OKLAHOMA v. CASTRO-HUERTA: OKLAHOMA'S LATEST POWER GRAB AND ITS IMPLICATIONS FOR NATIVE WOMEN IN A POST-*ROE* WORLD

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I. Introduction

Victor Manuel Castro-Huerta, a non-Indian man living in Tulsa, Oklahoma, was charged with criminal child neglect of his Cherokee Indian stepdaughter after she was found to be extremely sick and in deteriorating condition while under his care.[1] While Castro-Huerta's appeal was pending in state court, the United States Supreme Court decided *McGirt v. Oklahoma*, which raised questions regarding jurisdictional authority of the state to prosecute crimes committed by non-Indians against Indians on Indian Country.[2] The Oklahoma Court of Criminal Appeals found that the federal government has exclusive jurisdiction to prosecute such crimes and vacated Castro-Huerta's sentence.[3] The Supreme Court granted certiorari to decide the jurisdictional question in dispute and found that the federal government has concurrent jurisdiction with the state to prosecute crimes in Indian Country committed by non-Indians against Indians.[4]

This Note will explore the Supreme Court's decision to determine whether the law established in *Castro-Huerta* incorrectly encroaches on the inherent sovereignty of the tribes by stripping the tribal courts and federal government of their exclusive jurisdiction over Indian Country. This Note will also briefly examine the potential impact of the *Castro-Huerta* decision on Native women's access to reproductive healthcare in light of the Supreme Court overturning *Roe v. Wade* in 2022 with its opinion in *Dobbs v. Jackson Women's Health Organization*. Part II of this Note will outline the pertinent legal background of tribal sovereignty and the federal government's exclusive jurisdiction over American Indians on tribal land. In Part III, this Note will summarize the Supreme Court's decision in *Oklahoma v. Castro-Huerta*. Lastly, Part IV analyzes the *Castro-Huerta* decision as applied to questions of exclusive jurisdiction of tribal courts and the federal government

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1. Oklahoma v. Castro-Huerta, 142 S. Ct. 2486, 2491 (2022).
2. *Id.* at 2491-92.
3. *Id.* at 2492.
4. *Id.* at 2504.

over crimes in Indian Country, the impact on tribal sovereignty, and the effect of the *Castro-Huerta* holding on Native women.

II. Law Before the Case

A. Federal Jurisdiction

The question of concurrent jurisdiction over Indian territory dates back to the 1832 landmark Supreme Court case *Worcester v. Georgia*.[5] Writing for the Court, Chief Justice Marshall voided Georgia's self-proclaimed jurisdiction over the Cherokee Nation holding that the United States Constitution grants the federal government exclusive authority over the tribes.[6] Half a century later, in 1885, Congress enacted 18 U.S.C. § 1153, publicly known as the Major Crimes Act.[7] The Act was adopted after the Court in *Ex parte Crow Dog* overturned an Indian-against-Indian murder conviction because of the "Indian-against-Indian exception of the General Crimes Act."[8] The goal of the Major Crimes Act was to give the United States federal government jurisdiction over crimes that had the potential to go unpunished in the tribal courts.[9] However, while providing jurisdiction to the federal government to prosecute crimes in Indian Country, the General Crimes Act does not purport to "preempt the State's authority" to prosecute crimes committed by non-Indians against Indians in Indian Country.[10] The General Crimes Act denotes the "general laws of the United States" as the specific portion of federal criminal law that applies to Indian Country.[11] The "general laws" to which the Act refers are the "federal laws that apply in federal enclaves such as military bases and national parks."[12] The General Crimes Act does not consider Indian Country to be a federal enclave for purposes of determining jurisdiction.[13] Rather, the Act concludes that the

5. 31 U.S. (6 Pet.) 515 (1832).

6. *Id.* at 530-31.

7. Andie B. Netherland, Note, *The Disproportionate Effect on Native American Women of Extending the Federal Involuntary Manslaughter Act to Include a Woman's Conduct Against Her Child in Utero:* United States v. Flute, 45 AM. INDIAN L. REV. 191, 192 (2020-2021); Major Crimes Act, 18 U.S.C. § 1153; David Heska Wanbli Weiden, *This 19th-Century Law Helps Shape Criminal Justice in Indian Country,* N.Y. TIMES (July 19, 2020), https://www.nytimes.com/2020/07/19/opinion/mcgirt-native-reservation-implications.html.

