

SOVEREIGNTY THREAT: LOREAL TSINGINE, POLICING, AND THE INTERSECTIONALITY OF INDIGENOUS DEATH

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In March 2016, Loreal Tsingine, a twenty-seven-year-old Diné mother living in Winslow, Arizona, was killed by Officer Austin Shipley. After two investigations insinuated that Shipley was justified in using fatal force to take Ms. Tsingine's life, the Navajo Nation filed two suits in federal court: one against the city claiming that the Winslow Police Department was negligent in training, hiring, and supervising Shipley and another against the Justice Department for failing to act upon this violation of civil and constitutional rights. Despite national awareness that police violence is a persistent social problem, Ms. Tsingine's story, the stories of many other Native women killed by police, and tribal intervention on behalf of these community members, are rarely covered by national media. This Article disrupts that erasure by arguing that the invisibility of Native women and tribes is not arbitrary and is instead representative of settler-anxieties about indigeneity, race, class, and gender. To contextualize this claim, I frame indigeneity as an intersectional identity and examine how women of color broadly, and Black and Native women specifically, disproportionately experience police violence, yet pose different threats to the legitimacy of the settler-state. Importantly, I introduce the concept of sovereignty threat to explain this social phenomenon and show how tribal sovereignty and ongoing Indigenous kin relationships with land, place, and peoples jeopardize the settler-state's claims to territorial sovereignty. Thus, I reveal that Ms. Tsingine's death constitutes much more than a case of local law enforcement actualizing their biases while on patrol. Her death demonstrates the settler-state's desire to protect itself from sovereignty threat by controlling the generative power of Native women and their bodies. This uniquely Indigenous threat affects macro-level social structures, meso-level interactions between sovereigns, and micro-level social encounters between Native Peoples and police, including the fatal encounter between Shipley and Ms. Tsingine. I conclude by reorienting the Navajo Nation's attempts to protect their members off-reservation as one way tribal nations refuse the settler-state's narrow conceptualization of Indigenous sovereignty.

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INTRODUCTION

In March 2016, a mere twenty-three seconds after exiting his vehicle, Officer Austin Shipley shot and killed Loreal Tsingine, a twenty-seven-year-old Diné mother living in Winslow, Arizona.¹ Shipley's fatal use of force was prompted by a shoplifting call from a local convenience store just minutes earlier; he was called to the scene as backup by Sergeant Ernesto Cano. The two officers found and attempted to detain Ms. Tsingine as she walked down the

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¹ Jamiles Lartey, *Justice Department Investigating Fatal Police Shooting of Loreal Tsingine*, GUARDIAN (July 30, 2016, 3:02 PM), <https://www.theguardian.com/us-news/2016/jul/30/native-american-police-deaths-loreal-tsingine> [perma.cc/PK4Y-8Y75]. The Navajo Nation spans the states of Utah, Arizona, and New Mexico and is the largest tribal land base in the U.S. The reservation population boasts about 200,000 residents. The Nation is surrounded by several border towns including Winslow, Arizona, which is approximately twenty miles from the reservation border. Many members of the Navajo Nation refer to themselves as Diné, translated as "the people," and this is the term that I use throughout the Article to refer to the Diné community. Reuters, *Navajos Weigh Return to Old Name: Dine*, N.Y. TIMES (Dec. 17, 1993), <https://www.nytimes.com/1993/12/17/us/navajos-weigh-return-to-old-name-dine.html> [perma.cc/LV8V-CK69].

street and away from the convenience store. Multiple reports claim Tsingine threatened Shipley by brandishing a small pair of scissors,² yet the officer's body camera footage contradicts that narrative. Instead, the soundless recording shows Shipley grabbing Tsingine's arm and throwing her small, five-foot, 105-pound body to the ground. As she fell, three prescription bottles tumbled from her pockets. The video shows that Tsingine stood up, scissors tucked at her side, and walked toward Shipley who now stood in her original path headed away from the convenience store. Shipley raised his gun as Sergeant Cano trailed behind Tsingine, hitching up his belt. The video cuts off before Shipley fires his gun and murders Ms. Tsingine.

News of Tsingine's death spread quickly throughout Indian Country bringing heartache to her family and community. In response, her advocates demanded a formal review to consider whether criminal charges could be brought against the officer. After investigating the matter, the Maricopa County Attorney's Office cleared Shipley of wrongdoing.³ The President of the Navajo Nation then requested that the Department of Justice conduct an additional investigation into Tsingine's murder, but the Department found no evidence beyond a reasonable doubt that Shipley used excessive force against Tsingine.⁴ The shock, rage, and grief that permeated the community intensified after each investigation insinuated that Shipley was justified in using fatal force to take Ms. Tsingine's life. The Navajo Nation filed two suits in federal court: one against the city claiming that the Winslow Police Department was negligent in training, hiring, and supervising Shipley and another against the Justice Department for failing to act upon this violation of civil and constitutional rights.⁵ For many Native families, near and far, Tsingine's death, and the state's refusal to hold law enforcement accountable, was yet another painful reminder of the unrelenting nature of state-sanctioned violence against Native women.

² Donovan Quintero, *No Charges Against Winslow PD Officer Who Killed Loreal Tsingine*, NAVAJO TIMES (July 22, 2016), <https://navajotimes.com/reznews/maricopa-county-attorney-bill-montgomery-no-charges-will-filed-winslow-police-officer/> [perma.cc/J5JS-DW62]; Lartey, *supra* note 1.

³ Quintero, *supra* note 2; *see also* Civil Rights Complaint for Damages at 10, Navajo Nation v. Sessions (D. Ariz. Mar. 27, 2018) (No. 3:18-CV-08072).

⁴ *See* Letter from Albert Hale, State Rep., and Troy Eid, Chairman of the Indian L. and Ord. Comm'n, to Loretta Lynch, Att'y Gen. of the U.S. (Apr. 4, 2016), https://turtletalk.files.wordpress.com/2016/04/letter-to-attorney-general-loretta-lynch_040416.pdf [perma.cc/R2RN-XEWM] (On April 4, 2016, in addition to the Maricopa County Attorney's Office investigation, former Navajo Nation President and State Representative Albert Hale wrote a letter to the U.S. Attorney General's office requesting they investigate "systemic misconduct toward Native Americans by the Winslow Police Department."); *see also* Civil Rights Complaint for Damages, *supra* note 2, at 10–11 (In January 2017, President Begaye wrote twice requesting a federal investigation, and on March 3, 2017, he received a reply that the investigation was ongoing. In October 2017, acting Assistant Attorney General Felte of the Civil Rights Division echoed a similar statement to that of the Maricopa County Attorney's Office—the Department of Justice found no evidence, beyond a reasonable doubt, that Shipley used excessive force against Tsingine).

⁵ Civil Rights Complaint for Damages, *supra* note 2, at 2, 14–15.

Despite national awareness that police violence is a persistent social problem, Ms. Tsingine's story, the stories of many other Native women killed by police, and tribal intervention on behalf of these community members, are rarely covered by national media. This absence is particularly startling given that Native Peoples are three times more likely to be killed by police than whites,⁶ and Native women are twice as likely to be killed by police than white women.⁷ According to the Federal Complaint filed by the Navajo Nation in 2018, "[i]n the year Ms. Tsingine was killed, Native American deaths caused by police shooting almost doubled, increasing from 5.49 per one (1) million people in 2015 to 10.13 per one (1) million people in 2016."⁸ Although the state's legacy of anti-Indigenous violence is apparent in these disparities, these data have done little to compel the public to address the systemic violence that fuels Native death at the hands of the state.

In this Article, I disrupt this particular form of Indigenous erasure by arguing that the invisibility of Native women and tribes in matters of police violence is not arbitrary and is instead representative of settler-anxieties about indigeneity, race, class, and gender. To make sense of these anxieties, I take up the social and historical contexts that create the conditions under which violence against Native women is made possible—and oftentimes intentionally denied. In Part I, I examine the racially disproportionate nature of police violence, focusing explicitly on Black and Native women's experiences as major targets of that violence and the role that controlling images play in normalizing their experiences. In Part II, I engage settler-colonial theory to examine this phenomenon more broadly, attentive to how logics of racial elimination are scaled to erase the humanity of Native women *and* their tribal communities.⁹ In Part III, I draw from intersectionality theory and present indigeneity as a social identity that intersects, interacts, and overlaps with race, class, and gender to reveal the complexity of Native women's experiences with police violence. In Part IV, I provide a careful recounting of *Navajo Nation v. Sessions*, the Navajo Nation's federal suit regarding violations of Ms. Tsingine's civil and constitutional rights.

In Part V, I introduce the concept of *sovereignty threat* as one critical factor motivating police killings of Native Peoples, showing how this uniquely Indigenous threat affects macro-level social structures, meso-level interactions between sovereigns, and micro-level social encounters, including the encounter between Shipley and Ms. Tsingine in March 2016. I also offer the concept of

⁶ Elise Hansen, *The Forgotten Minority in Police Shootings*, CNN (Nov. 13, 2017, 2:51 PM), <https://www.cnn.com/2017/11/10/us/native-lives-matter/index.html> [perma.cc/HB2U-58PZ].

⁷ Frank Edwards et al., *Risk of Being Killed by Police Use of Force in the United States by Age, Race-Ethnicity, and Sex*, 116 PROC. NAT'L ACAD. SCI. U.S. 16793, 16794 (2019).

⁸ Civil Rights Complaint for Damages, at 5.

⁹ See Patrick Wolfe, *Settler Colonialism and the Elimination of the Native*, 8 J. GENOCIDE RSCH. 387, 387–89 (2006).

sovereignty threat as one way to center the humanity of Ms. Tsingine and her community, a sharp contrast to the dehumanization displayed by Shipley and the settler-state. Importantly, in Part VI, I show that Ms. Tsingine's death reveals much more than a case of local law enforcement actualizing their biases while on patrol. Her death is an example of the state's desire to protect itself from sovereignty threat by attempting to control the generative power of Native women whose bodies reproduce tribal sovereignty and threaten the state's (il)legitimate claims of territorial sovereignty. I conclude by emphasizing the efforts of tribal sovereigns to protect the health, welfare, and safety of their tribal members against unlawful treatment at the hands of local, state, and federal law enforcement as one possible direction forward, even when this violence takes place off reservation lands. Throughout, I push back against the silencing of Native women and tribes and remember Ms. Tsingine publicly as an Indigenous mother, daughter, and relative.

I. WOMEN OF COLOR AND POLICE VIOLENCE

Despite a growing awareness of the persistence of police violence across the nation in recent years, many gaps remain in the cultural narratives that predominate discussions of police violence, especially around intersectional issues of race, class, gender, and gender-based sexual violence. These gaps tend to situate police violence as a male experience, although routine and systemic violence at the hands of law enforcement is common among women of color.¹⁰ For example, recent data of police stops by the New York City Police Department from 2009–2014 show that Black and Latinx men and women are stopped by police at similarly high rates.¹¹ Despite this similarity, media and research narratives regarding stop and frisk policies focus almost exclusively on the experiences of Black males.¹² This lack of attention to police encounters with women of color promotes invisibility and obscures the prevalence of state-sanctioned gender-based sexual violence, including rape and unnecessary strip and cavity searches.¹³ Consequently, sexual misconduct disproportionately affects women of color and is the “second-most reported form of police misconduct, after excessive force.”¹⁴ These cases remain underreported for many reasons including

¹⁰ See generally ANDREA J. RITCHIE, *INVISIBLE NO MORE: POLICE VIOLENCE AGAINST BLACK WOMEN AND WOMEN OF COLOR* (2017); see also Armeta Rogers, *How Police Brutality Harms Mothers: Linking Police Violence to the Reproductive Justice Movement*, 12 HASTINGS RACE & POVERTY L.J. 205, 211, 217–20, 227–28 (2015).

¹¹ Andrea Ritchie & Delores Jones-Brown, *Policing Race, Gender, and Sex: A Review of Law Enforcement Policies*, 27 WOMEN & CRIM. JUST. 21, 22–23 (2017).

¹² KIMBERLÉ WILLIAMS CRENSHAW ET AL., *SAY HER NAME: RESISTING POLICE BRUTALITY AGAINST BLACK WOMEN* 4 (2015).

¹³ See RITCHIE, *supra* note 10, at 104, 110, 112.

