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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

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DENEZPI *v.* UNITED STATES

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

No. 20–7622. Argued February 22, 2022—Decided June 13, 2022

An officer with the federal Bureau of Indian Affairs filed a criminal complaint against Merle Denezpi, a member of the Navajo Nation, charging Denezpi with three crimes alleged to have occurred at a house located within the Ute Mountain Ute Reservation: assault and battery, in violation of 6 Ute Mountain Ute Code §2; terroristic threats, in violation of 25 CFR §11.402; and false imprisonment, in violation of 25 CFR §11.404. The complaint was filed in a CFR court, a court which administers justice for Indian tribes in certain parts of Indian country "where tribal courts have not been established." §11.102. Denezpi pleaded guilty to the assault and battery charge and was sentenced to time served—140 days' imprisonment. Six months later, a federal grand jury in the District of Colorado indicted Denezpi on one count of aggravated sexual abuse in Indian country, an offense covered by the federal Major Crimes Act. Denezpi moved to dismiss the indictment, arguing that the Double Jeopardy Clause barred the consecutive prosecution. The District Court denied Denezpi's motion. Denezpi was convicted and sentenced to 360 months' imprisonment. The Tenth Circuit affirmed.

Held: The Double Jeopardy Clause does not bar successive prosecutions of distinct offenses arising from a single act, even if a single sovereign prosecutes them. Pp. 4–13.

(a) The Double Jeopardy Clause of the Fifth Amendment provides: "No person shall . . . be subject for the same offence to be twice put in jeopardy of life or limb." By its terms, the Clause does not prohibit twice placing a person in jeopardy "'for the same *conduct* or *actions*,'" *Gamble* v. *United States*, 587 U. S. ___, ___, but focuses on whether successive prosecutions are for the same "offence." In 1791, "offence" meant the violation of a law. See *ibid.* Because the sovereign source

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of a law is an inherent and distinctive feature of the law itself, an offense defined by one sovereign is necessarily a different offense from that of another sovereign. See *id.*, at ___. The two offenses can therefore be separately prosecuted without offending the Double Jeopardy Clause—even if they have identical elements and could not be separately prosecuted if enacted by a single sovereign. See *id.*, at ___, n. 1, ___. This dual-sovereignty principle applies where "two entities derive their power to punish from wholly independent sources." *Puerto Rico* v. *Sánchez Valle*, 579 U. S. 59, 68.

Denezpi's single act transgressed two laws: the Ute Mountain Ute Code's assault and battery ordinance and the United States Code's proscription of aggravated sexual abuse in Indian country. The Ute Mountain Ute Tribe exercised its "unique" sovereign authority in adopting the tribal ordinance. See *United States* v. *Wheeler*, 435 U. S. 313, 323. Likewise, Congress exercised the United States' sovereign power in enacting the federal criminal statute. See *United States* v. *Lanza*, 260 U. S. 377, 382. The two laws—defined by separate sovereigns—proscribe separate offenses, so Denezpi's second prosecution did not place him in jeopardy again "for the same offence." Pp. 4–6.

(b) Denezpi argues that the dual-sovereignty doctrine applies only when offenses are enacted *and* enforced by separate sovereigns. He insists that his second prosecution violated double jeopardy, then, because prosecutors in CFR courts exercise federal authority, which means that he was prosecuted twice by the United States. The Court need not decide whether prosecutors in CFR courts exercise tribal or federal authority because the Double Jeopardy Clause does not prohibit successive prosecutions by the same sovereign; rather, it prohibits successive prosecutions "for the same offence." Thus, even if Denezpi is right that the Federal Government prosecuted his tribal offense, the Clause did not bar the Federal Government from prosecuting him under the Major Crimes Act too. The Double Jeopardy Clause does not ask who puts a person in jeopardy. It zeroes in on what the person is put in jeopardy for: the "offence." The Court has seen no evidence that "offence" was originally understood to encompass both the violation of the law and the identity of the prosecutor.

Denezpi stitches together loose language from the Court's precedent to support his position that the identity of the prosecuting sovereign matters under the dual-sovereignty doctrine. No precedent cited by Denezpi involves or even mentions the unusual situation of a single sovereign successively prosecuting its own law and that of a different sovereign. In any event, imprecise statements cannot overcome the holdings of the Court's cases, not to mention the text of the Clause. Those authorities make clear that enactment is what counts in deter-

mining whether the dual-sovereignty doctrine applies. Denezpi's reliance on *Bartkus* v. *Illinois*, 359 U. S. 121, is misplaced. At most, *Bartkus* acknowledged that successive federal prosecutions for the same conduct would raise a double jeopardy question, but *Bartkus* did not begin to analyze, much less answer, that question.

Denezpi's remaining arguments are unavailing. Denezpi first points to the Government's exclusion of Major Crimes Act felonies from the federal regulatory offenses enforceable in CFR court in order to avoid double jeopardy concerns. He asserts that this "limitation borders on a concession that the Double Jeopardy Clause bars [his] second prosecution." Brief for Petitioner 29. Not so. Federal regulatory crimes are defined by the Federal Government, so successive prosecutions for a federal regulatory crime and a federal statutory crime present a different double jeopardy question from the one here.

Next, Denezpi argues that permitting successive prosecutions like his "does not further the purposes underlying the dual-sovereignty doctrine," namely, advancing sovereigns' independent interests. *Id.*, at 28–29. Purposes aside, the doctrine "follows from" the Clause's text, which controls. *Gamble*, 587 U. S., at ___–___. In any event, the Tribe's sovereign interest *is* furthered when its assault and battery ordinance—duly enacted by its governing body as an expression of the Tribe's condemnation of that crime—is enforced, regardless of who enforces it.

Finally, Denezpi asserts that the Court's conclusion might lead sovereigns to assume more broadly the authority to enforce other sovereigns' criminal laws in order to get two bites at the apple. If a constitutional barrier to such cross-enforcement exists, it does not derive from the Double Jeopardy Clause. Pp. 6–13.

979 F. 3d 777, affirmed.

BARRETT, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, BREYER, ALITO, and KAVANAUGH, JJ., joined. GORSUCH, J., filed a dissenting opinion, in which SOTOMAYOR and KAGAN, JJ., joined as to Parts I and III.