

**Testimony of  
Teri Gobin  
Chairwoman, Tulalip Tribes  
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 on the public safety crisis created by the Supreme Court’s decision in *Castro-Huerta*. My name is Teri Gobin, and I am proud to serve as the Chairwoman for the Tulalip Tribes. The Tulalip Indian Reservation is a 22,000 acre reservation located east of the Interstate 5 corridor, 35 miles north of Seattle. As one of the very first tribes to implement the tribal jurisdiction that Congress restored to tribal nations in the 2013 reauthorization of the Violence Against Women Act, and as a tribe that has had to endure the harmful consequences of PL-280 in the state of Washington in the Pacific Northwest, Tulalip offers a unique perspective on how and why the Court’s decision in *Castro-Huerta* will dramatically undermine public safety throughout all of Indian country. We urge Congress to take action.

Public Law 280

It is important to understand the *Castro-Huerta* decision in the context of Public Law 280 (18 U.S.C. § 1162, 28 U.S.C. § 1360). Public Law 280 is a transfer of Indian country jurisdiction from the federal government to state governments. Prior to the enactment of Public Law 280, only the federal government and the tribes had jurisdiction to prosecute crimes committed by Indians within Indian Country. In enacting Public Law 280, Congress gave six states (California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska) extensive criminal and civil jurisdiction over tribal lands within the affected states (the so-called "mandatory states"). Public Law 280 also permitted the other states to acquire jurisdiction at their option. Washington assumed Public Law 280 jurisdiction by accepting requests from Indian tribes to assume jurisdiction on the reservation. Later, Washington enacted a law in 1963 that assumed partial Public Law 280 jurisdiction over Indian reservations without the consent of the tribes. Wash. Rev. Code § 37.12.010.

A common misconception about Public Law 280 is that it transferred jurisdiction from tribes to state governments. Rather, it transferred federal authority to the states to exercise jurisdiction over certain matters within Indian country but did not impair tribal concurrent authority. Retrocession of Public Law 280 reduces state authority on Indian reservations by relinquishing part or all of the state authority obtained under Public Law 280 back to the federal government. This has the practical effect of returning primary responsibility to the tribes for prosecuting crimes committed by Indians on tribal lands that are not prosecuted under federal law. In the

years since Public Law 280 was enacted, many if not most tribes in Public Law 280 states that have developed or expanded tribal justice systems have done so as part of a Public Law 280 retrocession process.

Washington State jurisdiction prior to retrocession - RCW 37.12.010 and .021

Washington State's assumption of Public Law 280 jurisdiction depended on land status and the subject matter of the criminal or civil action. Wash. Rev. Code § 37.12.010. For offenses committed by Indians on trust land within a tribe's reservation, the State assumed criminal and civil jurisdiction only as to eight subject matter areas: compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles. On reservation lands held in fee, the State assumed complete criminal and civil jurisdiction for offenses committed by or against Indians. When considered alongside the jurisdiction the State already had over crimes involving only non-Indians on reservation land, Washington had the same jurisdiction on fee lands within Indian reservations as it had anywhere else in the State.

In addition to the assumption of jurisdiction on fee land and as to the eight subject areas on trust land discussed above, Washington State also established a process for Indian tribes to petition the State to take full civil and criminal jurisdiction even on trust land within a reservation. Tulalip petitioned the State to assume full Public Law 280 criminal and civil jurisdiction on the Reservation in 1958.

As stated above, prior to retrocession, the State had full Public Law 280 criminal and civil jurisdiction over all lands on the Tulalip Reservation. In 2001, Washington State retroceded its Public Law 280 jurisdiction over Tulalip trust land (except as to the eight enumerated areas in RCW 37.12.010). The retrocession at Tulalip means the State no longer has jurisdiction over crimes committed by Indians on trust or restricted fee lands, regardless of the status of the victim. The State continues to exercise civil and criminal jurisdiction on fee land within the reservation concurrently with the Tulalip Tribes.

This checkerboard jurisdiction based on land status is one of the reasons that Tulalip found it beneficial to enter into a mutual law enforcement agreement with Snohomish County and obtain state general authority peace officer certifications for tribal officers. This allows Tribal and County law enforcement to cooperatively conduct law enforcement duties throughout the Tulalip Reservation and later refer matters to the appropriate jurisdiction for prosecution based on determinations of the status of the defendant and the lands where the crime occurred.

While some cases with Indian defendants who committed crimes on fee land are investigated and charged in County court, the Tulalip Prosecutor's office has always been able to transfer those cases of which they have become aware into Tribal court with the cooperation of County prosecutors.

## Challenges to State Jurisdiction on Reservation Lands

At Tulalip, forty percent of our reservation is currently owned by non-Indians, and we are home to a significant number of non-Indian residents, as well as visitors from Seattle and other nearby populated cities and regions. The large number of non-Indian residents on the Tulalip Indian Reservation, the geographic location of the reservation, and the economic activity of the reservation generated by the Tulalip Tribes have all contributed to an increased number of crimes committed against members of the Tulalip Tribes, including missing tribal members and human trafficking. A large number of these crimes are committed by non-Indians residents who live on or travel through our reservation.

