

IN THE SUPREME COURT OF IOWA

STATE OF IOWA	)	
PLAINTIFF-APPELLEE	)	APPELLANT'S BRIEF
	)	(FINAL FORM)
VS.	)	
	)	NO. 20-0409
CHRISTOPHER LEE CUNGTION, JR.	)	
DEFENDANT-APPELLANT	)	

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APPEAL FROM THE DISTRICT COURT, TAMA COUNTY, THE  
HONORABLE MITCHELL TURNER (DENIAL OF MOTION TO  
DISMISS) AND THE HONORABLE FAE HOOVER-GRINDE  
(ADJUDICATION OF GUILT AND SENTENCING), DISTRICT COURT  
JUDGES

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## Table of Contents

Table of Contents.....	2
Table of Authorities.....	3
Statement of the Issues Presented.....	4
Routing Statement.....	5
Statement of the Case.....	6
Nature of the Case.....	6
Course of Proceedings.....	7
Statement of Facts.....	9
Argument.....	9
1.    The district court erred by concluding that it had jurisdiction and by denying Cungtion’s motion to dismiss.....	9
a.    Background of state jurisdiction over crimes committed on the Sac and Fox Indian Settlement.....	10
b.    The repeal of state jurisdiction in Pub. L. No. 1215-301 applies to Cungtion’s case and deprives the court of jurisdiction to enter a judgment of conviction against him.....	12
c.    Applying the repeal of jurisdiction in Pub. L. No. 1215-301 that occurred on 12-11-2018 to the district court’s revocation of Cungtion’s deferred judgment and entry of a judgment of conviction that occurred on 2-28-2020 for a crime that occurred on 7-30-2017 is not a retrospective application of the statute.....	14

d. Even if the court concludes that applying Pub. L. No. 1215-301 to the district court’s entry of a judgment of conviction on 2-28-2020 would be a retrospective application of the statute, the court should apply the statute retrospectively.....	16
Conclusion and Requested Relief.....	20
Request for Submission with Oral Argument.....	20
Statement of Costs.....	21
Certificate of Compliance.....	21
Certificate of Service.....	21

**Table of Authorities**

**United States Supreme Court Cases**

<i>Hamdan v. Rumsfeld</i> , 548 U.S. 557 (2006).....	17
<i>Iowa Mut. Ins. Co. v. LaPlante</i> , 480 U.S. 9 (1987).....	18
<i>Landgraf v. USI Film Products</i> , 511 U.S. 244 (1994).....	15

**Iowa Supreme Court Cases**

<i>Hannan v. State</i> , 732 N.W.2d 45 (Iowa 2007).....	16-19
<i>State v. Macke</i> , 933 N.W.2d 226(Iowa 2019).....	15-16
<i>State v. Stanton</i> , 933 N.W.2d 244 (Iowa 2019).....	10-12
<i>State v. Wiese</i> , 201 N.W.2d 734 (Iowa 1972).....	10, 13

**Iowa Statutes**

Iowa Code 1.15A.....8, 12, 13, 17  
Iowa Code 4.5.....14  
Iowa Code 907.1(1).....12  
Iowa Code 907.3(1)(a).....12  
Iowa Code 907.3(1)(b).....13

**Iowa Rule of Appellate Procedure**

6.903(1)(e).....21  
6.903(1)(f).....21  
6.903(1)(g)(1).....21  
6.1101(2)(c).....5  
6.1101(2)(d).....5

**Statement of the Issues Presented**

1. Whether the federal repeal, that occurred on 12-11-2018 in Pub. L. No. 1215-301, of state jurisdiction over crimes committed on the Sac and Fox Indian Settlement that involve an Indian stripped the district court of jurisdiction to revoke Cungtion’s deferred judgment and enter a judgment of conviction on 2-28-2020 for a crime with an Indian victim that occurred on the Sac and Fox Indian Settlement on 7-30-2017.

