those closest to him.

142 Cong. Rec. S11,876 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (emphasis added).[24] In

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[24] *See United States v. Nason*, 269 F.3d 10, 17 (1st Cir. 2001) ("While the remarks of the chief sponsor of a bill by no means control a court's construal of the enacted statute, they nonetheless can provide reliable insights into its construction.") citing *N. Haven Bd. Of Educ. v. Bell*, 456 U.S. 512, 526-27 (1982)).

contrast to criminals who act knowingly or intentionally, the drafters of § 922(g)(9) conceived of domestic violence perpetrators as "people who have shown that they *cannot control themselves* and are prone to fits of violent rage directed, unbelievably enough, against their own loved ones." 142 Cong. Rec. S10,378 (daily ed. Sept. 12, 1996) (statement of Sen. Lautenberg) (emphasis added). Again, Senator Lautenberg explained the sort of criminal conduct that inspired the legislation as follows:

> As arguments often do, it will escalate, and this time, as before, it will get out of control. As their children huddle in fear, the anger will get physical, and almost *without knowing what he is doing*, with one hand he will strike his wife and with the other hand he will reach for the gun he keeps in his drawer.

142 Cong. Rec. S11,876 (daily ed. Sept. 30, 1996) (statement of Sen. Lautenberg) (emphasis added). As Congress noted in enacting the Lautenberg Amendment, individuals who act recklessly, lose control, and/or beat women in a fit of rage are precisely the type of individuals who should not be allowed to possess firearms. *See id.* Nothing in the plain text of the statute, or the legislative history, gives any indication that Congress considered individuals who abuse women *recklessly* to pose less of a risk than individuals who commit domestic abuse *intentionally*. If anything, it is clear that Congress intended to keep firearms out of the hands of domestic violence offenders who abuse women "without knowing what [they are] doing." *Id.*

Congress further recognized that even where the underlying conduct may have been initially classified as "intentional," many prosecutions for domestic

violence crimes result in plea bargains that classify the conduct as a lesser offense, either without a *mens rea*, or a *mens rea* constituting something less than knowing or intentional. *See* 142 Cong. Rec. S10,380 (daily ed. Sept. 12, 1996) (noting that in the context of domestic violence convictions, "plea bargains often result in misdemeanor convictions for what are really felony crimes.") (statement of Sen. Feinstein); 142 Cong. Rec. S11,876 (daily ed. Sept. 30, 1996) ("[M]ost wife beaters, [] plead[] down to a misdemeanor and g[e]t away with a slap on the wrist.") (statement of Sen. Lautenberg). That is, "[o]utdated or ineffective laws often treat domestic violence as a lesser offense." 142 Cong. Rec. S10,380 (daily ed. Sept. 12, 1996) (statement of Sen. Feinstein).

Consequently, Congress recognized it could not render § 922(g)(9) contingent upon a threshold label that, in many instances, would not be met. Instead, Congress created the "amendment [to] look[] to the type of crime, rather than the classification of the conviction." 142 Cong. Rec. S10,380 (daily ed. Sept. 12, 1996) (statement of Sen. Feinstein); *see also* 142 Cong. Rec. S10,378 (daily ed. Sept. 12, 1996) (stating that the Amendment was fashioned with an understanding that "[d]omestic violence, no matter how it is labeled, leads to more domestic violence . . . .") (statement of Sen. Lautenberg).

As the aforementioned Tribal Codes—and those listed in the Appendix of Tribal Codes—demonstrate, tribal prosecutions for reckless domestic violence crimes require the establishment of a *mens rea* greater than the congressionally described "loss of control" or "fit of rage" that led to § 922(g)(9)'s enactment. There can be no question, therefore, that tribal prosecutions for reckless domestic violence crimes fall well within

the scope Congress intended to establish in the Lautenberg Amendment.

There is no statutory text—nor legislative history—to support the conclusion that Congress intended to exclude tribal court prosecutions for reckless domestic violence crimes from the ambit of the Lautenberg Amendment's firearm prohibition. If this Court adopts Petitioners' interpretation and eliminates reckless acts of domestic violence from § 922(g)(9)'s reach, Native women and children will lose a critical safeguard that protects them from perpetrators who repeatedly, and with increasing severity, act with a conscious disregard for their safety and welfare.

Excluding reckless acts of domestic violence from § 922(g)(9) is not what Congress intended.

CONCLUSION

The decision of the First Circuit Court of Appeals should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX A

STATEMENTS OF ADDITIONAL *AMICI CURIAE*

The following organizations respectfully submit this brief as *amici curiae* in support of respondents.

American Indians Against Abuse ("AIAA") is a Wisconsin not-for-profit incorporated in 1991. AAIA is a statewide sexual assault and domestic violence tribal coalition serving Wisconsin's eleven Tribes and member programs by providing education, support, and technical assistance to enhance and strengthen the response to victims of domestic violence, sexual assault, dating violence, and stalking. AIAA's trainings, community awareness, and collaborative events are designed to be reflective of and have relevance to our local, regional, and nationwide indigenous people and culture.

The **First Nations Women's Alliance** is a North Dakota not-for-profit organization incorporated in 2008 (http://www.nativewoman.org/). It is the mission of the First Nations Women's Alliance to strengthen tribal communities by creating a forum for leaders to come together to address the issues of domestic violence and sexual assault. The Alliance is committed to ending all forms of violence by providing culturally relevant services and resources and facilitating the provision of those services by others in our communities.

The **Hopi-Tewa Women's Coalition to End Abuse** is an Arizona not-for-profit organization incorporated in 2009. The Coalition is a tribal domestic violence and sexual assault coalition located on the Hopi Reservation in northeast Arizona. The coalition provides training, technical assistance, policy development, advocacy support and education to the Tribal

Government, program partners and community. The Coalition's mission is to advocate for a coordinated and effective response system that creates a safety net towards building healthy communities, while embracing the strength of Hopi cultural values and traditions.

Mending the Sacred Hoop is a Minnesota not-for-profit organization incorporated in 2006 (www.mshoop.org). Mending the Sacred Hoop works from a social change perspective to end violence against Native women and children while restoring the safety, sovereignty, and sacredness of Native women. Mending the Sacred Hoop is committed to strengthening the voice and vision of Native peoples through grassroots organizing, as well as restoring the leadership of Native women in addressing and ending domestic and sexual violence.

The **Minnesota Indian Women's Sexual Assault Coalition** is a Minnesota not-for-profit organization incorporated in 2004 (www.miwsac.org). The Coalition is a statewide tribal coalition and a national tribal technical assistance provider. The Coalition works with 11 Tribes in Minnesota and more than 25 Tribes nationwide. The Coalition works to address sexual violence and sex-trafficking of Native women, and the Coalition's vision is to create safety and justice through the teachings of our grandmothers.

