SUPREME COURT OF THE UNITED STATES

No. 21–429

OKLAHOMA, PETITIONER *v.* VICTOR MANUEL CASTRO-HUERTA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

[June 29, 2022]

JUSTICE KAVANAUGH delivered the opinion of the Court.

This case presents a jurisdictional question about the prosecution of crimes committed by non-Indians against Indians in Indian country: Under current federal law, does the Federal Government have *exclusive* jurisdiction to prosecute those crimes? Or do the Federal Government and the State have *concurrent* jurisdiction to prosecute those crimes? We conclude that the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.

I

In 2015, Victor Manuel Castro-Huerta lived in Tulsa, Oklahoma, with his wife and their several children, including Castro-Huerta's then-5-year-old stepdaughter, who is a Cherokee Indian. The stepdaughter has cerebral palsy and is legally blind. One day in 2015, Castro-Huerta's sister-in-law was in the house and noticed that the young girl was sick. After a 911 call, the girl was rushed to a Tulsa hospital in critical condition. Dehydrated, emaciated, and covered in lice and excrement, she weighed only 19 pounds. Investigators later found her bed filled with bedbugs and

cockroaches.

When questioned, Castro-Huerta admitted that he had severely undernourished his stepdaughter during the preceding month. The State of Oklahoma criminally charged both Castro-Huerta and his wife for child neglect. Both were convicted. Castro-Huerta was sentenced to 35 years of imprisonment, with the possibility of parole. This case concerns the State's prosecution of Castro-Huerta.

After Castro-Huerta was convicted and while his appeal was pending in state court, this Court decided *McGirt* v. *Oklahoma*, 591 U. S. ___ (2020). In *McGirt*, the Court held that Congress had never properly disestablished the Creek Nation's reservation in eastern Oklahoma. As a result, the Court concluded that the Creek Reservation remained "Indian country." *Id.,* at ___–___, ___, ___ (slip op., at 1–3, 17, 28). The status of that part of Oklahoma as Indian country meant that different jurisdictional rules might apply for the prosecution of criminal offenses in that area. See 18 U. S. C. §§1151–1153. Based on *McGirt*'s reasoning, the Oklahoma Court of Criminal Appeals later recognized that several other Indian reservations in Oklahoma had likewise never been properly disestablished. See, *e.g.*, *State ex rel. Matloff* v. *Wallace*, 2021 OK CR 21, ¶15, 497 P. 3d 686, 689 (reaffirming recognition of the Cherokee, Choctaw, and Chickasaw Reservations); *Grayson* v. *State*, 2021 OK CR 8, ¶10, 485 P. 3d 250, 254 (Seminole Reservation).

In light of *McGirt* and the follow-on cases, the eastern part of Oklahoma, including Tulsa, is now recognized as Indian country. About two million people live there, and the vast majority are not Indians.

The classification of eastern Oklahoma as Indian country has raised urgent questions about which government or governments have jurisdiction to prosecute crimes committed there. This case is an example: a crime committed in what is now recognized as Indian country (Tulsa) by a non-

Indian (Castro-Huerta) against an Indian (his stepdaughter). All agree that the Federal Government has jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. The question is whether the Federal Government's jurisdiction is exclusive, or whether the State also has concurrent jurisdiction with the Federal Government.

In the wake of *McGirt*, Castro-Huerta argued that the Federal Government's jurisdiction to prosecute crimes committed by a non-Indian against an Indian in Indian country is exclusive and that the State therefore lacked jurisdiction to prosecute him. The Oklahoma Court of Criminal Appeals agreed with Castro-Huerta. Relying on an earlier Oklahoma decision holding that the federal General Crimes Act grants the Federal Government exclusive jurisdiction, the court ruled that the State did not have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. The court therefore vacated Castro-Huerta's conviction. No. F–2017–1203 (Apr. 29, 2021); see also *Bosse* v. *State*, 2021 OK CR 3, 484 P. 3d 286; *Roth* v. *State*, 2021 OK CR 27, 499 P. 3d 23.

While Castro-Huerta's state appellate proceedings were ongoing, a federal grand jury in Oklahoma indicted Castro-Huerta for the same conduct. Castro-Huerta accepted a plea agreement for a 7-year sentence followed by removal from the United States. (Castro-Huerta is not a U. S. citizen and is unlawfully in the United States.) In other words, putting aside parole possibilities, Castro-Huerta in effect received a 28-year reduction of his sentence as a result of *McGirt*.

Castro-Huerta's case exemplifies a now-familiar pattern in Oklahoma in the wake of *McGirt*. The Oklahoma courts have reversed numerous state convictions on that same jurisdictional ground. After having their state convictions reversed, some non-Indian criminals have received lighter

sentences in plea deals negotiated with the Federal Government. Others have simply gone free. Going forward, the State estimates that it will have to transfer prosecutorial responsibility for more than 18,000 cases per year to the Federal and Tribal Governments. All of this has created a significant challenge for the Federal Government and for the people of Oklahoma. At the end of fiscal year 2021, the U. S. Department of Justice was opening only 22% and 31% of all felony referrals in the Eastern and Northern Districts of Oklahoma. Dept. of Justice, U. S. Attorneys, Fiscal Year 2023 Congressional Justification 46. And the Department recently acknowledged that "many people may not be held accountable for their criminal conduct due to resource constraints." *Ibid.*

In light of the sudden significance of this jurisdictional question for public safety and the criminal justice system in Oklahoma, this Court granted certiorari to decide whether a State has concurrent jurisdiction with the Federal Government to prosecute crimes committed by non-Indians against Indians in Indian country. 595 U. S. ___ (2022).[1]

II

The jurisdictional dispute in this case arises because Oklahoma's territory includes Indian country. Federal law defines "Indian country" to include, among other things, "all land within the limits of any Indian reservation under the jurisdiction of the United States Government." 18 U. S. C. §1151.