**United States Supreme Court Cases**  
*Hamdan v. Rumsfeld*, 548 U.S. 557 (2006)

*Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9 (1987)  
*Landgraf v. USI Film Products*, 511 U.S. 244 (1994)

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*State v. Macke*, 933 N.W.2d 226(Iowa 2019)  
*State v. Stanton*, 933 N.W.2d 244 (Iowa 2019)  
*State v. Wiese*, 201 N.W.2d 734 (Iowa 1972)

**Iowa Statutes**

Iowa Code 1.15A  
Iowa Code 4.5  
Iowa Code 907.1(1)  
Iowa Code 907.3(1)(a)  
Iowa Code 907.3(1)(b)

**Routing Statement**

Pursuant to Iowa R. App. P. 6.1101(2)(c) and (d), the Supreme Court should retain this case. The case presents the substantial issue of first impression of at what point the state lost jurisdiction to enter judgments of conviction for crimes that occurred on the Sac and Fox Indian Settlement that involved an Indian as either a perpetrator or victim. Iowa R. App. P. 6.1101(2)(c). This issue is substantial because it implicates fundamental principles of tribal sovereignty and self-government and the power of the state to interfere with those principles. The case also presents fundamental and urgent issues of broad public importance requiring prompt or ultimate determination by the supreme court because the state's power to interfere with tribal sovereignty and self-government is a fundamental issue with broad public importance and settling the issue this case presents is

urgent because there may be several defendants with criminal charges or applications to revoke deferred judgments pending in state court for crimes that occurred on the Sac and Fox Indian Settlement that involved an Indian that the state may no longer have jurisdiction over. Iowa R. App. P.

6.1101(2)(d). A prompt settlement of those issues is necessary to protect the interests of such defendants, the interests of the Sac and Fox tribe, inform the state of the extent of its jurisdiction over such defendants, and, depending on the outcome of this case, conserve state resources by preventing the needless continuation of litigation in cases where the state has no jurisdiction.

## **Statement of the Case**

### **Nature of the Case**

The defendant-appellant (hereinafter referred to as “Cungtion”) appeals from the district court’s order that revoked his deferred judgment for the crime of Willful Injury Causing Bodily Injury, a class D felony in violation of Iowa Code 708.4(2), entered a judgment of conviction for the crime, and sentenced him to a suspended five year prison sentence and placed him on probation to the Department of Corrections for five years. The appeal also involves the district court’s denial of Cungtion’s motion to

dismiss the proceedings on the state's application for adjudication of guilt and sentencing.

### **Course of Proceedings**

On 11-30-2018, the state filed a trial information that charged Cungtion with, among other crimes, Willful Injury Causing Bodily Injury, a class D felony in violation of Iowa Code 708.4(2). (App. at p.4). On that same date, Cungtion pled guilty to, among other crimes, Willful Injury Causing Bodily Injury, a class D felony in violation of Iowa Code 708.4(2) and the district court granted Cungtion a deferred judgment, placed him on probation with the Department of Correctional Services for five years, and suspended a \$750 civil penalty. (App. at p.8-10).

On 7-22-2019, the state filed an application for adjudication of guilt and sentencing that asked the district court to revoke Cungtion's deferred judgment. (App. at p.15).

On 9-30-2019, Cungtion filed a motion to dismiss the state's application for adjudication of guilt and sentencing on the ground that the state did not have jurisdiction over the matter because the crime Cungtion was on probation for occurred on the Sac and Fox Settlement in Tama county and the victim of the crime was an Indian and federal legislation that took effect on 12-11-2018 divested the state of Iowa of jurisdiction for

crimes that occurred on the settlement and involved an Indian as either the perpetrator or the victim. (App. at p.19-21). The state filed a resistance to Cungtion's motion on 10-2-2019. (App. at p.22-23).The district court held a hearing on the motion to dismiss on 10-3-2019 and issued a ruling denying the motion on 10-10-2019. (App. at p.25-27). On 10-11-2019, Cungtion filed a joint motion to enlarge the ruling to address to issues: (1) "The implication, if any, of the State of Iowa Statute 1.15A becoming effective by the signature of President Trump repealing the 1948 Act of Congress and the Iowa Code language decreeing that all criminal jurisdiction 'shall cease'" and (2) "The impact, if any, that while the underlying criminal acts took place prior to the December 11, 2018 federal repeal, the acts leading to the filing of the current probation revocation took place after December 11, 2018. Further, the court has not imposed judgment on the felony offenses." (App. at p.29). On 10-24-2019, the district court entered an order enlarging its ruling as requested and affirming its denial of Cungtion's motion to dismiss. (App. at p.30).