8. Netherland, *supra* note 7, at 192.

9. United States v. Other Medicine, 596 F.3d 677, 680 (9th Cir. 2010).

10. Oklahoma v. Castro-Huerta, 142 S. Ct. 2486, 2494-95 (2022).

11. *Id.* at 2494 (quoting Major Crimes Act, 18 U.S.C. § 1152).

12. *Id.* at 2495.

13. *Id.*

"federal criminal laws that apply to federal enclaves also apply in Indian country."[14] Thus, the General Crimes Act seemingly provides the state and the federal government with concurrent jurisdiction over prosecution of crimes committed by non-Indians against Indians in Indian Country.[15] The *Castro-Huerta* Court determined that the extension of federal laws to Indian Country does not preempt "otherwise lawfully assumed" jurisdiction held by the state over prosecution of crimes committed by non-Indians in Indian Country.[16]

B. The Treaty of New Echota and the Oklahoma Enabling Act

In 1835, the United States entered into a treaty with the Cherokee promising the tribe a new reservation in what became present-day Oklahoma.[17] Within this new reservation, the United States promised the Cherokee that they would enjoy autonomous government and remain unencumbered from "State sovereignties" and "the jurisdiction of any State."[18] The Supreme Court has ruled that treaties between tribes and the federal government must be interpreted in the way "they would naturally be understood by the Indians" at the time of ratification.[19] The House Committee on Indian Affairs determined that it was extremely reasonable that the Cherokee understood the promises made to them in the Treaty of New Echota to mean "that they would retain their sovereign authority over crimes by or against tribal members, subject only to federal, not state law."[20]

Congress adopted the Oklahoma Enabling Act in 1906 in an attempt to fulfill its treaty promises to the tribes.[21] The Oklahoma Enabling Act preceded Oklahoma's admission to the Union.[22] In doing this, Congress ensured that Oklahoma assented to permanently disclaiming "all right and title in or to . . . all lands lying within [the State's] limits owned or held by

14. *Id.* at 2496.
15. *Id.* at 2495.
16. *Id.* at 2496.
17. Treaty of New Echota, Cherokee-U.S., Dec. 29, 1835, 7 Stat. 478, *cited in Castro-Huerta*, 142 S. Ct. at 2514 (Gorsuch, J., dissenting).
18. *Id.* at pmbl., *quoted in Castro-Huerta*, 142 S. Ct. at 2514.
19. Herrera v. Wyoming, 139 S. Ct. 1686, 1701 (2019) (quoting Washington v. Wash. State Com. Passenger Fishing Vessel Ass'n, 443 U.S. 658, 676 (1979)).
20. *Castro-Huerta*, 142 S. Ct. at 2514 (Gorsuch, J., dissenting).
21. Oklahoma Enabling Act, ch. 3335, 34 Stat. 267 (1906), *cited in Castro-Huerta*, 142 S. Ct. at 2515.
22. *Castro-Huerta*, 142 S. Ct. at 2515.

any Indian, tribe or nation."[23] Congress took this opportunity to decline granting the state a novel ability to "prosecute crimes by or against tribal members" and instead demanded that tribal lands remain under the jurisdiction of the federal government.[24] Oklahoma obeyed Congress's instructions and adopted both of these requirements in the State Constitution.[25]

Before Oklahoma became a state, there was no question whether Congress had exclusive authority over regulation of tribal lands and affairs within Oklahoma's territory.[26] The Enabling Act specifically provided that Oklahoma's State Constitution could not contain anything that could be construed as inhibiting the federal government's authority "to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise, which it would have been competent to make if this Act had never been passed."[27] Thus, Oklahoma's statehood did not disrupt the established rule that the federal government had "guardianship" over Native American tribes in Oklahoma.[28] Since the Treaty of New Echota and the Oklahoma Enabling Act were put into effect, the Court has enforced the "traditional rule" that states do not possess jurisdiction over crimes committed by or against American Indians on tribal lands.[29]

C. Federal Jurisdiction After McGirt

In 2020, the United States Supreme Court decided *McGirt v. Oklahoma*.[30] Jimcy McGirt, a member of the Seminole Nation of Oklahoma, was convicted in Oklahoma state court for "three serious sexual offenses" that occurred on the Creek Reservation.[31] McGirt argued that the State did not have jurisdiction to prosecute him for his sexual offenses because he was a member of the Seminole Nation and his crimes occurred on the Creek Reservation.[32] He further argued that a new trial for his conduct must take

23. *Id.* (alteration in original) (quoting Oklahoma Enabling Act, ch. 3335, § 25, 34 Stat. 267, 270 (1906)).