¹⁴ Dara E. Purvis & Melissa Blanco, *Police Sexual Violence: Police Brutality, #MeToo, and Masculinities*, 108 CALIF. L. REV. 1487, 1491 (2020); Ritchie & Jones-Brown, *supra* note 11, at 24; CATO INST.'S NAT'L POLICE MISCONDUCT REPORTING PROJECT, 2010 ANNUAL REPORT 1–2 (2010), <https://ftp.leg.state.nv.us/App/NELIS/REL/77th2013/ExhibitDocument/>

fear among victims who believe that they will not be protected if and when they report sexual violence at the hands of police.¹⁵

The invisibility of raced, classed, and gendered intersectional identities interacts with additional social locations including sexual orientation. All too often, for example, members of the LGBTQ community are deemed disordered and deviant because their positionality disrupts heteronormative attachments to a male-female binary. Relatedly, this notion of deviance contributes to the invisibility of LGBTQ experiences with police, especially the police violence they are likely to receive when this community calls out to the law for assistance.¹⁶ What these insights reveal more broadly is that the severity, frequency, and manifestation of police violence differ as a result of one's positionality within hierarchical social schemas including race, class, gender, sexual orientation, citizenship status, age, and ability status among others.

In addition to shaping one's likely exposure to police violence, predominate cultural schemas associated with diverse social groups also influence one's vulnerability to, and subsequent lack of protection by, the settler-state. Schemas often rely on stereotypes that are informed by the use and dissemination of controlling images—raced, classed, and gendered media depictions of a racial or ethnic group—that educate society about what whiteness is and what it is

OpenExhibitDocument?exhibitId=1240&fileDownloadName=o0220ab146_reejb.pdf [perma.cc/G555-NYDC].

¹⁵ The framing of women's bodies as disorderly and deviant is normalized in scholarly publications as well. A 2019 meta-analysis of the *Women and Criminal Justice* journal concluded that in the journal's thirty-year history, most articles examined women and girls as offenders, opposed to a focus on women and girls' experiences as victims of violence. See Brianne M. Posey et al., *Thirty Years of Scholarship in the Women and Criminal Justice Journal: Gender, Feminism, and Intersectionality*, 30 *WOMEN & CRIM. JUST.* 5, 6, 8–9, 21 (2020).

¹⁶ Police violence often includes harassment, physical assault, and sexual assault against LGBTQ youth and members of the transgender community, populations that experience disproportionate rates of poverty often leading to over policing. Despite the violence of these encounters with law enforcement, these experiences rarely receive recognition in mainstream media, academia, and national movements for social change. See Ritchie & Jones-Brown, *supra* note 11, at 23–24, 26; JAIME M. GRANT ET AL., NAT'L. CTR. FOR TRANSGENDER EQUAL. & NAT'L. GAY & LESBIAN TASK FORCE, *INJUSTICE AT EVERY TURN: A REPORT OF THE NATIONAL TRANSGENDER DISCRIMINATION SURVEY 162* (2011), https://www.transequality.org/sites/default/files/docs/resources/NTDS_Report.pdf [perma.cc/PBT6-3584]; see also Lisa Fedina et al., *Police Violence Among Women in Four U.S. Cities*, 106 *PREVENTIVE MED.* 150, 151–53 (2018); *Policing*, LAMBDA LEGAL, https://www.lambdalegal.org/criminal-justice-initiatives/policing#_ftnref15 [perma.cc/GR46-T3VE]; QUEERS FOR ECON. JUST., *A FABULOUS ATTITUDE: LOW-INCOME LGBTGNC PEOPLE SURVIVING AND THRIVING ON LOVE, SHELTER, & KNOWLEDGE 3* (2010), <https://thevoidgroup.com/wp-content/uploads/2015/10/afabulousattitudefinalreport.pdf> [perma.cc/ZZE9-GU6H]. See generally RITCHIE, *supra* note 10.

not.¹⁷ These harmful images reinforce racist and sexist beliefs about social groups and are used to justify social and economic inequalities.¹⁸

Black and Native women's experiences with police are uniquely impacted by the convergence of controlling images and gaps in cultural narratives about police violence.¹⁹ Both groups' experiences also remain underreported, are made secondary to the experiences of men and white women, and situate police as settler-state actors with coercive control of their bodies. Importantly, intersectional analyses about their encounters with police offer an opportunity to confront the violence of enslavement and genocide that undergird these narrative gaps. This analysis also highlights the need for policing studies to examine how sociohistorical context informs contemporary encounters between police and women of color. For these reasons, among many others, a discussion of state-sanctioned police violence against Native women is incomplete without an understanding of similar or adjacent patterns of violence against Black women in the United States. I turn briefly to a few controlling images to understand how these narratives inform, and negatively animate, encounters with police and state violence for these two groups of women.

A. *Controlling Images and Black Women*

Activists, organizers, and scholars have worked tirelessly to galvanize movements such as #SayHerName to remedy gaps in cultural narratives about police violence against Black women.²⁰ One example of these efforts is a 2015 African American Policy Forum ("AAPF") report entitled *Say Her Name: Resisting Police Brutality Against Black Women*, which draws attention to the influence of racialized and gender-based structures of domination on police encounters.²¹ Rightfully so, this lens argues for a historical examination of the interconnectedness between slavery and slave patrols with contemporary police employment practices that perpetuate violence against Black women.

¹⁷ Patricia Hill Collins, *Controlling Images and Black Women's Oppression*, in *SEEING OURSELVES: CLASSIC, CONTEMPORARY, AND CROSS-CULTURAL READINGS IN SOCIOLOGY* 231, 231 (John J. Macionis & Nijole V. Benokraitis eds., 5th ed. 2001).

¹⁸ *Id.* at 236–37.

¹⁹ RITCHIE, *supra* note 10, at 2–3.

²⁰ In a 2015 African American Policy Forum ("AAPF") report entitled *Say Her Name: Resisting Police Brutality Against Black Women*, organizers explained the invisibility of Black women in this way:

The erasure of Black women is not purely a matter of missing facts. Even where women and girls are present in the data, narratives framing police profiling and lethal force as exclusively male experiences lead researchers, the media, and advocates to exclude them. For example . . . [i]n New York City—one of the jurisdictions with the most extensive data collection on police stops—the rates of racial disparities in stops, frisks, and arrests are identical for Black men and Black women. However, the media, researchers, and advocates tend to focus only on how profiling impacts Black men.

See CRENSHAW ET AL., *supra* note 12, at 4.

²¹ *Id.*

What this lens might also suggest is the need to evaluate how harmful stereotypes about Black women in the past continue to inform the raced, classed, and gendered controlling images about Black women in society today, all of which have been used to rationalize unwarranted violence against them. Often times, controlling images portray Black women as mummies, matriarchs, and hypersexual jezebels,²² characterizations that attempt to normalize subordination in various aspects of social life. These ideas are linked with the malicious treatment of Black women under slavery. For example, Black women were characterized as promiscuous,²³ dangerous, and animalistic, all of which rationalized unspeakable violence including rape. This violence simultaneously dehumanized Black women *and* expanded the footprint of the settler-state by fueling the American economy,²⁴ reinforced by the assertion that Black women were unable to be raped²⁵ because historically, they were not subject to legal protections.²⁶ Slave patrols, a precursor to modern policing in the U.S., exacerbated these stereotypes by publicly brutalizing enslaved peoples, normalizing state violence on Black bodies by law enforcement.²⁷ Slave patrollers would also routinely enter slave quarters and rape women and girls with impunity.²⁸

These dangerous stereotypes continue to shape police encounters with Black women in profound ways. Today, the controlling image of Black women as sexual temptresses with a deviant sexuality informs how and why officers approach and incorrectly assume that Black women are engaged in sex or drug work.²⁹ They also inform the continued brutalization and sexual assault of Black women by police,³⁰ much of which likely goes underreported. Erasure plays an important role in extending the violence of controlling images. In 2015, for example, Officer Daniel Holtzclaw was prosecuted for sexually assaulting thirteen Black women and was found guilty on several counts. There was only scant media coverage of this trial, contributing to the framing of

²² PATRICIA HILL COLLINS, *BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT* 72–73, 81 (2d ed. 2000).

²³ See Nishaun T. Battle, *From Slavery to Jane Crow to Say Her Name: An Intersectional Examination of Black Women and Punishment*, 15 *MERIDIANS* 109, 110, 113 (2016); Patricia Hill Collins, *Intersectionality's Definitional Dilemmas*, 41 *ANN. REV. SOCIO.* 1, 8 (2015).

²⁴ Michelle S. Jacobs, *The Violent State: Black Women's Invisible Struggle Against Police Violence*, 24 *WM. & MARY J. WOMEN & L.* 39, 44 (2017).

²⁵ Battle, *supra* note 23, at 116; Jacobs, *supra* note 24, at 47.

²⁶ Brea C. Willingham, *Black Women and State-Sanctioned Violence: A History of Victimization and Exclusion*, 48 *CANADIAN REV. AM. STUD.* 77, 79 (2018).

²⁷ CRISTA E. NOEL & OLIVIA PERLOW, *AMERICAN POLICE CRIMES AGAINST AFRICAN WOMEN AND WOMEN OF COLOR* 1 (2014), https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/USA/INT_CERD_NGO_USA_17744_E.pdf [perma.cc/AV5H-N2A9].

²⁸ *Id.* at 2.

²⁹ See Nnennaya Amuchie, *'The Forgotten Victims': How Radicalized Gender Stereotypes Lead to Police Violence Against Black Women and Girls: Incorporating an Analysis of Police Violence into Feminist Jurisprudence and Community Activism*, 14 *SEATTLE J. FOR SOC. JUST.* 617, 647–48 (2016); Ritchie & Jones-Brown, *supra* note 11, at 23.

³⁰ See Willingham, *supra* note 26, at 85.

Black women and girls as less deserving of the state and public's protection³¹ while also implying that these police behaviors are warranted, exempt from police discipline, and ultimately acceptable.³²

B. *Controlling Images and Indigenous Women*

Despite Native women being killed by police at twice the rate of white women,³³ these acts of violence go vastly underreported in national media.³⁴ Historical stereotypes about Native People in the U.S., as well as the violence of settler colonialism that made the U.S. possible, both contribute to this persistent invisibility surrounding Native Peoples harmed and killed by police. These stereotypes also inform the raced, classed, and gendered controlling images about Native men and women prevalent in society today. Controlling images often depict Native men as warriors, savages, criminals, drunks, or relics of an otherwise extinct community. These images attempt to normalize Native Peoples as deviant, undeserving, and irrelevant to the future of American society. Controlling images often portray Native women as hyper-sexualized non-persons that tempt white men (analogous to the figure of the Black “Jezebel”), disidentified heroines willing to risk their lives for the contentment of white men, or wise elders who gift others with knowledge before their inevitable passing. In each of these images, the figure of “the Indian” is always disappearing or deserving of the systemic invisibility they experience.

Settler socialization takes many forms including federal policy, children's games, motion pictures, and sporting events. For example, many Americans are familiar with the racist slur, “The only good Indian is a dead Indian,” which encapsulates the intent of nineteenth century federal policy designed to assimilate and eliminate Native Peoples.³⁵ These racist ideas flowed from federal politicians and informed how children and the arts conceptualized and normalized stereotypes against Native Peoples. Many young people in the U.S. grew

³¹ *Id.* at 84–85.

³² CRENSHAW ET AL., *supra* note 12, at 7.

³³ Edwards et al., *supra* note 7, at 16794.

³⁴ See Jean Reith Schroedel & Roger J. Chin, *Whose Lives Matter: The Media's Failure to Cover Police Use of Lethal Force Against Native Americans*, 10 RACE & JUST. 150, 165 (2020).