To begin with, the Constitution allows a State to exercise jurisdiction in Indian country. Indian country is part of the State, not separate from the State. To be sure, under this Court's precedents, federal law may preempt that state jurisdiction in certain circumstances. But otherwise, as a

[1] Both the United States and the Cherokee Nation, along with several other Tribes, filed *amicus* briefs in this case articulating their views on the legal questions before the Court.

matter of state sovereignty, a State has jurisdiction over all of its territory, including Indian country. See U. S. Const., Amdt. 10. As this Court has phrased it, a State is generally "entitled to the sovereignty and jurisdiction over all the territory within her limits." *Lessee of Pollard* v. *Hagan*, 3 How. 212, 228 (1845).

In the early years of the Republic, the Federal Government sometimes treated Indian country as separate from state territory—in the same way that, for example, New Jersey is separate from New York. Most prominently, in the 1832 decision in *Worcester* v. *Georgia*, 6 Pet. 515, 561, this Court held that Georgia state law had no force in the Cherokee Nation because the Cherokee Nation "is a distinct community occupying its own territory."

But the "general notion drawn from Chief Justice Marshall's opinion in *Worcester* v. *Georgia*" "has yielded to closer analysis." *Organized Village of Kake* v. *Egan*, 369 U. S. 60, 72 (1962). "By 1880 the Court no longer viewed reservations as distinct nations." *Ibid.* Since the latter half of the 1800s, the Court has consistently and explicitly held that Indian reservations are "part of the surrounding State" and subject to the State's jurisdiction "except as forbidden by federal law." *Ibid.*

To take a few examples: In 1859, the Court stated: States retain "the power of a sovereign over their persons and property, so far as" "necessary to preserve the peace of the Commonwealth." *New York ex rel. Cutler* v. *Dibble*, 21 How. 366, 370 (1859).

In 1930: "[R]eservations are part of the State within which they lie and her laws, civil and criminal, have the same force therein as elsewhere within her limits, save that they can have only restricted application to the Indian wards." *Surplus Trading Co.* v. *Cook*, 281 U. S. 647, 651 (1930).

In 1946: "[I]n the absence of a limiting treaty obligation

or Congressional enactment each state ha[s] a right to exercise jurisdiction over Indian reservations within its boundaries." *New York ex rel. Ray* v. *Martin*, 326 U. S. 496, 499 (1946).

In 1992: "This Court's more recent cases have recognized the rights of States, absent a congressional prohibition, to exercise criminal (and, implicitly, civil) jurisdiction over non-Indians located on reservation lands." *County of Yakima* v. *Confederated Tribes and Bands of Yakima Nation*, 502 U. S. 251, 257–258 (1992).

And as recently as 2001: "State sovereignty does not end at a reservation's border." *Nevada* v. *Hicks*, 533 U. S. 353, 361 (2001).

In accord with that overarching jurisdictional principle dating back to the 1800s, States have jurisdiction to prosecute crimes committed in Indian country unless preempted. In the leading case in the criminal context—the *McBratney* case from 1882—this Court held that States have jurisdiction to prosecute crimes committed by non-Indians against non-Indians in Indian country. *United States* v. *McBratney*, 104 U. S. 621, 623–624 (1882). The Court stated that Colorado had "criminal jurisdiction" over crimes by non-Indians against non-Indians "throughout the whole of the territory within its limits, including the Ute Reservation." *Id.,* at 624. Several years later, the Court similarly decided that Montana had criminal jurisdiction over crimes by non-Indians against non-Indians in Indian country within that State. *Draper* v. *United States*, 164 U. S. 240, 244–247 (1896). The *McBratney* principle remains good law.

In short, the Court's precedents establish that Indian country is part of a State's territory and that, unless preempted, States have jurisdiction over crimes committed in Indian country.

III

The central question that we must decide, therefore, is

whether the State's authority to prosecute crimes committed by non-Indians against Indians in Indian country has been preempted. U. S. Const., Art. VI.

Under the Court's precedents, as we will explain, a State's jurisdiction in Indian country may be preempted (i) by federal law under ordinary principles of federal preemption, or (ii) when the exercise of state jurisdiction would unlawfully infringe on tribal self-government.

In Part III–A, we consider whether state authority to prosecute crimes committed by non-Indians against Indians in Indian country is preempted by federal law under ordinary principles of preemption. In Part III–B, we consider whether principles of tribal self-government preclude the exercise of state jurisdiction over crimes committed by non-Indians against Indians in Indian country.