24. *Id.*

25. *Id.*; *see* OKLA. CONST. art. I, § 3.

26. *Castro-Huerta*, 142 S. Ct. at 2516 (Gorsuch, J., dissenting).

27. Oklahoma Enabling Act § 1, 34 Stat. at 267-68, *quoted in Castro-Huerta*, 142 S. Ct. at 2515.

28. *Castro-Huerta*, 142 S. Ct. at 2516 (citing United States v. Ramsey, 271 U.S. 467, 469 (1926)).

29. *Id.* (citing McClanahan v. State Tax Comm'n of Ariz., 411 U.S. 164, 175 (1973)).

30. 140 S. Ct. 2452 (2020).

31. *Id.* at 2459.

32. *Id.*

place in federal court due to the United States having exclusive jurisdiction over crimes committed on Indian reservations and due to the nature of tribes' inherent sovereignty.[33] McGirt's appeal was based on the Federal Major Crimes Act, which provides, in part, that within Indian Country, any Indian committing "certain enumerated offenses" against another Indian, or another Indian's property, "shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States."[34]

The argument in *McGirt* centered around whether the Creek Nation reservation was ever actually established, and if it was found to be established, whether it was then ever disestablished.[35] To resolve the question of disestablishment, the Court relied on a three-step test originating in *Solem v. Bartlett* in 1984.[36] To determine whether a reservation has been disestablished, Courts may look at "(1) the language of the governing federal statute; (2) the historical circumstances of the statute's enactment; and (3) subsequent events, such as Congress's later treatment of an affected area."[37] The test outlined in *Solem* requires courts to resolve questions of reservation establishment in favor of the tribes; thus "if the evidence is not clear, the reservation continues to exist."[38] In *McGirt* the majority explained that the second and third steps of the *Solem* test apply only when clarifying statutory texts.[39] Because there was no governing federal statute that evidently disestablished the Creek reservation, the *Solem* analysis concluded after step one, making the subsequent treatment of the area irrelevant.[40] Accordingly, Oklahoma's arguments that eastern Oklahoma "had not been considered or treated like a reservation for more than a century" bore no weight on the Court's determination that Congress had left the Creek Nation with significant sovereign authority.[41]

The *McGirt* Court found that Congress established a reservation for the Creek Nation and that Congress alone has the power to disestablish a reservation and strip a reservation of its land and reduce the reservation's

33. *Id.*

34. *Id.* (quoting Major Crimes Act, 18 U.S.C. § 1153(a)).

35. MAINON A. SCHWARTZ, CONG. RSCH. SERV.: LEGAL SIDEBAR, LSB10527, THIS LAND IS WHOSE LAND? THE MCGIRT V. OKLAHOMA DECISION AND CONSIDERATIONS FOR CONGRESS 2 (2020), https://crsreports.congress.gov/product/pdf/LSB/LSB10527/2.

36. *Id.* at 3.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.*

boundaries.[42] For a reservation to be disestablished and a tribe to be stripped of its authority, Congress must explicitly declare the reservation to have been disestablished.[43] The Treaty of 1856 involved a promise by Congress to the Creek Nation that "no portion" of their reservation "shall ever be embraced or included within, or annexed to, any Territory or State."[44] Congress went on to promise the Creeks secure autonomy within their land and exclusive jurisdiction over "enrolled Tribe members and their property."[45] The primary effect of the Treaty of 1856 promised the Creek Nation the right to self-government "on lands that would lie outside both the legal jurisdiction and geographic boundaries of any State."[46]

The *McGirt* decision effectively classified nearly the entirety of eastern Oklahoma, including the city of Tulsa, as Indian Country.[47] This ruling raised questions of whether the State maintained any jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian Country or if the federal government's jurisdiction in this area was exclusive.[48] Castro-Huerta argued that the federal government's jurisdiction was exclusive in this area of the law.[49] *McGirt* upholds that, under the Major Crimes Act, Oklahoma must have approval from the federal government to prosecute crimes committed by Indians on tribal land.[50]