The **Montana Native Women's Coalition** ("MNWC") is a Montana not-for-profit organization incorporated in 2007 (www.mtnativewomenscoalition.org). MNWC is the Indigenous Circle of Seven relations with a common goal to honor each Tribe's spirituality and culture. MNWC provides collaborative, cohesive, and respectful efforts to end sexual and domestic violence within the Indian Nations and the State of Montana.

The **Native Alliance Against Violence** is an Oklahoma not-for-profit organization incorporated in 2009 (www.oklahomanaav.org). The Native Alliance Against Violence is Oklahoma's only tribal domestic and sexual violence coalition. Through the Spirit of respect and cooperation, the Native Alliance Against Violence strives to unify tribal service programs throughout Oklahoma by providing culturally appropriate technical assistance, training and support to eliminate domestic violence, sexual violence, dating violence, stalking and sex trafficking to restore balance and safety for Native communities.

The **Native Women's Coalition** is an Idaho not-for-profit organization incorporated in 2009. The Coalition provides awareness through education, training and technical assistance to Native and non-Native service providers to stop domestic violence and sexual assault against Native women and children, both on reservation and in rural and urban off reservation communities. The Coalition believes it is essential that all providers understand the unique need for the delivery of culturally appropriate services to victims, especially child victims.

The Native Women's Society of the Great Plains is a South Dakota not-for-profit organization incorporated in 2008 (www.nativewomenssociety.org). The Coalition's mission is to promote the safety of Native women. The Coalition is comprised of organizations that provide shelter and services to Native women experiencing violence in their homelands.

Restoring Ancestral Winds, Inc. ("RAW") is a Utah not-for-profit organization incorporated in 2013 (www.restoringancestralwinds.org). The mission of

RAW is to support healing in our indigenous communities. RAW will advocate for healthy relationships; educate our communities on issues surrounding stalking, domestic, sexual, dating and family violence; collaborate with Great Basin Region community members and stakeholders; and honor and strengthen traditional values with all our relations.

The **Seven Dancers Coalition** is a New York not-for-profit organization incorporated in 2009 (www.sevendancerscoalition.com). The Coalition is located in upstate New York, and thus the Coalition's territory straddles the United States and Canadian border. The Coalition is established to bring awareness and prevention on SA, DA, Campus Safety, Teen Dating, Stalking and Sex Trafficking. The Coalition's mission is to uplift families of indigenous communities by educating and restoring traditional values with the purpose of strengthening self-confidence and dignity. We strive for an environment of peace and tranquility in order to heal the damaged spirit.

The **Southwest Indigenous Women's Coalition** ("SWIWC") is an Arizona not-for-profit organization incorporated in 2006 (www.swiwc.org). SWIWC is located in Mesa, Arizona, and works to end domestic and sexual violence against Native women. Through training, technical assistance, policy development, and outreach education, SWIWC helps to build the capacity of Tribes in Arizona to better address and respond to the violence occurring in their communities.

The **Strong Hearted Native Women's Coalition, Inc**. is a California not-for-profit organization incorporated in 2006 (www.strongheartedwomen.org). Strong Hearted Native Women's Coalition was founded in 2005 to bring awareness against Sexual Assault,

Domestic Violence, Youth Violence, and Stalking in North County of the San Diego County. Native women from the Indian reservations of Rincon, Pauma, Mesa Grande, Santa Ysabel, La Jolla, San Pasqual, Los Coyotes, Pala, and Inaja/Cosmit make-up our coalition membership. Over the years, our coalition has expanded to include Tribes from all of Southern California as well as other Tribes throughout the State of California. The purpose of the Coalition is to enhance the capacity of survivors, advocates, Indian women's organizations, and victim services providers to form non-profit, nongovernmental tribal domestic violence and sexual assault coalitions to advance the goal of ending violence against American Indian and Alaskan Native women. The overarching goal of the Strong Hearted Native Women's Coalition program is to increase the amount of dedication to improving systemic and community responses to victims and to raise awareness, educate, and to provide technical assistance, training, and supportive services for victims of sexual assault, domestic violence, dating violence, stalking, and human/sex trafficking, including cultural and unique barriers facing Native American Women. By honoring our women ancestors, we advocate for women and their families and promote safety and a traditional non-violent lifestyle. The Coalition works towards empowering women with the tools for independence, courage, and a strong direction to make healthy life choices for herself, her children, and family.

The Tribal Law and Policy Institute ("TLPI") is a California not-for-profit organization incorporated in 1996 (www.tlpi.org). TLPI is a Native American owned and operated non-profit, organized to design and deliver education, research, training, and technical assistance programs which promote the

enhancement of justice in Indian Country and the health, well-being, and culture of Native peoples. TLPI has been extended significant resources and time in assisting Tribes to develop their domestic violence criminal codes and implement VAWA § 904's SDVCJ.

Uniting Three Fires Against Violence is a Michigan not-for-profit organization incorporated in 2009 (www.unitingthreefiresagainstviolence.org). Uniting Three Fires Against Violence ("UTFAV") is a statewide tribal coalition against domestic and sexual violence. UTFAV's mission is "[t]o support Michigan Tribes in promoting the social change necessary to address the disproportionate rates of violence impacting our communities." UTFAV envisions: (1) empowered Native American survivors with access to essential and culturally appropriate services throughout the State of Michigan; (2) tribal communities that have access to the resources necessary to provide the identified services: and (3) tribal, state and federal responses that are guided by culturally appropriate and trauma informed practices.

The **Wabanaki Women's Coalition** ("WWC") is a Maine not-for-profit organization incorporated in 2013 (www.wabanakiwomenscoalition.org). The mission of the WWC is to increase the capacity of tribal communities to respond to domestic and sexual violence and influence tribal, national, and regional systems to increase awareness, safety, justice, and healing for all our relations. The WWC's vision is to guide the evolution of systems and policies that reflect the WWC's Wabanaki voice on behalf of survivors of domestic and sexual violence. The vision is also to create a technical resource center that affirms Wabanaki cultural values and tribal sovereignty, and empowers tribal service

providers to serve, educate and influence their communities in an effective and uniform way. The WWC also seeks to be recognized as the informed resource for issues on Wabanaki survivors of domestic and sexual violence.

The Washington State Native American Coalition Against Domestic Violence & Sexual Assault is a Washington not-for-profit organization incorporated in 2005 (www.womenspirit.net). The Coalition envisions a Nation where Native women live safely and where all citizens embrace these core values as they strive towards a collective vision of safety. The Coalition believes in the empowerment of survivors, restoration of spiritual and traditional practices, human rights advocacy, restorative justice, and promoting healing from trauma.