On 2-27-2020, the district court held a hearing on the state's application for adjudication of guilt and sentencing. Pursuant to an agreement Cungtion reached with the state (2-27-2020 transcript at p.5 line 1 – p.6 line 17), the district court revoked Cungtion's deferred judgment ,



entered a judgment of conviction against Cungtion for Willful Injury Causing Bodily Injury, suspended a five year prison sentence, and placed him on probation for five years with the requirement that he reside at a residential correctional facility (2-27-2020 transcript at p.20 line 25 – p.22 line 19; App. at p.32-34).

On 3-5-2020, Cungtion filed a timely notice of appeal. (App. at p.36).

### **Statement of Facts**

The relevant facts to this appeal are that Cungtion’s crime of Willful Injury Causing Bodily Injury occurred on 7-30-2017 on the “Sac and Fox Indian Tribe Land” and the victim was a member of the “Sac and Fox Indian Tribe.” (10-3-2019 transcript at p.3 lines 11-21 (stipulation of parties); *see* Confidential App. at p.4-14, 30-40, 43-49).

### **Argument**

- 1. The district court erred by concluding that it had jurisdiction and by denying Cungtion’s motion to dismiss.**

#### **Preservation of Error:**

Cungtion preserved error on this issue by moving to dismiss the case on jurisdictional grounds (App. at p.19-21) and obtaining a ruling from the district court denying the motion (App. at p.25-28, 30-31). In any event, “jurisdiction of subject matter must derive from law rather than from

consent of the parties, and [appellate courts] are required to consider the issue even when not raised in order to avoid unwarranted exercise of judicial authority.” *State v. Wiese*, 201 N.W.2d 734, 736 (Iowa 1972).

**Standard of Review:**

The standard of review for rulings on subject matter jurisdiction is for errors at law. *State v. Stanton*, 933 N.W.2d 244, 247 (Iowa 2019).

**Argument:**

**a. Background of state jurisdiction over crimes committed on the Sac and Fox Indian Settlement.**

The Sac and Fox Indian Settlement (a.k.a. the Meskwaki Settlement) in Tama county is “Indian Country” that is “held in trust by the federal government for the benefit of the federally recognized [Sac and Fox] tribe.” *Stanton*, 933 N.W.2d at 248 (citing *Sac & Fox Tribe of Miss. in Iowa v. Licklider*, 576 F.2d 145, 147-48 (8th Cir. 1978)). Prior to 1948, United States Supreme Court precedents “held that the state had jurisdiction over ‘Indian country’ crimes involving non-Indians unless there [was] a treaty or provision or clause in a state’s enabling act prohibiting such jurisdiction.” *Id.* at 249 (collecting cases). Other precedents held that “states ha[d] criminal jurisdiction over criminal acts by non-Indians in ‘Indian country’ that are not committed against Indians.” *Id.*

A 1948 Act of Congress granted Iowa jurisdiction of crimes on the Sac and Fox Indian Settlement regardless of whether an Indian was involved in the crime as the perpetrator or victim. *Id.*; Act of June 30, 1948, ch. 759, 62 Stat. 1161 (1948). Therefore, “after 1948, Iowa district courts had preexisting jurisdiction over crimes committed on the Meskwaki Settlement involving non-Indians and, *in addition*, over offenses committed by or against Indians.” *Id.*(emphasis in original). In 2018, Congress repealed the 1948 Act in Pub. L. No. 1215-301. *Id.* The effect of the repeal was to strip Iowa of jurisdiction over crimes committed on the settlement that involved Indians as perpetrators or victims, but to leave intact Iowa’s jurisdiction over crimes committed on the Meskwaki Settlement that did not involve Indians. *Id.* The President of the United States signed Pub. L. No. 1215-301 into law on 12-11-2018. (App. at p.20). Therefore, as of 12-11-2018, the state does not have jurisdiction over criminal acts committed on the Sac and Fox Indian Settlement if the act involved an Indian as either the perpetrator or the victim. *Stanton*, 933 N.W.2d at 249; Iowa Code 1.15A.