A

Castro-Huerta points to two federal laws that, in his view, preempt Oklahoma's authority to prosecute crimes committed by non-Indians against Indians in Indian country: (i) the General Crimes Act, which grants the Federal Government jurisdiction to prosecute crimes in Indian country, 18 U. S. C. §1152; and (ii) Public Law 280, which grants States, or authorizes States to acquire, certain additional jurisdiction over crimes committed in Indian country, 67 Stat. 588; see 18 U. S. C. §1162; 25 U. S. C. §1321. Neither statute preempts preexisting or otherwise lawfully assumed state authority to prosecute crimes committed by non-Indians against Indians in Indian country.

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As relevant here, the General Crimes Act provides: "Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive juris-

diction of the United States, except the District of Columbia, shall extend to the Indian country." 18 U. S. C. §1152.

By its terms, the Act does not preempt the State's authority to prosecute non-Indians who commit crimes against Indians in Indian country. The text of the Act simply "extend[s]" federal law to Indian country, leaving untouched the background principle of state jurisdiction over crimes committed within the State, including in Indian country. *Ibid.*

The Act also specifies the body of federal criminal law that extends to Indian country—namely, "the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States." *Ibid.* Those cross-referenced "general laws" are the federal laws that apply in federal enclaves such as military bases and national parks. *Ibid.*

Importantly, however, the General Crimes Act does not say that Indian country is equivalent to a federal enclave for jurisdictional purposes. Nor does the Act say that federal jurisdiction is exclusive in Indian country, or that state jurisdiction is preempted in Indian country.

Under the General Crimes Act, therefore, both the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed in Indian country.[2] The General Crimes Act does not preempt state authority to prosecute Castro-Huerta's crime.

To overcome the text, Castro-Huerta offers several counterarguments. None is persuasive.

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[2]To the extent that a State lacks prosecutorial authority over crimes committed by Indians in Indian country (a question not before us), that would not be a result of the General Crimes Act. Instead, it would be the result of a separate principle of federal law that, as discussed below, precludes state interference with tribal self-government. See Part III–B, *infra*; *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136, 142–143, 145 (1980); *McClanahan* v. *Arizona Tax Comm'n*, 411 U. S. 164, 171–172 (1973).

First, Castro-Huerta advances what he describes as a textual argument. He contends that the text of the General Crimes Act makes Indian country the jurisdictional equivalent of a federal enclave. To begin, he points out that the Federal Government has exclusive jurisdiction to prosecute crimes committed in federal enclaves such as military bases and national parks. And then Castro-Huerta asserts that the General Crimes Act in effect equates federal enclaves and Indian country. Therefore, according to Castro-Huerta, it follows that the Federal Government also has exclusive jurisdiction to prosecute crimes committed in Indian country.

Castro-Huerta's syllogism is wrong as a textual matter. The Act simply borrows the body of federal criminal law that applies in federal enclaves and extends it to Indian country. The Act does not purport to equate Indian country and federal enclaves for jurisdictional purposes. Moreover, it is not enough to speculate, as Castro-Huerta does, that Congress might have implicitly intended a jurisdictional parallel between Indian country and federal enclaves.

Castro-Huerta's argument also directly contradicts this Court's precedents. As far back as 1891, the Court stated that the phrase "sole and exclusive jurisdiction" in the General Crimes Act is "only used in the description of the laws which are extended" to Indian country, not "to the jurisdiction extended over the Indian country." *In re Wilson*, 140 U. S. 575, 578 (1891). The Court repeated that analysis in 1913, concluding that the phrase "sole and exclusive jurisdiction" is "used in order to describe the laws of the United States which by that section are extended to the Indian country." *Donnelly* v. *United States*, 228 U. S. 243, 268 (1913).

Stated otherwise, the General Crimes Act provides that the federal criminal laws that apply to federal enclaves also apply in Indian country. But the extension of those federal laws to Indian country does not silently erase preexisting

or otherwise lawfully assumed state jurisdiction to prosecute crimes committed by non-Indians in Indian country.

Moreover, if Castro-Huerta's interpretation of the General Crimes Act were correct, then the Act would preclude States from prosecuting *any* crimes in Indian country—presumably even those crimes committed by non-Indians against non-Indians—just as States ordinarily cannot prosecute crimes committed in federal enclaves. But this Court has long held that States may prosecute crimes committed by non-Indians against non-Indians in Indian country. See *McBratney*, 104 U. S., at 623–624; *Draper*, 164 U. S., at 242–246. Those holdings, too, contravene Castro-Huerta's argument regarding the General Crimes Act.

In advancing his enclave argument, Castro-Huerta also tries to analogize the text of the General Crimes Act to the text of the Major Crimes Act. He asserts that the Major Crimes Act grants the Federal Government exclusive jurisdiction to prosecute certain major crimes committed by Indians in Indian country. But the Major Crimes Act contains substantially different language than the General Crimes Act. Unlike the General Crimes Act, the Major Crimes Act says that defendants in Indian country "shall be subject to the same law" as defendants in federal enclaves. See 18 U. S. C. §1153 ("Any Indian who commits against the person or property of another Indian or other person any of" certain major offenses "shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States"). So even assuming that the text of the Major Crimes Act provides for exclusive federal jurisdiction over major crimes committed by Indians in Indian country, see, *e.g.*, *United States* v. *John*, 437 U. S. 634, 651, and n. 22 (1978); *Negonsott* v. *Samuels*, 507 U. S. 99, 103 (1993), that conclusion does not translate to the differently worded General Crimes Act.

