

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES
1324 LHOB & CISCO WEBEX
September 20, 2022 at 11:00 a.m. ET

Questions for the Record

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

**Questions from Rep. Westerman for Bryan Newland, Assistant Secretary – Indian Affairs,
U.S. Department of Interior:**

1. Lead Up: In your recent testimony before the Senate Committee on Indian Affairs, you mentioned that the Department was providing Technical Assistance on legislative efforts related to the *Castro-Huerta* decision.

Question: Does the Department of the Interior support a legislative efforts that would alter the current criminal jurisdiction states possess in Indian country post-*Castro-Huerta*?

Question: What specific actions has the Department of the Interior taken since the *Castro-Huerta* decision was handed down in regard to public safety in Indian country and what other actions are being contemplated for the future?

2. Question: How is the Department of the Interior coordinating with the Department of Justice on future actions that may be taken and policy recommendations for Congress to consider?

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Questions from Rep. Westerman for Jonodev Chadhuri, Ambassador, Muscogee (Creek)

Nation:

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?

Question: Could you provide information and data about how plans to increase resources to the Muscogee Creek Nation's tribal court system have or have not changed both pre- and post- the *McGirt* decision, and also pre- and post- the *Castro-Huerta* decision, including staff increases, staff position additions, funding increases, and other similar metrics?

2. Lead Up: In *Castro-Huerta*, the Court held that "Under the Constitution, States have jurisdiction to prosecute crimes within their territory except when preempted (and preempted in a manner consistent with the Constitution) by federal law or principles of tribal self-government."

Question: Would you propose to limit state criminal jurisdiction over non-Indians in the absence of some measure of tribal consent be consistent with or violative of the Court's statement of the law?

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3. Lead Up: The Court also concluded that Oklahoma's exercise of criminal jurisdiction over a non-Indian who victimized a Native did not impermissibly infringe on Tribal self-government and would not harm the federal interest in protecting Indian victims.

Question: Given that is what the Court has said, what is the constitutional source of Congress's power to say otherwise?

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Questions from Rep. Westerman for Sara Hill, Attorney General, Cherokee Nation

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 not included in your written testimony that your tribe has with non-tribal law enforcement, and how that may help inform discussion about public safety in Indian country?

Question: Could you provide further information and data about how plans to increase resources to the Cherokee Nation's tribal court system have or have not changed both pre- and post- the *McGirt* decision, and also pre-and post- the *Castro-Huerta* decision, including staff increases, staff position additions, funding increases, and other similar metrics?

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Questions from Rep. Westerman for Kevin Killer, President, Ogalala Sioux Tribe

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?

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?

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Questions from Rep. Westerman for Cheryl Andrews-Maltais, Chairwoman, Wampanoag Tribe of Gay Head (Aquinnah):

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 had with non-tribal law enforcement, and how that may help inform discussion about public safety in Indian country?

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?

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**Questions from Rep. Westerman for Whitney Gravelle, President, Bay Mills Indian
Community**

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?

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?

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Questions from Rep. Westerman for Teri Gobin, Chair, Tulalip Tribes

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?

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?

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**Questions from Rep. Westerman for Matthew J. Ballard, District Attorney, Oklahoma
District 12**

1. Question: Can you provide the committee with further examples of acts that are currently criminal under Oklahoma law that would not be prosecutable if *Castro-Huerta* were not in effect?
2. Question: Have there been instances where criminals exploit the criminal jurisdiction issues in Oklahoma that existed prior to *Castro-Huerta*?
3. Question: In your experience, how has *Castro-Huerta* impacted the federal law enforcement workload? Has it decreased, remained the same, or increased?
4. Question: Can you further explain your understanding of the the differences in capacity and/or focus between Oklahoma state prosecutors and federal prosecutors for the federal districts of Oklahoma?
5. Can you further expand beyond your written testimony, and speak to how you have seen the *McGirt* and *Castro-Huerta* decisions play out day-to-day in Oklahoma?
6. How difficult is it to determine whether a victim is Native American and is the non-prosecution of cases with Native American victims a wide-spread issue?

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Questions from Rep. Westerman for Mithun Mansinghani, Partner, Lehotsky Keller LLP

1. Lead Up: Other witness statements have stated that *Castro-Huerta* was decided contrary to standing law. Your statement gave a defense of the decision.

Question: Could you further explain how *Castro-Huerta* is a continuation of the current understanding of criminal jurisdiction in Indian country and not a departure from it?

Question: Could you further expand beyond your written testimony, and speak to how you have seen the *McGirt* and *Castro-Huerta* decisions play out day-to-day in Oklahoma?