³⁵ Gayatri Devi, *Mainstreaming Racial Slurs: White Nationalism Comes Home to Roost*, N.D. Q. (June 1, 2020), <https://ndquarterly.org/2020/06/01/mainstreaming-racial-slurs-white-nationalism-comes-home-to-roost> [perma.cc/A324-E994] (“We hear this slur for the first time in a debate on a House Appropriations Bill in 1868 from the mouth of a Minnesota congressman James Michael Cavanaugh: ‘The gentleman from Massachusetts may denounce the sentiment as atrocious, but I will say that I like an Indian better dead than living. I have never in my life seen a good Indian—and I have seen thousands—except when I have seen a dead Indian.’ Cavanaugh went on to affirm that ‘I believe in the policy that exterminates the Indians, drives them outside the boundaries of civilization, because you can’t civilize them . . .’”). See generally Wolfgang Mieder, “*The Only Good Indian is a Dead Indian*”: *History and the Meaning of a Proverbial Stereotype*, 106 J. AM. FOLKLORE 38 (1993).

up playing “Cowboys and Indians,” in which the explicit goal of the game is to capture and “kill” the Indian. These racist ideas were reinforced in the silver screen story lines about American Indian inferiority that became ubiquitous in the western movies that gave rise to Hollywood. Major motion pictures of the era, including *The Massacre* in 1912 and *The Battle at Elderbush Gulch* in 1913, were often constructed around a narrative in which violence against Native Peoples was intentional and permissible.³⁶ In the contemporary, violent stereotypes persist in several venues including the dehumanizing use of Native Peoples as sports team mascots. These images normalize Native death and physical harm, and have historically filled stadiums across the country with tomahawk chops, “scalped tickets,” warpaint, and faux headdresses—all which function to subordinate, ostracize, and devalue the humanity of Native Peoples.³⁷

Settler colonialism – an ongoing social process that shapes the formation of race and gender by controlling land, resources, and labor using coercion and violence – permeates this harmful socialization³⁸ and attempts to erase Indigenous personhood (socially and politically). For example, in both historical and contemporary settings, controlling images reinforce racist beliefs about Native inferiority and attempt to justify centuries of settler violence against Native Peoples including genocide, assimilation, dispossession, and family separation to “save” or “civilize” Native children. In this way, controlling images attempt to position whiteness as culturally superior and suggest that this purported superiority is threatened by temptations from uncivilized Native men and/or promiscuous Native women who are undeserving of care and protection. Throughout, controlling images mobilize stereotypes that converge with settler colonial “logic[s] of elimination”³⁹ to support the belief that the settler-state is the “true democracy” and most capable of stewarding Indigenous homelands and resources.

As the militarized violence against Native Peoples central to European colonization⁴⁰ persisted into the contemporary, so too have the settler anxieties about indigeneity, race, class, and gender. Police and police agencies are central to understanding where and how the manifestation of these anxieties take

³⁶ For an overview of these themes, see MICHAEL HILGER, *NATIVE AMERICANS IN THE MOVIES: PORTRAYALS FROM SILENT FILMS TO THE PRESENT 1–2* (2016), as well as the films *THE MASSACRE* (Biograph Company 1912) and *THE BATTLE OF ELDERBUSH GULCH* (Biograph Company 1913); see also *REEL INJUN* (National Film Board of Canada 2009).

³⁷ See Kevin Bruyneel, *Race, Colonialism, and the Politics of Indian Sports Names and Mascots: The Washington Football Team Case*, 3 *NATIVE AM. & INDIGENOUS STUD.* 1, 2, 6 (2016).

³⁸ See generally Evelyn Nakano Glenn, *Settler Colonialism as Structure: A Framework for Comparative Studies of U.S. Race and Gender Formation*, 1 *SOCIO. RACE & ETHNICITY* 54 (2015); SARAH DEER, *THE BEGINNING AND END OF RAPE: CONFRONTING SEXUAL VIOLENCE IN NATIVE AMERICA* (2015).

³⁹ See generally Wolfe, *supra* note 9.

⁴⁰ See RITCHIE, *supra* note 10, at 13–14.

root. Today, for example, fatal encounters (specifically, fatal injury by legal intervention) at the hands of police are most common in Western states, including New Mexico, Oregon, and Nevada.⁴¹ The West is also home to more tribal reservations than anywhere else in the country.

Fatal encounters with police intersect with over-policing and under-policing in Native communities. In a qualitative study with nearly 300 Natives from three U.S. regions, researchers found that over-policing in Native communities results in an over-representation in the justice system and increased group hostility towards law enforcement.⁴² Moreover, under-enforcement allows for Indigenous victimization without justice and over-enforcement based on stereotypes of Indigenous criminality, resulting in police harassment and brutality.⁴³ This study explains that “[p]olice represent the frontline troops in the effort to maintain the place of racial minorities. As such, they carry into their interactions with Native Americans—and any other racialized communities—the same stockpile of stereotypes and images that shape the broader patterns of cultural imperialism.”⁴⁴ These stereotypes affect all aspects of social life, including whether Native complaints against police violence will be legitimated and whether Native Peoples will themselves become the target of police harassment.⁴⁵ Drawing from these same interview data, additional studies find that bias-related hate crimes against Native Peoples abound, and that in many cases, much of this violence goes unreported or is committed by the very law enforcement officials who should be providing the assistance that community members deserve.⁴⁶ Much like the case of Officer Daniel Holtzclaw’s sexual assault of Black women, officers are not trusted and often enact violence against the very Native Peoples they are hired to serve.

Research also shows that rates of violence against Native Peoples are alarmingly high, and Native Peoples in the U.S. and Canada experience the highest homicide rate in both countries.⁴⁷ Indigenous women and girls also go missing at unprecedented rates, indicating that settler-states maintain a normalized indifference to the prevalence of violence against Indigenous women and

⁴¹ Jonathan Thompson, *Killings by Cops Are Much More Common in Western States*, HIGH COUNTRY NEWS (Dec. 12, 2014), <https://www.hcn.org/articles/the-west-is-rife-with-killings-by-cops> [perma.cc/KTQ2-9VA8].

⁴² Barbara Perry, *Impacts of Disparate Policing in Indian Country*, 19 POLICING & SOC’Y 263, 265–68 (2009).

⁴³ Barbara Perry, *Nobody Trusts Them! Under- and Over-Policing Native American Communities*, 14 CRITICAL CRIMINOLOGY 411, 412 (2006).

⁴⁴ *Id.* at 422.

⁴⁵ *Id.* at 437.

⁴⁶ See BARBARA PERRY, *SILENT VICTIMS: HATE CRIMES AGAINST NATIVE AMERICANS* 6 (2008).

⁴⁷ Lisa Monchalin et al., *Homicide and Indigenous Peoples in North America: A Structural Analysis*, 46 AGGRESSION & VIOLENT BEHAV. 212, 214–15 (2019).

girls.⁴⁸ This indifference is not simply apathy. This racialized response is embedded in a history of anti-Indigenous violence that treats Native women's lives as disposable and uses mechanisms of gendered and racialized violence in the social construction of nationhood.⁴⁹ Recent scholarship on state and police violence against Native Peoples broadly, and Ms. Tsingine specifically, connects contemporary encounters between law enforcement and Native women with racial terror and settler-colonial desires to maintain white property interests.⁵⁰ This lens interrogates the relationship between the nation's founding history of murder, surveillance, and incarceration, with the use of colonial militias and Indian agents to capture and kill American Indians in the past and present. When these causes are made invisible to the public, the consequences of police violence that uniquely impact Native women also remain hidden from view.

II. SETTLER COLONIALISM AND SETTLER-STATE VIOLENCE

With a sense of the racially disproportionate nature of police violence, and the controlling images used to justify and normalize this violence against women of color, I zoom out from these experiences to examine settler colonialism as the underlying social structure that informs contemporary police violence. Settler colonialism is a distinct form of colonialism that is characterized by coercive land acquisition, the forcible removal of Indigenous Peoples, and the repopulation of Indigenous lands with settlers.⁵¹ The process of settler colonialism is ongoing, as the state continuously enacts violence against tribal nations to maintain sovereign and territorial legitimacy as well as secure its economic interests in the maintenance of private property. To this end, settler-states actively build and reify settler institutions that reject tribal sovereignty and romanticize the violence of Indigenous land theft as a necessary and inevitable step toward the creation of a "civilized" new nation. Settler-colonial violence in North America also fueled racial formation, racialization, and racialized social hierarchies—all of which were designed to transform non-white social groups into subordinate, minoritized, and threatening peoples in the eyes of the settler-state.⁵² The United States, Canada, and Australia, among others, are settler-colonial states that continue to derive legal and political authority from colonial violence.⁵³

⁴⁸ KARA GRANZOW, *INVESTED INDIFFERENCE: HOW VIOLENCE PERSISTS IN SETTLER COLONIAL SOCIETY* 2–3 (2020).

⁴⁹ *Id.* at 3.

⁵⁰ Sherene H. Razack, *Settler Colonialism, Policing and Racial Terror: The Police Shooting of Loreal Tsingine*, 28 *FEMINIST LEGAL STUD.* 1, 2 (2020).

⁵¹ Glenn, *supra* note 38, at 57. *See generally* Lorenzo Veracini, *Introducing Settler Colonial Studies*, 1 *SETTLER COLONIAL STUD.* 1, 1, 3 (2011); Wolfe, *supra* note 9.

⁵² *See* MICHAEL OMI & HOWARD WINANT, *RACIAL FORMATION IN THE UNITED STATES* 105–07 (2014).

⁵³ *See* Ronald J. Horvath, *A Definition of Colonialism*, 13 *CURRENT ANTHROPOLOGY* 45, 47 (1972).

Settler-state violence is maintained in contemporary society using social, legal, economic, and psychological means. For example, the state implicitly normalizes and justifies settler violence by creating laws that appear race-neutral but in effect disproportionately impact the health and safety of minoritized populations.⁵⁴ In the case of American Indians, the federal government has explicitly refused to respect Indigenous sovereignty, honor treaties, and invest in critical infrastructure on and near tribal lands to promote the health and safety of tribal communities as required by the hundreds of treaties signed between the U.S. and tribal nations.⁵⁵ Settler-state violence is also maintained by embedding trauma into generations of Indigenous families by promoting federal policies that support family separation and cultural assimilation.⁵⁶

The settler-state attempts to make sense of its violent history while disappearing Natives at the same time. “[S]ettler moves to innocence,” which allow settlers to identify and quickly relinquish feelings of guilt associated with settler colonialism,⁵⁷ are one way this is accomplished. Moves to innocence sidestep the realities of settler violence and ultimately reinforce presumptions of Native death into contemporary society’s understanding of Native Peoples. Indigenous Studies scholars Eve Tuck and Wayne Yang provide this vivid description of the motivating logics of Indigenous disappearance:

Everything within a settler colonial society strains to destroy or assimilate the Native in order to disappear them from the land—this is how a society can have multiple simultaneous and conflicting messages about indigenous peoples, such as all Indians are dead, located in faraway reservations, that contemporary In-

⁵⁴ While there are several relevant examples, here I am thinking specifically of the War on Drugs and redlining. See, e.g., Elizabeth Hinton et al., *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System*, VERA EVIDENCE BRIEF, May 2018, at 3, <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf> [perma.cc/92MV-9985] (“But even laws that are neutral on their face can disparately impact black people. The ‘War on Drugs,’ for example, inspired policies like drug-free zones and habitual offender laws that produced differential outcomes by race.”); Dayna Bowen Matthew et al., *Time for Justice: Tackling Race Inequalities in Health and Housing*, BROOKINGS (Oct. 19, 2016), <https://www.brookings.edu/research/time-for-justice-tackling-race-inequalities-in-health-and-housing/> [perma.cc/C4DK-C3NF] (“After being denied home loans before the civil rights era, black Americans have continued to be denied affordable credit, and have been pushed towards sub-prime loans. SunTrust, Wells Fargo, and Bank of America have in recent years settled with the Justice Department (for \$21 million, and \$175 million, and \$335 million respectively) for pushing black homebuyers into subprime mortgage deals, overcharging them for home loans, and other breaches.”).

⁵⁵ U.S. COMM’N ON C.R., BROKEN PROMISES: CONTINUING FEDERAL FUNDING SHORTFALL FOR NATIVE AMERICANS 1, 12–13, 15 (2018), <https://www.usccr.gov/pubs/2018/12-20-Broken-Promises.pdf> [perma.cc/83P6-UAZL].

⁵⁶ See generally Theresa Rocha Beardall, *Adoptive Couple v. Baby Girl: Policing Authenticity, Implicit Racial Bias, and Continued Harm to American Indian Families*, 40 AM. INDIAN CULTURE & RSCH. J. 119 (2016), <https://meridian.allenpress.com/aicrj/article-abstract/40/1/119/211275/Adoptive-Couple-v-Baby-Girl-Policing-Authenticity> [perma.cc/E545-GDCR].