In short, the General Crimes Act does not treat Indian

country as the equivalent of a federal enclave for jurisdictional purposes. Nor does the Act make federal jurisdiction exclusive or preempt state law in Indian country.

Second, Castro-Huerta contends that, regardless of the statutory text, Congress *implicitly intended* for the General Crimes Act to provide the Federal Government with exclusive jurisdiction over crimes committed by non-Indians against Indians in Indian country.

The fundamental problem with Castro-Huerta's implicit intent argument is that the text of the General Crimes Act says no such thing. Congress expresses its intentions through statutory text passed by both Houses and signed by the President (or passed over a Presidential veto). As this Court has repeatedly stated, the text of a law controls over purported legislative intentions unmoored from any statutory text. The Court may not "replace the actual text with speculation as to Congress' intent." *Magwood* v. *Patterson*, 561 U. S. 320, 334 (2010). Rather, the Court "will presume more modestly" that "the legislature says what it means and means what it says." *Henson* v. *Santander Consumer USA Inc.*, 582 U. S. 79, ___ (2017) (slip op., at 10) (internal quotation marks and alterations omitted); see, *e.g., McGirt*, 591 U. S., at ___ (slip op., at 12) ("[W]ishes are not laws"); *Virginia Uranium, Inc.* v. *Warren*, 587 U. S. ___, ___ (2019) (lead opinion) (slip op., at 14) (The Supremacy Clause cannot "be deployed" "to elevate abstract and unenacted legislative desires above state law"); *Alexander* v. *Sandoval*, 532 U. S. 275, 287–288 (2001) (The Court does not give "dispositive weight to the expectations that the enacting Congress had formed in light of the contemporary legal context," because we "begin (and find that we can end) our search for Congress's intent with . . . text and structure" (internal quotation marks omitted)); *Central Bank of Denver, N. A.* v. *First Interstate Bank of Denver, N. A.*, 511 U. S. 164, 173 (1994) ("[T]he text of the statute controls our decision").

To buttress his implicit intent argument, Castro-Huerta seizes on the history of the General Crimes Act. At the time of the Act's earliest iterations in 1817 and 1834, Indian country was separate from the States. Therefore, at that time, state law did not apply in Indian country—in the same way that New York law would not ordinarily have applied in New Jersey. But territorial separation—*not* jurisdictional preemption by the General Crimes Act—was the reason that state authority did not extend to Indian country at that time.

Because Congress operated under a different territorial paradigm in 1817 and 1834, it had no reason at that time to consider whether to preempt preexisting or lawfully assumed state criminal authority in Indian country. For present purposes, the fundamental point is that the text of the General Crimes Act does not preempt state law. And this Court does not "rewrite a constitutionally valid statutory text under the banner of speculation about what Congress might have done had it faced a question that . . . it never faced." *Henson*, 582 U. S., at ___ (slip op., at 9). The history of territorial separation during the early years of the Republic is not a license or excuse to rewrite the text of the General Crimes Act.

As noted above, the *Worcester*-era understanding of Indian country as separate from the State was abandoned later in the 1800s. After that change, Indian country in each State became part of that State's territory. But Congress did not alter the General Crimes Act to make federal criminal jurisdiction exclusive in Indian country. To this day, the text of the General Crimes Act still does not make federal jurisdiction exclusive or preempt state jurisdiction.

In 1882, in *McBratney*, moreover, this Court held that States have jurisdiction to prosecute at least some crimes committed in Indian country. Since 1882, therefore, Congress has been specifically aware that state criminal laws apply to some extent in Indian country. Yet since then,

Congress has never enacted new legislation that would render federal jurisdiction exclusive or preempt state jurisdiction over crimes committed by non-Indians in Indian country. Additionally, in 1979, the Office of Legal Counsel stated that this Court had not resolved the specific issue of state jurisdiction over crimes committed by non-Indians against Indians in Indian country, and that the issue was not settled. 3 Op. OLC 111, 117–119 (1979). Yet Congress still did not act to make federal jurisdiction exclusive or to preempt state jurisdiction.

On a different tack, Castro-Huerta invokes the reenactment canon. Castro-Huerta points out that, in 1948, Congress recodified the General Crimes Act. Two years before that recodification, this Court suggested in dicta that States lack jurisdiction over crimes committed by non-Indians against Indians in Indian country. See *Williams* v. *United States*, 327 U. S. 711, 714 (1946). Castro-Huerta contends that the 1948 Congress therefore intended to ratify the *Williams* dicta.

Castro-Huerta's reenactment-canon argument is misplaced. First of all, the reenactment canon does not override clear statutory language of the kind present in the General Crimes Act. See *BP p.l.c.* v. *Mayor and City Council of Baltimore*, 593 U. S. ___, ___ (2021) (slip op., at 11). In addition, the canon does not apply to dicta. See *Jama* v. *Immigration and Customs Enforcement*, 543 U. S. 335, 349, 351, n. 12 (2005). The Court's statements in *Williams* were pure dicta. Indeed, the *Williams* dicta did not even purport to interpret the text of the General Crimes Act. Dicta that does not analyze the relevant statutory provision cannot be said to have resolved the statute's meaning. Moreover, any inference from Congress's 1948 recodification is especially weak because that recodification was not specific to the General Crimes Act, but instead was simply a general recodification of all federal criminal laws. This Court has pre-

viously explained that "the function" of the 1948 recodification "was generally limited to that of consolidation and codification." *Muniz* v. *Hoffman*, 422 U. S. 454, 474 (1975) (internal quotation marks omitted). This Court does not infer that Congress, "in revising and consolidating the laws, intended to change their policy, unless such an intention be clearly expressed." *Id.,* at 470 (internal quotation marks omitted).

