FEDERAL INDIAN LAW — TRIBAL SOVEREIGNTY — SEVENTH CIRCUIT HOLDS THAT ONEIDA NATION REMAINS INTACT. — *Oneida Nation v. Village of Hobart*, 968 F.3d 664 (7th Cir. 2020).

From 1887 to 1934, Congress sought to partition collective tribal landmasses into fee simple, individually owned plots; meanwhile, it made unclaimed reservation lands available to the general public under homesteading laws and other disposal statutes.[1] The result was the "checkerboarding" of Indian country, which left reservation land interspersed with land owned by tribes in trust; tribal citizens in trust; and individual non-Indians, Indians, and tribes.[2] However, the allotment acts did not state whether the opening of these areas to non-Indians affected reservation boundaries.[3] Recently, in *Oneida Nation v. Village of Hobart*,[4] the Seventh Circuit held that neither the allotment era's vesting of allotments to individual Indians nor the later conveyance of those fee simple lands to non-Indians had diminished the Oneida Reservation.[5] *Oneida Nation* represents a victory for tribal sovereignty. The panel's decision reaffirms established precedent protecting Indian tribes, confirms that last Term's landmark ruling in *McGirt v. Oklahoma*[6] applies in the civil context, and safeguards reservations with comparable allotment structures against diminishment and disestablishment.

The Oneida Nation Reservation was established by an 1838 treaty and modified by later legislation — the 1887 Dawes Act, the 1906 Burke Act, and the Oneida Provisions of the 1906 Appropriations Act (Oneida Appropriations Act) — that divvied up the Wisconsin reservation into individual allotments, reducing Indian ownership from 65,400 acres to

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[1] *See* Kristen A. Carpenter & Angela R. Riley, *Privatizing the Reservation?*, 71 STAN. L. REV. 791, 816–17 (2019) (noting that Congress authorized the allotment of 118 reservations and through this process reduced total tribal land holdings by two-thirds, from 138 million acres to 48 million acres). The government sought to destroy tribal governance and reservation landmasses. ROBERT J. MILLER, RESERVATION "CAPITALISM": ECONOMIC DEVELOPMENT IN INDIAN COUNTRY 43 (2012). Through the allotment era's end in 1934, sales of allotted lands accelerated as poverty and assimilationist pressures forced Indian landowners to sell their parcels to non-Indians. *See* Kevin K. Washburn, *What the Future Holds: The Changing Landscape of Federal Indian Policy*, 130 HARV. L. REV. F. 200, 230 (2017).

[2] *See* Jessica A. Shoemaker, *Emulsified Property*, 43 PEPP. L. REV. 945, 947–48 (2016).

[3] *See, e.g.*, General Allotment (Dawes) Act of 1887, ch. 119, 24 Stat. 388 (codified as amended in scattered sections of 25 U.S.C.) (providing for Indian land allotments); *see also, e.g.*, Burke Act, ch. 2348, 34 Stat. 182, 183 (1906) (codified as amended at 25 U.S.C. § 349) (granting the Secretary of the Interior the discretion to issue a patent in fee simple to any "competent" Indian allottee before the trust period ended); 1906 Appropriations Act, ch. 3504, 34 Stat. 325, 380–81 (specifying changes to the implementation of the Dawes Act on the Oneida Nation Reservation).

[4] 968 F.3d 664 (7th Cir. 2020).

[5] *See id.* at 668.

[6] 140 S. Ct. 2452 (2020) (holding Creek Reservation remained intact because only Congress can diminish or disestablish it and must "clearly express its intent to do so," *id.* at 2463).

less than 15,400 acres by 1917.[7] The Village of Hobart lies within the 1838 boundaries of the Oneida Reservation and is home to the eponymous federally recognized tribe.[8] For decades, the Village has sought to assert jurisdiction over tribal lands and citizens.[9] Hobart has a population of nearly nine thousand people, of whom 79.9% of residents are "White alone" and 12.2% are "American Indian and Alaska Native alone."[10] Annually, the Nation holds its Big Apple Fest on trust land and non-trust land tribally owned in fee simple within Hobart.[11] Fee lands within reservation boundaries are considered Indian country.[12] Yet in 2016, the Village adopted a special events permit ordinance that required the Nation to obtain a permit for the festival.[13] The Nation rejected this permitting process.[14] It filed a motion for a preliminary injunction seeking to enjoin the Village from mandating the Nation's compliance with the ordinance.[15] Since the Village stated that it would not prevent the festival from occurring, the court denied the motion, determining that the Nation did not show that it would suffer irreparable harm.[16] The Nation hosted the festival.[17] The Village then issued a $5,000 citation against the Nation for violating the ordinance.[18]