⁵⁷ Eve Tuck & K. Wayne Yang, *Decolonization Is Not a Metaphor*, 1 DECOLONIZATION: INDIGENEITY, EDUC. & SOC’Y 1, 9 (2012).

indigenous people are less indigenous than prior generations, and that all Americans are a “little bit Indian.”⁵⁸

Additional strategies used to disappear Native Peoples include settler nativism, fantasizing adoption, colonial equivocation, and “at risk-ing” and “asterisk-ing”—all of which function to find some type of elimination-based solution to the “Indian Problem.”⁵⁹ Tuck and Yang explain that these acts of “disappear[ing] the [Indian]” are less about pretending that Natives were always non-existent but rather have more to do with how settlers justify their claims to stolen Indigenous land and resources.⁶⁰ These efforts to disappear, dehumanize, and normalize the absence of Native Peoples affect individuals, organizations, and entire tribal nations. In the present case of Ms. Tsingine, I suggest that these logics can and are scaled to silence Native women *and* their tribal communities in the face of police violence.⁶¹ In the following section, I draw from intersectionality theory to examine indigeneity as a social location that resists settler moves to innocence by centering the ongoing threat of settler colonialism on Indigenous lives.

III. INDIGENEITY IS A SOCIAL LOCATION

With settler colonialism situated as the enabling social structure that underlies police violence, I turn now to intersectionality theory to introduce and examine indigeneity as a social location. I do so to show how the persistent invisibility surrounding the murder of Native women by police is entangled within settler-anxieties about indigeneity, race, class, and gender. This approach is both novel and necessary to understand how indigeneity intersects and interacts with “other categories of difference” in a web of overlapping systems of oppression that affect one’s life outcomes.⁶² Legal scholar Kimberlé Crenshaw, an

⁵⁸ *Id.*

⁵⁹ *Id.* at 3–4.

⁶⁰ *Id.* at 6.

⁶¹ Wolfe, *supra* note 9, at 388–89, 399.

⁶² Kathy Davis, *Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful*, 9 FEMINIST THEORY 67, 68 (2008). The broad, malleable nature of intersectionality created a theory that is amenable to critical analysis involving multiple identities and forms of oppression; *see id.* at 74. For example, intersectional studies grew from theorizing race and gender to theorizing a variety of social locations, including sexual orientation and immigration status and systems of power, law, and politics across the disciplines. *See* Devon W. Carbado et al., *Intersectionality: Mapping the Movements of a Theory*, 10 DU BOIS REV. SOC. SCI. RSCH. ON RACE 303, 304 (2013). Methodologically, intersectionality draws from this topical richness and exposes complex relationships between people, law, and the state. As a result, intersectionality can be used to theorize the unique social location of a singular multiply marginalized group, such as Wingfield’s (2009) and Connell’s (2014) studies that show Black men’s and gay men’s inability to ascend the glass escalator in medicine and education respectively. Aida Harvey Wingfield, *Racializing the Glass Escalator: Reconsidering Men’s Experiences with Women’s Work*, 23 GENDER & SOC’Y 5, 6 (2009); CATHERINE CONNELL, *SCHOOL’S OUT: GAY AND LESBIAN TEACHERS IN THE CLASSROOM* 179 (2015). Conversely, intersectionality can also be used to compare the

authority on civil rights and critical race theory, coined the term “intersectionality” while working within the legal contexts of employment discrimination and gender-based violence against Black women,⁶³ writing of “the need to account for multiple grounds of identity.”⁶⁴ Emerging from Black feminist thought, intersectionality illustrates that socially constructed categories have meaning and consequences, and that power is central to the construction of these categories. Thus, naming and claiming one’s social location can be an exercise in subversion, resistance, and *agency*.⁶⁵ A hallmark of this perspective is the rejection of additive models of oppression, opting instead for an understanding of oppression as a blended, co-occurring framework.⁶⁶

In this Article, I argue that indigeneity is a unique social location that (1) differs from race, class, and gender; (2) interacts and overlaps with the lived realities, advantages, and disadvantages associated with these three prominent categories of sociological analysis; and (3) must be included in the larger lexicon of power relations and categories of difference that are central to intersectional analysis. This is especially true of analysis of police violence against women of color.

Aileen Moreton-Robinson, Aboriginal scholar and leading authority in Indigenous Studies and Indigenous feminisms, explains the importance of analyzing indigeneity among a collection of intersecting categorical experiences when she theorizes an Indigenous women’s standpoint theory.⁶⁷ She explains that In-

specific location of multiple groups, including Indigenous Peoples. See Hae Yeon Choo & Myra Marx Ferree, *Practicing Intersectionality in Sociological Research: A Critical Analysis of Inclusions, Interactions, and Institutions in the Study of Inequalities*, 28 SOCIO. THEORY 129, 130, 136 (2010); Leslie McCall, *The Complexity of Intersectionality*, 30 SIGNS: J. WOMEN CULTURE & SOC’Y 1771, 1773–74 (2005).

⁶³ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 139 (1989); Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241, 1242–43 (1991).

⁶⁴ Crenshaw, *Mapping the Margins: Intersectionality, Identity, Politics, and Violence Against Women of Color*, *supra* note 63, at 1245.

⁶⁵ To this point, “intersectionality contests conventional ways of thinking about domination, subordination, and resistance” by approaching “privilege and oppression as concurrent and relational” that affect “within-group differences” and “between-group power asymmetries.” See VIVIAN M. MAY, PURSING INTERSECTIONALITY, UNSETTLING DOMINANT IMAGINARIES 4 (2015). While intersectionality scholarship tends to engage contemporary forms of “interlocking oppression,” there is a long trajectory of Black women intellectuals theorizing “non-hierarchical models of race-gender-sexuality-class politics,” including Sojourner Truth, Harriet Tubman, Mary Church Terrell, Ida B. Wells, and Anna Julia Cooper. *Id.* at 55–56; see Patricia Hill Collins, *Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought*, 33 SOC. PROBS. 14, 19 (1986).

⁶⁶ Choo & Ferree, *supra* note 62, at 130–31; COLLINS, *supra* note 22, at xi; Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, *supra* note 63.

⁶⁷ See generally Aileen Moreton-Robinson, *Towards an Australian Indigenous Women’s Standpoint Theory*, 28 AUSTRAL. FEMINIST STUD. 331 (2013).

Indigenous sovereignty is central to this perspective, as is the presence of patriarchal white sovereignty and its persistent attempts to erase and make invisible the power of Indigenous governance.⁶⁸ More broadly, Indigenous feminisms center Indigenous women's relationships with systems of power, in ways that illustrate "how both racism and sexism fuse" under systems of settler-colonialism and patriarchy.⁶⁹ Some scholars have taken up critical analyses about the diversity of difference within Indigenous communities,⁷⁰ and others have argued for the use of a "[r]ed intersectionality"⁷¹ framework in order to foreground Indigenous resistance, sovereignty, and anti-colonialism on issues of violence against Indigenous women and girls.⁷²

My approach builds upon Indigenous feminist teachings and argues for the inclusion of indigeneity as an additional axis within Crenshaw's theory of intersectionality. By linking intersectionality theory⁷³ with federal Indian law scholar Addie Rolnick's "integrated [Indianness] framework,"⁷⁴ which recognizes American Indian status as both a racial and political status, I situate indi-

⁶⁸ *Id.* at 340 ("It generates its problematics through Indigenous women's knowledges and experiences acknowledging that intersecting oppressions will situate us in different power relations and affect our different individual experiences under social, political, historical and material conditions that we share either consciously or unconsciously. These conditions and the sets of complex relations that discursively shape us in the everyday are also complicated by our respective cultural, sexual, racialised, abled and class differences.").

⁶⁹ Joyce Green, *Taking Account of Aboriginal Feminism*, in *MAKING SPACE FOR INDIGENOUS FEMINISM* 23 (Joyce Green ed. 2007); Moreton-Robinson, *supra* note 67, at 340.

⁷⁰ See Torjer A. Olsen, *This Word Is (Not?) Very Exciting: Considering Intersectionality in Indigenous Studies*, 26 *NORDIC J. FEMINIST & GENDER RSCH.* 182, 194 (2018) ("At the same time, whiteness and non-whiteness, indigeneity and non-indigeneity, and even women and men, are not binaries. There are spaces in between. Within indigenous communities there is diversity and difference. Even though indigenous peoples are seen as belonging to marginalized and vulnerable communities, there are also differences within them in terms of power as well as internal relations of privilege and oppression.").

⁷¹ Natalie Clark, *Shock and Awe: Trauma as the New Colonial Frontier*, 5 *HUMAN.* 1, 6–7 (2016).

⁷² Clark and other Indigenous feminist scholars have argued that Indigenous theorists have long used an intersectional framework before Crenshaw coined the term. *See id.* Clark explains that "Zitkala-Sa and other Indigenous feminists remind us again and again in their writing that violence has always been gendered, aged, and linked to access to land." *See* Natalie Clark, *Red Intersectionality and Violence-Informed Witnessing Praxis with Indigenous Girls*, 9 *GIRLHOOD STUD.* 46, 49 (2016). I do not enter that conversation because Clark's approach to intersectionality is not the inclusion of indigeneity as an additional axis into Crenshaw's theory of intersectionality; rather, it is a recognition that the intersection of language, sovereignty, land, and colonialism shape a consciousness that is unique to Indigenous peoples. Clark's definition of red intersectionality is "grounded in five principles: respecting sovereignty and self-determination, local and global land-based knowledge, holistic health within a framework that recognizes the diversity of Indigenous health, agency and resistance, and approaches that are rooted within specific Indigenous nations relationships, language, land, and ceremony." *See* Clark, *supra* note 71, at 7.

⁷³ *See generally* Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, *supra* note 63; Collins, *supra* note 23, at 3.

⁷⁴ Addie C. Rolnick, *The Promise of Mancari: Indian Political Rights as Racial Remedy*, 86 *N.Y.U. L. REV.* 958, 1040–41, 1043–44 (2011).

geneity as a social location that intersects with race and racism. This intersection guides my analysis of American Indian women's experiences with policing and state violence.⁷⁵ This theoretical coupling invites critical analyses of further intersections—including citizenship status, ability, and sexual orientation, among other social locations—that create an interlocking system of social advantages and disadvantages particular to the American Indian experience. Importantly, I emphasize that indigeneity is not a racial or ethnic category.⁷⁶ I also resist the tendency to frame Indianness as a political status that is wholly distinct from race. Indigeneity is a relational identity that individuals and communities hold with one another, homelands, and non-human kin. Instead, I wade into the conversation that often situates indigeneity and race as opposing concepts and argue that the two are better understood as distinct, intersecting social locations. I frame these concepts in this manner because “efforts to disaggregate race and Indianness obscures the complex dimensions of belonging . . . that define indigeneity and tribal groups.”⁷⁷ It also obscures the unique anti-Indigenous racism that targets these communities.

Theorizing indigeneity using an intersectional lens invites comparative analysis about Native women's perceived threat against the settler-state. With this framing, we can now return to Ms. Tsingine and highlight how her intersectional identities were used to normalize her death and erase her personhood. In doing so, I create and employ a unique set of tenets that guide my analysis. Specifically, I suggest that an intersectional analysis of state violence should (1) be rooted in an “oppositional consciousness”⁷⁸ to white supremacy and hierarchical power relationships that erase non-white communities; (2) engage categories of difference as drivers of institutional inequalities relative to U.S. capitalism, labor, citizenship, and nationalism;⁷⁹ and (3) promote reflexivity, subjectivity, and relationality to macro-level structures and micro-level interactions of oppression and privilege. Grounded in these tenets, I use my intersec-

⁷⁵ Olsen, *supra* note 70, at 191.