For many reasons, then, we cannot conclude that Congress, by recodifying the entire Federal Criminal Code in 1948, silently ratified a few sentences of dicta from *Williams*. The reenactment canon does not apply in this case.

Third, Castro-Huerta contends that the Court has repeated the 1946 *Williams* dicta on several subsequent occasions. But the Court's dicta, even if repeated, does not constitute precedent and does not alter the plain text of the General Crimes Act, which was the law passed by Congress and signed by the President. See *National Collegiate Athletic Assn.* v. *Alston*, 594 U. S. ___, ___ (2021) (slip op., at 21).[3]

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[3]In addition to citing *Williams* and later cases, Castro-Huerta also cites the earlier 1913 decision in *Donnelly* v. *United States*, 228 U. S. 243. According to Castro-Huerta, *Donnelly* determined that States may not exercise jurisdiction in Indian country over crimes by or against Indians. Castro-Huerta is wrong. In *Donnelly*, the Court simply concluded that although States have exclusive jurisdiction over crimes committed by non-Indians against non-Indians in Indian country, States do not have similarly "*undivided* authority" over crimes committed by or against Indians in Indian country. *Id.,* at 271–272 (emphasis added). In other words, the Federal Government also maintains jurisdiction under the General Crimes Act over crimes by or against Indians in Indian country because of the Federal Government's interest in protecting and defending tribes. See *ibid.* (citing *United States* v. *Kagama*, 118 U. S. 375 (1886)). *Donnelly* did not address the distinct question we confront here: whether States have concurrent jurisdiction with the Federal Government over non-Indians who commit crimes against Indians in Indian country. If anything, *Donnelly*'s rejection of the argument that the State had "undivided" authority, without the Court's saying more, suggests

Moreover, there is a good explanation for why the Court's previous comments on this issue came only in the form of tangential dicta. The question of whether States have concurrent jurisdiction over crimes committed by non-Indians against Indians in Indian country did not previously matter all that much and did not warrant this Court's review. Through congressional grants of authority in Public Law 280 or state-specific statutes, some States with substantial Indian populations have long possessed broad jurisdiction to prosecute a vast array of crimes in Indian country (including crimes *by Indians*). See Brief for National Congress of American Indians as *Amicus Curiae* 20, and n. 2. Indeed, Castro-Huerta notes that "21 States have jurisdiction over crimes 'by or against' Indians in some Indian country." Brief for Respondent 7. So the General Crimes Act question—namely, whether that Act preempts inherent state prosecutorial authority in Indian country—was not relevant in those States.

In any event, this Court never considered the General Crimes Act preemption question. As the Office of Legal Counsel put it, "many courts, without carefully considering the question, have assumed that Federal jurisdictio[n] whenever it obtains is exclusive. We nevertheless believe that it is a matter that should not be regarded as settled before it has been fully explored by the courts." 3 Op. OLC, at 117. This case is the first time that the matter has been fully explored by this Court.

Until the Court's decision in *McGirt* two years ago, this

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that the Court thought that the State had concurrent authority with the Federal Government in Indian country, unless otherwise preempted.

The Court's subsequent decision in *United States* v. *Ramsey*, 271 U. S. 467 (1926), likewise considered whether the Federal Government's "authority" to prosecute crimes committed by or against Indians "was ended by the grant of statehood." *Id.,* at 469. The Court held that federal authority was not "ended" by statehood. *Ibid.* But the Court did not say that States lacked concurrent jurisdiction.

question likewise did not matter much in Oklahoma. Most everyone in Oklahoma previously understood that the State included almost no Indian country. *McGirt*, 590 U. S., at ___–___ (ROBERTS, C. J., dissenting) (slip op., at 31–32). But after *McGirt*, about 43% of Oklahoma—including Tulsa—is now considered Indian country. Therefore, the question of whether the State of Oklahoma retains concurrent jurisdiction to prosecute non-Indian on Indian crimes in Indian country has suddenly assumed immense importance. The jurisdictional question has now been called. In light of the newfound significance of the question, it is necessary and appropriate for this Court to take its first hard look at the text and structure of the General Crimes Act, rather than relying on scattered dicta about a question that, until now, was relatively insignificant in the real world.

After independently examining the question, we have concluded that the General Crimes Act does not preempt state jurisdiction over crimes committed by non-Indians against Indians in Indian country.

2

Castro-Huerta next invokes Public Law 280 as a source of preemption. That argument is similarly unpersuasive.

Public Law 280 affirmatively grants certain States broad jurisdiction to prosecute state-law offenses committed by or against Indians in Indian country. See 18 U. S. C. §1162. (Other States may opt in, with tribal consent. 25 U. S. C. §1321.) But Public Law 280 does not preempt any preexisting or otherwise lawfully assumed jurisdiction that States possess to prosecute crimes in Indian country. Indeed, the Court has already concluded as much: "Nothing in the language or legislative history of Pub. L. 280 indicates that it was meant to divest States of pre-existing and otherwise lawfully assumed jurisdiction." *Three Affiliated Tribes of Fort Berthold Reservation* v. *Wold Engineering, P. C.*, 467

U. S. 138, 150 (1984). The Court's definitive statement in *Three Affiliated Tribes* about Public Law 280 applies to both civil and criminal jurisdiction. And the Court's statement follows ineluctably from the statutory text: Public Law 280 contains no language that preempts States' civil or criminal jurisdiction.