In the present case, it is undisputed that the state had jurisdiction to prosecute Cungtion for his crime at the time the trial information was filed (11-30-2018) and the time the district court entered its deferred judgment order (11-30-2018). The question this case presents is whether the repeal in

Pub. L. No. 1215-301 on 12-11-2018 of state jurisdiction over crimes committed on the Sac and Fox Indian Settlement that involved an Indian stripped the district court of jurisdiction to revoke Cungtion's deferred judgment and enter a judgment of conviction against him subsequent to 12-11-2018.

**b. The repeal of state jurisdiction in Pub. L. No. 1215-301 applies to Cungtion's case and deprives the court of jurisdiction to enter a judgment of conviction against him.**

A deferred judgment is “a sentencing option whereby both the adjudication of guilt and the imposition of a sentence are deferred by the court . . . The court retains the power to pronounce judgment and impose sentence subject to the defendant's compliance with conditions set by the court as a requirement of the deferred judgment.” Iowa Code 907.1(1). If the court defers judgment, it “place[s] the defendant on probation upon conditions as it may require.” Iowa Code 907.3(1)(a). “Upon a showing that the defendant is not cooperating with the program of probation or is not responding to it, the court may withdraw the defendant from the program, pronounce judgment, and impose any sentence authorized by law.” Iowa Code 907.3(1)(b). Therefore, when the district court entered its deferred judgment order on 11-30-2018, it had not yet “exhausted its jurisdiction”

because it retained jurisdiction “until a valid judgment is entered.” *Wiese*, 201 N.W.2d at 737.

However, Iowa Code 1.15A, which the Iowa legislature passed on 4-6-2016 in Senate File 2022, state as follows:

Notwithstanding any other provision of law to the contrary, the state of Iowa tenders to the United States any and all criminal jurisdiction which the state of Iowa has over criminal offenses committed by or against Indians on the Sac and Fox Indian settlement in Tama, Iowa, and that as soon as the United States accepts and assumes such criminal jurisdiction previously conferred to the state of Iowa or reserved by the state of Iowa, all criminal jurisdiction on the part of the state of Iowa over criminal offenses committed by or against Indians on the Sac and Fox Indian settlement in Tama, Iowa, *shall cease*.

(emphasis added)

Therefore, once Pub. L. No.1215-301 took effect on 12-11-2018, “the United States accept[ed] and assume[d] such criminal jurisdiction previously conferred to the state of Iowa” and “all criminal jurisdiction on the part of the state of Iowa over criminal offenses committed by or against Indians on the Sac and Fox Indian settlement in Tama, Iowa” ceased. Iowa Code 1.15A. Because the state’s jurisdiction ceased at that time, the district court no longer “retain[ed] the power to pronounce judgment and impose sentence” against Cungtion under Iowa Code 907.1 or to “withdraw [Cungtion] from the program, pronounce judgment, and impose any sentence authorized by law” under Iowa Code 907.3(b) since his crime occurred on the Sac and Fax

Indian settlement and had an Indian victim. Therefore, the district court had no jurisdiction to enter a judgment of conviction against Cungtion on 2-28-2020 and the district court erred by denying Cungtion's motion to dismiss.

The question may arise whether the repeal of jurisdiction in Pub. L. No.1215-301 applies to Cungtion's case since the case began and a deferred judgment was granted when the state had jurisdiction, but judgment was not entered until after the state lost jurisdiction. *See* Iowa Code 4.5 (“A statute is presumed to be prospective in its operation unless expressly made retrospective”). This brief will address that issue now and argue that applying Pub. L. No.1215-301 to Cungtion's case would not be a retrospective<sup>1</sup> application of the statute and, even if applying the statute to Cungtion's case would be a retroactive application, the statute should apply to Cungtion's case.