⁷⁶ See Karen Soldatic, *Postcolonial Reproductions: Disability, Indigeneity and the Formation of the White Masculine Settler State of Australia*, 21 J. FOR STUD. RACE NATION & CULTURE 53, 56–60, 64 (2015) (Soldatic distinguishes race and indigeneity and argues that unlike race, indigeneity includes dispossession; “[w]hile race is a key feature of settler-indigenous relations, it also sidesteps processes of dispossession where the principal site of difference for indigenous people under white-settler arrangements is the indigenous relationship to the land within the settler colony”); Cameron Greensmith, *Pathologizing Indigeneity in the Caledonia “Crisis,”* 1 CAN. J. DISABILITY STUD. 19, 21, 27–28, 34–37 (2012). From this indigenous standpoint, any critical engagement with theories of colonial relations needs to foreground the relationship of race as it stands in relation to indigenous land and indigenous identity, culture and embodiment, and indigenous territorial governance. See LINDA TUHIWAI SMITH, *DECOLONIZING METHODOLOGIES: RESEARCH AND INDIGENOUS PEOPLES* 47–49 (2d ed. 2012).

⁷⁷ Rolnick, *supra* note 74, at 967.

⁷⁸ Chela Sandoval, *U.S. Third World Feminism: The Theory and Method of Oppositional Consciousness in the Postmodern World*, 10 GENDERS 1, 1–4 (1991).

⁷⁹ Joane Nagel, *Ethnicity and Sexuality*, 26 ANN. REV. SOCIO. 107, 109–10, 124–25 (2000).

tional framing of indigeneity, which answers the call from international feminists to take up an intersectional analysis of violence against Indigenous women with intention,⁸⁰ to return to the events surrounding Ms. Tsingine's death. Here, I draw attention to how intersectional violence functions within macro-level settler-state structures and micro-level interactions with settler-state agents.

IV. THE DEATH OF LOREAL TSINGINE

Violent encounters between police and women of color are rarely isolated events and often involve multiple run-ins with local police. To contextualize this lived reality for Native women, I examine the case of Ms. Tsingine, who was killed by police on March 27, 2016. To ground my analysis of the settler-anxieties about indigeneity, race, class, and gender that surround the murder of Native women by police, I begin by outlining the events that led to Ms. Tsingine's death on March 27. Next, I look to the days leading up to her fatal police encounter, and then sketch the events in the months and years that followed. This framing is necessary to make visible how the state relied on her intersectional identities to normalize her death and erase her personhood.

A. *The Day of . . .*

On March 27, 2016 the Winslow Police Department received three 911 calls from a cashier at a local Circle K store about a shoplifting incident that unfolded in a series of five store visits.⁸¹ The first call stated that a woman had stolen two cases of beer and left.⁸² The second call occurred after the suspect had entered and exited the store two more times.⁸³ The 911 recordings suggest that the cashier was not scared or threatened but instead mildly annoyed by these repeated occurrences and perhaps the failure of the police to arrive quickly enough.⁸⁴ On the second call, the cashier told the 911 operator, "[t]he female who has done it has been back in the store twice and this last time she was in the store I asked her to leave because we just don't want her in the store anymore and she was just throwing stuff all over the place."⁸⁵ Sergeant Ernesto

⁸⁰ See Rauna Kuokkanen, *Globalization as Racialized, Sexualized Violence*, 10 INT'L FEMINIST J. POL. 216, 218 (2008) ("To understand violence against indigenous women we need an intersectional analysis that is able to grasp the interconnections and overlaps between various forms of marginalization and subjugation and to go beyond male dominated conceptions of race and white-dominated conceptions of gender.").

⁸¹ Yihyun Jeong, *DPS Report: Tsingine Advanced on Winslow Officer with Scissors in Hand*, AZCENTRAL (Aug. 4, 2016, 12:55 PM), <https://www.azcentral.com/story/news/local/arizona/2016/08/04/dps-report-tsingine-advanced-winslow-officer-scissors-hand/88072336/> [perma.cc/ZS3K-WGXC]; Civil Rights Complaint for Damages, *supra* note 3, at 5–7.

⁸³ Jeong, *supra* note 81.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁵ *Id.*

Cano arrived at the Circle K to talk with the suspect but left before she entered the store a fourth time, gathered several items, and threw a pint of ice cream at the cashier when confronted.⁸⁶ The suspect entered the store a fifth and final time, now with a small pair of medical scissors.⁸⁷ The cashier made a final call and reported that the suspect went behind the cashier to take a hot dog and a pack of cigarettes and left.⁸⁸ The suspect did not speak in any of the five interactions.⁸⁹

Sergeant Cano texted Officer Shipley for backup while he finished his work at the store, and Shipley drove around the area searching for the suspect.⁹⁰ He saw a woman matching the description given by the Circle K employee walking down the street, and he yelled at her from his window.⁹¹ The suspect, Ms. Tsingine, was not in possession of any of the goods that were reported stolen from the store; nonetheless, Shipley exited his vehicle and followed her.⁹² According to Shipley, she had a “‘blank stare’ and was not acting ‘normal.’”⁹³ Around this time Sergeant Cano arrived and Shipley grabbed Ms. Tsingine’s arm and threw her to the ground with the intention of handcuffing her.⁹⁴ As she lay on the ground, he saw the small pair of scissors in her hand and let her up only to push her forward again, scattering her belongings across the street.⁹⁵ Several pill bottles fell to the ground, containing her prescribed antipsychotics.⁹⁶ Ms. Tsingine got up and walked towards Officer Shipley with her hands by her sides.⁹⁷ Shipley retreated, walked backwards towards his vehicle,⁹⁸ and

⁸⁶ *Id.*

⁸⁷ The cashier described the scissors as “not that big” and reported that the suspect was “a little out there,” alluding to a history of mental illness and possible substance abuse. See Civil Rights Complaint for Damages, *supra* note 3, at 6; Nick Estes, *Lapel Camera Shows Racist, Killer Cop Executed Loreal Tsingine*, RED NATION (July 28, 2016), <http://therednation.org/lapel-camera-shows-racist-killer-cop-executed-loreal-tsingine/> [perma.cc/F2KK-HLN4]; Jeong, *supra* note 81; Razack, *supra* note 50, at 2.

⁸⁸ Jeong, *supra* note 81.

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² Arizona Daily Sun, *Winslow PD Shooting of Loreal Tsingine*, YOUTUBE (July 27, 2016), https://www.youtube.com/watch?time_continue=1&v=FO2mInGXOJI&feature=emb_logo [perma.cc/RDG6-9QM8].

⁹³ Civil Rights Complaint for Damages, *supra* note 3, at 6. A blood sample collected three days after her death showed that she was legally drunk when she was killed with a BAC of 0.081. See KPNX Staff, *Examiner: Winslow Woman Was Drunk When Shot by Police*, 12NEWS (July 1, 2016, 1:17 PM), <https://www.12news.com/article/news/local/valley/examiner-winslow-woman-was-drunk-when-shot-by-police/75-261812775> [perma.cc/R4AD-G6TX].

⁹⁴ Civil Rights Complaint for Damages, *supra* note 3, at 7.

⁹⁵ Arizona Daily Sun, *supra* note 92.

⁹⁶ Yihyun Jeong, *Winslow Body-Camera Video Shows Fatal Shooting*, AZCENTRAL (Aug. 4, 2016, 10:49 AM), <https://www.azcentral.com/story/news/local/arizona/2016/07/27/winslow-body-camera-video-shows-fatal-shooting/87625554/> [perma.cc/A7QN-U7Q8].

⁹⁷ Arizona Daily Sun, *supra* note 92.

raised his gun while Ms. Tsingine walked towards him.⁹⁹ Sergeant Cano can be seen in the background of the body cam video jogging towards the two and hitching up his belt as Shipley discharges the first of five bullets that kill Ms. Tsingine.¹⁰⁰ The body cam footage that captured this interaction was only twenty-three seconds long from the moment Shipley exited his car to the moment he pointed his gun at Tsingine.¹⁰¹

B. Before the Encounter

The event details leading up to the day of Ms. Tsingine's death are equally important. I emphasize two paramount points here. First, an investigation into Officer Shipley's personnel records revealed that he had prior contact with Ms. Tsingine, even though he denied recognizing her or interacting with her before March 2016. Shipley was a responding officer in 2013 when Ms. Tsingine was a victim of domestic violence and again in 2015 when she was sexually assaulted.¹⁰² Second, Shipley's records show his history of using force against non-threatening individuals,¹⁰³ with at least two incidents instigated by minor property offenses. According to local news reports, "In his three-year career at the Winslow Police Department, Shipley held a suspect at gunpoint five times, drew his Taser four times and has used physical force in at least three situations."¹⁰⁴ In August 2014, Shipley responded to a situation involving a highly intoxicated and aggressive man at a hospital who made sexual remarks towards a woman.¹⁰⁵ The man was restrained on a hospital bed and was trying to pull out the cords connected to his medical equipment.¹⁰⁶ Worried the man was going to damage the equipment, Shipley commanded the man to stop.¹⁰⁷ When the man ignored him, Shipley put his taser on the man's neck and told him again to let go of the cords.¹⁰⁸ In this encounter, as well as Shipley's fatal encounter with Ms. Tsingine in March 2016, after calls alleging that she was

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Civil Rights Complaint for Damages, *supra* note 3, at 10.

¹⁰³ See, e.g., Yihyun Jeong, *Winslow Officer's File Details a History of Using Force before Loreal Tsingine Shooting*, AZCENTRAL (Apr. 12, 2016, 7:44 AM), <https://www.azcentral.com/story/news/local/arizona/2016/04/11/winslow-officers-file-details-history-using-force-before-loreal-tsingine-shooting/82888708/> [perma.cc/24J6-M8SB].

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

shoplifting at a local convenience store, Officer Shipley unmistakably demonstrated a clear valuation of property over human life.¹⁰⁹

Additional events illustrate Shipley's disposition as an officer. In January 2016, Shipley responded to a fight in a park between a man and a fifteen-year-old girl while a group of bystanders watched.¹¹⁰ He ordered the entire group to sit on the curb, the officer was ignored, and the fifteen-year-old girl walked away.¹¹¹ Shipley chased after her with his taser drawn and said, "[g]et back over here . . . [y]ou want me to taser you?"¹¹² She pulled up her baggy sweat-pants and Shipley tased her, believing those movements indicated that she had a weapon.¹¹³ The Winslow policy on taser deployment states, "[m]ere flight from a pursuing officer, without other known circumstances or factors, is not good cause for the use of the taser to apprehend an individual[.]" and the officers investigating his actions concluded that none of her actions seemed threatening or suggested that she was armed.¹¹⁴ Shipley received a one-day suspension for violating the department's taser policy, was placed on disciplinary probation for six months, and was enrolled in mandatory training on the use of force and taser deployment.¹¹⁵ Despite Shipley's additional training, none had their intended effects.¹¹⁶

These impulsive behaviors and immediate uses of force were well known to Shipley's fellow officers; several had serious concerns and had reported that Shipley "was too quick" to draw his gun during citizen encounters, "ignored directives from superiors," and "was liable to falsify reports and not control his

¹⁰⁹ "On March 27, 2016 multiple 911 calls were made regarding alleged incidents of shoplifting at a Circle K store in Winslow, Arizona." See Civil Rights Complaint for Damages, *supra* note 3, at 5.