The Nation filed an action for declaratory and injunctive relief that challenged the Village's legal authority to enforce the ordinance.[19] The Village filed a counterclaim for declaratory relief.[20] On March 29, 2019, the U.S. District Court for the Eastern District of Wisconsin entered summary judgment for the Village, holding that the festival grounds owned by the Tribe in fee simple were not sovereign federal trust land and thus fell within the Village's dominion.[21] The court found no

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[7] *See* Oneida Nation v. Village of Hobart, 371 F. Supp. 3d 500, 506–07 (E.D. Wis. 2019); *see also* Treaty with the Oneida, Oneida-U.S., art. 2, Feb. 3, 1838, 7 Stat. 566, 566–67; sources cited *supra* note 3.

[8] *Oneida Nation*, 371 F. Supp. 3d at 503.

[9] *See id.*; *see also, e.g.*, Oneida Tribe of Indians v. Village of Hobart, 732 F.3d 837, 838 (7th Cir. 2013) (rejecting the Village's attempt to impose an ordinance on the Tribe "assessing stormwater management fees on all parcels" of tribal land in the Village); Oneida Tribe of Indians v. Village of Hobart, 542 F. Supp. 2d 908, 909–10 (E.D. Wis. 2008) (upholding the Village's attempt to condemn a portion of the Tribe's newly purchased property and levy a special assessment on it).

[10] *Oneida Nation*, 371 F. Supp. 3d at 504.

[11] *Id.* at 504–05. The event involves apple picking, a food market, and horse demonstrations, among other activities, and in the past, it has attracted over eight thousand attendees. *Id.* at 504.

[12] 18 U.S.C. § 1151(a).

[13] *Oneida Nation*, 371 F. Supp. 3d at 504.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 504–05.

[17] *Id.* at 505.

[18] *Id.* at 505, 523.

[19] *Id.* at 503, 505.

[20] *Id.* at 503. The court later dismissed this counterclaim, reasoning that the Nation would comply with the ordinance following the ruling in the case. *Id.* at 524.

[21] *See id.* at 524.

express evidence of congressional intent to disestablish the reservation.[22] Nonetheless, based on an Eighth Circuit case,[23] it surmised that Congress's intent to diminish the reservation was manifest in the Dawes Act and subsequent legislative acts, which divided the reservation into individual allotments rather than collectively held tribal property.[24] It determined that the conveyance of tribal members' fee simple lands to nontribal members following allotment — paired with the fact that these lands were not reobtained and placed into federal trust — meant that the lands in question no longer constituted the reservation.[25] Since the Nation's festival was on non-trust property, the court reasoned that it was subject to the ordinance.[26] The Nation appealed.[27]

The Seventh Circuit reversed.[28] Writing for the panel, Judge Hamilton[29] confirmed that the Oneida Reservation, as defined in the 1838 Treaty, remained intact; therefore, the land falling within the reservation's boundaries was Indian country under 18 U.S.C. § 1151(a).[30] Applying the interpretive rule that Congress must speak clearly if it wishes to break a treaty with Native Americans,[31] the court used the three-prong framework from *Solem v. Bartlett*[32] to show that Congress did not diminish the reservation.[33] The panel warned that holding otherwise would precipitate the diminishment of not only the Oneida Reservation but also all other reservations that participated in allotment.[34]

The court applied the *Solem* framework to show that Congress did not diminish the reservation by looking to relevant statutory text, then to the circumstances surrounding the legislation, and finally to later demographic history and the United States' treatment of the area.[35] First,

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[22] *Id.*

[23] Yankton Sioux Tribe v. Gaffey, 188 F.3d 1010, 1030 (8th Cir. 1999) (finding that an 1894 congressional surplus lands act diminished the Yankton Sioux Reservation).

[24] *Oneida Nation*, 371 F. Supp. 3d at 519–20, 524.

