

**STATEMENT OF  
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UNITED STATES DEPARTMENT OF THE INTERIOR  
BEFORE THE  
HOUSE COMMITTEE ON NATURAL RESOURCES  
SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES**

**September 20, 2022**

Good afternoon, Chair Leger Fernández, Ranking Member Obernolte, and Members of the Subcommittee. My name is Bryan Newland, and I serve as the Assistant Secretary for Indian Affairs at the U.S. Department of the Interior (Department). Thank you for the opportunity to present the Department’s testimony at this important oversight hearing, “Examining *Oklahoma v. Castro-Huerta*: The Implications of the Supreme Court’s Ruling on Tribal Sovereignty.”

**Background**

Throughout the history of the United States, the jurisdictional framework between Indian Tribes, the federal government, and states has proved to be complex, especially as it relates to criminal jurisdiction. Both Congress and the courts have tied criminal jurisdiction in Indian country to variables such as the type of crime perpetrated, the Tribal affiliation of the criminal defendant, the Tribal membership status of the victim, and the land ownership status of the crime scene. All of these variables must be determined before it is known whether a Tribal government, the federal government, a state, or some combination of these entities, may exercise criminal jurisdiction.

Congress, working with the Executive Branch and Tribes, has legislated to affirm, assign, or clarify criminal jurisdiction in Indian country. In the past half-century, the trend in these statutes has been to affirm Tribal sovereignty and clarify and strengthen the ability of Tribal governments to protect public safety within their reservations. Those enactments include:

- the 1968 amendments to Public Law 83-280 (Public Law 280), which allows States to obtain criminal jurisdiction in Indian country only with the consent of an Indian Tribe through a special election;
- the 1991 amendments to the Indian Civil Rights Act, which affirm the Tribes’ inherent criminal jurisdiction over non-member Indians;
- the 2010 Tribal Law and Order Act, which enhanced the criminal sentencing authority of Tribal courts;

- the 2013 reauthorization of the Violence Against Women Act, which recognized and affirmed Tribes’ inherent jurisdiction to prosecute non-Indians for certain crimes committed in Indian country;
- the 2019 enactment of Savanna’s Act, which closed gaps in law enforcement investigations and data reporting to improve the ability of federal and Tribal agencies to address instances of missing and murdered Indigenous people;
- the 2019 enactment of the Not Invisible Act to create a Commission to study and report on improving intergovernmental coordination for Tribal, federal, and state law enforcement and strategies to improve resources for survivors and victims’ families ; and
- the 2022 reauthorization of the Violence Against Women Act, which expanded the recognition and affirmation of Tribes’ inherent jurisdiction to prosecute non-Indians for additional crimes committed in Indian country and authorized an Alaska pilot program under which the Attorney General may designate participating tribes to exercise criminal jurisdiction over non-Indians who commit covered crimes.

In addition, President Biden issued Executive Order 14053, Improving Public Safety and Criminal Justice for Native Americans and Addressing the Crisis of Missing or Murdered Indigenous People on November 15, 2021, to improve the coordination of federal agencies’ work with Tribes to improve public safety in Tribal communities.

### ***Castro-Huerta***

On June 29, 2022, the U.S. Supreme Court decided *Oklahoma v. Castro-Huerta*, 142 S.Ct. 2486 (2022). The decision drastically altered the status quo, overturning nearly 200 years of law enforcement practice nationwide where federal jurisdiction over crimes committed by non-Indians against Indians in Indian country has always been exclusive of state jurisdiction. In *Castro-Huerta*, the Court upended settled law, holding for the first time, “that the federal government and states have concurrent jurisdiction over crimes committed by non-Indians against Indians in Indian country.” *Id.* at 2504.

According to the *Castro-Huerta* decision, because of *McGirt v. Oklahoma*, 591 U.S. \_\_\_, 140 S.Ct. 2452 (2020)—a recent Supreme Court decision which held that the Creek reservation remained intact and was never disestablished—the “classification of eastern Oklahoma as Indian country has raised urgent questions about which government or governments have jurisdiction to prosecute crimes committed there.” *Castro-Huerta*, 142 S.Ct. at 2492. The Court granted certiorari to decide *Castro-Huerta* “[i]n light of the sudden significance of this jurisdictional question for public safety and the criminal justice system in Oklahoma.” *Id.*

While *McGirt*’s impacts were limited to Oklahoma, *Castro-Huerta* has national implications, altering the previously-settled understanding of state jurisdiction throughout Indian country.