D. Public Law 280

Congress enacted Public Law 280 in 1953 to provide certain states with "criminal jurisdiction over Indians" on tribal land and to permit civil litigation under tribal or federal jurisdiction to be addressed by state courts.[51] Public Law 280 affords some explicitly listed states with wide jurisdiction

42. McGirt v. Oklahoma, 140 S. Ct. 2452, 2462 (2020) (citing Solem v. Bartlett, 465 U.S. 463, 470 (1984)).

43. *Id.* (citing Nebraska v. Parker, 577 U.S. 481, 487-88 (2016)).

44. *Id.* at 2461 (quoting Treaty with Creeks and Seminoles (Treaty of 1856), art. IV, Aug. 7, 1856, 11 Stat. 700).

45. *Id.* (citing Treaty of 1856, art. XV).

46. *Id.* at 2462.

47. Oklahoma v. Castro-Huerta, 142 S. Ct. 2486, 2492 (2022).

48. *Id.*

49. *Id.*

50. Darcel Rockett, *Local Tribe Members React to Supreme Court Decision That Strikes at the Issue of Tribal Sovereignty*, CHI. TRIB. (June 30, 2022), https://www.chicagotribune.com/people/ct-supreme-court-oklahoma-castro-huerta-tribal-sovereignty-tt-0630-20220630-4jepldqg3nabvpkcc2r5gbie6y-story.html.

51. *Fact Sheet: American Indians and Alaska Natives - Public Law 280 Tribes*, ADMIN. FOR NATIVE AMS., https://www.acf.hhs.gov/ana/fact-sheet/american-indians-and-alaska-natives-public-law-280-tribes (last visited Feb. 1, 2024).

over prosecuting "state-law offenses committed by or against Indians in Indian country."[52] Public Law 280 notably does not affect the scope of tribal criminal jurisdiction—rather, it adjusted only the allocation of jurisdiction between the federal government and the state regarding state criminal jurisdiction.[53] Summarily, Public Law 280 fails to prohibit state power to prosecute crimes committed by non-Indians against Indians in Indian Country.[54] However, Oklahoma is not a Public Law 280 state.[55]

Public Law 280 specifically grants the following states with broad jurisdiction over the prosecution of crimes involving Indians on tribal land: Alaska, California, Minnesota, Nebraska, Oregon, and Washington.[56] Other states may opt into the scheme of Public Law 280 with tribal consent.[57] Currently, Oklahoma has not opted into the Public Law 280 framework.[58] Thus, it is a misapplication of law to apply Public Law 280's grants of state authority to the Oklahoma state government over prosecution of crimes committed by or against Indians on tribal land.[59] The following states are currently opted into Public Law 280 and have "elected to assume full or partial state jurisdiction": Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington.[60]

From its inception, Public Law 280 has been vehemently "opposed by Indian nations" because of the law's failure to recognize tribal sovereignty and the unilateral process by which it obtrudes state jurisdiction on tribes.[61] The tribes were not the only entity that expressed disfavor regarding Public Law 280. When President Eisenhower signed the act into law in 1953, he expressed concern surrounding the absolute "lack of tribal consent" and was adamant that the law receive expeditious amendment to "require tribal

52. *Castro-Huerta*, 142 S. Ct. at 2499; *see* 18 U.S.C. § 1162.

53. *Fact Sheet: American Indians and Alaska Natives - Public Law 280 Tribes*, *supra* note 51.

54. *Castro-Huerta*, 142 S. Ct. at 2500.

55. Rockett, *supra* note 50.

56. 18 U.S.C. § 1162.

57. *Castro-Huerta*, 142 S. Ct. at 2499; *see* 25 U.S.C. § 1321.

58. Rockett, *supra* note 50.

59. *Id.*

60. *Frequently Asked Questions About Public Law 280*, THE ANNA INST. (Apr. 24, 2000), https://www.theannainstitute.org/American%20Indians%20and%20Alaska%20Natives/QUESTIONS%20ABOUT%20PUBLIC%20LAW%20280%20-%20APRIL%2024,%202000.pdf.