Castro-Huerta separately contends that the enactment of Public Law 280 in 1953 would have been pointless surplusage if States already had concurrent jurisdiction over crimes committed by non-Indians against Indians in Indian country. So he says that, as of 1953, Congress must have assumed that States did not already have concurrent jurisdiction over those crimes. To begin with, assumptions are not laws, and the fact remains that Public Law 280 contains no language preempting state jurisdiction, as the Court already held in *Three Affiliated Tribes*. Apart from that, Public Law 280 encompasses far more than just non-Indian on Indian crimes (the issue here). Public Law 280 also grants States jurisdiction over crimes committed *by Indians*. See Conference of Western Attorneys General, American Indian Law Deskbook §4.6, p. 250–251 (2021 ed.); cf. *Negonsott*, 507 U. S., at 105–107. Absent Public Law 280, state jurisdiction over those Indian-defendant crimes could implicate principles of tribal self-government. See *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136, 142–143 (1980); Part III–B, *infra*. So our resolution of the narrow jurisdictional issue in this case does not negate the significance of Public Law 280 in affording States broad criminal jurisdiction over other crimes committed in Indian country, such as crimes committed by Indians.[4]

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[4] Castro-Huerta also points to several state-specific grants of jurisdiction from 1940 through 1948. See Act of July 2, 1948, ch. 809, 62 Stat. 1224 (New York); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (Iowa); Act of May 31, 1946, ch. 279, 60 Stat. 229 (North Dakota); Act of June 8, 1940, ch. 276, 54 Stat. 249 (Kansas). Those statutes operate similarly to Public Law 280.

In any event, to the extent that there is any overlap (or even complete overlap) between Public Law 280's jurisdictional grant and some of the States' preexisting jurisdiction with respect to crimes committed in Indian country, it made good sense for Congress in 1953 to explicitly grant such authority in Public Law 280. The scope of the States' authority had not previously been resolved by this Court, except in cases such as *McBratney* and *Draper* with respect to non-Indian on non-Indian crimes. Congressional action in the face of such legal uncertainty cannot reasonably be characterized as unnecessary surplusage. See *Nielsen* v. *Preap*, 586 U. S. ___, ___–___ (2019) (slip op., at 20–21). And finally, even if there is some surplusage, the Court has stated that "[r]edundancy is not a silver bullet" when interpreting statutes. *Rimini Street, Inc.* v. *Oracle USA, Inc.*, 586 U. S. ___, ___ (2019) (slip op., at 11).

In sum, Public Law 280 does not preempt state authority to prosecute crimes committed by non-Indians against Indians in Indian country.

B

Applying what has been referred to as the *Bracker* balancing test, this Court has recognized that even when federal law does not preempt state jurisdiction under ordinary preemption analysis, preemption may still occur if the exercise of state jurisdiction would unlawfully infringe upon tribal self-government. See *Bracker*, 448 U. S., at 142–143; see also *New Mexico* v. *Mescalero Apache Tribe*, 462 U. S. 324, 333–335 (1983). Under the *Bracker* balancing test, the Court considers tribal interests, federal interests, and state interests. 448 U. S., at 145.[5]

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[5]The dissent suggests that we should not reach *Bracker* because Congress has already spoken to the issue and preempted state jurisdiction. *Post*, at 30–32 (opinion of GORSUCH, J.). As already discussed, Congress did not preempt the State's jurisdiction over crimes committed by non-Indians against Indians in Indian country. Therefore, we proceed to

Here, *Bracker* does not bar the State from prosecuting crimes committed by non-Indians against Indians in Indian country.

First, the exercise of state jurisdiction here would not infringe on tribal self-government. In particular, a state prosecution of a crime committed by a non-Indian against an Indian would not deprive the tribe of any of its prosecutorial authority. That is because, with exceptions not invoked here, Indian tribes lack criminal jurisdiction to prosecute crimes committed by non-Indians such as Castro-Huerta, even when non-Indians commit crimes against Indians in Indian country. See *Oliphant* v. *Suquamish Tribe*, 435 U. S. 191, 195 (1978).

Moreover, a state prosecution of a non-Indian does not involve the exercise of state power over any Indian or over any tribe. The only parties to the criminal case are the State and the non-Indian defendant. Therefore, as has been recognized, any tribal self-government "justification for preemption of state jurisdiction" would be "problematic." American Indian Law Deskbook §4.8, at 260; see *Three Affiliated Tribes*, 467 U. S., at 148; see also *Hicks*, 533 U. S., at 364; *McBratney*, 104 U. S., at 623–624; *Draper*, 164 U. S., at 242–243.[6]

Second, a state prosecution of a non-Indian likewise would not harm the federal interest in protecting Indian victims. State prosecution would supplement federal authority, not supplant federal authority. As the United

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Bracker balancing to determine whether the exercise of state jurisdiction would unlawfully infringe on tribal self-government.

