

*Oklahoma v. Castro-Huerta:*  
One step forward, 200 years back?



**PATTERSON EARNHART  
REAL BIRD & WILSON LLP**

---

**NATIVE LAW GROUP**





## *Oklahoma v. Castro-Huerta:*

Did *McGirt v. Oklahoma* pave the way for *Castro-Huerta*?

- In *McGirt v. Oklahoma*, the U.S. Supreme Court ruled, in a 5-4 decision, that Congress has never diminished or disestablished the Muscogee Creek treaty-land base, making the Tribe's entire land base Indian country.
- Beyond recognizing the that the Muscogee Creek Reservation still exists, the McGirt decision necessarily gave rise to questions of jurisdiction within Reservation.
- Notably, in response to this ruling the State of Oklahoma has tried numerous avenues to claw back *McGirt v. Oklahoma*.





# *Oklahoma v. Castro-Huerta:* The Facts

- *Oklahoma v. Castro-Huerta* was one of first cases to present itself as a vehicle for challenging *McGirt*. The case involved the State of Oklahoma's prosecution of a non-Indian, Victor Manuel Castro-Huerta, who also happened to be an illegal immigrant from Cuba.
- 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. In 2015, the 5-year-old was rushed to a Tulsa hospital in critical condition. Dehydrated, emaciated, and covered in lice and excrement, she weighed only 19 pounds.
- When questioned, Castro-Huerta admitted he had severely undernourished his stepdaughter during the preceding month. Oklahoma criminally charged both Castro-Huerta and his wife for child neglect. Both were convicted. Castro-Huerta was sentenced to 35 years of imprisonment. While his appeal was pending, the Supreme Court issued its decision in *McGirt*. Castro-Huerta then challenged his state court conviction, arguing that because the victim of his crime was a Native American and the crimes occurred within Indian Country, the State of Oklahoma lacked jurisdiction to prosecute him.





# *Oklahoma v. Castro-Huerta:* The Opinion

- When the case made its way to the Supreme Court, the Supreme Court rejected Castro-Huerta’s arguments and ruled, in a 5-4 decision, that States have CONCURRENT jurisdiction with the federal government over major crimes committed against Indian victims within Indian Country.
- To reach this decision, Justice Kavanaugh, opined that states have a constitutional right under the Tenth Amendment to exercise jurisdiction over all territory inside their state boundaries “including Indian country.” Further, applying the *White Mountain Apache v. Bracker* Preemption Test, the Court held that federal law (General Crimes Act (GSA) and P.L. 280) does not preempt the State of Oklahoma’s prosecution of Castro-Huerta, and such prosecution also does not infringe on tribal sovereignty.
- Justice Kavanaugh’s reasoning and ruling is 180-degrees the opposite of what the U.S. Supreme Court ruled in its seminal decision on tribal sovereignty—the 1832 case of *Worcester v. Georgia*. In that case, the Supreme Court ruled explicitly, that: “The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the [federal] government.”
- Justice Gorsuch—who wrote the dissenting opinion in *Castro-Huerta*—said it would “be hard to fathom” a more “ahistorical and mistaken statement of Indian law” than the flawed reasoning and legal analysis that Justice Kavanaugh crafted in order to support the majority justices’ ruling.





# *Oklahoma v. Castro-Huerta:* Where do we go from here?

- Seek a legislative fix, similar to the “Duro fix” tribes had to obtain in order to overturn the U.S. Supreme Court decision in *Duro v. Reina*, 495 U.S. 676 (1990). Specifically, the GSA and P.L. 280 could be amended to state that Indian reservations are federal enclaves for purposes of criminal jurisdiction over all crimes committed by or against Indians, except to the extent that such jurisdiction is reserved to Indian tribes themselves by treaty or federal statute.
- Since the only exception the Court recognized to a state’s “constitutional right” to exercise jurisdiction in Indian country was if the exercise of state jurisdiction would undermine tribal sovereignty. Thus, in every pending or future litigation remotely involving state jurisdiction within Indian country, tribal attorneys will need to buttress their case with evidence demonstrating how and why an exercise of state jurisdiction within a tribe’s Indian country would effectively infringe on tribal sovereignty.





# *Oklahoma v. Castro-Huerta:* Where do we go from here?

Call on Congress fix the *Castro-Huerta* decision by amending 18 U.S.C. § 1152 as shown in italics below:

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 jurisdiction of the United States, except the District of Columbia, shall extend to Indian country *and shall apply to preempt the application of state law and prosecutorial jurisdiction*. This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.





**PATTERSON EARNHART  
REAL BIRD & WILSON LLP**

---

**NATIVE LAW GROUP**

1900 Plaza Drive  
Louisville, CO 80027

[JPatterson@nativelawgroup.com](mailto:JPatterson@nativelawgroup.com)

(303) 709-3827