[25] *Id.* at 516–17 (citing Wisconsin v. Stockbridge-Munsee Cmty., 554 F.3d 657, 664–65 (7th Cir. 2009) (holding that the reservation had been abolished because all tribal members had been allotted lands in fee simple and therefore the trust had expired)). "[T]he intent unequivocally expressed by Congress in its enactment of the allotment acts was realized and either then or with the further conveyance of the land to non-Indians, the original reservation was diminished." *Id.* at 515.

[26] *Id.* at 524. The court also ruled that sovereign immunity barred the Village's monetary claim against the Tribe. *Id.* at 523–24.

[27] *Oneida Nation*, 968 F.3d at 668.

[28] *Id.* at 689.

[29] Judge Hamilton was joined by Chief Judge Sykes and Judge St. Eve.

[30] *See Oneida Nation*, 968 F.3d at 689.

[31] *See id.* at 674; *see also* Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 152 (2010) ("The Indian canon is unique among the substantive canons . . . because it began in the treaty context . . . . When courts began interpreting these statutes in the early 1900s, they assumed, without reflection, that the canon should continue to apply.").

[32] 465 U.S. 463 (1984).

[33] *Oneida Nation*, 968 F.3d at 676.

[34] *See id.* at 684.

[35] *Id.* at 675.

the panel held that because no statute expressly removed a portion of the reservation, incremental diminishment could not prove intent.[36] Indeed, the relevant acts of allotment — the 1887 Dawes Act, the 1906 Burke Act, and the 1906 Oneida Appropriations Act — "contain no such language surrendering all tribal interests in allotted land, so there is no textual basis for diminishment."[37]

Second, to uncover congressional intent, the panel searched for signs of diminishment in legislative history and the Nation's negotiations records, but the Village had produced neither type of contemporaneous evidence.[38] The Village claimed that the overarching aim of allotment was to end reservations, but the court observed that "whatever the ultimate aim of allotment may have been, the Village's argument is foreclosed by Supreme Court precedent."[39] The panel rejected the atypical Eighth Circuit case that the Village rested its arguments upon — "the only case in which a Court of Appeals has embraced an incremental theory of diminishment akin to the one proposed by the Village" — because it contradicted established Supreme Court precedent and its statutory analysis focused on a later surplus land act rather than the Dawes Act.[40]

Third, the court announced that events following Congress's passing of the relevant statutes — population changes and fee simple land sales — could not support a finding of the reservation's diminishment absent other textual or contextual evidence.[41] Even an "extreme population shift" that catalyzed further land loss could not demonstrate diminishment, as the Village had contended.[42] According to the panel, a demographic argument was contrary to *Nebraska v. Parker*,[43] a 2016 Supreme Court case that held that the Omaha Reservation was undiminished despite the Tribe's 120-year absence from the reservation and lack of assertion of jurisdiction over the land in that period.[44] For the court, *Solem* and its progeny invalidated the Village's theory that later events other than acts of Congress could diminish the reservation.[45]

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[36] *Id.* at 676–77.

[37] *Id.* at 677; *see id.* at 676.

[38] *Id.* at 677.

[39] *Id.*

[40] *Id.* at 680 (citing Yankton Sioux Tribe v. Gaffey, 188 F.3d 1010, 1028 (8th Cir. 1999)). The panel also distinguished *Oneida Nation* from a Seventh Circuit case that the district court had cited. *Id.* at 681–82 (citing Wisconsin v. Stockbridge-Munsee Cmty., 554 F.3d 657, 664–65 (7th Cir. 2009)). The act in that case had allotted the entire reservation in fee simple — an anomalous situation — whereas this case's act "left intact the trust process established by the Dawes Act and modified in the Burke Act." *Id.* at 682.

[41] *Id.* at 682–83.

[42] *Id.* at 683.

[43] 136 S. Ct. 1072 (2016).

[44] *Oneida Nation*, 968 F.3d at 684 (citing *Parker*, 136 S. Ct. at 1081).

