



August 29, 2022

Dear Tribal Leader:

We are pleased to invite you to listening sessions with the Department of Justice (DOJ) and the Department of the Interior (DOI) to discuss the impact of the June 29, 2022, Supreme Court decision in *Oklahoma v. Castro-Huerta*, which addressed the scope of a state’s criminal jurisdiction to prosecute non-Indian defendants in Indian country. A summary of this decision and possible topics for discussion are included at Appendix A.

Both sessions will be held virtually:

Monday, September 26, 2022	
3:00 – 5:00 p.m. Eastern Time	Link to register: https://dpreregister.com/sreg/10170785/f448755115 ; those unable to pre-register may join by calling 1-844-845-4169 and asking to be joined to the US DOJ Office of Tribal Justice call
Tuesday, September 27, 2022	
3:00 – 5:00 p.m. Eastern Time	Link to register: https://dpreregister.com/sreg/10170786/f4491215ac ; those unable to pre-register may join by calling 1-844-845-4169 and asking to be joined to the US DOJ Office of Tribal Justice call

Please note that you will be asked to provide your name, Tribal affiliation, and email when registering or joining the call. We welcome written comments at any time but encourage submission by September 30, 2022. Please submit them via email to OTJ@usdoj.gov.

If you have questions, please contact the Office of Tribal Justice at (202) 514-8812 or OTJ@usdoj.gov. We hope you will be able to participate in this important discussion and look forward to working with you.

Sincerely,

Tracy Toulou
Director, Office of Tribal Justice
U.S. Department of Justice

Bryan Newland
Assistant Secretary – Indian Affairs
U.S. Department of the Interior



APPENDIX A

BACKGROUND

In 2015, the State of Oklahoma charged Victor Manuel Castro-Huerta, a non-Indian person living on the Cherokee Nation reservation in Oklahoma, with criminal child neglect. The victim was a member of the Eastern Band of Cherokee Indians. After his conviction in state court, Castro-Huerta appealed the decision and, while his appeal was pending, the Supreme Court issued *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020).¹

In the wake of the *McGirt* decision, Castro-Huerta challenged his conviction, arguing that the State of Oklahoma lacked criminal jurisdiction to prosecute him for his offense against an Indian victim in Indian country. The Oklahoma Court of Criminal Appeals agreed.² The State then filed a petition asking the Supreme Court to review the decision, arguing that the State had inherent jurisdiction to prosecute non-Indian defendants who commit crimes against Indian victims in Indian country. The Supreme Court granted the State's request to review the ruling.

On June 29, 2022, the Supreme Court held that the General Crimes Act (18 U.S.C. § 1152) does not preempt or otherwise limit state criminal jurisdiction to prosecute non-Indian defendants who commit crimes against Indian victims in Indian country. In so holding, the Court rejected the United States' longstanding position that under the General Crimes Act, federal jurisdiction is exclusive of state jurisdiction in Indian country over crimes committed against Indian victims unless Congress has statutorily delegated such authority.³ The Court also made clear that its decision was not limited to the State of Oklahoma but instead "applies throughout the United States."⁴

The Supreme Court left open the possibility that Congress, exercising its plenary power over Indian affairs, could abrogate its decision by legislation.⁵ Unless Congress acts, however, "States may exercise jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country."⁶

¹ In *McGirt*, the Supreme Court held that Congress had never disestablished the Muscogee Creek Nation reservation in eastern Oklahoma and that the Muscogee Creek Nation thus reservation remained Indian country. Based on the *McGirt* decision, the Oklahoma Court of Criminal Appeals later concluded that the Cherokee Nation reservation also remained intact. State ex rel. *Matloff v. Wallace*, 2021 OK CR 21, ¶ 15, 497 P.3d 686, 689.

² *Castro-Huerta v. State*, No. F-2017-1203 (Apr. 29, 2021).

³ Br. for United States, No. 21-429, *Oklahoma v. Castro-Huerta* (filed April 2022), available at https://www.supremecourt.gov/DocketPDF/21/21-429/220251/20220404203500611_21-429bsacUnitedStates.pdf.

⁴ See *Castro-Huerta v. Oklahoma*, 597 U.S. __ (2022), slip op. at 24 n.9.

⁵ See *id.*, slip op. at 6; see also *id.* (Gorsuch, J., dissenting), slip op. at 41.

⁶ See *id.*, slip op. 24 n.9.



QUESTIONS FOR CONSIDERATION

The following questions are not intended to limit discussion; the Departments welcome any question or topic of interest to participants.

1. What is the impact of this Supreme Court decision on your law enforcement or justice systems?
2. Does this decision impact standing cooperative agreements or processes with state or federal agencies? If so, how?
3. What has been the reaction to the *Castro-Huerta* decision in your Tribe? Do you have views about concurrent state criminal jurisdiction in Indian country?