



Oglala Sioux Tribe

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Office of the President
Kevin Killer

October 4, 2022

Chairwoman Teresa Leger Fernández
Ranking Member Jay Obernolte
Subcommittee for Indigenous Peoples of the United States
House Committee on Natural Resources
1324 Longworth House Office Building
Washington, D.C. 20515
Via email

Re: Questions for the Record for the Oversight Hearing on *Examining Oklahoma v. Castro-Huerta: The Implications of the Supreme Court's Ruling on Tribal Sovereignty*

Dear Chairwoman Leger Fernández and Ranking Member Obernolte:

Thank for the opportunity to testify before the House Subcommittee for Indigenous Peoples of the United States in the Oversight Hearing entitled, "*Examining Oklahoma v. Castro-Huerta: The Implications of the Supreme Court's Ruling on Tribal Sovereignty.*" This issue is of utmost importance to the Oglala Sioux Tribe and Indian Country overall. We are glad the Subcommittee is being proactive in discussing the impacts of the disastrous *Castro-Huerta* decision and ways Congress might address it.

I am in receipt of the various Questions for the Record (QFR) from several Subcommittee Members. Thank you for the opportunity to provide answers and additional information on this matter. I set forth my answers to those QFRs below in italics.

Questions from Rep. Teresa Leger Fernández

1. Does the State of South Dakota provide support or resources to public safety services on tribal lands?

Answer: No, the State of South Dakota does not provide support or resources to public safety services on our tribal lands unless formally requested to do so on a particular case. Oglala Lakota and Pennington Counties each provide one officer who address non-Indian crime only.

- a. Since the *Castro-Huerta* ruling, has the State government communicated with the Oglala Sioux Tribe about the expected impacts?

Answer: No, the State of South Dakota has not communicated with the Oglala Sioux Tribe about the expected impacts of the Castro-Huerta ruling.

- b. [Left blank in the QFR document]

2. If you are able to, can you provide a rough comparison of the resources available to the Oglala Sioux Tribe for public safety services and the resources at the disposal of the State of South Dakota for its own public safety services?

Answer: The comparison is stark. The public safety resources we have available to our Tribe are at a level that is well below the level of need. Our Tribe's Pine Ridge Indian Reservation is roughly 3.1 million acres, which is approximately the size of the States of Rhode Island and Delaware combined. Our Reservation is vast, rural and remote; it covers much of the southwest portion of the State of South Dakota and a small piece of Nebraska. Our Tribe has more than 46,000 enrolled members overall. In excess of 40,000 people reside on or conduct business on our Reservation, all of whom are dependent on federally funded law enforcement officers to protect them and their on-reservation property. Among these are Oglala Sioux Tribal Members, non-member Indians, and non-Indians who reside on or enter our Reservation on a regular basis or are under the criminal jurisdiction of our officers holding Special Federal Law Enforcement Commissions. These individuals comprise the law enforcement service population of our Reservation.

The Department of Interior has determined that a basic law enforcement program needs a minimum of 2.8 officers per 1,000 people, which is the national average for rural areas in the United States with less than 10,000 people living in a low crime rate area with clustered communities, according to the Bureau of Indian Affairs' Office of Justice Services' "Report to the Congress on Spending, Staffing, and Estimated Funding Costs for Public Safety and Justice Programs in Indian Country" (dated September 12, 2017; May 2, 2018; March 1, 2020; July 2020) (OJS TLOA Reports), available at <https://www.bia.gov/bia/ojs/documents-and-forms>.

Nonetheless, the Oglala Sioux Tribe is only provided enough funding from the United States for 33 law enforcement officers and 7 criminal investigators to cover our approximate 40,000-person law-enforcement-service population and 52 communities. That comes out to less than one law enforcement officer per 1000 people and less than 6 officers per shift Reservation-wide. Our Department of Public Safety responded to 133,755 service calls on our Reservation in 2021.