The **Yupik Women's Coalition** ("YWC") is an Alaska not-for-profit organization incorporated in 2007 (www.yupikwomen.org). The YWC strives to promote safety of women through education and advocacy. The YWC is committed to organize community efforts to end violence against women and children with Yup'ik villages through strengthening the traditional Yup'ik beliefs and teachings that have guided the Yup'ik people for thousands of years. The YWC is dedicated to the safety of women and believes in all the rights of all people to live without fear, threat, violence, and oppression.

* * *

APPENDIX B:

TRIBAL CODES ADDRESSING
DOMESTIC VIOLENCE CRIMES[1]

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[1] This Appendix demonstrates the variance of Tribal Codes and the laws that criminalize domestic violence across Indian Country. The Appendix is a sampling of extant Tribal Codes and therefore does not constitute an exhaustive list of the Tribal Codes that allow for the prosecution of domestic violence crimes with a *mens rea* other than intentional and/or knowing.

Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation

7 Fort Peck Tribes Comprehensive Code of Justice § 245, http://www.fptc.org/ccoj/title_7/sections/sec_245.pdf

> A person who attempts by physical menace to put a family member or household member in fear of serious bodily harm, or by physical menace causes another to harm himself/herself, is guilty of domestic abuse . . . .
>
> > (1) Conviction for domestic abuse shall be punishable as a Class A misdemeanor . . .

2 Fort Peck Tribes Comprehensive Code of Justice § 106, http://www.fptc.org/ccoj/title_2/sections/sec_106.pdf

> (b) Criminal jurisdiction over non-Indian domestic or dating violence. The Fort Peck Tribal Court is vested with jurisdiction to enforce all provisions of this Code against a non-Indian who has committed an act of dating violence or domestic violence against an Indian victim within the Fort Peck Tribes' Indian country provided the non-Indian has sufficient ties to the Fort Peck Tribes.

E.g., 7 Fort Peck Tribes Comprehensive Code of Justice § 231, http://www.fptc.org/ccoj/title_7/sections/sec_231.pdf

> Simple assault. A person who
>
> > (a) Intentionally causes bodily injury to another; or
> >
> > (b) Recklessly or negligently causes bodily injury to another with a deadly weapon; or

(c) Attempts by physical menace to put another in fear of serious bodily harm, or by physical menace causes another to harm himself/herself is guilty of an assault.

Simple assault is a Class A misdemeanor.

7 Fort Peck Tribes Comprehensive Code of Justice § 103, http://www.fptc.org/ccoj/title_7/sections/sec_103.pdf

(c) "Reckless". Conduct is reckless if, with respect to a result or to a circumstance, a person consciously disregards a substantial risk that such result will occur or that such a circumstance exists, and the risk is of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the situation.

Confederated Tribes of the Colville Reservation

Colville Confederated Tribes Code § 5-5-3 (WESTLAW)[2]

(d) "Domestic Violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense or culturally appropriate discipline of a child:

(1) Attempting to cause or causing physical, mental or emotional harm to another family or household member;

(2) Placing a family or household member in reasonable fear of physical harm to him or herself or another family or household member. This fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;

(3) Causing a family or household member to engage involuntarily in sexual activity, which includes, but not limited to, through coercion, intoxication, force, threat of force, or duress; or

(4) Attempting to commit or committing any criminal offense under Colville Tribal law against another family or household member.

[2] "(WESTLAW)" indicates the Tribal Code referenced is available on Westlaw's online database.

E.g., Colville Confederated Tribes Code § 3-1-11 (WESTLAW)

> Reckless Endangerment. Any person who shall recklessly engage in conduct which places or may place another human being in danger of death or serious bodily injury shall be guilty of Reckless Endangerment. Reckless Endangerment shall be presumed whenever a person shall knowingly point or discharge a firearm at or in the direction of another whether the actor believes the firearm to be loaded or not. Reckless Endangerment is a Class A offense.

Confederated Tribes of Coos,
Lower Umpqua and Siuslaw Indians

4 Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians Tribal Code § 4-11-3, http://www.narf.org/nill/codes/cooscode/4_4-11.pdf

(a) "Abuse" - the occurrence of one or more of the following acts between family or household members:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury.

(2) Intentionally, knowingly or recklessly placing another in fear of imminent bodily injury.

(3) Causing another to engage in involuntary sexual relations by force or threat of force.

Confederated Tribes of Siletz Indians

Siletz Tribal Code § 8.102 (WESTLAW)

(a) Unless the context requires otherwise, terms used in the Domestic and Family Violence Ordinance are defined as follows.

(1) "Domestic or family violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense by the victim:

(2) attempting to cause or causing physical harm, bodily injury, or assault to another family or household member;

(3) placing a family or household member in fear of the infliction of physical harm, bodily injury, or assault; or

(4) causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

Siletz Tribal Code § 8.103 (WESTLAW)

(a) A "crime involving domestic or family violence" occurs when a family or household member:

(1) purposely or knowingly causes bodily injury to a family or household member;

(2) purposely or knowingly causes apprehension of bodily injury to a family or household member;

(3) purposely or knowingly causes emotional distress of a family or household member; or

(4) commits one or more of the following offenses, as defined by the Confederated Tribes

of Siletz Indians Criminal Code, against another family or household member:

(A) Assault (First, Second, Third or Fourth Degree Assault);

(B) Menacing;

(C) Intimidation (First or Second Degree);

(D) Harassment;

(E) Burglary (First or Second Degree);

(F) Criminal Trespass (First or Second Degree);

(G) Criminal Mischief (First, Second or Third Degree);

(H) Custodial Interference (First or Second Degree);

(I) Theft (First, Second, or Third Degree, and Aggravated First Degree);

(J) Disorderly Conduct;

(K) Stalking;

(L) Arson;

(M) Homicide (Murder, First or Second Degree Manslaughter, Criminally Negligent Homicide);

(N) Kidnapping (First or Second Degree);

(O) Any Sex Offense contained in §§ 12.044–12.055; or

(P) Any Weapon Law Violation contained in §§ 12.122–12.128.

E.g., Siletz Tribal Code § 12.031 (WESTLAW)

> Third Degree Assault: Class A. Recklessly causing serious physical injury to another by means of deadly or dangerous weapon or recklessly causing serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.

Confederated Tribes of the Umatilla Indian Reservation

Conf. Tribes of Umatilla Indian Res. Crim. Code § 1.01, http://ctuir.org/system/files/Criminal%20Code.pdf

> (X) Domestic Violence. For the purposes of exercising criminal jurisdiction over non-Indians, the term 'domestic violence' means violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic- or family- violence laws of an Indian tribe that has jurisdiction over the Indian country where the violence occurs.