*Castro-Huerta* has introduced additional complexities for Tribal governments and Indian victims as they seek to determine who is responsible for ensuring public safety on Tribal lands. The Department is working to understand the implications of this decision, and to determine how to continue our work to fulfill our treaty, trust, legal, and moral obligations to promote Tribal sovereignty, Indian self-determination, and strengthen Tribal jurisdiction.

### **Impact of *Castro-Huerta* on Public Safety in Indian Country**

The *Castro-Huerta* opinion injects uncertainty into Indian country. State prosecutors may now accept or decline cases involving crimes committed by non-Indians against Indians in Indian country without obtaining consent from the Tribe, as Congress explicitly required for states to exercise such jurisdiction under the Public Law 280 framework. If state prosecutorial activity conflicts with the exercise of Tribal and federal jurisdiction and public safety goals, that conflict will come at the expense of communities on Indian reservations. State actions at odds with Tribal and federal public safety needs and priorities will confuse the public, add conflict to the already fragile relationships between Indian Tribes and states, and abet increased crime in Indian country.

### **Tribal-State Relationships**

Tribal nations are pre-existing sovereigns over which states have historically lacked authority. One of the roles of the federal government, since the time of this Nation's founding, has been to protect Tribal nations from state regulation, intrusion, and overreach. Centuries of interactions between Indian Tribes and states have shown that a delicate relationship exists between the two. Under Public Law 280, the mechanism established by Congress for certain states to acquire criminal jurisdiction over parts of Indian country, we have seen first-hand challenges with the exercise of state jurisdiction in Indian country. At times, some states have limited or denied public safety services to Tribal communities, leaving Tribes without coverage. Tribes in the six mandatory Public Law 280 states (Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin) and in other states that Congress has allowed to exercise criminal jurisdiction in Indian country have repeatedly told the Department that state resources do not always filter to their communities and that coordination of law enforcement is challenging and inadequate. Many Tribes in these states are dissatisfied with state jurisdiction over criminal matters on their lands. As a result, many Tribes have proactively built up their own law enforcement capacity and have worked with states to successfully retrocede from Public Law 280 - limiting jurisdiction to that of the federal government and the Tribe with the state's support. *Castro-Huerta* not only disrupts the process Congress established for allocating criminal jurisdiction between Tribes and states, but it has the potential to spread the above enumerated challenges to Tribes located in non-Public Law 280 states.

## **Tribes are Their Own Best Stewards**

Time and time again, Tribes have proven that they can best meet the public welfare and safety needs of communities on their reservations. To that end, the Department supports energized investment in Tribal justice systems, infrastructure, and law enforcement. In the 2013 and 2022 Violence Against Women Act (VAWA) reauthorizations, Congress created a path for Tribal justice systems to exercise criminal jurisdiction in certain cases over non-Indians. It is a trust and moral obligation for the United States to assist Tribes in achieving VAWA's necessary and complex prerequisites to be eligible for such jurisdiction.

Congress has paired its legislation affirming Tribal jurisdiction and sovereignty with increased investments in Tribal law enforcement agencies and Tribal courts in recent years. This includes an additional \$62 million in funds for Bureau of Indian Affairs (BIA) to support Tribes in Oklahoma to enhance public safety in the wake of the *McGirt* decision. Recent increases in funding have increased the BIA's and Tribal law enforcement capacity in Indian country to improve public safety in Indian country.

## **Conclusion**

The Department of the Interior and the Department of Justice are hosting two listening sessions with Indian Tribes to discuss the Supreme Court's *Castro-Huerta* decision on September 26 and 27, 2022. Specifically, the Departments are seeking comments on the impact of the decision on Tribal law enforcement and justice systems, whether the decision impacts standing cooperative agreements or processes with state or federal agencies, and what the Tribal-specific reactions are to the decision, including views about concurrent state criminal jurisdiction in Indian country.

As a trustee to Indian Tribes, the Department of the Interior continues to prioritize and reinforce Tribal sovereignty and self-determination, including working to protect Indian territorial integrity and ensure public safety can be realized across Indian country.

Chair Leger Fernández, Ranking Member Obernolte, and Members of the Subcommittee, thank you for the opportunity to provide the Department's views. The Department looks forward to working with Congress to affirm Tribal sovereignty and public safety within the boundaries of Tribal lands. I look forward to answering any questions that you may have.