[45] *Id.*

In applying the three-part framework, the court observed that *McGirt* had modified but not abrogated *Solem*. According to the court, *McGirt* placed greater focus on statutory text and thus "ma[de] it even more difficult to establish the requisite congressional intent to disestablish or diminish a reservation."[46] *McGirt* reshaped federal Indian law's interpretive approach by holding that consideration of the legislation's context and subsequent history is proper only if a specific statute's text is ambiguous.[47] Since congressional allotment acts neither contemplated nor stated that the Creek Reservation would be diminished, the court posited that "*McGirt*'s allotment analysis has turned what was a losing position for the Village into a nearly frivolous one."[48]

The court concluded by dismissing the Village's alternative grounds for affirmance. First, the court dismissed the Village's claims that a 1933 case initiated by individual Oneida citizens decided the issue of the reservation's disestablishment, such that issue preclusion barred the Nation from arguing that former fee lands were within the reservation.[49] Second, the court disagreed with the Village that "exceptional circumstances" triggered the application of the ordinance to the festival.[50]

The Seventh Circuit's reasoning illustrates how *McGirt* can be a tool to protect tribal sovereignty in the civil context. Through its application of *Solem*, the panel reversed the district court's ruling, which contradicted decades of established precedent.[51] *Oneida Nation* was the first case to interpret last Term's landmark ruling in *McGirt* and apply its "clear intent" rule in the civil context, thereby altering the previous framework governing reservation status cases and adding difficulty to proving disestablishment.[52] It emphasized that only an explicit statement from Congress — as opposed to individual, local, and state land transfers — can recontour the boundaries of the reservation.[53] In addition to its reasoning, *Oneida Nation*'s result is preferable to the alternatives. The decision safeguards not only the Oneida Reservation

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[46] *Id.* at 668.

[47] *Id.* at 685.

[48] *Id.*

[49] *Id.* at 687–88. The panel affirmed that the earlier action "was not *brought* on behalf of the Nation," so the earlier decision could not bind the Nation now. *Id.* at 688.

[50] *Id.* at 688–89. Dissenting in *City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005), Justice Stevens noted that "exceptional circumstances" would merit the application of local land-use regulations on Indian-held land if there were a small number of Indian properties on the reservation and there was a "balance of interests" between the locality and the tribe. *Oneida Nation*, 968 F.3d at 689 (citing *Sherrill*, 544 U.S. at 226 n.6 (Stevens, J., dissenting)). The panel denied that the test was applicable in this instance but suggested that if uniform regulation were necessary to advance state interests in a checkerboarded reservation, then courts may apply the doctrine. *Id.*

[51] *Id.* at 672–73.

[52] *Id.* at 668.

[53] *Id.* at 685.

but also reservations with comparable allotment structures against diminishment due to demographic shifts and government encroachment.

The Seventh Circuit correctly rejected the flawed reasoning espoused by the Village and the district court and reinforced a modified *Solem* framework.[54] A long line of Supreme Court cases has held that Congress's "general expectation[s]"[55] are insufficient to diminish a reservation.[56] The panel held that the Village erroneously "relie[d] on a theory of incremental diminishment," which rested on Congress's belief during the allotment era that Indian reservations and peoples would gradually disappear.[57] The district court had followed an outlier Eighth Circuit decision supporting incremental diminishment that involved substantially different facts.[58] As an amicus brief put it, "no court — before this one — ha[d] suggested that alienation without a tribe-specific act diminishes a reservation."[59] Thus, the panel logically upheld U.S. treaty obligations to the Nation under the *Solem* framework.[60]

*Oneida Nation* is one of *McGirt*'s progeny, published a mere three weeks after the Supreme Court announced its landmark decision.[61] By applying *McGirt*'s diminishment analysis, the court determined that *McGirt* rendered the Village's diminishment claim not just improbable but obsolete, as there was no evidence in the relevant allotment statutes that generated ambiguity regarding reservation status.[62] The panel's assertion that *McGirt* altered *Solem*'s existing framework produced a stronger holding for the Nation.[63] By adjusting this analysis, the court also undercut the precedent that the district court had depended on.[64] The *Oneida Nation* decision illustrates that the groundbreaking *McGirt*

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[54] *See id.* at 668.

[55] *Id.* at 676.