Conf. Tribes of Umatilla Indian Res. Crim. Code § 1.02, http://ctuir.org/system/files/Criminal%20Code.pdf

> (B) Criminal Jurisdiction Over Non-Indian Domestic or Dating Violence. The Umatilla Tribal Court is vested with jurisdiction to enforce all provisions of this Code against a non-Indian who has committed an act of Dating Violence or Domestic Violence against an Indian victim within the Confederated Tribes' Indian country provided the non-Indian has sufficient ties to the Confederated Tribes.

E.g., Conf. Tribes of Umatilla Indian Res. Crim. Code § 4.74, http://ctuir.org/system/files/Criminal%20Code.pdf

> (A) A person commits the crime of assault if the person:

> (1) Intentionally, knowingly or recklessly causes physical injury however slight to another . . .

Conf. Tribes of Umatilla Indian Res. Crim. Code § 4.05, http://ctuir.org/system/files/Criminal%20Code.pdf

> (A) As used in this code unless the context requires otherwise:
>
> . . .
>
> (9) "Recklessly", when used with respect to a result or to a circumstance described by a statute defining an offense, means that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Coushatta Tribe of Louisiana

3A Coushatta Tribal Code § 3A.01.040, http://www.narf.org/nill/codes/coushatta/coutitle3a.html

(c) "Crime involving domestic violence" means one or more of the following crimes when committed by a family or household member against another family or household member:

(1) Offenses listed under 18 U.S.C. 1153, the Major Crimes Act as now or hereafter amended: murder, manslaughter, kidnapping, maiming, felony sexual abuse under chapter 1 09A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and felony theft under section 661 of Title 18.

(2) Offenses listed under the Coushatta Tribe of Louisiana Judicial Code, Title 3, as now or hereafter amended: assault, assault and battery, abductions, subjection to maltreatment, malicious mischief, trespass, and disobedience to lawful orders of court, when the order was entered for the purpose of protecting a victim of alleged domestic violence.

(d) "Domestic Violence" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:

(1) Attempting to cause or causing physical harm to another family or household member.

(2) Attempting to commit or committing a crime involving domestic violence against another family or household member.

> (3) Placing a family or household member in reasonable fear of physical harm to him or herself or another family or household member. This fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets.
>
> (4) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force or duress.

E.g., 3 Coushatta Tribal Code § 3.2.3, http://www.narf.org/nill/codes/coushatta/coutitle3.html

> Simple Assault: A person who . . .
>
> (b) Recklessly or negligently causes bodily injury to another with a dangerous weapon; or

3 Coushatta Tribal Code § 3.1,2, http://www.narf.org/nill/codes/coushatta/coutitle3.html

> (c) "Reckless": Conduct is reckless if, with respect to a result or circumstance, a person consciously and unjustifiably disregards a substantial risk that such a result will occur or that such a circumstance exists, and the risk is of such a nature and degree that its disregard involves a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

Eastern Band of Cherokee Indians

Eastern Band of Cherokee Indians Code § 14-40.1, https://www.municode.com/library/nc/cherokee_indians_eastern_band/codes/code_of_ordinances?nodeId=PTIICOOR_CH14CRLA_ARTIXCRBOIN_S14-40.1DOVI

(b) Definition. The crime of domestic violence occurs when a person commits one of the following acts against an intimate partner or against a member of such intimate partner's family or household, or against an animal of such intimate partner:

(1) Attempting to cause or causing physical harm, bodily injury, or assault to an intimate partner or to a member of such intimate partner's family or household, or to an animal of such intimate partner;

(2) Placing an intimate partner or a member of the intimate partner's family or household in fear of the infliction of physical harm, bodily injury or assault;

(3) Willfully attempting to cause or causing emotional distress to an intimate partner or to a member of such intimate partner's family or household;

(4) Causing an intimate partner or a member of such intimate partner's family or household to engage involuntarily in sexual activity by force, threat of force, or duress; or

(5) Committing any willful violation of a court order intended to protect the intimate partner or a member of such person's family or household;

(6) Committing one of the following offenses, as defined by the Eastern Band of Cherokee Indians Criminal Code, against an intimate partner or against a family member, household member, or animal of such intimate partner:

a. Injuring real property (§ 14-10.11);

b. Injuring telephone, wires or other telephone equipment (§ 14-10.14);

c. Criminal trespass (§§ 14-10.15, 14-10.16, and/or 14-10.17);

d. Burglary (§ 14-10.40);

e. Breaking and entering (§ 14-10.14);

f. Criminal mischief (§ 14-10.9);

g. Arson (§§ 14-10.50, 14-10.51, and/or 14-10. 52);

h. Assault (§§ 14-40.10, 14-40.11, 14-40.12);

i. Maiming (§ 14-40.14);

j. Discharging a firearm into an occupied building (§ 14-40.15);

k. Harassment; telephone harassment (§§ 14-25.13 and/or 14-5.3);

l. Kidnapping (§ 14-40.30);

m. False imprisonment (§ 14-40.31);

n. Custodial interference (§ 14-40.32);

o. Homicide (§§ 14-40.40 and/or 14-40.41);

p. Sex offenses–including rape, taking indecent liberties with children, aggravated sexual abuse, sexual abuse, sexual abuse of

minor or ward (§§ 14-20.1, 14-20.2, 14-20.3, 14-20.4);

q. Stalking (§ 14-5.5);

r. Communicating threats (§ 14-5.2);

s. Harassment (§§ 14-5.3 and/or 14-25.13);

t. Weapons law violations (§§ 14-34.10, 14-34.11, 14-34.12, 14-34.13, and/or 14-34.14);

u. Cruelty to animals (§ 14-5.20);

The commission of one of the above-referenced crimes against an intimate partner or against a member of such party's family or household, or against an animal of such party shall trigger the application of this ordinance.

Eastern Band of Cherokee Indians Code § 14-10.51, https://www.municode.com/library/nc/cherokee_indians_eastern_band/codes/code_of_ordinances?nodeId=PTIICOOR_CH14CRLA_ARTIIIPRCR_S14-10.51ARSEDE

Arson in the Second Degree: It shall be unlawful to knowingly or recklessly, carelessly, or negligently, without regard to the consequences, start a fire or cause an explosion which:

(1) Endangers human life or safety; or

(2) Damages or destroys the property of another.

Grand Traverse Band of Ottawa and Chippewa Indians

9 Grand Traverse Band Code § 310 (WESTLAW)

(a) "Abuse" means:

(1) Intentionally or recklessly or negligently causing or attempting to cause physical harm or mental anguish to another person; or

(2) Threatening or placing another person in reasonable apprehension of imminent serious physical injury.

. . .