For this reason, Tulalip took immediate action when Congress reauthorized VAWA in 2013 and restored tribal criminal jurisdiction over non-Indian crimes of domestic violence, dating violence, and violations of protective orders, and became one of four pilot project tribes to implement the restored criminal jurisdiction. From 2014 through the present day, Tulalip brought charges against 46 non-Indian defendants. Tulalip has a victims' rights code and robust victim services that allow us to respond quickly, effectively, and consistently to DV victims in a way the state never has. VAWA has made our community safer.

However, upon exercising jurisdiction under VAWA 2013 we quickly discovered glaring jurisdiction gaps. These jurisdictional gaps were the result of the Supreme Court's decision in *Oliphant* that stripped tribal jurisdiction over many violent crimes committed against our citizens, including child abuse, sexual assault, sex trafficking, and all drug related crimes. At Tulalip, the most glaring jurisdictional gap was the inability to prosecute non-Indians for crimes committed against children. Crimes of domestic violence do not happen in a vacuum. Children are often in the home during these incidents, and are the first responders to a domestic violence victim, either coming to the aid of their mother or being used as a physical pawn during a physical altercation. In fact, from 2013-2021, over half of our domestic violence cases also involved crimes committed against children. Tulalip had no jurisdiction to prosecute, and although the State of Washington *could* have prosecuted these crimes by non-Indians against children, they did not, and never have during this time frame. With competing priorities, limited resources, and inherent bias, state prosecutions for crimes against our tribal community members don't happen as often as they should.

The Court's decision in *Castro-Huerta* involved a crime of child abuse, committed by a non-Indian against an Indian child on a reservation. The Court's decision to grant Oklahoma jurisdiction over crimes committed against our children on our lands has damaging consequences for public safety across all of Indian country. This past March, Congress restored the inherent jurisdiction of our nation to prosecute non-Indian crimes of violence committed against Indian children on reservation lands under VAWA 2021. Underlying the Court's decision in *Castro-Huerta* is the assumption that states will do a better job of protecting our children than our own tribal governments.

Moreover, the Court acts like adding a layer of jurisdiction is no big deal, and that doing so does no harm. From a PL 280 tribe with a reservoir of experience with the state having jurisdiction on our reservation, we are here to tell you that there is great harm. It simply does not work. Aside from the chaos and confusion, when a state has jurisdiction over tribal lands, that jurisdiction is rarely exercised. And if the state does exercise this authority, there is often bias treatment, discrimination, insensitivity toward the tribal victim and families, and abuse. This leads to extreme distrust and diminishment of confidence in law and justice, making prosecution in Indian cases extremely difficult. At Tulalip victims were afraid of the state system, and subsequently victims did not report crimes pre-retrocession. Tulalip has often been described as a place of lawlessness pre-retrocession. And while there have been some improvements, distrust of outside law enforcement remains with our tribal citizens. Adding a layer of state jurisdiction also becomes an impediment to the fulfillment of the federal trust responsibility. From 1985 until 2001, we worked tirelessly to secure a partial retrocession of the jurisdiction granted to the state of Washington because of these reasons. In our experience, concurrent jurisdiction doesn't translate to better access to justice or community safety but the opposite: cases and people fall through the cracks of jurisdictional complexity as both state and federal law enforcement step back in favor of the other's jurisdiction.

The Court's decision in *Castro-Huerta*, injects more uncertainty for tribes under PL 280. Before *Castro-Huerta*, the procedures created by Congress to grant jurisdiction to states, as well as to retrocede it, were clearly spelled out in PL-280. But the *Castro-Huerta* Court's reading of PL-280 calls all of that into question and diminishes the value of retrocession. Justice Kavanaugh concluded that states have this jurisdiction over tribal lands regardless of whether a state has followed the procedures outlined in PL-280. Does our work with Washington to retrocede specific categories of jurisdiction meet the specificity in the *Bracker* test when the Court concluded that the actual text of PL-280 did not meet the test, according to Justice Kavanaugh? Our goal was to remove state jurisdiction on our Indian lands, is state jurisdiction now resurrected, or could it be? It seems now the state may have jurisdiction without PL 280.

Ultimately, the Court's decision restricts the ability of tribal nations to seek self-sufficiency and build strong governments, which is an established and repeated policy goal of the federal government. Specifically, *Castro-Huerta* impedes the ability of tribes to utilize PL-280's procedures to retrocede state jurisdiction and build tribal government capacity and self-sufficiency. In order to protect public safety on tribal lands, our nations' ability to develop tribal governmental institutions and economies must be preserved, not limited by arbitrary impediments imposed by court decisions.

*Castro-Huerta* does nothing to increase public safety in Indian country. It only creates confusion. And ultimately, the Court's disregard for the connection between sovereignty and safety for Native children threatens to obscure the critical work this Congress has done to restore our inherent right to protect our children. With the Supreme Court's consideration of *Brackeen v.*

*Haaland* in the upcoming term, the opportunity for mischief and misinterpretations with regards to the inherent sovereignty of our tribal nations calls for the Court's immediate correction.

We urge Congress to action to correct the harm caused by the Court's decision.