- c. **Applying the repeal of jurisdiction in Pub. L. No. 1215-301 that occurred on 12-11-2018 to the district court's revocation of Cungtion's deferred judgment and entry of a judgment of conviction that occurred on 2-28-2020 for a crime that occurred on 7-30-2017 is not a retrospective application.**

Applying Pub. L. No. 1215-301 to Cungtion's case would not be a retrospective application of the statute. “Application of a statute is in fact

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<sup>1</sup> This brief uses the terms “retrospective” and “retroactive” synonymously.

retrospective when the statute applies a new rule, standard, or consequence to a prior act or omission.” *State v. Macke*, 933 N.W.2d 226, 239 (Iowa 2019) (McDonald, J., dissenting). “The prior act or omission is the event of legal consequence ‘that the rule regulates.’ In other words, the event of legal consequence is the specific conduct regulated in the statute.” *Id.* (citing *Landgraf v. USI Film Products*, 511 U.S. 244, 291 (1994) (Scalia, J., concurring)). The event of legal consequence for application of a statute conferring or eliminating jurisdiction “is the moment at which [judicial] power is sought to be exercised. Thus, applying a jurisdiction-eliminating statute to undo past judicial action would be applying it retroactively; but applying it to prevent any judicial action after the statute takes effect is applying it prospectively.” *Landgraf v. USI Film Products*, 511 U.S. 244, 293 (1994) (Scalia, J., concurring). Therefore, in *Cungtion*’s case, the event of legal consequence for determining whether applying Pub. L. No. 1215-310 to this case would in fact be a retrospective application of the statute is the district court’s entry of a judgment of conviction on 2-28-2020 because that is the moment at which judicial power was exercised to enter a judgment of conviction. *Id.* Because 2-28-2020 was subsequent to the repeal of jurisdiction that occurred in Pub. L. No. 1215-301 on 12-11-2018, applying Pub. L. No. 1215-301 to the district court’s entry of judgment

would not be a retrospective application. Hence, the district court's conclusion that applying Pub. L. No. 1215-301 to Cungtion's case would be a retrospective application was in error. (*See App.* at p.26). The correct conclusion is that applying the repeal of jurisdiction in Pub. L. No. 1215-301 to prevent the district court from imposing a judgment of conviction on 2-28-2020 for a crime that occurred on 7-30-2017 is only a prospective application of the repeal of jurisdiction regardless of when Cungtion's criminal activity occurred or when the district court granted Cungtion a deferred judgment.

- d. Even if the court concludes that applying Pub. L. No. 1215-301 to the district court's entry of a judgment of conviction on 2-28-2020 would be a retrospective application of the statute, the court should apply the statute retrospectively.**

The current rule the Iowa Supreme Court has adopted to determine whether a statute should apply retroactively “[u]ltimately . . . look[s] to legislative intent to determine whether a statute applies retroactively or prospectively.” *Hannan v. State*, 732 N.W.2d 45, 51 (Iowa 2007) (citing *Bd. of Trs. v. City of W. Des Moines*, 587 N.W.2d 227, 231 (Iowa 1998)). This rule requires the court to “look at the language of the statute, the evil to be remedied, and whether there was an existing statute that governed the evil to be remedied.” *Id.*



The first step in determining whether the legislature intended for retroactive application is looking to the language of the statute. *Hannan*, 732 N.W.2d at 51. In looking at the language of the statute, it is necessary to look at Iowa Code 1.15A along with Pub. L. No. 1215-301. Iowa Code 1.15A, it is clear that as of 4-6-2016, the date of its passage, the legislature wanted to rid the state of jurisdiction over crimes committed on the settlement that involved an Indian by stating that the state’s jurisdiction “shall cease” once the United States accepted jurisdiction of such crimes. Because a court cannot impose judgment without jurisdiction to do so, the legislature must have intended, by using “shall cease”, that state criminal cases wherein judgment had not been rendered as of the time the “United States accept[ed] and assume[d]” jurisdiction were no longer under the state’s jurisdiction. Iowa Code 1.15A. Had the state or federal government not wanted the stripping of state jurisdiction to affect criminal cases that were pending at the time the United States accepted and assumed jurisdiction, it would have inserted language to the following effect: *the repeal of state jurisdiction over crimes committed on the Sac and Fox Indian Settlement that involve an Indian shall not prevent the state from exercising jurisdiction over such criminal cases that are pending with no judgment entry as of 12-11-2018. See Hamdan v. Rumsfeld*, 548 U.S. 557, 578 (2006)

