Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

UNITED STATES *v.* LARA

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 03–107. Argued January 21, 2004—Decided April 19, 2004

After respondent Lara, an Indian who is not a member of the Spirit Lake Tribe (Tribe), ignored the Tribe's order excluding him from its reservation, he struck one of the federal officers arresting him. He pleaded guilty in Tribal Court to the crime of violence to a policeman. The Federal Government then charged him with the federal crime of assaulting a federal officer. Lara claimed that, because key elements of that crime mirrored elements of his tribal crime, he was protected by the Double Jeopardy Clause. The Government countered that the Clause does not bar successive prosecutions by *separate sovereigns*, and that this "dual sovereignty" doctrine determined the outcome. The Government noted that this Court has held that a tribe acts as a separate sovereign in prosecuting its own members, *United States* v. *Wheeler,* 435 U. S. 313, 318, 322–323; that, after this Court ruled that a tribe lacks sovereign authority to prosecute nonmember Indians, see *Duro* v. *Reina,* 495 U. S. 676, 679, Congress specifically authorized such prosecutions; and that, because this statute enlarges the tribes' self-government powers to include "the inherent power of Indian tribes . . . to exercise criminal jurisdiction over all Indians," 25 U. S. C. §1301(2), the Tribe here had exercised its own tribal authority, not delegated federal authority. Accepting this argument, the Magistrate Judge rejected Lara's double jeopardy claim. The en banc Eighth Circuit reversed, holding that the "dual sovereignty" doctrine did not apply because the Tribal Court was exercising a federal prosecutorial power, and, thus, the Double Jeopardy Clause barred the second prosecution.

Held: Because the Tribe acted in its capacity as a sovereign authority, the Double Jeopardy Clause does not prohibit the Federal Government from proceeding with the present prosecution for a discrete fed-

eral offense. Pp. 4–16.

(a) Congress has the constitutional power to lift the restrictions on the tribes' criminal jurisdiction over nonmember Indians. Pp. 4–13.

(1) Section 1301(2) "recognize[s] and affirm[s]" in each tribe the "inherent power" to prosecute nonmember Indians, and its legislative history confirms that such was Congress' intent. Thus, it seeks to adjust the tribes' status, relaxing restrictions, recognized in *Duro*, that the political branches had imposed on the tribes' exercise of inherent prosecutorial power. Pp. 4–5.

(2) Several considerations lead to the conclusion that Congress has the constitutional power to lift these restrictions. First, the Constitution, through the Indian Commerce and Treaty Clauses, grants Congress "plenary and exclusive" powers to legislate in respect to Indian tribes. *E.g., Washington* v. *Confederated Bands and Tribes of Yakima Nation,* 439 U. S. 463, 470–471. Second, Congress, with this Court's approval, has interpreted these plenary grants of power as authorizing it to enact legislation that both restricts tribal powers and, in turn, relaxes those restrictions. Third, Congress' statutory goal—to modify the degree of autonomy enjoyed by a dependent sovereign that is not a State—is not an unusual legislative objective. Fourth, Lara points to no explicit language in the Constitution suggesting a limitation on Congress' institutional authority to relax tribal sovereignty restrictions previously imposed by the political branches. Fifth, the change at issue is limited, concerning a power similar to the power to prosecute a tribe's own members, which this Court has called inherent. Sixth, concluding that Congress has the power to relax the restrictions imposed by the political branches on the tribes' inherent prosecutorial authority is consistent with this Court's earlier cases. The holdings in *Wheeler, supra,* at 326; *Oliphant* v. *Suquamish Tribe,* 435 U. S. 191, 209–210; and *Duro, supra,* at 686, that the tribes' power to prosecute nonmembers was divested by treaties and Congress, reflected the Court's view of the tribes' retained sovereign status at the time of those decisions; but they did not set forth constitutional limits prohibiting Congress from taking actions to modify or adjust that status. The Court there based its descriptions of inherent tribal authority on the sources as they existed at the time. Congressional legislation was one such important source, but it is a source subject to change. When *Duro, supra,* at 686, like other cases, referred to a statute that "delegated" power to the tribes, it simply did not consider whether a statute could constitutionally achieve the same end by removing restrictions on the tribes' inherent authority. Thus, none of those cases can be read to hold that the Constitution forbids Congress to change judicially made federal Indian law through an amendment to §1301(2). *Wheeler,*

Oliphant, and *Duro,* then, are not determinative because Congress has enacted a new statute, relaxing restrictions on the bounds of the inherent tribal authority the United States recognizes. Pp. 5–13.

(b) Lara's additional arguments cannot help him win his double jeopardy claim. This Court will not consider the merits of his due process claim that his prosecution was invalid because the Indian Civil Rights Act of 1968 does not guarantee counsel to an indigent criminal defendant. Proving that claim does not show that the source of the tribal prosecution was federal power, something Lara must do to win his double jeopardy claim. Like the due process claim, Lara's argument that the phrase "all Indians" in "inherent power . . . to exercise criminal jurisdiction over all Indians" violates the Equal Protection Clause is beside the point. And Lara simply repeats these due process and equal protection arguments in a different form when he argues that the *Duro* Court found the absence of certain constitutional safeguards, such as an indigent defendant's right to counsel, an important reason for concluding that tribes lacked the "inherent power" to try nonmember Indians. Pp. 13–15.

324 F. 3d 635, reversed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, O'CONNOR, and GINSBURG, JJ., joined. STEVENS, J., filed a concurring opinion. KENNEDY, J., and THOMAS, J., filed opinions concurring in the judgment. SOUTER, J., filed a dissenting opinion, in which SCALIA, J., joined.