

United States Supreme Court Issues Decision Supporting Tribal Police Powers

Ft. Duchesne, UT — On June 1, 2021, the United States Supreme Court issued a unanimous decision in *United States v. Cooley*, in favor of tribal police powers. The Supreme Court held that tribes, acting through their police officers, have retained the inherent sovereign authority to stop, search, and detain non-Indian suspects, using the same police procedures that every other police officer in the United States uses. The Court also confirmed that tribal police have the authority to transport non-Indian suspects to the state or local police.

In *Cooley*, the Ute Indian Tribe submitted an amicus brief to the Supreme Court. The Tribe's amicus brief discussed how the patchwork jurisdiction on the Uintah Valley portion of the Tribe's Reservation illustrated why it was essential for tribes to have the power to stop and search non-Indians. Had the Supreme Court decided to take that power away from tribes, non-Indian crime on reservations would increase, and prosecution of such crimes would be substantially more difficult. The end result would have been that tribal members and others who come onto tribal reservations would be substantially harmed. The Supreme Court agreed. It held tribes had retained the police powers at issue because Cooley's conduct "threatens or has a direct effect on ... the health or welfare of the tribe."

The Ute Indian Tribe's brief supplemented briefs by two other groups of tribes, who discussed other reasons for the Supreme Court to rule in favor of tribal authority.

In its June 1, 2021 decision, the Supreme Court rejected and vacated a decision by United States Court of Appeals for the Ninth Circuit issued last year. *United States v. Cooley*, 919 F.3d 1135 (9th Cir. 2020). In practical terms, the Ninth Circuit would have barred tribal police from detaining most suspected non-Indian criminals! The Ninth Circuit decision had that effect because the Ninth Circuit had held that when a tribal officer suspects that someone is committing a crime on a roadway or non-trust land on a reservation, the tribal officer's first question to the suspect should be "Are you an Indian?" If the suspect stated he was not an Indian, the tribal police officer would have had to let the suspect continue on his way. According to the Ninth Circuit, the only time the tribal officer would not have had to let the non-Indian leave is if it were "obvious" or "apparent" that the suspect had committed a crime. *Cooley*, 919 F.3d at 1142, 1147.

In *Cooley*, a tribal officer on the Crow Reservation saw a vehicle stopped on the shoulder of a roadway in a remote area of the Reservation. The officer stopped to check whether the driver was okay. Using police procedures that all other police officers are allowed to use, the officer developed suspicions that Cooley might have been intoxicated and suspicions that Cooley was a meth dealer, waiting for one of his buyers to arrive. Cooley then showed the officer a driver's license which showed Cooley was not an Indian. Based upon standard police procedures, the officer then discovered methamphetamines, a large amount of cash, guns, and a child in Cooley's vehicle. According to the Ninth Circuit, the tribal officer had to let Cooley drive off with the drugs, guns, and child, because the officer had determined that Cooley was a non-Indian before the officer found the drugs, cash, guns, and child. The Supreme Court disagreed. It held that the

tribal officer had the authority to conduct the search, and to detain Cooley, and that Cooley's subsequent conviction for selling methamphetamines on the Reservation was lawful.

About the Ute Indian Tribe-The Ute Indian Tribe resides on the Uintah and Ouray Reservation in northeastern Utah. Three bands of Utes comprise the Ute Indian Tribe: the Whiteriver Band, the Uncompahgre Band and the Uintah Band. The Tribe has a membership of more than three thousand individuals, with over half living on the Uintah and Ouray Reservation. The Ute Indian Tribe operates its own tribal government and oversees approximately 1.3 million acres of trust land which contains significant oil and gas deposits. The Tribal Business Committee is the governing council of the Tribe.

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