(f) "Domestic Violence" means:

(1) Engaging in any of the following acts against family or household members or persons in a dating relationship:

(A) Attempting to cause or causing physical harm;

(B) Attempting to cause or causing injury to a pet or property damage;

(C) Attempting to cause or causing a family or household member to engage involuntarily in sexual activity by force, threats or duress;

(D) Inflicting injury to household pets, reasonable fear of physical harm, sexual assault, or property damage;

(E) Stalking, as defined in this code;

(2) All crimes involving threats, violence, assault and/or physical or sexual abuse against,

adults, children, the elderly or others enumerated in Title 9 of the Grand Traverse Band Constitution may be charged as domestic violence and those crimes listed under the Major Crimes Act, 18 U.S.C. § 1153.

(3) Any act of self-defense or self-defense of another reasonably taken in response to an act of domestic violence shall not be considered a crime of domestic violence.

9 Grand Traverse Band Code § 102 (WESTLAW)

(e) Mental State: Wanton or Reckless. A person acts "wantonly" or "recklessly" when that person is aware, or should be aware, that certain conduct will endanger the health, safety, or property of others but persists in engaging in the conduct despite the risks.

Hoh Indian Tribe

9 Hoh Tribal Code § 1.5, http://hohtribe-nsn.org/wp-content/uploads/2013/11/Title-9-Domestic-Violence-Anti-Harassment-Code.pdf

> (A) "Abuse" means the infliction of physical harm, bodily injury or sexual assault or the infliction of the fear of imminent physical harm, and includes but is not limited to assault and battery as defined in the Hoh Tribal code.
>
> . . .
>
> (G) "Crime of Domestic Violence" means one or more of the following when committed by a family or household member against another family or household member:
>
> > (1) Offenses listed under 18 U.S.C.SS1153, the Major Crimes Act as now or hereinafter amended: murder, manslaughter, kidnapping, maiming, felony sexual abuse under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and felony theft under section 661 of Title 18.
> >
> > (2) Offenses listed under the Hoh Tribes code, Title 5, as now or hereafter amended: assault, aggravated assault, intimidation, neglect, endangerment, elder abuse, unlawful restraint, kidnapping, aggravated kidnapping, criminal mischief, trespass, and disobedience to lawful orders of court, when the order was entered or the purpose of protecting a victim of alleged domestic violence.

(3) Offenses listed under the Hoh Tribal Code, Title 5, Section 5.17, Sexual Offenses, as now or hereafter amended.

(H) "Domestic Violence" means an act of abuse, as defined in Section 1.5 (A), by a perpetrator or a family member or household member of the perpetrator.

E.g., 5 Hoh Tribal Code § 5.5.05, http://hohtribe-nsn.org/wp-content/uploads/2013/11/Title-5-Law-and-Order.pdf

(l) A person is guilty of reckless endangerment when he or she recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person.

(2) Reckless endangerment is a felony if a person under the age of eighteen years or a dependent adult is endangered, in other cases reckless endangerment is a gross misdemeanor.

5 Hoh Tribal Code § 5.2.01, http://hohtribe-nsn.org/wp-content/uploads/2013/11/Title-5-Law-and-Order.pdf

(1) Kinds of Culpability Defined.

. . .

(c) Recklessness. A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

Hopi Tribe

III Hopi Tribal Code § 3.6.7, http://www.hopi-nsn.gov/wp-content/uploads/2013/05/Hopi-Code.pdf

> A person who commits assault, aggravated assault, endangerment, threatening, kidnapping, sexual assault, or sexual conduct with a minor is guilty of domestic violence, a serious offense . . .

E.g., III Hopi Tribal Code § 3.7.1, http://www.hopi-nsn.gov/wp-content/uploads/2013/05/Hopi-Code.pdf

> A person commits assault, an offense, by:
>
> . . .
>
> (B) attempting to cause or recklessly causing physical injury to another person; or . . .

III Hopi Tribal Code § 3.2.2, http://www.hopi-nsn.gov/wp-content/uploads/2013/05/Hopi-Code.pdf

> APPLICABLE MENTAL STATES. In this Code, unless the context or subject matter otherwise requires:
>
> . . .
>
> "Recklessly" means that a person is aware of and consciously disregards a substantial and unjustifiable risk that a fact exists or that a particular result will occur. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the same situation. A person who creates such a risk but is unaware of it solely because of voluntary intoxication also acts recklessly.

Little River Band of Ottawa Indians

Little River Band of Ottawa Indians Ordinance 04-400-05 (WESTLAW)

> 3.02. "Abuse" means
>
> > a. intentionally or recklessly or negligently causing or attempting to cause physical harm or mental anguish to another person, or
> >
> > b. threatening or placing another person in reasonable apprehension of imminent serious physical injury.
>
> . . .
>
> 3.05. "Domestic Violence" means abuse, mental anguish, physical harm, bodily injury, assault, or the infliction of reasonable fear of bodily injury, between family or household members, or sexual assault of one family or household member by another. All crimes involving threat, violence, assault and physical or sexual abuse against adults, children, elderly or others enumerated in the Law and Order–Criminal Offenses–Ordinance may be charged as domestic violence.

Little River Band of Ottawa Indians Ordinance 03-400-03 (WESTLAW)

> 3.13. Mental State: "Recklessly" means a person acting recklessly with respect to a material element of an offense, when the person consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the person's conduct and the circumstances known to the person, its disregard involves a gross

deviation of the standard of conduct that a law-abiding person would observe in the actor's situation.

Little Traverse Bay Bands of Odawa Indians

WAGANAKISING ODAWAK STATUTE 2015-018 § VII (B)-(C)

B. Domestic Violence. This crime occurs when violence is committed by a current or former spouse, or intimate partner, of the victim; by a person with whom the intimate partner of the victim shares a child in common; by a person who is cohabitating with, or has cohabitated with the victim as a spouse or intimate partner; or by a person similarly situated to a spouse of the victim under the domestic violence laws of LTBB when the violence occurs within the territorial jurisdiction of LTBB.

C. Definition of Violence. Violence is defined as the act of causing actual physical or mental harm, or causing the fear of imminent physical or mental harm, or engaging in a course of conduct that causes a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed or controlled.

Kalispel Tribe of Indians

Kalispel Tribe Law and Order Code § 8-5.01 (WESTLAW)

(1) "Domestic Violence" includes but is not limited to any of the following acts defined below, when committed by one family or household member against another:

. . .

(O) Reckless Endangerment: any person who recklessly engages in conduct which creates substantial risk of death or serious physical injury to another.

Makah Tribe

11 Makah Law and Order Code § 11.104, http://www.narf.org/nill/codes/makahcode/makahlawt11.html

(e) "Domestic violence" means any one of the following when occurring between family or household members:

(1) Commission of an act that constitutes a crime under MLOC Title 5, Chapter 1, as now or hereafter amended.

(2) Commission of a crime listed under the Major Crimes Act, 18 U.S.C. §1153, as now or hereafter amended.

(3) Physical harm, bodily injury, assault, sexual assault, property damage, or injury to household pets or the infliction of reasonable fear of physical harm, bodily injury, assault, sexual assault, property damage, or injury to household pets.

