

**PREPARED STATEMENT OF THE HONORABLE WHITNEY B. GRAVELLE,
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**SUBCOMMITTEE FOR INDIGENOUS PEOPLES OF THE UNITED STATES
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES**

**EXAMINING OKLAHOMA V. CASTRO-HUERTA: THE IMPLICATIONS OF THE
SUPREME COURT'S RULING ON TRIBAL SOVEREIGNTY**

Introduction

Aanii boozhoo, (hello, greetings)! My name is Whitney Gravelle, and I currently serve as the President of Gnoozhekaaning, Place of the Pike, or Bay Mills Indian Community, which is an Ojibwe Tribal Nation located on Lake Superior in Michigan's Upper Peninsula. Bay Mills Indian Community was federally recognized in 1936 and has maintained civil and criminal jurisdiction with the federal government on behalf of its citizens since that time.

I am appearing before the Subcommittee in my capacity as President to speak on behalf of the questions, concerns, and issues we have encountered due to the United States Supreme Court ruling in *Oklahoma v. Castro-Huerta* (Castro-Huerta), and encourage the federal government to work together to resolve the issues presented by this ruling.

Background

As discussed by others providing testimony today, the Supreme Court in *Castro-Huerta* ruled that the Federal Government, Tribal Nations, and the States have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. The Court indicated that the opinion applies to all states, which caused reverberating shocks throughout Indian Country, as it overturned long held legal precedent.

Without question, it is important to start with the premise that any Tribal Nation's first duty since time immemorial has always been to protect and safeguard its citizenry, the people. Our sovereignty and duty to protect operate in large part to safeguard the political integrity, economic security, and the health and welfare of our community.

In pursuit of this, Bay Mills Indian Community has executed Cross Deputation Agreements with Chippewa County, obtained Special Law Enforcement Cards with the Bureau of Indian Affairs, and executed a formal agreement with the Chippewa County Jail in order to meet these goals on behalf of our people and our Nation.

The facts and the landscape across Indian Country is anything but what was described by the Court in *Castro-Huerta*, especially here in the State of Michigan, and ultimately any solution will turn on resources, communication, coordination, respect, sovereignty, and the continued empowerment of Tribal Nations to seek justice for their citizens, lands, and resources.

Problem

Across Indian Country, Tribal Nations make up a small percentage of the population, yet our citizens continue to suffer disproportional rates of crime - domestic violence, murder, stalking, rape, and sexual assault. This is partly due to the fact that the history of violence against native people is convoluted by the complex jurisdictional scheme that exists for Tribal Nations in the United States. For more than forty years, Tribal Nations have been denied the ability to prosecute non-Indian perpetrators and a lack of resources impedes investigation, which prevents Tribal Nations from providing our citizens the protection and help they deserve.

Bay Mills Indian Community was one of the first Tribal Nations in the United States to complete our Missing and Murdered Indigenous People Tribal Community Response Plan. In preparation of that plan, we learned important questions we had to ask ourselves as well as our nearby law enforcement partners as well. We learned that we needed to communicate expectations and information. We also learned it was important we take the steps beforehand, implementing policy or regulatory frameworks to stop the steps that lead to the final horrific act that harms our loved ones, but this also means we must empower Tribal Nations in resolving issues related to and within Indian Country.

The ruling in *Castro-Huerta* does little to solve these complex jurisdictional schemes contributing to this problem, but instead adds an additional barrier for Tribal Nations to navigate and overcome.

More so, the implications of *Castro-Huerta* go much further beyond criminal jurisdiction by stating instead a State's jurisdiction in Indian country may be preempted (1) by "federal law under ordinary principles of federal preemption" in which the federal act must have "clear statutory language" stating so, or (2) when the exercise of state jurisdiction would unlawfully infringe on tribal self-government. These two requirements now cast doubt on any federal law that exists and its application in Indian Country: permitting requirements and regulations, control of land or natural resources, and most of all how to seek justice for our citizens.

This could implicate criminal and non-criminal matters concerning businesses like extractive industries where Tribal Nations are targeted and exploited. In the Great Lakes Region, both Bay Mills Indian Community and the Bad River Band of Lake Superior Chippewa are involved in litigation involving Enbridge Energy, Inc.'s Line 5 dual pipelines and proposed tunnel project. Because business practices affect almost all human rights, including the right to a clean environment, personal security, community security, and economic stability, governmental officials and community members must observe the impact these practices have within the community. Without adherence to set standards by the impacted community or Tribal Nation, development projects will lead to violence and conflict, and take advantage of land held by Tribal Nations for another's gain or profit. Once previous federal or tribal standards are now too questioned by *Castro-Huerta*.

Solution

One solution presented by the Pascua Yacqui Tribal Nation in the State of Arizona is to look at another set of agreements with a local County / Counties to authorize the appointment of a qualified

tribal prosecutor to assist in prosecuting state offenses committed within that Tribal Nation's reservation, as well as to help coordinate and clarify the responsibilities of the Tribal Nation and County government for any crime committed.

This position would help address any jurisdictional uncertainty, reduce regional crime, decrease the prevalence of violent crime, combat sexual and domestic violence on reservation lands, and help combat Missing and Murdered Indigenous Persons and Women.

However, these agreements rely on a Tribal Nation's sovereignty for execution and do not come without unanswered questions and unidentified issues as well. If a State prosecutes a crime in Indian Country do they too pay the prosecution costs and jail fees? Does the Tribe in seeking justice for their Nation? How would each sovereign hold one another accountable?

Furthermore, in order to pursue an agreement such as the one described, it would require a good working relationship with the local County / Counties, which is not always determined by any set party or person. For example, in the State of Michigan's Constitution local county sheriffs and county prosecutors are carved out as an independent state actor, and thus not subject to review or guidance by the Governor or Attorney General.

Tribal Nations should not be left to answer to the determinations of individuals, or the fragility of relationships that change with each election season.

Improving safety in the day-to-day lives of the residents of Indian country is the responsibility of a broad range of justice institutions both within and outside of Indian country. Apart from the grant of state authority to prosecute non-Indians for crimes committed against Indians in Indian country, the long-term impact of the decision in *Castro-Huerta* is unclear at this time without any real guidance from the federal government. We cannot wait to address the issues presented by this ruling. Any uncoordinated exercise of state authority could infringe on a Tribal Nation's right to self-government, could disrupt the prosecution of non-Indian cases, could cause unclear regulatory parameters for projects, and could cause additional jurisdictional uncertainty.

Tribal Nations negotiated treaties with the United States of America not the several states. The United States should not stay silent and let states set domestic policy with Tribal Nations. I humbly ask that the United States Congress develop a *Castro-Huerta* fix.