[56] *See, e.g.*, Nebraska v. Parker, 136 S. Ct. 1072, 1082 (2016) ("Only Congress has the power to diminish a reservation." (citing DeCoteau v. Dist. Cnty. Ct., 420 U.S. 425, 449 (1975))); Mattz v. Arnett, 412 U.S. 481, 506 (1973) (holding that the reservation remained Indian country even though it was subject to allotment); Seymour v. Superintendent of Wash. State Penitentiary, 368 U.S. 351, 355–56 (1962) (holding that the State did not have jurisdiction over the reservation because it remained undiminished, despite a 1906 act that permitted the sale of surplus lands on the reservation).

[57] *Oneida Nation*, 968 F.3d at 675.

[58] *Id.* at 680–81. The court in *Yankton Sioux Tribe v. Gaffey*, 188 F.3d 1010 (8th Cir. 1999), rested its analysis on acts other than the three at issue in *Oneida Nation*. *See id.* at 1018.

[59] *Amici Curiae* Brief of the National Congress of American Indians and the Indian Land Tenure Foundation in Support of Plaintiff-Appellant Oneida Nation and Reversal of the District Court at 28, *Oneida Nation*, 968 F.3d 664 (7th Cir. 2020) (No. 16-cv-01217). In the past, when reservations have been disestablished or diminished, it has been through an act of Congress specific to that reservation. *See, e.g.*, Rosebud Sioux Tribe v. Kneip, 430 U.S. 584, 587 (1977) (diminishing reservation); *DeCoteau*, 420 U.S. at 426–28 (disestablishing reservation).

[60] *Cf.* Treaty with the Oneida, *supra* note 7, art. 2, 7 Stat. at 566–67.

[61] *McGirt* was issued on July 9, 2020, and *Oneida Nation* was announced on July 30, 2020.

[62] *Oneida Nation*, 968 F.3d at 685.

[63] *See id.* at 668, 685.

[64] *Id.* at 682 n.13 ("Our reasoning in *Stockbridge-Munsee* seems to be in tension with *McGirt*.").

decision has ramifications in the civil realm, not just in federal criminal law as its narrow holding intimated.[65] Beyond offering more robust protection for tribes, these two cases together present a standard test for district courts to adopt in deciding similar issues, reducing confusion regarding which factors to examine.[66] Pending cases may rely on *Oneida Nation* and *McGirt* to preserve reservations that Congress never explicitly stated were disestablished or diminished.[67]

Both the court's application of *Solem* and its understanding of *McGirt* provide the Oneida Reservation and other reservations with necessary safeguards. First, this ruling ensures that extreme demographic shifts alone cannot diminish tribal sovereignty, particularly on reservations that bore the brunt of allotment-era policies.[68] Tribal citizens like the Oneida may become the minority population in their homelands, as non-Indians hold large swaths of reservations as a result of U.S.-sponsored land grabs.[69] Such demographic disparity can have devastating effects on tribal sovereignty. For instance, the predominantly white Village of Hobart has repeatedly endeavored to exert its will over the Oneida Nation.[70] The Seventh Circuit's decision repudiates governments that similarly seek to harass and wield their power over Native nations operating within the borders of their reservations.

Second, this decision also protects the Oneida Reservation — and over one hundred Indian reservations with comparable allotment structures — against diminishment and disestablishment claims. Had the court ruled that allotment amounted to congressional intent to diminish the Oneida Nation, this outcome would have justified local and state governments' imposing civil laws on the other reservations that experienced allotment, impinging upon tribal sovereignty.[71] Many of these Native nations, like the Oneida Nation, have bought back lands sold to homesteaders during the allotment period; this property may be tribally owned, though tribes do not always place this land into trust.[72] The

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[65] *See* McGirt v. Oklahoma, 140 S. Ct. 2452, 2459 (2020) (deciding "whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law"); *Oneida Nation*, 968 F.3d at 685.

[66] *See McGirt*, 140 S. Ct. at 2469.

[67] *See, e.g.*, Brief of Plaintiff-Appellant at 1–2, Little Traverse Bay Bands of Odawa Indians v. Whitmer, No. 19-2070 (6th Cir. Feb. 4, 2020), 2020 WL 639302 (arguing that an 1855 treaty established a reservation). As of this writing, the case is on appeal in the Sixth Circuit. *Id.*

[68] *See Oneida Nation*, 968 F.3d at 684.

[69] *See* Oneida Nation v. Village of Hobart, 371 F. Supp. 3d 500, 506–08 (E.D. Wis. 2019).