"Domestic violence" also means:

(4) Violation of a restraint provision contained in an order entered under this Title or of a comparable provision contained in an order accorded full faith and credit by the court under MLOC 11.7.03, and of which the person had notice at the time of the alleged violation.

"Domestic violence" does not include acts of self-defense or in defense of another reasonably taken in response to acts of domestic violence.

E.g., 5 Makah Law and Order Code § 5.6.11, http://www.narf.org/nill/codes/makahcode/makahlawt5.html#5title

> Reckless Endangerment. Any person who shall recklessly engage in conduct which creates a substantial risk of death or serious physical injury to another person shall be deemed guilty of reckless endangerment. Reckless endangerment is a Class B offense.

Mississippi Band of Choctaw Indians

III Mississippi Band of Choctaw Tribal Code § 3-10-2, http://www.choctaw.org/government/tribal_code/TITLE%20III.pdf

(1) "Abuse/Domestic Violence" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together, but does not include acts of self-defense:

(a) attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;

(b) placing, by physical menace or threat, another in fear of serious bodily injury;

(c) causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress;

(d) criminal sexual conduct committed against a minor in violation of this chapter; or

(e) intentionally, knowingly or recklessly causing damage in excess of one hundred dollars ($100.00) to the property of family or household members.

. . .

(5) "Crime involving domestic violence" means when a family or household member commits an act of abuse or domestic violence as defined in this chapter against another family or household member and said act is committed in conjunction with or is an underlying element of one or more of the following crimes:

(a) Crimes Against Persons:

(1) Abduction, §3-3-1;

(2) Assault, §3-3-2;

(3) Battery; §3-3-3;

(4) Aggravated Assault, §3-3-4;

(5) Aggravated Battery, §3-3-5;

(6) Harassment, §3-3-19;

(7) Use of Telephone to Terrify, Intimidate, Threaten, Harass, Annoy, or Offend, §3-3-20;

(8) Sexual Assault, §3-3-29; or

(9) Stalking, §3-3-35

(b) Crimes Against Property:

(1) Criminal Damage to Property, §3-4-2;

(2) Cruelty to Animals, §3-4-9; or

(3) Theft, §3-4-17

(c) Crimes Against the Social Order:

(1) Recklessly Endangering Another, §3-6-11; or

(2) Negligent Use of a Deadly Weapon, §3-6-19

Navajo Nation

9 Navajo Code § 1605, http://www.navajonation council.org/Navajo%20Nation%20Codes/V0030.pdf

A. Domestic abuse

1. "Domestic abuse" means the infliction of any of the following acts upon a victim as defined in § 1605(B):

a. "Assault"—an attempt to cause bodily harm to another through the use of force, or the creation in another of a reasonable fear of imminent bodily harm;

b. "Battery"—application of force to the person of another resulting in bodily harm or an offensive touching;

c. "Threatening"—words or conduct which place another in fear of bodily harm or property damage;

d. "Coercion"—compelling an unwilling person, through force or threat of force, to:

(1) Engage in conduct which the person has a right to abstain from; or

(2) Abstain from conduct which the person has a right to engage in;

e. "Confinement"—compelling a person to go where the person does not wish to go or to remain where the person does not wish to remain;

f. "Damage to property"—damaging the property of another;

g. "Emotional abuse"—using threats, intimidation, or extreme ridicule to inflict humiliation and emotional suffering upon another;

h. "Harassment"—conduct which causes emotional alarm and distress to another by shaming, degrading, humiliating, placing in fear, or otherwise abusing personal dignity. Examples of harassing conduct include, but are not limited to the following:

(1) Unwelcome visiting or following of a person;

(2) Unwelcome sexual propositioning, reference to body functions or attributes, or other comments of a sexual nature;

(3) Unwelcome communications, made by phone or by other methods, containing intimidating, taunting, insulting, berating, humiliating, offensive, threatening, or violent language; or

(4) Unwelcome lingering around the home, school, or work place of a person.

i. "Sexual abuse"—any physical contact of a sexual nature, or attempted physical contact of a sexual nature, with a person, made without that person's consent. Consent cannot be obtained through means such as force, intimidation, duress, fraud, or from a minor under any circumstance; and

j. "Other conduct"—any other conduct that constitutes an offense or a tort under the law of the Navajo Nation.

Northern Cheyenne Tribe

7 Northern Cheyenne Tribal Code § 7-5-10, http://www.narf.org/nill/codes/northern_cheyenne/title7.PDF

> (A) Any person who purposefully, knowingly, recklessly, or negligently abuses their spouse, family member, or household member shall be prosecuted for committing the offense of domestic abuse.
>
> (B) Definitions:
>
> > (1) "Domestic abuse" is defined as causing harm, bodily injury, assault, or inflicting fear of imminent harm, bodily injury or assault.

7 Northern Cheyenne Tribal Code § 7-1-8, http://www.narf.org/nill/codes/northern_cheyenne/title7.PDF

> (A) Mental States:
>
> . . .
>
> > (3) Recklessly – A person acts recklessly with respect to a circumstance or to conduct described in this Code defining an offense if he is aware of a risk created by the circumstance or by the conduct and disregards the risk. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

Nottawaseppi Huron Band of the Potawatomi

VIII Nottawaseppi Huron Band of Potawatomi Indians Law and Order Code § 1102, http://nhbpi.com/wp-content/uploads/2014/09/Title-VIII-06-Law-and-Order-Code-Amended-8.21.20141.pdf

> A person commits the offense of domestic abuse if he or she intentionally, knowingly or recklessly causes or threatens to cause serious physical pain or injury to any adult member of his or her family or household, a former spouse, an individual with whom the person has a child in common, or an individual with whom the person has had a dating relationship.

VIII Nottawaseppi Huron Band of Potawatomi Indians Law and Order Code § 201, http://nhbpi.com/wp-content/uploads/2014/09/Title-VIII-06-Law-and-Order-Code-Amended-8.21.20141.pdf

> B. Mental States:
>
> . . .
>
> 3. "Recklessly" means conduct where a person acts consciously and disregards a substantial and unjustifiable risk that a particular result will occur as a consequence of that conduct, or a particular circumstance exists with respect to the conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the person's conduct and the circumstances known to the person, its disregard involves a gross deviation from the standard of care that a law-abiding person would observe in the situation.

Omaha Tribe

11 Omaha Tribal Code § 11-2-1, http://omaha-nsn.gov/wp-content/uploads/2013/08/Title-11-Domestic-Violence.pdf

> (a) Any physical contact with purposefully, knowingly or recklessly results in bodily injury to a household member or former household member shall constitute Domestic Abuse.