61. *Fact Sheet: American Indians and Alaska Natives - Public Law 280 Tribes*, *supra* note 51.

referenda."[62] Public Law 280 did not receive this amendment until 1968, fifteen years after its initial codification.[63]

E. Brief Overview of Current Reproductive Healthcare Law in Oklahoma Indian Country

In 1973, the Supreme Court decided in *Roe v. Wade* that a woman has a constitutionally protected right to terminate her pregnancy without state interference or legal consequence.[64] The Court found that this right existed under the fundamental right to privacy "founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action."[65] For almost half a century, women in the United States retained the liberty to terminate their pregnancies without interference from state government. However, in 2022, the Supreme Court overturned *Roe* with its highly divisive and controversial decision in *Dobbs v. Jackson Women's Health Organization*.[66] The *Dobbs* Court held that *Roe* had been incorrectly decided and determined that the Constitution does not bar the states from "regulating or prohibiting abortion."[67] Thus, *Dobbs* effectively returned to the citizens and elected representatives of each state the authority to regulate or prohibit abortion.[68]

In the aftermath of *Dobbs*, conservative states across the country, such as Oklahoma, started passing restrictive legislation banning and regulating abortion. In April of 2022, the Oklahoma governor, Kevin Stitt, signed House Bill 4327, effectively making abortion unavailable in the state.[69] At the time, Oklahoma's law was the most restrictive abortion ban in the nation.[70] Oklahoma's ban made the state the first in the country to effectively terminate the availability of abortion procedures within the state.[71] Publicly

62. *Id.*
63. *Id.*
64. 410 U.S. 113 (1973).
65. *Id.* at 153.
66. 142 S. Ct. 2228 (2022).
67. *Id.* at 2284.
68. *Id.*
69. Ismael Lele, *Oklahoma Supreme Court Rules 'Heartbeat Bill', Total Abortion Ban Unconstitutional*, OU DAILY (May 23, 2023), https://www.oudaily.com/news/oklahoma-supreme-court-rules-heartbeat-bill-total-abortion-ban-unconstitutional/article_61582a02-ffda-11ed-a1bb-d7d3aac16387.html.
70. Associated Press, *Oklahoma Governor Signs Nation's Strictest Abortion Ban*, NPR (May 26, 2022, 5:58 AM), https://www.npr.org/2022/05/26/1101428347/oklahoma-governor-signs-the-nations-strictest-abortion-ban.
71. *Id.*

known as "The Oklahoma Heartbeat Act," Senate Bill 1503 prohibits abortions in Oklahoma as early as six weeks—whenever the physician can detect the presence of a fetal heartbeat.[72] Oklahoma Governor Kevin Stitt took things a step further in April of 2022, by signing a bill into law criminalizing the performance of abortions and making such conduct "punishable by up to 10 years in prison."[73] However, in March of 2023, the Oklahoma Supreme Court ruled in *Oklahoma Call for Reproductive Justice v. Drummond* that both Senate Bill 1503 and House Bill 4327 were unconstitutional, ruling that the Oklahoma constitution protects the right to abortion if the mother's life is endangered by the pregnancy.[74]

Notably, in the federal arena, the Hyde Amendment of 1976 was added to the Health and Human Services Appropriations Act.[75] The original Amendment disallowed funds appropriated to the Department of Health and Human Services to be used to perform abortions except in situations where carrying the fetus to term would endanger the life of the mother.[76] Since the Hyde Amendment's enactment, Congress has broadened the scope of the amendment to allow for the use of federal funds to finance abortions seeking to terminate ectopic pregnancies or pregnancies resulting from rape or incest.[77]

In 2008, the Senate sought to fill a gap in the Hyde Amendment generated "by its intersection with the funding mechanism for the Indian Health Service."[78] Because the Hyde Amendment only restricted funds contained in the Act, the Amendment was not applicable to the funds apportioned to the Indian Health Services via a different act.[79] The Senate proposed an amendment to the Hyde Amendment that would eliminate the loophole by

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72. Veronica Stracqualursi, *Oklahoma GOP Governor Signs 6-Week Abortion Ban Modeled After Texas Law That Allows Civil Enforcement*, CNN POLITICS (May 7, 2022, 3:37 PM), https://www.cnn.com/2022/05/03/politics/oklahoma-heartbeat-act-abortion-governor-stitt-signs/index.html; *see* 63 OKLA. STAT. ANN. §§ 1–745.31, 1–745.33 (2022), *declared unconstitutional by* Okla. Call for Reprod. Just. v. State, 2023 OK 60, 531 P.3d 117.