[70] *See, e.g.*, Oneida Tribe of Indians v. Village of Hobart, 732 F.3d 837, 838 (7th Cir. 2013); Oneida Tribe of Indians v. Village of Hobart, 542 F. Supp. 2d 908, 909–10 (E.D. Wis. 2008).

[71] *Cf.* Carpenter & Riley, *supra* note 1, at 817 (discussing the devastating effects of allotment).

[72] *See Two Recent Legal Victories Strengthen Indian Country's Jurisdictional Landscape*, MIRAGE NEWS (Sept. 9, 2020, 3:50 AM), https://www.miragenews.com/two-recent-legal-victories-strengthen-indian-country-s-jurisdictional-landscape [https://perma.cc/HAB5-9UMR]; *see also Fee to Trust*, U.S. DEP'T OF THE INTERIOR, https://www.bia.gov/bia/ots/fee-to-trust

district court's ruling would have jeopardized efforts to restore tribal lands and repair the wounds caused by allotment,[73] especially in light of the Department of the Interior's recent attempts to remove Indian lands from trust.[74] Lastly, disputes regarding the potential disestablishment of these reservation fee lands would have thrown civil and criminal cases on contested fee simple lands into chaos, particularly those relating to taxation law.[75] The Seventh Circuit's approach provides clearer guidance for subsequent rulings regarding reservation boundaries.

Ultimately, *Oneida Nation* should be celebrated for its reasoning and its positive result for the Nation. The panel rejected an ahistorical, erroneous district court opinion that was based on bad case law and instead affirmed that only express congressional intent can reshape the boundaries of reservations.[76] Consequently, the Seventh Circuit's decision adhered to established Indian law.[77] Even though the Nation likely would have prevailed under *Solem* alone, the court's novel application of *McGirt* assured the Nation's victory.[78] *McGirt* modified *Solem* by placing greater emphasis on statutory text, making it more challenging to prove congressional intent to diminish a reservation.[79] This development improves administrability and safeguards the Oneida Reservation and other reservations against disestablishment and diminishment claims. Extreme demographic shifts alone do not justify departing from *McGirt*'s clear statement rule.[80] The fee lands that are tribally owned, even if alienated during the allotment era, remain in Indian country.[81] Thus, tribes like the Oneida Nation may continue to oppose aggressive and oppressive local and state regulation that undermines tribal sovereignty.

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[https://perma.cc/3FEP-KFX7]; *Land Buy-Back Program for Tribal Nations*, U.S. DEP'T OF THE INTERIOR, https://www.doi.gov/buybackprogram [https://perma.cc/SN2P-GPF6].

[73] *See Oglala Sioux, Northern Cheyenne, and Santee Sioux Become Latest Tribal Nations to Partner with Interior's Land Buy-Back Program*, U.S. DEP'T OF THE INTERIOR (Aug. 30, 2018), https://www.bia.gov/as-ia/opa/online-press-release/oglala-sioux-northern-cheyenne-and-santee-sioux-become-latest-tribal [https://perma.cc/LG5N-NEXR].

[74] *Mashpee Wampanoag Tribe and Native Organizations Encouraged by Recent Decision in* Mashpee v. Bernhardt *and Now Call on DOI for Recommitment to Tribal Sovereignty*, NAT'L CONG. OF AM. INDIANS (June 6, 2020), http://www.ncai.org/news/articles/2020/06/06/mashpee-wampanoag-tribe-and-native-organizations-encouraged-by-recent-decision-in-mashpee-v-bernhardt-and-now-call-on-doi-for-recommitment-to-tribal-sovereignty [https://perma.cc/A5BH-A69G]. In March 2020, the Department of the Interior attempted to disestablish the Mashpee Wampanoag Tribe's reservation by taking its homelands out of trust. *Id.* As of this writing, a decision had been rendered in favor of the Tribe in the U.S. District Court for the District of Columbia. *See* Mashpee Wampanoag Tribe v. Bernhardt, 466 F. Supp. 3d 199 (D.D.C. 2020).

[75] *See Two Recent Legal Victories*, *supra* note 72.

[76] *See Oneida Nation*, 968 F.3d at 672–73.

[77] *Id.* at 677.

[78] *See id.* at 668.

[79] *See id.*

[80] *Id.* at 684.

[81] *Id.* at 689.