5 Omaha Tribal Code § 5-2-2, http://omaha-nsn.gov/wp-content/uploads/2015/10/OTN-Tribal-Code-2013-Title-05-Crimes.pdf

> (3) Recklessly: a person acts recklessly with respect to an element of an offense when he consciously disregards a substantial and unjustifiable risk that the element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation.

Pascua Yaqui Tribe

4 Pascua Yaqui Tribal Code § 3-10, http://www.pascuayaqui-nsn.gov/_static_pages/tribalcodes/docs/4_PYTC/3_Domestic_Violence_FINAL.pdf

> (A) "Domestic Violence" means any act or attempted to commit is an offense defined in Title 4, Chapters 1 and 2, if any of the following applies:
>
> > (1) The relationship between the victim and the defendant is one of marriage or former marriage or of person residing or having resided in the same household as intimate or dating partners;
> >
> > (2) The victim and the defendant have a child in common;
> >
> > (3) The victim or the defendant is pregnant by the other;
> >
> > (4) The victim and the defendant are or have been in a social relationship of a romantic or intimate nature as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship[.]

E.g., 4 Pascua Yaqui Tribal Code § 1-130, http://www.pascuayaqui-nsn.gov/_static_pages/tribalcodes/docs/4_PYTC/1_Criminal_Offenses.pdf

> (A) "Assault". A person commits assault by:
>
> > (1) Intentionally, knowingly or recklessly causing any physical injury to another person . . .

4 Pascua Yaqui Tribal Code § 1-41, http://www.pascuayaqui-nsn.gov/_static_pages/tribalcodes/docs/4_PYTC/1_Criminal_Offenses.pdf

> (A) "Culpable Mental States" means intentionally, knowingly, recklessly or with criminal negligence as those terms are thusly defined:
>
> . . .
>
> (3) "Recklessly" means with respect to a result or to a circumstance described [by] a statute defining an offense that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard of such risk constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware of such risk solely by reason of voluntary intoxication also acts recklessly with respect to such risk.

Poarch Band of Creek Indians

Poarch Band of Creek Indians Code § 8A-2-3 (WESTLAW)

> (A) A person commits the offense of Criminal Domestic Abuse if he/she commits any of the acts set forth in § 8-2-1 through § 8-2-9, § 8-3-2 through § 8-3-7, or § 8-3-10, of the Tribal Code of the Poarch Band of Creek Indians; or by using threats, intimidation, extreme ridicule, he/she inflicts severe humiliation and emotional suffering upon another; and the victim is a member of the class of persons as defined in § 8A-2-1(B)(1). . . .

E.g., Poarch Band of Creek Indians Code § 8-2-1 (WESTLAW)

> a) A person commits the crime of assault if he:
>
> > 1) Purposely or knowingly causes bodily harm to another person; or
> >
> > 2) Recklessly causes bodily harm to another; or
> >
> > 3) Negligently causes bodily harm to another with a weapon; or
> >
> > 4) While driving under the influence of alcohol or a controlled substance or any combination thereof in violation of Section 8-8-1 he causes bodily injury to the person of another with a motor vehicle; or
> >
> > 5) With intent to prevent a police officer from performing a lawful duty, he causes physical injury to any person.
>
> b) Assault is a Class A Misdemeanor

Poarch Band of Creek Indians Code § 8-1-8 (WESTLAW)

b) DEFINITIONS OF CULPABLE MENTAL STATE

. . .

2) RECKLESSLY

A person acts recklessly with respect to a result or to a circumstance described by a statute defining an offense when he is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates a risk but is unaware thereof solely by reason of voluntary intoxication acts recklessly with respect thereto.

Ponca Tribe of Nebraska

Ponca Tribe of Neb. Code § 4-7-1 (WESTLAW)

(1) "Abuse" means the occurrence of one or more of the following acts between family or household members who reside together or who formerly resided together, including spouses or former spouses, children, persons who have had a child in common whether or not they have been married or had lived together at any time, other persons related by blood or marriage, and persons who are presently involved in a dating relationship with each other or who have been involved in a dating relationship with each other:

(a) attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon;

(b) placing, by physical menace or threat, another in fear of imminent serious bodily injury;

(c) attempting to cause or intentionally, knowingly or recklessly causing mental and/or emotional injury or anguish; or

(d) attempting to cause or intentionally, knowingly or recklessly refusing to provide for the physical needs of a person, including but not limited to a family or household member, a minor or an incompetent person, by a person with whom the law or society places this responsibility or by a person who has undertaken this responsibility. "Physical needs" include food, clothing, shelter, health care or

other services which are necessary to maintain the person's mental and physical health.

Santee Sioux Nation

VI Santee Sioux Domestic Violence Code § 3, http://www.narf.org/nill/codes/santee_sioux_nation/title6.PDF

> (A) "Domestic violence/abuse" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self-defense:
>
> > (1) Attempting to cause or causing physical harm to another family or household member;
> >
> > (2) Placing a family or household member in fear of physical harm; or
> >
> > (3) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

Sisseton-Wahpeton Oyate of the Lake Traverse Reservation

Sisseton-Wahpeton Tribal Code § 52-01-04, http://www.swo-nsn.gov/wp-content/uploads/Ch-52-Domestic-Violence-Ordinance-final.pdf

> (6) "Domestic Violence" means the occurrence of one or more of the following acts by a family or household member, a current or former spouse, or intimate partner of the victim, a person with whom the victim shares a child in common, a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or a person similarly situated to a spouse of the victim under the domestic – or family – violence laws of the Sisseton-Wahpeton Oyate:
>
> > a. Attempting to cause or causing bodily injury to the victim; Placing the victim in fear or apprehension of bodily injury;
> >
> > b. Causing the victim to engage involuntarily in sexual activity by force, threat of force, or duress.
>
> This act will exclude any acts of self-defense.

Sisseton-Wahpeton Tribal Code § 52-02-01, http://www.swo-nsn.gov/wp-content/uploads/Ch-52-Domestic-Violence-Ordinance-final.pdf

> "CRIME INVOLVING DOMESTIC VIOLENCE" DEFINED. Crimes involving domestic violence as defined in 52-01-04 are oftentimes already defined under the existing Sisseton-Wahpeton Oyate Tribal Code. The purpose of this ordinance is to clarify that domestic violence is a separate and distinct crime punishable separate and apart from other potential underlying crime/s, and to acknowledge

that when the following crimes are committed against a victim and/or victims, a finding of such shall trigger the application of this ordinance. The crime of domestic violence occurs when an offender commits one or more of the following offenses, as defined in 52-01-04, against another victim and/or victims.