In comparison, Rapid City, South Dakota (the closest urban area to our Reservation) has a budget of \$19.6 million and 176 officers. <https://www.rcgov.org/departments/police-department.html>. In 2021, its police department responded to 114,816 police calls, which is well below the amount of calls our officers responded to despite our having approximately nineteen percent (19%) of the total number of officers.

Additionally, Aberdeen, South Dakota has 47 officers for a population of 28,495 per the 2020 Census. <https://data.census.gov/cedsci/profile?g=1600000US4600100> ; <https://www.police1.com/law-enforcement-directory/police-departments/aberdeen-police-department-aberdeen-sd-OaFyvyRljagW0iH7/>.

Finally, the State of Connecticut, which is about the same size geographically as the Pine Ridge Indian Reservation (as stated above) has 6,534 municipal police officers. <https://www.cga.ct.gov/2022/rpt/pdf/2022-R-0025.pdf>.

Question from Rep. Raúl M. Grijalva

1. How many BIA-funded law enforcement officers is the Oglala Sioux Tribe being provided?

Despite the fact that Department of Interior has determined that a basic law enforcement program for a low crime rate rural area of less than 10,000 persons needs 2.8 officers per 1,000 people as stated in the Bureau of Indian Affairs' OJS TLOA Reports, the Oglala Sioux Tribe is only provided enough funding from the United States for 33 law enforcement officers and 7 criminal investigators to cover our 40,000-person law-enforcement-service population and our approximate 3.1-million-acre Reservation with our 52 communities. In plain numbers, that is less than one officer for every 1000 people.

- a. How has this impacted the delivery of public safety services on the Tribe's lands?

The lack of BIA-funded law enforcement officers for our Tribe to cover our vast, remote Pine Ridge Indian Reservation has been devastating. Again, our Tribe is provided only enough funding for 33 law enforcement officers and 7 criminal investigators. This equates to a total Reservation-wide 6-8 officers per shift to cover our approximate 3.1-million-acre Reservation and our 40,000-person law-enforcement-service population. It is untenable. Between July 4, 2022 and September 7th of this year, the Tribe has responded to: five homicides, four shootings, four stabbings, three sexual assaults, and five violent assaults alone, and this is after responding to an additional 58 missing persons reports and 159 calls for domestic violence in July 2022 alone.

The lack of law enforcement officers causes extraordinary danger to the law enforcement officers who are working unreasonable amounts of overtime, patrolling alone, and responding to dangerous calls for service without proper backup. In 2021, our Department of Public Safety received 133,755 E-911 calls for service on the Pine Ridge Reservation. These 2021 calls for services included 794 calls involving an assault, 1,463 domestic violence calls, 522-gun related calls, 541 drug/narcotic calls, and calls reporting 541 missing persons, most of which required immediate attention to protect life, health, and safety. On-Reservation deaths, homicides, drug sales, police-involved accidents, and overdoses have continued to increase significantly. The volume of E-911 calls, combined with an inadequate number of police officers, is forcing police officers to drive from call to call at high speeds, endangering both the officer and the public. Police officers operate alone, with backup often being over 30 miles away, even in calls involving guns or weapons.

Thus, police officers are often placed in unnecessary danger.

The lack of adequate law enforcement has had and is continuing to have serious consequences for the Tribe and its citizens. Significantly, many E-911 calls for police service are abandoned, are not being responded to in the time required to ensure public safety, or are not being properly investigated or prosecuted because there simply are not enough police officers. When calls are responded to, police response time often exceeds 30 minutes, even in cases of domestic violence, gun activities, and other imminent threats of harm. This can and often does add to the harm suffered by crime victims on the Reservation.

Additionally, often due to the lack of an adequate amount of law enforcement officers, criminal investigators, and resources, crimes are not timely or adequately investigated, and witness statements and other evidence are not collected promptly, thereby endangering federal and tribal prosecutions and convictions. Sadly, our Tribal citizens are often scared to venture out of their homes at night, especially because gunshots are heard throughout our Reservation on a frequent and re-occurring basis.

