

**Testimony of  
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Before the  
United States House Committee on Natural Resources  
Subcommittee for Indigenous Peoples of the United States**  
*“Examining Oklahoma v. Castro-Huerta: The Implications of the Supreme Court’s Ruling on  
Tribal Sovereignty”*  
**Tuesday, September 20, 2022**

Madame Chairwoman and members of the committee, thank you for the opportunity to testify. I am honored to serve as counsel to the National Indigenous Women’s Resource Center, a national non-profit whose mission is to end violence against Native women and children. Today, Native women and children face the highest rates of violence in the entire United States. The reasons for this epidemic of violence in Indian country are no mystery.

In 1978, the United States Supreme Court took away the inherent jurisdiction of our Tribal Nations to prosecute crimes committed by non-Indians against Indian victims on tribal lands. And then two months ago, the Court gave that jurisdiction to States.

But after 1978, and before the Court’s decision in *Castro-Huerta*, Congress passed two pieces of legislation that restored, partially, the jurisdiction the Court took away in *Oliphant*. In the last two re-authorizations of the Violence Against Women Act, Congress, in a bi-partisan manner, elected to restore this jurisdiction to Tribal Nations. Not States. In fact, the crime underlying the Court’s decision in *Castro-Huerta* involved non-Indian abuse against an Indian child on tribal lands- a crime that, as of October 1, Tribal Nations will once again be able to prosecute. In restoring this jurisdiction to Tribal Nations, Congress recognized that no sovereign has a greater interest in protecting the safety and welfare of Native victims than their Tribal Nations. The majority opinion in *Castro-Huerta* erroneously ignored Congress’ passage of VAWA 2022, and the Court ignored Congress’ considered judgment.

Indian law scholars have noted numerous problems with the judicial underpinnings of the opinion in *Castro-Huerta*. It misconstrues the plain language of the General Crimes Act. It violates the Constitution’s separation of powers and disrespects Congress’ exclusive authority to legislate over Indian affairs. But as a Native woman dedicated to ending violence against Native women and children, the biggest problem I see with *Castro-Huerta* is that the Court erroneously concluded that state governments somehow have a greater interest in protecting Native victims than their own Tribal Nations.

They do not. The consequences of *Castro-Huerta*, as they relate to safety for Native women and children, have already proven to be dire. According to the DOJ, 96% of Native victims have been victims of violent crimes committed by non-Indians. Because of *Oliphant*, Tribal Nations cannot prosecute the majority of violent crimes committed against our women and children in our own homes. And because of *Castro-Huerta*, our Native women and children will now have to rely on their state and local governments to protect them, instead of the federal government—the only government with a treaty trust duty and responsibility to protect us. The NIWRC is

already receiving reports that individual United States Attorneys Offices are implementing policies to defer prosecution of crimes committed by non-Indians against Indians on tribal lands to state law enforcement, based on a flawed reading of *Castro-Huerta*. Nothing in *Castro-Huerta* invites the Department of Justice to distance itself from its treaty trust duty and responsibility to safeguard the lives of our women and children. But as we've witnessed with PL 280, the Kansas Act, and the few other instances when Congress has granted States jurisdiction over crimes against Native victims on tribal lands, such a grant of jurisdiction to States inevitably results in a decrease in federal resources, a decrease in prosecutions, and an increase in violent crimes against our Native people. For instance, after Nebraska acquired this jurisdiction through PL-280, the United States Commission on Civil Rights reported in 1961 that Tribal Nations in Nebraska were told the State did "not have the funds to maintain station deputy sheriffs on their reservations."<sup>1</sup>

I wish I could say that state and local governments have prioritized the protection of Native women and children, but they have not.

In Big Horn County, the state county with the highest rates of Missing and Murdered Indigenous Persons in the United States, the State of Montana has done nothing to address the fact that an entire Sheriff's Office repeatedly refuses to investigate the innumerable homicides of Native people within the state's jurisdiction. Kaysera Stops Pretty Places, Allison High Wolf, Selena Not Afraid. The list goes on and on.

In North Dakota, local and state law enforcement did not search for Savanna Greywind when she went missing. She was murdered in Fargo, North Dakota. But the Fargo police refused to look for her. It was her family and friends who organized the search party. State law enforcement did nothing.

In Alaska, one of the States with the highest rates of violence against Native women, Native victims of violent crimes who call 911 wait days and days for the arrival of a State trooper. Often times, children and family members have to guard the crime scene until state law enforcement finally arrives. Native children are the first responders.

In Wyoming, Native people comprise 3 percent of the entire state's population, but they are 21% of the state's homicide victims.

Oklahoma, the State that asked the Court for this jurisdiction, fares no better. In 2017, the Urban Indian Health Institute ("UIHI") found that Oklahoma ranks in the top ten of States with the highest number of MMIWG cases, and Oklahoma City ranks in the top eight of American cities that fail to properly record and investigate MMIWG cases.

The decision in *Castro-Huerta* truly has nothing to do with what's best for Native victims. It is an outcome determinative decision fueled by one Governor's multi-million dollar PR campaign

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<sup>1</sup> 5 U.S. Comm'n on Civil Rights, Justice: 1961 Comm'n on Civil Rights Report 148 (1961).

to overturn the Court's prior decision in *McGirt*. But when the dust has settled and the rhetoric has calmed down, it will be Native women and children who pay the price.

We are asking Congress to take action and address the crisis created by *Castro-Huerta*.