¹¹⁰ Jeong, *supra* note 103.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ I called Winslow PD's records office requesting the department's use of force policies for the years 2015–2018 as well as the supplemental training that officers were required to attend. This request did not mention Ms. Tsingine or Officer Shipley. The officer that the department assigned to help me was Ernesto Cano, the Sergeant who answered the Circle K employee's call and who did nothing to prevent Officer Shipley from killing Ms. Tsingine. He responded saying, "Good afternoon, our records division forwarded me your information and said you have questions regarding use of force policy and training. Just let me know what you are looking for and I will help you." After my response specifying the time frame I was interested in, he never replied. Cano has been promoted to Lieutenant with the Winslow PD, evident by his email signature. I sent a second email to the journalist, Yihyun Jeong, who substantially covered this case in 2016, asking for details that may have been vague or omitted in her articles. Jeong has since moved on from AZ Central and responded that while the details of the case "are a blur" with the passing of time, she would be willing to review her notes and reports for "anything that might be useful." No new findings have turned up yet.

emotions.”¹¹⁷ Impressions from commanding officers echoed these sentiments. Three years earlier, a Winslow police corporal clearly expressed his professional opinion that once Shipley completed his police recruit training, he should be refused employment by the Winslow Police Department.¹¹⁸ Shipley successfully gained employment in Winslow only after being rejected from two other departments.¹¹⁹

C. *After the Encounter*

During the post-shooting investigation, approximately six months after the death of Ms. Tsingine, Shipley was questioned about his use of force. Shipley stated that Ms. Tsingine was too close for his taser to be effective and that it would be an inappropriate use of force against scissors.¹²⁰ He did not have any pepper spray because he had been rearranging the tools on his belt earlier and forgot it.¹²¹ Despite these justifications, Officer Shipley was 5’11 and 200 pounds, which was almost a foot taller and ninety-five pounds heavier than Tsingine.¹²² Either Shipley or Sergeant Cano could have subdued her with their physical strength without having to resort to any kind of weapon, lethal or non-lethal.¹²³ Sergeant Cano claimed he was planning how he would apprehend Ms. Tsingine when he heard Shipley command her to drop the scissors.¹²⁴ This command, Cano said, made him feel “as though his life was in jeopardy,” and if given the chance, he also would have pulled out his gun.¹²⁵ He believed that if Shipley had drawn his gun and yelled commands, then Shipley must have understood something about the scene that he did not, indicating that he trusted Shipley’s assessment and handling of the situation.¹²⁶

On April 4, 2016, in addition to the Maricopa County Attorney’s Office investigation, former Navajo Nation President and State Representative Albert Hale turned to the U.S. Attorney General’s office requesting the agency to investigate “systemic misconduct toward Native Americans by the Winslow Police Department.”¹²⁷ In January 2017, Navajo Nation President Russell Begaye

¹¹⁷ Lartey, *supra* note 1.

¹¹⁸ *Id.*

¹¹⁹ Jeong, *supra* note 103.

¹²⁰ Jeong, *supra* note 81.

¹²¹ Charly Edsitty, *Documents: Officer Austin Shipley Feared for His Life Before Winslow Shooting*, 12NEWS (Aug. 9, 2016), <https://www.12news.com/article/news/local/arizona/documents-officer-austin-shipley-feared-for-his-life-before-winslow-shooting/75-287804128> [perma.cc/QQF7-YQYF].

¹²² Civil Rights Complaint for Damages, *supra* note 3, at 7.

¹²³ Additionally, both officers were wearing body armor designed to shield them from bullets and would certainly be effective in protecting from stab wounds by a pair of scissors with a blade less than an inch long. *Id.* at 8.

¹²⁴ Jeong, *supra* note 81.

¹²⁵ *Id.*

¹²⁶ *See id.*

¹²⁷ Letter from Albert Hale, *supra* note 4.

wrote twice requesting a federal investigation, and on March 3, 2017 he received a reply that the investigation was ongoing.¹²⁸ In October 2017, acting Assistant Attorney General Felte of the Civil Rights Division echoed the statement of the Maricopa County Attorney's Office: the Department of Justice found no evidence beyond a reasonable doubt that Shipley used excessive force against Tsingine.¹²⁹

On March 27, 2018, two years after Ms. Tsingine's death, the Navajo Nation filed suit as a representative of Tiffany Robbins (Loreal's daughter) and all Navajo Nation members against Jefferson Sessions, Attorney General of the U.S.; James Felte, Jr., Acting Chief of the Department of Justice Civil Rights Division; the City of Winslow; former officer Austin Shipley; Officer Ernesto Cano; and former Police Chief Stephen Garnett.¹³⁰ The Navajo Nation brought three specific counts against the defendants. The first count, against Officers Shipley and Cano, alleged that the officers' actions on the day of March 27, 2016, caused the wrongful death of Ms. Tsingine.¹³¹ The second count, against the City of Winslow and former Police Chief Stephen Garnett, alleged wrongful death as a result of "developing, implementing and maintaining policies or customs that exhibit deliberate indifference to the constitutional rights of persons who are arrested in the City of Winslow and for allowing the use of excessive and unnecessary force against members of the public."¹³² That is, the City of Winslow failed to maintain a proper police force that allowed Officers Cano and Shipley to cause Ms. Tsingine's death. The third count, brought against Attorney General Sessions and Acting Chief James Felte, Jr., alleged that they violated the right of all Navajo Nation members to equal protection under the law for refusing to take action against Officers Shipley and Cano.¹³³ The Navajo Nation demanded general damages, punitive damages, and injunctive relief for proper action to be taken against Officer Shipley and Sergeant Cano.¹³⁴ They also demanded a jury trial and the City of Winslow to instate new policies con-

¹²⁸ Civil Rights Complaint for Damages, *supra* note 3, at 10–11.

¹²⁹ On April 6, 2016, President Begaye wrote to Attorney General Loretta Lynch requesting an investigation into Ms. Tsingine's death by the Department of Justice. *Id.* at 10. On January 10, 2017, President Begaye wrote to Attorney General Loretta Lynch again to request an investigation. *Id.* On January 16, 2017, President Begaye wrote to Attorney General Loretta Lynch asking about the status of the Department of Justice's investigation. *Id.* On March 3, 2017, James F. Felte Jr., acting assistant Attorney General for the civil rights division wrote to President Begaye that the investigation was ongoing. *Id.* at 11. And on October 17, 2017, Felte delivered the results of the investigation. *Id.*

¹³⁰ Press Release, Navajo Nation Dep't of Just., Navajo Nation Files Complaint RE Shooting Death of Loreal Tsingine (Mar. 28, 2018), http://nndojo.org/uploads/FileLinks/b5ae9215b289483294e173341626f2cc/2018.3.28__PR_Re_Navajo_Nation_Files_Complaint_Re_Shooting_Death_of_Loreal_Tsingine__FINAL.pdf [perma.cc/TUD5-UU9F]; Civil Rights Complaint for Damages, *supra* note 3, at 1.

¹³¹ Civil Rights Complaint for Damages, *supra* note 3, at 12.

¹³² *Id.* at 13.

¹³³ *Id.* at 13–14.

¹³⁴ *Id.* at 14.

cerning lethal force, mental illness, and general practices while interacting with Native Americans.¹³⁵

On May 7, 2019, before going to trial, the U.S. District Court for the District of Arizona dismissed the matter for lack of jurisdiction and standing.¹³⁶ In short, because the court lacked jurisdiction to hear the federal claims, and the Navajo Nation lacked standing, the court granted the motion to dismiss and terminated all claims against the defendants.¹³⁷ In count three of the complaint, Navajo Nation claimed that Sessions and Felte violated Navajo members' rights to equal protection under the law, as guaranteed by the Fifth Amendment.¹³⁸ In order to bring such a claim against federal actors, and for the court to have jurisdiction over the matter, a plaintiff must meet the standard outlined in *Bivens v. Six Unknown Federal Narcotics Agents*.¹³⁹ In *Bivens*, the U.S. Supreme Court held that a claim can only be made against a federal actor as an individual and not in the federal actor's official capacity.¹⁴⁰ In order to bring claims against federal actors in their official capacity, the federal government would need to expressly waive their sovereign immunity;¹⁴¹ the Justice Department did not waive their immunity in this case.¹⁴² The district court lacked jurisdiction to hear the matter because the claim regarding Fifth Amendment rights was brought against federal actors working in an official capacity.¹⁴³ Thus, neither the Attorney General nor the Acting Chief of the Civil Rights Division of the Department of Justice could be brought to suit due to the court's lack of jurisdiction in such federal matters.

In addition to lacking jurisdiction, the court decided that the Nation lacked standing to bring its claims.¹⁴⁴ First, the Nation lacked standing to bring the *Bivens* claim referenced above because there is no interest for a third party in the prosecution or non-prosecution of another, which prevented the requested injunctive relief to discipline the officers.¹⁴⁵ Additionally, this claim is not redressable, as the court cannot direct the executive branch to enforce discretionary investigatory or prosecution powers because of the doctrine of separation of

¹³⁵ *Id.* at 14–15.

¹³⁶ *Navajo Nation v. Barr*, No. CV-18-08072, 2019 U.S. Dist. LEXIS 77513, at *1, *7–14 (D. Ariz. May 7, 2019). A case is dismissed when a plaintiff has not, or cannot, prove their case. *See* Legal Info. Inst., *Dismiss*, WEX (June 2020), <https://www.law.cornell.edu/wex/dismiss> [perma.cc/G2AZ-METE].

¹³⁷ *Navajo Nation*, 2019 U.S. Dist. LEXIS 77513, at *1, *7.

¹³⁸ Civil Rights Complaint for Damages, *supra* note 3, at 13–14.

¹³⁹ *Bivens v. Six Unknown Named Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971).

¹⁴⁰ *Id.* at 395 (citation omitted).

¹⁴¹ *See id.* at 394.

¹⁴² *Navajo Nation*, 2019 U.S. Dist. LEXIS 77513, at *7.

¹⁴³ *Id.*

¹⁴⁴ *Id.* at *7–14.

¹⁴⁵ *Id.* at *7–8.

powers.¹⁴⁶ Thus, the court claimed it could not fix the policing problems that drew concern from the Navajo Nation.¹⁴⁷ Second, the Nation could not bring a wrongful death suit because it is considered a tortious act, and torts are non-assignable in Arizona.¹⁴⁸ This meant that both wrongful death claims were prohibited from moving forward, effectively disqualifying counts one and two, because Tiffany Robbins' rights to the suit were assigned to the Navajo Nation.

Third, the Nation lacked organizational standing to bring a claim because such a claim requires a statutory exception, and no exceptions were claimed.¹⁴⁹ Thus, the Navajo Nation was prevented, in all three counts, from bringing a case on behalf of its members. Fourth, the Nation lacked *parens patriae* standing, which is the right of a government or authoritative body to make a claim to protect its citizens.¹⁵⁰ The *parens patriae* claim failed because the Nation did not explain how other members of the Navajo Nation were injured, nor did they "allege a plausible claim for relief under these circumstances,"¹⁵¹ or one that "is plausible on its face."¹⁵² According to the district court, neither the Navajo Nation, nor its members, suffered a "cognizable injury" or explained how the claim would be judicially redressable.¹⁵³ The court also stated that the Navajo Nation's complaint failed to explain how Ms. Tsingine's shooting injured other members of the Navajo Nation, and that there was no concrete, actual, or imminent injury.¹⁵⁴ Additionally, elements of the redress sought were deemed unreasonable; the court alleged that no possible claim for relief existed for the allegation—"the City of Winslow does not train its officers on interacting with individuals with mental illnesses . . ."¹⁵⁵ As a result of these supposed deficiencies, the court determined that the Navajo Nation would be unable to prove its case and dismissed the matter at this early stage.¹⁵⁶ Table 1 below presents a brief timeline of key events, organized chronologically, associated with the death of Ms. Tsingine.

¹⁴⁶ *Id.* at *8–9.

¹⁴⁷ *See id.* at *9.

¹⁴⁸ *Id.* at *9–11.

¹⁴⁹ *Id.* at *11.

¹⁵⁰ *Id.* at *12–14.

¹⁵¹ *Id.* at *13–14 (citing *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)).

¹⁵² *Id.* at *14 (citing *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)).

¹⁵³ *Id.* at *7–9.

¹⁵⁴ *Id.* at *13.

¹⁵⁵ *See id.* at *14.

¹⁵⁶ *See id.*

TABLE 1: HISTORICAL TIMELINE OF KEY EVENTS CONCERNING LOREAL TSINGINE'S DEATH

Date	Event
August 29, 2013	Officer “Shipley performed a ‘welfare check’ on Ms. Tsingine[] . . . because a neighbor suspected Ms. Tsingine was the victim of domestic violence.” ¹⁵⁷
April 27, 2015	Officer Shipley was the responding officer when Ms. Tsingine was a victim of sexual assault. ¹⁵⁸
March 27, 2016	Officer Shipley killed Ms. Tsingine after suspecting her of shoplifting. ¹⁵⁹
April 6, 2016	The Navajo Nation President wrote to Attorney General Loretta Lynch requesting a Department of Justice investigation into the death of Ms. Tsingine. ¹⁶⁰
July 19, 2016	The Maricopa County Attorney’s Office found that Officer Shipley’s actions did not warrant criminal prosecution. ¹⁶¹
October 17, 2017	The Department of Justice found insufficient evidence to disprove Officer Shipley’s claim that he shot Ms. Tsingine in self-defense. ¹⁶²
March 27, 2018	The Navajo Nation filed suit as a representative of Tiffany Robbins (Loreal’s daughter) and all Navajo Nation members against Attorney General Jefferson Sessions; James Felte, Jr., Acting Chief of the Department of Justice Civil Rights Division; City of Winslow; Former Officer Austin Shipley; Officer Ernesto Cano; and former Police Chief Stephen Garnett. ¹⁶³
May 7, 2019	The U.S. District Court for the District of Arizona dismissed the matter, concluding that the court lacked jurisdiction to hear the federal claims, and the Navajo Nation lacked standing. ¹⁶⁴

Despite the inherent problems within the original suit, it is important to recognize the intentions of the Navajo Nation, a sovereign dedicated to representing the best interests of their tribal members, whether or not harm against their members occurred on the reservation. In addition to the Navajo Nation’s fight, her community worked hard to bring justice to Ms. Tsingine and other

¹⁵⁷ Civil Rights Complaint for Damages, *supra* note 3, at 10.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 5, 8.