[6] To the extent that some tribes might have a policy preference for federal jurisdiction or tribal jurisdiction, but not state jurisdiction, over crimes committed by non-Indians in Indian country, that policy preference does not factor into the *Bracker* analysis.

Furthermore, this case does not involve the converse situation of a State's prosecution of crimes committed by an Indian against a non-Indian in Indian country. We express no view on state jurisdiction over a criminal case of that kind.

States has explained in the past, "recognition of concurrent state jurisdiction" could "facilitate effective law enforcement on the Reservation, and thereby further the federal and tribal interests in protecting Indians and their property against the actions of non-Indians." Brief for United States as *Amicus Curiae* in *Arizona* v. *Flint*, O. T. 1988, No. 603, p. 6. The situation might be different if state jurisdiction ousted federal jurisdiction. But because the State's jurisdiction would be concurrent with federal jurisdiction, a state prosecution would not preclude an earlier or later federal prosecution and would not harm the federal interest in protecting Indian victims.

Third, the State has a strong sovereign interest in ensuring public safety and criminal justice within its territory, and in protecting all crime victims. See *Dibble*, 21 How., at 370. The State also has a strong interest in ensuring that criminal offenders—especially violent offenders—are appropriately punished and do not harm others in the State.

The State's interest in protecting crime victims includes both Indian and non-Indian victims. If his victim were a non-Indian, Castro-Huerta could be prosecuted by the State, as he acknowledges. But because his victim is an Indian, Castro-Huerta says that he is free from state prosecution. Castro-Huerta's argument would require this Court to treat Indian victims as second-class citizens. We decline to do so.[7]

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[7] Castro-Huerta notes that many tribes were enemies of States in the 1700s and 1800s. The theory appears to be that States (unlike the Federal Government) cannot be trusted to fairly and aggressively prosecute crimes committed by non-Indians against Indians in 2022. That theory is misplaced for at least two reasons. *First*, the State's jurisdiction would simply be concurrent with, not exclusive of, the Federal Government's. If concurrent state jurisdiction somehow poses a problem, Congress can seek to alter it. *Second*, many tribes were also opposed to the *Federal Government* at least as late as the Civil War. Indeed, some of those tribes, including the Cherokees, held black slaves and entered into treaties with the Confederate government. A. Gibson, Native Americans and

IV

The dissent emphasizes the history of mistreatment of American Indians. But that history does not resolve the legal questions presented in this case. Those questions are: (i) whether Indian country is part of a State or instead is separate and independent from a State; and (ii) if Indian country is part of a State, whether the State has concurrent jurisdiction with the Federal Government to prosecute crimes committed by non-Indians against Indians in Indian country.

The answers to those questions are straightforward. On the first question, as explained above, this Court has repeatedly ruled that Indian country is part of a State, not separate from a State. By contrast, the dissent lifts up the 1832 decision in *Worcester* v. *Georgia* as a proper exposition of Indian law. But this Court long ago made clear that *Worcester* rested on a mistaken understanding of the relationship between Indian country and the States. The Court has stated that the "general notion drawn from Chief Justice Marshall's opinion in *Worcester* v. *Georgia*" "has yielded to closer analysis": "By 1880 the Court no longer viewed reservations as distinct nations. On the contrary, it was said that a reservation was in many cases a part of the surrounding State or Territory, and subject to its jurisdiction except as forbidden by federal law." *Organized Village of Kake*, 369 U. S., at 72.

Because Indian country is part of a State, not separate

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the Civil War, 9 Am. Indian Q. 4, 385, 388 (1985); 1 F. Cohen, Handbook of Federal Indian Law §4.07(1)(a), p. 289 (2012); see *McGirt* v. *Oklahoma*, 591 U. S. ___, ___–___ (2020) (ROBERTS, C. J., dissenting) (slip op., at 3–4); *Cherokee Nation* v. *Nash*, 267 F. Supp. 3d 86, 89–90 (DC 2017). In any event, it is not evident why the pre-Civil War history of tribal discord with States—unconnected from any statutory text—should disable States from exercising jurisdiction in 2022 to ensure that crime victims in state territory are protected under the State's laws.

from a State, the second question here—the question regarding the State's jurisdiction to prosecute Castro-Huerta—is also straightforward. Under the Constitution, States have jurisdiction to prosecute crimes within their territory except when preempted (in a manner consistent with the Constitution) by federal law or by principles of tribal self-government. As we have explained, no federal law preempts the State's exercise of jurisdiction over crimes committed by non-Indians against Indians in Indian country. And principles of tribal self-government likewise do not preempt state jurisdiction here.

As a corollary to its argument that Indian country is inherently separate from States, the dissent contends that Congress must affirmatively authorize States to exercise jurisdiction in Indian country, even jurisdiction to prosecute crimes committed by non-Indians. But under the Constitution and this Court's precedents, the default is that States may exercise criminal jurisdiction within their territory. See Amdt. 10. States do not need a permission slip from Congress to exercise their sovereign authority. In other words, the default is that States have criminal jurisdiction in Indian country unless that jurisdiction is *preempted*. In the dissent's view, by contrast, the default is that States do *not* have criminal jurisdiction in Indian country unless Congress specifically *provides* it. The dissent's view is inconsistent with the Constitution's structure, the States' inherent sovereignty, and the Court's precedents.

