

**Written Statement of Matthew J. Ballard**

**Hearing Before the  
House Subcommittee for Indigenous Peoples of the United States**

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

**September 20, 2022**

I serve as the elected District Attorney for Oklahoma District 12, encompassing Rogers, Mayes and Craig Counties, an office I have held since 2015. Suburban/rural in character, my District lies to the northeast of Tulsa and along Interstate 44. It is located primarily within the bounds of the Cherokee Nation, and also includes a small portion of the Creek Nation. The District is located entirely within Indian Country.

For 113 years, the federal government, the State of Oklahoma, and the sovereign tribal governments with rights to lands within the political boundaries operated in the belief that the tribal reservations were abolished when Oklahoma was named the 46th of the United States of America. Two years ago, one of the most consequential Supreme Court decisions in history cast Oklahoma law enforcement into chaos. When the Supreme Court determined the reservations within the political boundaries of the State of Oklahoma had not been abolished, the population of Native Americans living on reservation land in the United States nearly tripled. Today, nearly 2 million Oklahomans live in Indian Country. To put that into perspective, approximately 14 states have populations smaller than the population of Oklahomans living on reservation land.

The consequences of this decision on victims of crime were immediate. Every case involving a Native American defendant or victim was in jeopardy of being dismissed or overturned. Thousands of pending state cases were dismissed, never to be refiled. Those that were refiled put victims, both Native and non-Native, in the traumatic position of reliving previous trials

and the crimes against them and their loved ones. In my district alone, court dockets with hundreds of cases involving defendants seeking to have their charges dismissed consumed hours of court time. My victim advocates spent hours making phone calls to crime victims to deliver the devastating news that their case was dismissed. On more than one occasion, I found my team's victim advocates in tears as the stress of making these phone calls became overwhelming.

Meanwhile, police investigators were left with state court judges who refused to sign arrest warrants or even search warrants for cases involving Native Americans. Judges became concerned that acting in the absence of jurisdiction would leave them open to personal liability and therefore adopted an extremely conservative review of every case involving a Native American. Officers preparing affidavits were required to include a statement affirming that neither the suspect nor victim was Native American, and were even required to check with Oklahoma tribes to ensure non-membership.

The impact on day to day law enforcement was profound. Dispatchers on 911 calls were forced to ask whether a Native American was involved, so that the call could be properly dispatched. Although cross-deputization agreements ameliorated some of the worst effects, these agreements could not provide protection to the most vulnerable group impacted: Native American victims. In cases with non-Native perpetrators, Native American victims were left only with the hope that the federal government and the U.S. Attorneys' offices in Oklahoma would prosecute their cases. These agencies, however, were overwhelmed by the tsunami of new cases (many of which had never or were rarely prosecuted by these agencies) and the backlog of old cases that had been dismissed. In the United States Eastern District for Oklahoma, the U.S. Attorney's office adopted the position that the threshold for filing charges against those that had victimized Native citizens was serious bodily injury, as defined by federal law. If the case did not involve serious

bodily injury, it would be declined. Incredibly, this included such cases as strangulation not resulting in death or protracted injury. It certainly included property crimes against Native Americans ranging from home invasion to theft, embezzlement, fraud, and more.

On the day after the Oklahoma Court of Criminal Appeals issued its decision finding that the Cherokee Reservation had not been disestablished, victims of crime in Rogers, Mayes, and Craig Counties were immediately impacted. Just after midnight that evening, Kayla Dobbs was a patron at the Iron Horse Saloon in rural Rogers County. While she was distracted, a female acquaintance of her ex-boyfriend approached her, punched her in the back of the head, knocking her to the ground, and pepper sprayed her in the face. The parties were separated and Deputy Ronnie Roden from the Rogers County Sheriff's office was dispatched. Upon arrival, Deputy Roden asked Ms. Dobbs if she was Native American and she confirmed that she was, but that her ex-boyfriend and his acquaintance were not. Because Ms. Dobbs was Native American but her assailant was not, the case would be solely federal. Although Deputy Roden was cross-commissioned with the Cherokee Marshal Service, this did not provide federal credentials and no on-duty sheriff deputy held federal credentials (because federal credentials are more difficult to obtain, they are held primarily by investigators). Lacking jurisdiction to conduct an investigation in his own county or to make an arrest, Deputy Roden could only ensure the scene was safe and then had no recourse other than to contact the FBI field office in Tulsa (approximately 45 miles away). The FBI advised they would not respond and that, as the assault was only a misdemeanor, they would likely take no action on the case. Deputy Roden shared this information with Ms. Dobbs and, with nothing further to do, departed.

Unfortunately, scenes like this played out nearly every day in my district. What I saw in my community prior to the ruling in Castro-Huerta, was that my office, and those of cooperating

state and local professional law enforcement agencies, stood nullified in our efforts to ensure the safety of our communities through the enforcement of laws, investigation of crime, and redress for victims, both Native and non-Native, in a crippling number of cases. Without the modulating effects of this ruling, the federal government is essentially tasked with the heretofore novel and nontraditional role of community policing. Current agencies lack the resources, capacity, and, frankly, will to execute these functions within the expectations of the populace. What was needed was essentially a federal police force. This type of agency could certainly be created with enough time and resources, but victimized members of the public do not expect the government to respond to their very real crises in a number of years. They seek immediate response and quick redress.