¹⁶⁰ *Id.* at 10.

¹⁶¹ *Id.*

¹⁶² *Id.* at 11.

¹⁶³ *Id.* at 1.

¹⁶⁴ Navajo Nation, 2019 U.S. Dist. LEXIS 77513, at *7–14.

missing and murdered Indigenous women and girls who were taken and/or made invisible. In the years following Tsingine's death, her Arizona family and community continued to mourn the loss of this young Diné mother. The Bordertown Justice Coalition (a congregation of Native activists) hosted vigils in her memory in hopes of putting pressure on Winslow and the federal government to hold Shipley, and all officers, accountable for their crimes.¹⁶⁵ In addition to these vigils, billboards were erected in Winslow with photos of Ms. Tsingine and hashtags such as “#MMIW,” “#JusticeForLoreal,” and “#EndPoliceViolence.”¹⁶⁶ articulated the community's refusal of state violence. Floranda Dempsey, Ms. Tsingine's aunt, explained the intent: “This visible pressure will hopefully get the much needed attention that will get the justice Loreal deserves. Not only for our baby girl but for all missing and murdered indigenous women throughout the world. We all matter.”¹⁶⁷ Ms. Dempsey's explanation that her niece's murder is both a local tragedy and is simultaneously connected to the global nature of violence against Indigenous women draws attention to the ongoing entanglements of white supremacy and settler colonialism.¹⁶⁸

V. SOVEREIGNTY THREAT: COMPLICATING MINORITY THREAT IN THE SETTLER-STATE

By situating and analyzing how indigeneity, race, class, and gender position Native women in a web of overlapping systems of oppression, the roots of the settler-state's anxieties about Native Peoples broadly, and Native women specifically, are revealed. In turn, I argue that Ms. Tsingine's death constitutes the actualization of Officer Shipley's biases *and* the settler-state's attempt to control the generative power of Native women and their bodies in ways that are similar to how it attempts to control Native homelands, waterways, and other natural resources. With this framing, I turn now to social theory about race prejudice and social hierarchies. I suggest that Ms. Tsingine's murder, and the lawsuit filed against the Department of Justice by the Navajo Nation on behalf of her family, both constitute classic cases of minority threat in the eyes of the settler-state. The minority threat perspective is informed by sociologist Herbert Blumer's argument that race prejudice exists as a result of group position and the collective processes by which one racial group comes to define another relative to their threat to the status of the dominant group.¹⁶⁹ Thus, this perspective contends that intergroup conflict is the result of threats, real or imagined, posed

¹⁶⁵ Katherine Locke, *Coalition Fights for Justice for Loreal Tsingine*, NAVAJO-HOPI OBSERVER (Apr. 3, 2018, 3:45 PM), <https://www.nhoneews.com/news/2018/apr/03/coalition-fights-justice-loreal-tsingine/> [perma.cc/5NYX-HWE3].

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ *See id.*

¹⁶⁹ Herbert Blumer, *Race Prejudice as a Sense of Group Position*, 1 PAC. SOCIO. REV. 3, 3 (1958).

by subordinate social groups.¹⁷⁰ Such threats are most often tied to the size and proportion of the minority group relative to the dominant group and their power and influence over community politics and economics. The minority threat perspective is also closely linked with social constructions of criminality, exposing how dominant social groups use the criminal justice system to exert control of those groups deemed dissimilar and subordinate.¹⁷¹

Minority threat in the U.S. is informed by and maintained within a social hierarchy that positions whites as superior to others. In this schema, whites function in the dominant subject position, and in turn attempt to define other social groups relative to their presumed social status. This belief system is a macro-level state system known as white supremacy; this ideology is also operationalized during micro-level interactions between marginalized groups and law enforcement officers, who function as the boundary-keepers of the settler-state. Interactions between law enforcement officers and community residents differ across social groups relative to the “threat” they pose to the nation’s historically white majority population. I theorize below what motivates the settler-state to construct these perceived differences as they relate to the social, economic, and political status of Native Peoples by focusing on the social processes that inform the policing of non-whites.

A. *Macro-Level Minority Threat*

The U.S. employs a set of doctrines, myths, and beliefs that uphold the white supremacist social hierarchy. In order to create and maintain dissimilar social groups that reify this hierarchy, the settler-state relies on three specific tools relevant to the study of policing, which this Article introduces and defines. First, the state employs *settler-socialization* to teach state agents how, when, and why to engage with different minoritized groups using state police power, a socialization that is informed by the logics of elimination that undergird U.S. police powers. Second, the state uses *settler-stratification* to categorize the population along race, class, gender, ability, and other social identities so that state agents can police, coerce, and physically maintain the boundaries of a white supremacist social hierarchy. Third, the settler-state disseminates *settler double-vision*, an ideology of white supremacy that constitutes the ability of state agents to identify minoritized groups as threats while simultaneously ignoring and refusing the needs of minoritized groups because they have been labeled disorderly and deviant.

Taken together, these tools reveal how Native death at the hands of police constitutes much more than individual police biases. Instead, I suggest that from a threat perspective, the presence of minority group members presents

¹⁷⁰ Ryan D. King & Darren Wheelock, *Group Threat and Social Control: Race, Perceptions of Minorities, and the Desire to Punish*, 85 SOC. FORCES 1255, 1255 (2007).

¹⁷¹ Weston J. Morrow et al., *Police Use of Force: An Examination of the Minority Threat Perspective*, 31 CRIM. JUST. STUD. 368, 372–73 (2018).

state agents with opportunities to protect and defend the settler-state. As a result, settler double-vision relies on the logics of controlling images that are designed to disregard and dehumanize, and permits the state to fail to prioritize the needs of minoritized groups. Attention to these social groups and their histories as peoples denied protections common to others in the settler-state would ultimately shift and devalue the white supremacist power hierarchy. Consequently, this double vision hinges its subordination on seeing and unseeing all minoritized groups in one broad stroke. In turn, socialization, stratification, and double-vision reveal how minority threat relies on social processes to train state agents, and the public, to function differently when attempting to engage and control minoritized peoples, all of which are informed by the social and historical context of the settler-state's subordination of that group. My focus on Native women illustrates this complexity by positioning their experiences with police and police violence as fundamentally linked with the historical violence that *produced* the U.S. settler-state.

B. *Micro-Level Minority Threat*

In addition to the relationship between minority threat and policing at the macro-level (orienting minority threat to state systems), the boundaries of the settler-state are also managed within micro-level interactions between state agents and minoritized groups (person to person). As a micro-level analytical lens,¹⁷² intersectionality demonstrates that population sorting is a dynamic, often interpersonal social process that cannot easily categorize peoples around strictly delineated racial and ethnic lines. For example, variation such as skin tone exists *within* and *across* racial and ethnic groups, thus impacting whether and how an individual is perceived by state agents as a minority threat and in need of policing. *Within* groups, for example, light-skinned Native women may draw suspicion from state agents (*e.g.*, police) differently than darker-skinned Native women. *Across* groups, light-skinned Native women may draw suspicion from state agents differently than light-skinned Black women. An intersectional analysis reveals that the stakes for the dominant and subordinate groups are differentiated along a dynamic social hierarchy that is dependent

¹⁷² See Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, *supra* note 63, at 1242–44. (Crenshaw writes about how male violence against women (*e.g.*, domestic violence and rape) intersects with an individual's race, class, and citizenship. By drawing our attention to these micro-level interactions between individuals, Crenshaw's work opens micro-level social interactions as an important analytical lens that can help to draw connections and relationships to larger social forces and social problems. I am thinking specifically of the lines, "Focusing on two dimensions of male violence against women—battering and rape—I consider how the experiences of women of color are frequently the product of intersecting patterns of racism and sexism, and how these experiences tend not to be represented within the discourse of either feminism or antiracism. Because of their intersectional identity as both women *and* people of color within discourses that are shaped to respond to one *or* the other, the interests and experiences of women of color are frequently marginalized within both.").

upon, and nuanced by, a person's unique social location. The state also differentiates the use of police power within and across social groups, similar to differences in attention and suspicion that minoritized groups may draw from the state.¹⁷³ Within groups, for example, the state may use less police power to control light-skinned Native women in contrast to the amount they use to control darker-skinned Native women who they perceive to be a greater threat.

As an analytical lens, intersectionality reveals dynamic relationships with state agents because it considers several categorical identities simultaneously as sites of oppression and privilege.¹⁷⁴ For example, impoverished dark-skinned Native women living in proximity to the U.S./Mexico border may experience oppression on the basis of class, skin color, and presumed national origin. This oppression influences the suspicion and response they may draw from the state in a manner that is different than professionally employed light-skinned Native women supported by class privilege. Thus, intersections of settler-state scrutiny based on color, class, and ideas about who is a citizen worthy of protection under the law come to bear in ways that vary based on perceived settler-threat. As a result, the coercion the state uses to maintain power over land and people is not evenly distributed because various social groups pose distinct and often contrasting threats to the legitimacy of the settler-state.

Recent legal scholarship illustrates how and when a variety of social and psychological factors can lead to the likelihood that members of the Black community may be marked as a threat to state agents, such as police officers. This research largely focuses on the experiences of men but provides important insights into how violence is used unevenly across social groups. Legal scholar Devon Carbado and social psychologist Patrick Rock, for example, explain that a police officer's fears can arise from inflated concerns about their own physical safety (informed by metaphors that characterize inner cities as war zones); masculinity threat (often due to Black, Latino, and Native male hypermasculinity stereotypes); and racism stereotype threat (fear that during interactions with Black citizens the stereotype that cops are racist will be confirmed).¹⁷⁵ As a result, Black men in particular may experience increased and excessive use of police force. This micro-level minority threat analysis on racialized police violence between persons is connected with macro-level structural problems, encouraging an examination of the social structures that contribute to police feeling insecure and responding to perceived threats with violence.¹⁷⁶ Additionally, this analysis provides a framework in which to pursue future empirical research and theorizing on the use of police violence against Black and Native women, particularly as this violence relates to the feminization and hypersexualization

¹⁷³ RITCHIE, *supra* note 10, at 2–3.

¹⁷⁴ Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, *supra* note 63, at 1244–45.

¹⁷⁵ Devon W. Carbado & Patrick Rock, *What Exposes African Americans to Police Violence?*, 51 HARV. C.R.-C.L.L. REV. 159, 179–80 (2016).

¹⁷⁶ See generally *id.*

of women deemed less innocent, rational, and worthy of protection than white women.

C. Sovereignty Threat

Building on an understanding of minority threat on a macro-level in state systems and on a micro-level in interpersonal encounters, I now link these two by framing the sovereign powers of tribal nations as a meso-level threat against the U.S. settler-state. I do so because in order to understand how Native Peoples are surveilled and controlled by settler-state agents, one must understand the fundamental threat this social group poses to the presumed dominant group's position. When compared to other social groups, Native Peoples' minority threat is directly tied to their inherent tribal sovereignty and ongoing kin relationships with land, place, and peoples. These ties are unbroken despite centuries of violence, including genocidal programs of assimilation and removal. The inclusion of indigeneity, from a minority threat perspective, complicates the legitimacy of the settler-state because the vibrance and survivance of Indigenous life reveals that the settler-colonial elimination project is incomplete and incompatible with Indigenous futures. As a result, the state seeks to erase and eliminate this threat, as it would a threat to its power from other subordinates, but with an existential purpose to maintain the foundational legitimacy of the white supremacist settler-state. Put another way, non-Native social groups have the potential to threaten the structures of white supremacy, and often do, while Natives threaten the very foundation of the settler-state upon which white supremacy is built and maintained.