Snoqualmie Indian Tribe

7.1 Snoqualmie Tribal Criminal Code § 4 (WESTLAW)

> Domestic Violence means any act resulting in physical harm or bodily injury, or the infliction of fear of imminent physical harm or bodily injury to oneself or another family member, when committed by one family or household member against another family or household member. Domestic violence shall include, but is not limited to, the following crimes when committed by one family or household member against another family or household member: rape, kidnapping, assault, battery, reckless endangerment, unlawful imprisonment, indecent liberties, intimidation, burglary, trespass, vandalism and unauthorized use, violation of the provisions of a restraining order, or violation of the provisions of a protection order.

E.g., 7.1 Snoqualmie Tribal Criminal Code § 6 (WESTLAW)

> 6.5 Reckless Endangerment
>
> > (a) Any person who recklessly engages in conduct that creates a substantial risk of death or serious bodily injury to another shall be guilty of reckless endangerment.
> >
> > (b) Reckless endangerment shall be a class B offense.

7.1 Snoqualmie Tribal Criminal Code § 4 (WESTLAW)

> Reckless means acting while being aware of a substantial risk and disregarding the risk, when such disregard is a gross deviation from the standard of conduct employed by a reasonable person under similar circumstances.

Squaxin Island Tribe

9 Squaxin Island Tribal Code § 9.12.1035 (WESTLAW)

(A) "Domestic violence" means:

(1) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury or assault, between family or household members; or

(2) Sexual assault of one family or household member by another.

9 Squaxin Island Tribal Code § 9.12.1040 (WESTLAW)

(A) Kinds of Culpability Defined.

. . .

(3) Recklessness. A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

Swinomish Tribe

7 Swinomish Tribal Code § 7-11.040 (WESTLAW)

(A) "Domestic Violence" means:

(A) attempting to cause or causing physical harm, bodily injury, or assault on a family or household member;

(B) placing a family or household member in fear of the infliction of physical harm, bodily injury, or assault;

(C) causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress;

(D) stalking of one family or household member by another family or household member; and/or

(E) any act found by a court to be a crime of domestic violence.

4 Swinomish Tribal Code § 4-01.100 (WESTLAW)

(A) Classification. Any crime may be classified a crime of domestic violence when it is committed by one family or household member against another family or household member.

E.g., 4 Swinomish Tribal Code § 4-02.120 (WESTLAW)

(B) Any assault that is a violation of an order issued under Chapter 7-11, Domestic Violence, and does not amount to a Class A offense under this Chapter is a Class B offense, and any conduct in violation of such a protective order that is reckless and creates a substantial risk of death or serious bodily injury to another person is a Class B offense.

4 Swinomish Tribal Code § 4-01.040 (WESTLAW)

(12) "Recklessly" means being aware of a substantial risk and disregarding the risk when such disregard is a gross deviation from the conduct of a reasonable person.

Tulalip Tribes

4 Tulalip Tribal Code § 4.25.100, http://www.codepublishing.com/WA/Tulalip

(11) "Domestic violence" means a crime committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated to a spouse of the victim under the domestic violence laws of the Tulalip Tribes.

Domestic violence can take many forms such as but not limited to use of intimidation, contact as defined within this chapter, manipulation, isolation, coercion, fear and/or violence, as well as other tactics of power and control to establish and maintain a relationship of dominance over an intimate partner, but does not include acts of self-defense. The following are examples of what form the domestic violence action may take, but are not an exhaustive list, merely illustrative:

(a) Attempting to commit or committing any criminal offense as defined by TTC Title 3 against an intimate partner;

(b) Physically harming, attempting to physically harm, or placing an intimate partner in reasonable fear of physical harm to himself or herself. Reasonable fear may be produced by behavior which induces fear in the victim, including, but not limited to, harassment, stalking, destruction of property, or physical harm or threat of harm to household pets;

> (c) Emotional or mental abuse of the intimate partner, including physical or mental intimidation, controlling activities, or using demeaning language;
>
> (d) Economic abuse of an intimate partner;
>
> (e) Causing an intimate partner to engage involuntarily in sexual activity; or
>
> (f) Preventing the victim from accessing services.

E.g., 3 Tulalip Tribal Code § 3.50.070, http://www.codepublishing.com/WA/Tulalip

> Reckless or malicious use of explosives. (1) Every person who shall recklessly or maliciously use, handle, or have in his or her possession any explosive substance whereby any human being is intimidated, terrified, or endangered shall be guilty of a Class C offense.

White Earth Nation of the Minnesota Chippewa

18 White Earth Nation Domestic Violence Code, Ch. 1 § 3 (WESTLAW)

(4) "Domestic violence/abuse" means the occurrence of one or more of the following acts by a family or household member, but does not include acts of self defense:

(a) Attempting to cause or causing physical harm to another family or household member;

(b) Placing a family or household member in fear of physical harm; or

(c) Causing a family or household member to engage involuntarily in sexual activity by force, threat of force, or duress.

White Mountain Apache Tribe

White Mountain Apache Crim. Code § 6.2, http://www.wmat.nsn.us/Legal/Criminal%20Code%20-%20080614%20-%20IN%20EFFECT.pdf

> (A) "Abuse" means intentionally or recklessly or negligently causing or attempting to cause physical harm or mental anguish to another person, or placing another person in reasonable apprehension of imminent serious physical injury to himself or another.
>
> . . .
>
> (D) "Domestic Violence" means abuse, mental anguish, physical harm, bodily injury, assault, or the infliction of reasonable fear of bodily injury, between family or household members or romantic partners, or sexual assault of one family or household member or romantic partner by another. Domestic violence offenses shall consist of the following:
>
> 1. Assault
>
> 2. Aggravated Assault
>
> 3. Assault with a Deadly Weapon
>
> 4. Assault with Intent to Commit Rape
>
> 5. Assault with Intent to Cause Serious Bodily Injury
>
> 6. Assault with Intent to Kill
>
> 7. Battery
>
> 8. Criminal Negligence
>
> 9. Disobedience to a Lawful Order of the Court
>
> 10. Threatening and Intimidating

11. Unlawful Restraint

12. Sexual Abuse

13. Sexual Conduct with a Minor

14. Sexual Assault

15. Sexual Assault of a Spouse

16. Molestation of Child

17. Child Abuse

18. Sexual Exploitation of a Minor

E.g., White Mountain Apache Crim. Code § 2.4, http://www.wmat.nsn.us/Legal/Criminal%20Code%20-%20080614%20-%20IN%20EFFECT.pdf

(A) A person commits assault by:

(1) Intentionally, knowingly, or recklessly causing any physical injury to another person . . .

White Mountain Apache Crim. Code § 1.1, http://www.wmat.nsn.us/Legal/Criminal%20Code%20-%20080614%20-%20IN%20EFFECT.pdf

(21) "Reckless" means an act done in conscious disregard of a [sic] unjustifiable risk and in gross deviation from reasonable standards of conduct. Ignorance of reasonable standards of conduct resulting from voluntary intoxication is no defense to recklessness.