(refusing to apply a jurisdiction-stripping statute to an appeal pending at the time of the statute's enactment because certain provisions of the statute explicitly stated they applied to pending cases but the jurisdiction-stripping portion of the statute did not contain any statement regarding applicability to pending cases). The combination of the "shall cease" language in Iowa Code 1.15A and the lack of any jurisdiction-saving statement in Iowa Code 1.15A or Pub. L. No. 1215-301 for pending cases where judgment had not been entered as of 12-11-2018 weighs in favor of a finding that the district court did not have jurisdiction to enter a judgment of conviction against Cungtion on 2-28-2020.

The second step is to determine the evil to be remedied by the statute. *Id.* Tribal courts play a vital role in tribal self-government. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 14 (1987). "If state-court jurisdiction over Indians for activities on Indian lands would interfere with tribal sovereignty and self-government, the state courts are generally divested of jurisdiction as a matter of federal law." *Id.* at 15. Because state jurisdiction over crimes that occur on the settlement that involve an Indian interferes with tribal sovereignty and self-government, the evil to be remedied by Pub. L. No. 1215-301 was state interference with tribal sovereignty and self-government. Applying the repeal of state jurisdiction to

prevent a state court from entering a judgment for a crime that occurred on the settlement and involved an Indian remedies that evil. Therefore, the evil to be remedied by the statute weighs in favor of applying the repeal of jurisdiction to Cungtion's case.

The third step looks to whether an existing statute governed the evil to be remedied. *Hannan*, 732 N.W.2d at 51. The only state statute counsel is aware of that was in effect prior to 12-11-2018 that dealt with state jurisdiction over crimes on the settlement that involved an Indian is Iowa Code 1.15A. That statute stated that the state's jurisdiction over such crimes "shall cease" once the United States "accepts and assumes such criminal jurisdiction[.]" Iowa Code 1.15A. Therefore, a statute existed governing the evil of state interference with tribal sovereignty and self-government prior to Pub. L. No. 1215-301 and the existing statute evinced the legislature's intent to rid the state of jurisdiction as soon as the United States accepted jurisdiction. Because an existing statute governing the evil to be remedied showed the legislature's intent to rid the state of jurisdiction, that weighs in favor of a finding that the legislature intended the repeal of jurisdiction in Pub. L. No. 12125-301 to apply retrospectively.

## **Conclusion and Requested Relief**

Pub. L. No.1215-301 applies to Cungtion's case and deprived the district court of jurisdiction to revoke Cungtion's deferred judgment and enter a judgment of conviction against him on 2-28-2020 for a crime that had an Indian victim and occurred on the Sac and Fox Indian Settlement on 7-30-2017. Such application of Pub. L. No. 1215-301 is not a retrospective application because the date the district court entered its judgment, 2-28-2020, is the date used to determine whether applying Pub. L. No. 1215-301 would in fact be retrospective. Even if applying Pub. L. No. 1215-301 to Cungtion's case would be a retrospective application, the court should apply it retrospectively.

The district court erred by concluding that Pub. L. No. 1215-301 did not apply to Cungtion's case and by denying Cungtion's motion to dismiss. Therefore, Cungtion requests that the court vacate the district court's judgment of conviction and sentence and remand the case with an order to dismiss the state's application for adjudication of guilt and sentencing.

## **Request for Submission With Oral Argument**

Cungtion requests to be heard at oral argument.

### **Statement of Costs**

Cungtion's attorney incurred no costs in printing or duplicating necessary copies of this brief.

### **Certificate of Compliance with Type-Volume Limitations, Typeface Requirements, and Type-Style Requirements**

1. This brief complies with the type-volume limitations of Iowa R. App. P. 6.903(1)(g)(1) because this brief contains 4,070 words.
2. This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced type face using Microsoft Word in 14 point Times New Roman text.

### **Certificate of Service**

I certify that on 3-22-2021, I will mail a copy of this document to Christopher Lee Cungtion, Jr., c/o Tama county jail, 101 N Main St, Toledo IA 52342. /s/ *Peter Stiefel*