I offer the concept of "sovereignty threat" to theorize the unique minority threat that Native Peoples pose and to describe the continued resistance of this social group that jeopardizes the settler-state's legitimacy. In my analysis, I suggest that the continued vitality of indigeneity intersects with other critical social locations, including race and gender, and poses a macro-, meso-, and micro-level threat to the settler-state. These threats have less to do with the potential for Native deviance and criminality, and instead have everything to do with the potential influence that Native Peoples have on disruptions to the economic and political institutions that emerged from settler-colonialism. At the macro-level, persistent attempts from the state to undermine, diminish, and eliminate tribal sovereignty demonstrates that Natives Peoples remain a tangible threat to the group position of settlers. The continued exercise of tribal sovereignty by tribal nations challenges presumptions about the allocation of land and resources as well as the normative settler association between resources and private property. Tribal sovereignty also challenges the assumption that the law's structuring of tribal nations as domestic dependents is mutually acceptable to Native Peoples. Dynamic and robust protests against the Dakota Access Pipeline, and other large-scale public and private projects that infringe on the powers of tribal sovereigns, demonstrate that Native Peoples' relationships to place correlates with their refusal to acquiesce to the settler project.

Thus, sovereignty threat is situated within the lived reality that settler-colonialism is a structure and not an event.¹⁷⁷ An event assumes a beginning and an ending, whereas a structure constitutes a powerful, unseen scaffolding supporting the foundations of both physical and social structures, such as white supremacy. Sovereignty threat offers a lens through which to analyze the scaffolding of settler colonialism. From this vantage point, we can see that U.S. laws have long supported the interests of white supremacy and are “the most significant sources of violence and harm against indigenous people, not forces of protection.”¹⁷⁸ Importantly, we can also see how Native Peoples have refused the settler narrative, “which seeks to portray the process of genocide and displacement as over or complete”¹⁷⁹ Native resistance expose the settler project as incomplete, uncover the threat that tribal sovereignty poses against the legitimacy of the settler-state, and demonstrate the relationship between indigeneity and the intentions and function of policing among Native Peoples.

VI. THE IMPLICATIONS OF SOVEREIGNTY THREAT IN THE LIFE OF LOREAL TSINGINE

Ms. Tsingine’s death reveals the force of police violence against Native women, while also revealing the settler-state’s investment in destabilizing and making invisible the function of tribal sovereignty. The concept of sovereignty threat, as previously outlined, helps to explain the presence and contemporary significance of settler colonialism in and around the Navajo Nation, for the Tribe itself as well as its members, including Ms. Tsingine and her family. Sovereignty threat occurs as a result of incongruent group positions between settlers and Native Peoples and the active refusal by Native Peoples to be defined by the settler-state. The capacity of tribal sovereignty to function as a delegitimizing threat against the settler-state and its agents cannot be understated because it is out of that tension that the latter seem to reflexively respond with violence to the mere presence of an Indigenous person. The implications of sovereignty threat also suggest that both the Nation *and* Ms. Tsingine each posed a real or imagined threat to the state’s interests and that such threats warranted violence in the eyes of the state.

Below, I take up these two sets of threats and begin with a description of how the relationship between settler-colonial power structures and tribal sovereignty affects the operation of social institutions, notably the law, and specifically the Navajo Nation’s federal suit regarding violations of Ms. Tsingine’s civil and constitutional rights. Next, I analyze how interactions between state agents, like Officer Shipley, and Native women, including Ms. Tsingine, help individuals interpret, give meaning to, and enact the state’s ideology of white

¹⁷⁷ Wolfe, *supra* note 9, at 388.

¹⁷⁸ Dean Spade, *Intersectional Resistance and Law Reform*, 38 SIGNS: J. WOMEN CULTURE & SOC’Y 1031, 1044 (2013).

¹⁷⁹ *Id.*

supremacy in day-to-day social encounters. By doing so, I expand on indigeneity's status as a social location by discussing the significance of reservations as carceral spaces, and border towns as liminal spaces, that attest to the complexity of sovereign power and minority protection under settler-colonial regimes.

Thinking first with the Navajo Nation's federal suit, the settler-state's presumed dominance over tribal nations affects how contemporary social institutions function as well as how and when the settler-state employs carcerality and liminality as tools of social control against Native Peoples. Carcerality describes the settler-state's physical confinement of persons and groups in carceral spaces, such as jails, prisons, and reservations.¹⁸⁰ Confinement allows the settler-state to limit mobility, reserve access to land and resources for itself, and ultimately manage society within a white supremacist social hierarchy. Tribal sovereignty, in contrast, challenges the permissibility of carcerality,¹⁸¹ and thereby the legitimacy of the settler-state. To this point, political theorist Robert Nichols draws connections between the incarceration of Indigenous Peoples and other racialized populations. He argues that "indigenous sovereignty itself calls forth an alternative normativity that challenges the very *existence* of the carceral system, let alone its internal organization and operation."¹⁸² When the Navajo Nation, a tribal sovereign, responds to the murder of Ms. Tsingine by seeking redress from the U.S. federal government for Ms. Tsingine's suffering and the continued grief of her family, it overtly challenges the settler-state's authority. This challenge reveals the relationship between carcerality, settler colonialism, Indigenous governance, and the root of settler anxieties in two major ways. First, by refusing to acquiesce to the murder of Ms. Tsingine outside of reservation boundaries, the Navajo Nation is establishing its jurisdiction to protect Native subjects regardless of how they choose to move and where they choose to live. In addition, the Navajo Nation is disrupting the settler-state's belief that reservations constitute carceral spaces within which Native subjects, and tribal sovereignty, are expected to remain.

Second, the Navajo Nation's legal fight offers critical insights on the significance of land and exposes the extent of settler-state bias for Diné women living off reservation. Ms. Tsingine lived in Winslow, Arizona, a border town that constitutes the ideal liminal space to enact subordination upon American Indians. The social, economic, and political boundaries between reservation communities and reservation border towns play a central role in constructing this likelihood for violence for reasons associated with minority threat. As a transitional location between settler space and tribal space, border towns are sites of sovereign tension and settler-anxiety—the space in which Shipley and Ms. Tsingine interact as symbols of the layered relationship between the Nava-

¹⁸⁰ Robert Nichols, *The Colonialism of Incarceration*, 17 RADICAL PHIL. REV. 435, 444 (2014).

¹⁸¹ *Id.* at 445.

¹⁸² *Id.*

jo Nation and the United States government. Diné geographer Andrew Curley confirms that these tensions and anxieties extend to other border towns. Speaking of his personal experiences in Arizona, he states, “I have lived in Flagstaff and there has been no other community where I’ve been harassed as much by the police as I have been here in Flagstaff, and I think this is purposeful and systemic and part of the culture of policing.”¹⁸³ In addition to serving as sites of tension, border towns also encompass and represent the persistent lack of equal protection afforded to American Indians, a point which draws our attention to one driver of persistent inequality in these spaces. Diné historian Jennifer Denetdale contextualizes these points within Ms. Tsingine’s experiences and writes that the presence of Diné in border towns “on traditional Navajo and Native lands, remind settlers and the state that we are the rightful owners and that we are not to be disposed of so easily. We return and claim our humanity and continue our relations with the land they so arrogantly claim as theirs.”¹⁸⁴ In this way, Denetdale also contextualizes Native presence, resistance, and refusal by rightfully challenging the settler-state’s presumptions of authority.

Ultimately, micro-level social dynamics and interactions between state agents, such as Officer Shipley, and Ms. Tsingine illustrate how the settler-state employs state violence to surveil and control Native Peoples and bodies. Empowered by the state’s violence, Shipley used the tools of settler socialization and settler double-vision, justifying the legal treatment of an Indigenous woman as both subject to his authority and outside the protection of the law. Shipley subsequently enacts the state’s ideology of white supremacy in day-to-day social encounters with Winslow residents, including Ms. Tsingine. Importantly, Ms. Tsingine’s death reveals much more than a case of local law enforcement having biases that they act upon unknowingly while on patrol. Her death is an example of the state’s desire to protect itself from sovereignty threat by attempting to control the generative power of Native women whose bodies reproduce tribal sovereignty and threaten the state’s (il)legitimate claims of territorial sovereignty. When considered within the social and historical context of the settler-state’s relationship to Native women, reproduction is significant to my intersectional analysis because Native mothers, daughters, sisters, aunts, and extended kin destabilize the settler project as they care for their communities and homelands.

¹⁸³ Adrian Skabelund, *Police Violence Protests Highlight Native American Issues in Flagstaff*, LUMBERJACK (Aug. 16, 2016), http://www.jackcentral.org/news/police-violence-protests-highlights-native-american-issues-in-flagstaff/article_7fedfdda-642c-11e6-b51e-cf4100bbc48f.html [perma.cc/J3XT-GR2T].

¹⁸⁴ Jennifer Denetdale, *Guest Column: Loreal: The Ordinarity of Being Diné in Winslow*, NAVAJO TIMES (Oct. 26, 2017), <https://navajotimes.com/opinion/essay/guest-column-loreal-the-ordinarity-of-being-dine-in-winslow/> [perma.cc/8687-3HKQ].

CONCLUSION

In the U.S., women of color disproportionately experience police violence and fatal use of force. This violence is particularly pronounced for Black and Native women and families. Focused specifically on Native women, I investigate how these disparities are intimately linked to the historical violence that produced the U.S. settler-state. In this Article, I have argued that the persistent invisibility surrounding the murder of Native women by police is the product of settler-anxieties about indigeneity, race, class, and gender. By framing indigeneity as an intersectional identity that interacts and overlaps with several other categories of difference, I show how settler-colonial logics of elimination, as well as the rules and structures of law, are scaled to silence and erase the humanity of Native women *and* their tribal communities. In effect, these efforts attempt to remove Native women from the protection of the law while enforcing their subjugation to it. These logics also inform the settler-state's use of violence to maintain sovereign and territorial legitimacy, as well as secure its continuous interests in the maintenance of private property. As we see in the death of Ms. Tsingine—shot and killed by Officer Shipley, who was prompted to the scene by a mere shoplifting call from a local convenience store—the settler-state's valuation of even a few dollars' worth of private property above Native life remains steadfast and uncompromising. Even when death is not the result, the use of force against those minoritized bodies deemed suspect of stealing or likely to “damage the equipment” (as was the case in a previous encounter between Shipley and the public), the protection of property persists, perhaps unsurprisingly given its central role in the formation and continuation of the settler-state.

Throughout the scaffolding of my argument, I introduce the concept of sovereignty threat as an analytical intervention and show how this uniquely Indigenous experience plays out in macro-, meso-, and micro-level social encounters, including the fatal encounter between Shipley and Ms. Tsingine in March 2016. This analytical intervention sheds light on the emptiness of the court's assumption that Ms. Tsingine's murder did not pose a concrete, actual, or imminent injury to the Tribe. My analysis also helps us to reorient the “insufficient” claims of tribal sovereigns working to protect the health, welfare, and safety of their tribal members against unlawful treatment at the hands of local, state, and federal law enforcement. Taken together, sovereignty threat illustrates the material implications that undergird Ms. Tsingine's social location (intersectional Indigenous identity) and her physical location (a border town, spaces known for their state-sanctioned violence against Native Peoples) at the time of her death. These spatial logics are profound, as bordertowns locate the liminal space that marks the transition between settler space and tribal space.

Fortunately, the Navajo Nation's defiant response to the murder of Ms. Tsingine offers a new way to reexamine and trouble the conceptual power of the U.S. The type of sovereignty the Navajo Nation is exercising by protecting

its members beyond the reservation borders, even after their death, represents a true form of patronage beyond the settler-state's discriminatory and limiting model of citizenship. By protecting Ms. Tsingine as a woman, Native person, tribal citizen, mother, and member of the working-class, the Navajo Nation is activating an intersectional framework of inclusion by situating the tribe's sovereignty as extending to its citizens even as they travel beyond the settler-drawn lines of the reservation borders. The example of the Navajo Nation presents an important question for future inquiry: What can the intersectional thinking of tribal nations, and their sovereign status, bring to the fight against police and state violence, particularly as this violence impacts the lives of Black and Native relatives?