The Tribe is also adversely impacted by the lack of law enforcement officers and resources in a variety of other ways. For instance, the Tribe operates numerous tribal on-Reservation schools, health facilities, Tribal programs, and several Tribally-owned businesses whose safe operation is compromised by the lack of law enforcement services. Some families no longer feel safe sending their children to school, especially without School Resource Officers present. Some students also feel unsafe on school grounds because of the gang violence on our Reservation, which often involves other juveniles, and the lack of law enforcement services to respond to threats. Tribal health care costs have increased because of the increased number of overdoses and injuries sustained from assaults, domestic violence, and other crimes. Also, the Tribal economy is negatively impacted as new businesses are not attracted to high crime areas. The businesses that are located on our Reservation must spend additional funds to protect their employees and property. Some have even chosen not to remain open at night.

As described above, our lack of law enforcement officers and resources has had a significant negative impact on our law enforcement officers, our Tribal citizens, and our efforts toward economic development.

Question from Rep. Stansbury

1. What can Congress do to hear from Tribal Nations in order to find a reasonable consensus in Indian Country to respond to *Castro-Huerta*?

Answer: Congress has taken the correct first step through this Subcommittee's Oversight Hearing to hear from Tribal Nations about the impacts of the Castro-Huerta decision and the need for Congress to address it. At the hearing, the Subcommittee heard the overwhelming majority of the witnesses state their disagreement with the decision the United States Supreme Court made in Castro-Huerta. Only two witnesses agreed with the decision - one Oklahoma District Attorney and one Oklahoma City attorney that was present in his individual capacity. But, the Tribal Leaders who testified, along with the Indian law academic witnesses, expressed disagreement with the decision.

What Tribal Nations need is for Congress to pass legislation to fix the jurisdictional maze of criminal jurisdiction in Indian Country, which the Castro-Huerta decision complicated further. The Supreme Court legislated from the bench in the Castro-Huerta decision, usurping Congress's constitutional role. Thus, it is incumbent on Congress to protect this country's constitutional balance of power by stepping into its rightful role to pass legislation to address the severely problematic Castro-Huerta decision.

It is Congress's role to act and it is our understanding that Congress has the backing of Tribal Nations to act, but, perhaps, with an open question about when to act. As stated in my testimony, in the wake of Castro-Huerta, my Tribe asks Congress to act swiftly to (1) repeal all existing civil and criminal jurisdictional limits on Tribes, and allow Tribes the option of fully asserting their inherent civil and criminal jurisdiction throughout our territories; and (2) provide adequate appropriations to Tribes to develop our court and law enforcement infrastructure throughout Indian Country. As further stated in my written testimony, if Congress chooses not to address the jurisdictional gaps following the Supreme Court's decision in Oliphant at this time, it should at a minimum restore the pre-Castro-Huerta status quo by clarifying that states lack criminal jurisdiction over crimes committed by non-Indians against Indians in Indian Country.

While I am not convinced it is necessary, if the Subcommittee believes it needs additional input from Tribal Nations, it could host a roundtable specifically to discuss solutions. I have to think all Tribal Nations would stand strong on protecting and upholding tribal sovereignty, uncomplicating criminal jurisdiction in Indian Country, and clarifying that states lack criminal jurisdiction over crimes committed by non-Indians against Indians in Indian Country. If the Subcommittee were to have such a roundtable, I strongly urge you to hold it as soon as possible so that there would still be time in this Congress for Congress to act to effectively address the Castro-Huerta decision.

Questions from Rep. Westerman

1. Lead Up: Collaboration among tribal, state, federal, and local law enforcement and legal systems is needed to cover the complicated jurisdictional system that exists in Indian country.