Straying further afield, the dissent seizes on treaties from the 1800s. *Post*, at 18–20, and n. 4 (opinion of GORSUCH, J.).[8] But those treaties do not preclude state jurisdiction here. The dissent relies heavily on the 1835 Treaty of New Echota, which stated that Indian country

[8] Congress "abolished treatymaking with the Indian nations in 1871 and has itself subjected the tribes to substantial bodies of state and federal law." *County of Yakima* v. *Confederated Tribes and Bands of Yakima Nation*, 502 U. S. 251, 257 (1992) (citation omitted).

was separate from States, and which the dissent says was preserved in relevant part by the 1866 Treaty. See Treaty with the Cherokee (New Echota), Art. 5, Dec. 29, 1835, 7 Stat. 481; Treaty with the Cherokee, July 19, 1866, 14 Stat. 709. But history and legal development did not end in 1866. Some early treaties may have been consistent with the *Worcester*-era theory of separateness. But as relevant here, those treaties have been supplanted: Specific to Oklahoma, those treaties, in relevant part, were formally supplanted no later than the 1906 Act enabling Oklahoma's statehood. See Oklahoma Enabling Act, ch. 3335, 34 Stat. 267. As this Court has previously concluded, "admission of a State into the Union" "necessarily repeals the provisions of any prior statute, or of any existing treaty" that is inconsistent with the State's exercise of criminal jurisdiction "throughout the whole of the territory within its limits," including Indian country, unless the enabling act says otherwise "by express words." *McBratney*, 104 U. S., at 623–624; see *Draper*, 164 U. S., at 242–246. The Oklahoma Enabling Act contains no such express exception. Therefore, at least since Oklahoma's statehood in the early 1900s, Indian country has been part of the territory of Oklahoma.

The dissent responds that the language of the 1906 statute enabling Oklahoma's statehood itself established a jurisdictional division between the State and Indian country. See *post*, at 20–22 (discussing the Oklahoma Enabling Act). That argument is mistaken. This Court long ago explained that interpreting a statehood act to divest a State of jurisdiction over Indian country "wholly situated within [its] geographical boundaries" would undermine "the very nature of the equality conferred on the State by virtue of its admission into the Union." *Draper*, 164 U. S., at 242–243. So the Court requires clear statutory language "to create an exception" to that "rule." *Id.,* at 244. To reiterate, the Oklahoma Enabling Act contains no such clear language. Indeed, the Court has interpreted similar statutory language in other

state enabling acts not to displace state jurisdiction. See *id.,* at 243–247; *Organized Village of Kake*, 369 U. S., at 67–71. In *Organized Village of Kake*, the Court specifically addressed several state enabling acts, including the Oklahoma Enabling Act, and stated that statutory language reserving jurisdiction and control to the United States was meant to preserve federal jurisdiction to the extent that it existed before statehood, not to make federal jurisdiction exclusive. *Id.,* at 67–70. Consistent with that precedent, today's decision recognizes that the Federal Government and the State have concurrent jurisdiction over crimes committed by non-Indians against Indians in Indian country.[9]

The dissent incorrectly seeks to characterize various aspects of the Court's decision as dicta. To be clear, the Court today holds that Indian country within a State's territory is part of a State, not separate from a State. Therefore, a State has jurisdiction to prosecute crimes committed in Indian country unless state jurisdiction is preempted. With respect to crimes committed by non-Indians against Indians in Indian country, the Court today further holds that the General Crimes Act does not preempt the State's authority to prosecute; that Public Law 280 does not preempt

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[9] The dissent characterizes the Court's opinion in several ways that are not accurate. *Post*, at 38–41. For example, the dissent suggests that States may not exercise jurisdiction over crimes committed by Indians against non-Indians in Indian country—the reverse of the scenario in this case. To reiterate, we do not take a position on that question. See *supra,* at 19, n. 6.

The dissent also hints that the jurisdictional holding of the Court in this case may apply only in Oklahoma. That is incorrect. The Court's holding is an interpretation of federal law, which applies throughout the United States: Unless preempted, States may exercise jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.

Finally, the statutory definition of Indian country includes "all Indian allotments, the Indian titles to which have not been extinguished." See 18 U. S. C. §1151. Therefore, States may prosecute crimes committed by non-Indians against Indians in those allotments.

the State's authority to prosecute; that no principle of tribal self-government preempts the State's authority to prosecute; that the cited treaties do not preempt Oklahoma's authority to prosecute; and that the Oklahoma Enabling Act does not preempt Oklahoma's authority to prosecute (indeed, it solidifies the State's presumptive sovereign authority to prosecute). Comments in the dissenting opinion suggesting anything otherwise "are just that: comments in a dissenting opinion." *Railroad Retirement Bd.* v. *Fritz*, 449 U. S. 166, 177, n. 10 (1980).

From start to finish, the dissent employs extraordinary rhetoric in articulating its deeply held policy views about what Indian law should be. The dissent goes so far as to draft a proposed statute for Congress. But this Court's proper role under Article III of the Constitution is to declare what the law is, not what we think the law should be. The dissent's views about the jurisdictional question presented in this case are contrary to this Court's precedents and to the laws enacted by Congress.

* * *

We conclude that the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. We therefore reverse the judgment of the Oklahoma Court of Criminal Appeals and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.