The possibility that victims could once again see justice after Castro-Huerta spread almost immediately through my community. Within hours of the decision, I received a phone call from Katrina West asking about a case involving her son. I first came to know Ms. West in 2019, when her son and his cousin were murdered and my office filed charges against the individual responsible. As the case progressed, we had multiple meetings with Ms. West and she came to trust that we would do everything in our power to seek justice for her son. Unfortunately, during the pendency of the case, we learned that her son, who identified as African-American, was also a member of the Creek Nation. As a result, the state's case against his killer was dismissed. The U.S. Attorney's office filed two counts of Murder 1, however, in the weeks prior to Castro-Huerta, they notified Ms. West that they had reached a tentative plea agreement with the murderer by which he would receive a sentence of 17 years. By comparison, the minimum sentence in Oklahoma for a single count of Murder 1 is calculated at 45 years and this particular defendant had violently murdered two people. Ms. West was extremely distraught about the federal prosecution's proposed

resolution of the case and sought my advice. I explained to her that, absent a favorable decision in Castro-Huerta, my office had no jurisdiction and there was nothing my team could do.

Within hours of the Castro-Huerta decision, one of my victim advocates notified me that a very emotional Ms. West was on the phone. I accepted the call and Ms. West, through her tears, asked me if it was true that this meant we could refile the case against her son's killer. I told her that was exactly what it meant and that I would be proud to seek a just sentence on his behalf. Emotional, Ms. West exclaimed that this was the answer to her prayers.

Unfortunately, the scenario of crimes against Native Americans going unprosecuted, played out all too often prior to Castro-Huerta. Here are just a handful of additional examples from my district:

- A Native American female was stopped at a stoplight in front of an elementary school. Another driver, angry at a perceived driving infraction, approached her window and punched through the glass, breaking the window. The incident was caught on video and disseminated widely through social media. The other driver was not Native American. No charges were brought for the assault.
- A Native American female became involved in a road rage incident with another driver. While her vehicle was stopped, the male driver advised her that he was a police officer and ordered her out of the vehicle. In fact, he was not a police officer. When the Native American driver stepped out of her vehicle, he held her arms, while she was assaulted by his female passenger. This occurred in front of the Native American female's children. The male driver and his female passenger were not Native American. No charges were brought.
- After a fight outside of a bar, a man pulled out a gun and fired a shot at a man fleeing on foot. The man fleeing was Native American, so in an effort to circumvent the jurisdictional issue, my office filed a misdemeanor reckless conduct with a firearm charge, rather than any charge associated with the actual victim. No federal charges were filed.
- Claremore Police found a non-Native American woman living in a squalid hotel room with her five children (ages 4 months to 13 years) and two dogs. Covered in trash, the room reeked of human and animal excrement. Two of the children were completely naked. An unsecured firearm was accessible to all children, as was a plainly visible container of medical marijuana. The woman's children were Native American and while they were removed from the deplorable conditions, no charges for child neglect were filed.

The first published case in which the Oklahoma Court of Criminal Appeals applied Castro-Huerta was prosecuted by my team in District 12. In that case, Deputy Keisha Oberg of the Mayes County Sheriff's office arrested an individual near a high school football field for carrying a firearm while intoxicated and public intoxication. After securing the arrestee in her vehicle and while driving to the Mayes County jail, the arrestee managed to gain leverage with his feet, elevate himself, head butt Deputy Oberg multiple times and interfere with her driving. The arrestee was charged with felony Assault and Battery on a Police Officer. Deputy Oberg, however, is a Native American member of the Cherokee Nation. As such, her case was dismissed by the state court and my office appealed. The appeal was significant because under federal law, the defendant could only be charged with a misdemeanor assault, as federal law on assaults on law enforcement officers only extends to federal officers. Applying Castro-Huerta, however, the Oklahoma appellate court determined the state case could proceed. Absent Castro-Huerta, this criminal and similarly situated perpetrators would merit shorter sentences for no reason other than the fact their victim is Native American. It was my firm belief that Deputy Oberg, as a Native American first responder putting her life on the line, deserved the full protection afforded to all Oklahoma citizens.

Oklahoma is not a place where societal lines are drawn between Natives and non-Natives. When an officer responds to the scene of an accident, they cannot determine which parties are Native or non-Native without going through detailed questions, and those questions must be asked of every person because, just like many of those in my own family, tribal membership may differ within a single household, both among tribes and a mix of native and non-native members. In my own office, my office manager, who is Native American, made certain that her husband, who is not Native American, was listed on her vehicle titles to ensure that if their car was stolen or burglarized, he could be listed as the victim and therefore allow state prosecution.

In the midst of this chaos, the Castro-Huerta decision has been a beacon of hope for Native American victims of crime. It returned to Oklahoma law enforcement what had been the practice for the 113 years prior to McGirt. State and local law enforcement officers and local prosecutors could once again prosecute cases involving Native American victims. The impact I have witnessed is not suppositional or theoretical. If you have read stories in publications such as the Wall Street Journal or New York Times about what you think may be isolated incidents I can assure you they are not. Those victims are neighbors and members of my community. They are parents, and business owners, and members of my church. They are my constituents. I can speak directly to the evidence of the realities in which I work to protect ALL individuals, families, businesses and others in the jurisdiction that have placed their trust in my office. I cannot speak to how the current situation could have been improved had individuals acted differently outside my lifetime. What I can say is that in 2022 the people of Oklahoma deserve a very real conversation about today's challenges, and assurances that their communities remain safe places to live, worship, raise families, and operate businesses.

I am proud to lend my voice to the Native American victims that I was elected to represent. Castro-Huerta has given them hope. I will be working to do all that I can to live up to this trust and to ensure that my office seeks justice for all victims of crime.