Question: Could you provide examples of the best collaborative connection that your tribe has with non-tribal law enforcement, and how that may help inform discussion about public safety in Indian country?

Answer: South Dakota, like many western states with large land-based tribes who are located in non-Public Law 83-280 jurisdictions often consider policing on the reservation to be a federal/tribal issue and expect the federal government to pick up the costs. This is why the State Police does not come onto the Pine Ridge Indian Reservation unless the Tribe specifically asks it to. My Tribe also considers policing on our Reservation to be a federal/tribal issue per our nation-to-nation relationship with the United States, our Treaties, and the South Dakota Enabling Act.

The best collaborative connection that our Tribe has with non-tribal law enforcement is with the federal government through the Bureau of Indian Affairs and the Department of Justice. Despite our adamant, correct position that the federal government has not and is not living up to its treaty obligations and trust duties to ensure that law enforcement services provided to the Tribe are adequately funded, as a practical matter, we work with the Bureau of Indian Affairs and Department of Justice on on-the-ground public safety issues.

As for working with other non-tribal law enforcement, the current Bureau of Indian Affairs (BIA) Office of Justice Services (OJS) rules currently prohibit a two-party Memorandum of Understanding (MOU), other than an assistance agreement, when the BIA is funding the law enforcement officers. This is the case unless the OJS's own specific provisions are included in the MOU and unless the Department of the Interior is a party to that MOU. These proposed federal agreements often boil down to an issue of tort claims coverage, and liability and insurance issues - - which is an area that Congress can look into and address. Tribes have worked out decent agreements that DOI has refused to approve.

Additionally, state law often controls what authority a local Chief of Police or Police Board employed by a local non-Indian government has to enter into a policing agreement with a tribal government—some such state statutes require state legislation in order to execute such agreements.

Question: Can you explain whether the *Castro-Huerta* decision has had any impacts on your tribe's relationship with local, state, or federal law enforcement and could you provide an example of how those relationship have changed, if they have?

Answer: At present, our Tribe is continuing to carry out our law enforcement as usual. However, as stated in my testimony, the Castro-Huerta decision gives rise to major areas of practical concern in Indian Country, including the following:

- 1. A potential lack of prosecution of non-Indians in Indian Country generally as state and federal prosecutors point their fingers at each other.*
- 2. The potential for chaos arising from conflicting tribal, state, and federal laws regarding differing standards when charging and prosecuting crimes.*
- 3. The potential application of Castro-Huerta to civil matters and efforts to extend state policymaking onto tribal lands.*
- 4. Unending and costly litigation about the application and reach of the decision.*

*The Castro-Huerta decision adds to the maze of criminal jurisdiction in Indian Country, which complicates the prosecution of crimes in Indian Country. The solution to the jurisdictional maze is not to grant unconstitutional power to the states. Instead, it is to fix the jurisdictional gap following the Court's decision in *Oliphant*, which held that tribes lacked criminal jurisdiction over non-Indians. Any such fix must also include the funding required to carry out that authority. With this, the Oglala Sioux Tribe asks Congress to:*

1. *Repeal all existing civil and criminal jurisdictional limits on Tribes, and allow Tribes the option of fully asserting their inherent civil and criminal jurisdiction throughout our territories;*
2. *Provide adequate appropriations to Tribes to develop and enhance our court and law enforcement infrastructure throughout Indian Country.*

If Congress chooses not to address the jurisdictional gaps following the Supreme Court's decision in Oliphant at this time, it should at a minimum restore the pre-Castro-Huerta status quo by clarifying that states lack criminal jurisdiction over crimes committed by non-Indians against Indians in Indian Country.

Conclusion

Again, thank you for the opportunity to participate in this important hearing of the Subcommittee. The Oglala Sioux Tribe stands ready to work with this Subcommittee and Congress overall to address these matters and to ensure that the longstanding nation-to-nation relationship between our governments continues.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Killer". The signature is stylized and cursive.

Kevin Killer
President