



# Choctaw Nation of Oklahoma

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Gary Batton  
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September 22, 2022

Hon. Teresa Leger-Fernandez, Chairwoman  
Subcommittee for Indigenous Peoples  
Natural Resources Committee  
U.S. House of Representatives  
Washington, DC 20515

Hon. Jay Obernolte, Ranking Member  
Subcommittee for Indigenous Peoples  
Natural Resource Committee  
U.S. House of Representatives  
Washington, DC 20515

Re: Comment for the Record of September 20, 2022, Castro-Huerta Oversight Hearing

Dear Chairwoman Leger-Fernandez and Ranking Member Obernolte:

On behalf of the Choctaw Nation of Oklahoma (the “Nation”) and the people of our Reservation, I want to thank you for holding such an important hearing. Unfortunately, I write to you today to express concern regarding comments made by some witnesses during the September 20, 2022, oversight hearing titled, “Examining *Oklahoma v. Castro-Huerta*: The Implications of the Supreme Court’s Ruling on Tribal Sovereignty.” While such hearings often elicit diverse viewpoints, I believe it is prudent to respond when some statements on the record perpetuate half-truths and misstatements of law and fact.

Some witnesses alluded to reports of public safety chaos in Oklahoma following the Supreme Court decision in *McGirt v. Oklahoma* and subsequent court cases reaffirming the reservations of each of the Five Tribes and the Quapaw Nation. These reports were and are false. The day the Oklahoma Court of Criminal Appeals agreed that the Reservation of the Choctaw Nation had never been disestablished by Congress, the Choctaw Nation was prepared to file and did file, every case that was eligible for prosecution under the laws of the Choctaw Nation. In fact, not one single inmate for a crime arising within the Choctaw Reservation left custody. The Nation did and is still doing everything in its power to provide adequate public safety for not only our tribal members but for all those who live within our Reservation.

The Choctaw Nation cannot control what the U.S. DOJ does, nor could we control how it responded after the *McGirt* decision. The U.S. DOJ is understaffed and underfunded to perform the job necessary. Even still, we refuse to allow the U.S. DOJ to shirk its federal responsibility, and we are actively working to hold them accountable. This is yet another reason why Congress should empower tribal governments on the ground and restore federal recognition of tribal public safety jurisdiction on tribal reservations.

During the hearing, Matthew Ballard, District Attorney for Oklahoma District 12, made the claim that prior to *Castro-Huerta*, Native victims were not receiving proper justice in Oklahoma, because the State could not prosecute their perpetrators. He also said that cross-deputized officials could not investigate crime scenes when they arrived. Regarding the first claim, we agree that in some cases, Native victims do not receive justice. Unfortunately, while this has been an issue for decades, it is due to no fault of the tribes. By and large, repairing the perceived inability of Tribal Nations to effectively pursue and punish those—Native and non-Native alike—who seek to harm tribal members within their reservation boundaries lies at the feet of Congress.

The second point made by Mr. Ballard is false. If the State truly cared about victims, it would investigate the situation first and then sort out questions of prosecutorial jurisdiction later. That is exactly how the process works in many other states. Federal courts have held, including the recent decision by the U.S. Supreme Court in *United States v. Cooley*, that responding agencies can temporarily detain suspects, investigate, and collect evidence of crimes, regardless of whether they end up concluding they have authority to prosecute the perpetrator. The incident cited by Mr. Ballard is disingenuous because he failed to mention the most crucial fact—federal courts had already ruled on the matter. Does this Subcommittee truly believe the Cherokee Nation—a Nation with a large and capable police force—would purposefully refuse to support county officers investigating an assault on a tribal member? The answer is simple and spinning up a narrative to the contrary is deceitful. Both before and after *Castro-Huerta*, the Choctaw Nation, and other tribal governments have worked effectively with the State through the utilization of cross-deputization agreements. Certain State official's continued narrative of division, chaos, and uncertainty in Eastern Oklahoma only pumps oxygen into the flame of anti-tribal sovereignty sentiment. This is something we cannot accept. Fortunately, Indian Country knows the solution, and we will continue to urge Members of Congress to clarify federal law before the State of Oklahoma succeeds in completely obliterating tribal sovereignty through false fear-mongering.

To that point, many tribes retain treaty rights which the U.S. Constitution requires be honored as the supreme law of the land. During the hearing, Kevin Killer, President of the Oglala Sioux Tribe, mentioned its treaties with language providing for their exercise of criminal jurisdiction over non-Indians. Likewise, the Choctaw Nation has similar treaty provisions. The most recent treaty the Choctaw Nation signed with the United States reads as follows:

*Every white person who is married a Choctaw or Chickasaw, resides in the Choctaw or Chickasaw Nation, or has been adopted by the legislative authorities of either nation, is subject to the laws of the Choctaw and Chickasaw Nations and may be prosecuted, tried, and punished as though he were a native Choctaw or Chickasaw.*

In the 5-4 *Castro-Huerta* decision, the Supreme Court not only erroneously interpreted numerous statutes crucial to criminal jurisdiction within Indian Country, but it also committed an egregious overreach when it decided to legislate tribal affairs from the bench. Congress must reclaim its constitutional plenary power over tribal affairs and legislate a correction right away. The complete jurisdiction of tribal governments must be restored to ensure we can prosecute all persons committing crimes on our Reservation, thus bringing an end to this ridiculous and unprecedented checkerboard jurisdictional scheme patched together by the 5-4 *Castro-Huerta* majority. Tribal

governments are not asking for anything new, nor are we asking for an expansion of tribal sovereignty or authority. We are simply asking Congress to clarify federal law so that tribal authority is recognized in federal law as being restored. In other words, we are asking for the United States to honor and uphold its trust and treaty obligation to Tribal Nations.

During times such as these, I am reminded of the verse in 2<sup>nd</sup> Timothy 1:7, “for God has not given us a spirit of fear, but of power and of love and of a sound mind.” While my strong faith tells me not to entertain a spirit of fear, it is difficult to ignore the adverse and consequential fates that will befall Tribal Nations if Congress fails to act to correct the misguided and unprecedented 5-4 majority opinion in *Castro-Huerta*. It is my sincere hope that Congress will live up to its constitutional responsibilities, under the watchful eye of history, and fortify the recognition in federal law of tribal sovereignty, self-governance, and self-determination, all of which are at risk of being dismantled following this erroneous ruling in *Castro-Huerta*. Please, heed the advice of Justice Gorsuch in his dissent in *Castro-Huerta*, and do the right thing by moving swiftly to protect the Choctaw Nation and all other Tribal Nations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Gary Batton".

Gary Batton, Chief  
Choctaw Nation of Oklahoma

cc: Hon. Raul Grijalva  
Hon. Bruce Westerman