

Oklahoma V. Castro-Huerta

“We conclude that the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.”

On June 29, 2022, the U.S. Supreme Court decision in [Oklahoma v Castro-Huerta](#) **authorized states to prosecute non-Indians who commit crimes against Indians in Indian country.** The Court noted that “Indian country is part of the State, not separate from the State”¹ and opined that a “State has jurisdiction over all of its territory, including Indian country.”² Unless State jurisdiction is preempted, a State has jurisdiction over crimes committed in Indian country.³ Importantly, the Court noted in footnote 9 of the opinion, “The Court’s holding is an interpretation of federal law, which applies throughout the United States.”⁴ The Court did not take a position on State jurisdiction over crimes committed in Indian country by Indians against non-Indians.⁵ The decision was a 5-4 majority opinion drafted by Justice Kavanaugh; joined by Justices Alito, Thomas, Roberts, and Barrett. Justice Gorsuch drafted the dissent; joined by Justices Breyer, Sotomayor and Kagan.

Facts of the Case: Victor Castro-Huerta, a non-Indian, was found guilty and sentenced by the State of Oklahoma for abusing a Native child. After he was convicted, the U.S. Supreme Court in 2020 decided [McGirt v. Oklahoma](#), which held that much of eastern Oklahoma remains Indian country to this day. After McGirt was decided, Castro-Huerta appealed his case and argued that only the federal government had the authority to prosecute him since McGirt held that his criminal actions occurred on Cherokee Nation land. The lower courts agreed and overturned his conviction and Oklahoma brought the case to the Supreme Court in the hopes of completely overturning McGirt. The US Supreme Court held that the state has jurisdiction to prosecute crimes by non-Indians in Indian country unless Congress says otherwise.

Ignoring nearly 200 years of existing law and policy, and violating treaties, the [Oklahoma v Castro-Huerta](#) decision expands state power while undermining the hard-fought principle that tribes, as sovereign nations, have the inherent right to govern themselves and their own territory.

Potential Impact: This decision has tribes and states scrambling to understand what it means for their criminal justice systems and has potentially huge negative impacts and implications. The Court did not completely overturn McGirt, but the ruling has disrupted tribal sovereignty and jurisdiction in criminal cases. For the first time in history, every state, along with the federal government, will have concurrent jurisdiction over Indian country. Unless Congress acts to preempt state jurisdiction, states can choose to prosecute non-Natives for all crimes committed on tribal lands.

With regard to VAWA STCJ and SDVCJ, we believe and will continue to make the argument that Castro-Huerta has NO impact on tribal and federal jurisdiction. The case dealt only with state jurisdiction.

¹ Opinion at 4.

² Opinion at 5.

³ Opinion at 6.

⁴ Opinion at 24.

⁵ Opinion at 24, fn 9.

The **potential negative impacts** of the Castro-Huerta decision are far reaching. Without action, the following is an initial overview of just some of the initial potential impacts of this case:

- **Confusion** for both states and tribes around the authority to exercise criminal jurisdiction – impacting **both law enforcement and courts**. This can result in dangerous jurisdictional vacuums where the confusion leads to no one taking responsibility. Alternatively, this can also result in multiple authorities claiming jurisdiction, resulting in chaos and confusion.
- **Funding** to tribal criminal justice –**both courts and law enforcement** - could be impacted, because of the perception that the addition of state law enforcement reduces the need.
- These two developments will mean that the Indian country criminal jurisdiction in many places will **change overnight** from one sovereign government (federal) with jurisdiction to prosecute to three sovereign governments (tribal under VAWA 2022 and state under *Castro-Huerta*) with jurisdiction to prosecute.
- The ability to obtain **guilty pleas** in tribal court will be greatly reduced since a defendant will be less willing to plead guilty if the state could now also charge them (and use the tribal guilty plea in that state prosecution).
- This **unfunded mandate** for state jurisdiction in Indian country could result in under resourced and overburdened state law enforcement and court systems.
- Unlike federal authorities, states have no trust responsibility in Indian country. **Native victims** may face barriers in state system such as a lack of cultural appropriate victim services and advocates. This could result in a dangerous under-reporting of crimes.

The true impact of Castro-Huerta depends on how states respond to their newly granted jurisdiction. Some important considerations are ***the need for intergovernmental collaborations and funding for tribal law enforcement and tribal justice systems.***

The chart below suggests the current criminal jurisdictional paradigm regarding crimes committed in Indian country for non-P.L. 280 states/tribes according to Castro-Huerta.

Crime by Parties	Jurisdiction	Statutory or Constitutional Authority
Crimes by Indians against Indians: i. “Major” crimes ii. Other crimes	Federal or Tribal concurrent Tribal (exclusive)	18 U.S.C. § 1153 Tribal Code
Crimes by Indians against non-Indians i. “Major” crimes ii. Other crimes	Federal or Tribal concurrent Federal or Tribal concurrent	18 U.S.C. § 1153 18 U.S.C. § 1152
Crimes by Indians without victims	Tribal (exclusive)	Tribal Code
Crimes by non-Indians against Indians	Federal and State concurrent Possibly tribal (STCJ)	18 U.S.C. § 1152 / 10th Amendment, unless preempted (Oklahoma v. Castro-Huerta) 25 U.S.C. § 1304 (restored inherent right to self-govern); Tribal Code
Crimes by non-Indians against non-Indians	State (exclusive)	State Statutes/Code
Crimes by non-Indians without victims	State (exclusive)	State Statutes/Code