73. H.R. 4327, 58th Leg., 2d Reg. Sess. (Okla. 2021); Associated Press, *Oklahoma Governor Signs Bill Making it Felony to Perform an Abortion*, NBC NEWS (Apr. 12, 2022, 11:11 AM), https://www.nbcnews.com/news/us-news/oklahoma-governor-signs-bill-making-felony-perform-abortion-rcna24071.

74. 2023 OK 24, 526 P.3d 1123; Lele, *supra* note 69.

75. *Senate Moves to Bar Abortion Funding from Indian Health Care Bill*, 15 Andrews Health L. Litig. Rep. (West) No. 11, para. 4, 2008 WL 780623 at *1 (Mar. 26, 2008).

76. Health and Human Services Appropriations Act, Pub. L. No. 94-439, § 209, 90 Stat. 1418, 1434 (1976).

77. Netherland, *supra* note 7, at 196.

78. *Id.*

79. *Id.* (quoting Health and Human Services Appropriations Act § 209, 90 Stat. at 1434).

expanding the application of the Amendment to the Indian Health Service.[80] The Senate approved the amendment to the Indian Health Care Improvement Act to reflect that the restriction on funds contained in the Hyde Amendment now applied to the funds apportioned to the Indian Health Services, regardless of which Act allocated the funds.[81]

III. The Case: Oklahoma v. Castro-Huerta

In 2015, Victor Manuel Castro-Huerta was living with his wife and their children in Tulsa, Oklahoma.[82] Among the children living with Castro-Huerta was his "then five-year-old stepdaughter, who is a Cherokee Indian."[83] The stepdaughter is blind and suffers from cerebral palsy.[84] After visiting Castro-Huerta's house in 2015, Castro-Huerta's sister-in-law noticed that the stepdaughter was in poor health.[85] The stepdaughter was "rushed to a Tulsa hospital in critical condition"[86] after a 911 call was made. At the hospital, the little girl was found to be extremely underweight, "[d]ehydrated, emaciated, and covered in lice and excrement."[87] Further investigations later revealed that the girl's bed was infested with cockroaches and bedbugs.[88]

Upon questioning, Castro-Huerta admitted to "severely undernourish[ing] his stepdaughter," and the State of Oklahoma subsequently brought criminal charges of child neglect against both Castro-Huerta and his wife.[89] Both were convicted in 2015, and Castro-Huerta received a thirty-five-year prison sentence with the possibility of parole.[90] While Castro-Huerta was awaiting the appeal of his case, the United States Supreme Court decided *McGirt v. Oklahoma*.[91] As previously discussed, *McGirt* determined that the eastern part of Oklahoma, including Tulsa, is recognized as Indian Country.[92] The effect of the *McGirt* decision was that land promised to the tribes in treaties

80. *Senate Moves to Bar Abortion Funding from Indian Health Care Bill*, *supra* note 75.
81. *Id.*
82. Oklahoma v. Castro-Huerta, 142 S. Ct. 2486, 2491 (2022).
83. *Id.*
84. *Id.*
85. *Id.*
86. *Id.*
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.*
91. *Id.*
92. *Id.* at 2492.

with the United States federal government is to remain an "Indian reservation for the purposes of federal criminal law."[93]

Castro-Huerta addresses whether the *McGirt* ruling has stripped the state of its ability to prosecute crimes committed by non-Indians against Indians in Indian Country, or if the state and federal government maintain concurrent jurisdiction over these types of crimes.[94] Castro-Huerta argued that the federal government maintains exclusive jurisdiction over prosecution of crimes committed by non-Indians against Indians in Indian Country, which would eliminate the state's jurisdiction to prosecute him in this case.[95] The Oklahoma Court of Criminal Appeals agreed with Castro-Huerta's argument by "[r]elying on an earlier Oklahoma decision holding that the federal General Crimes Act" confers exclusive jurisdiction on the federal government.[96] The Oklahoma Court of Criminal Appeals thus ruled that the State lacks concurrent jurisdiction over crimes against Indians perpetrated by non-Indians in Indian Country and subsequently vacated Castro-Huerta's conviction.[97]

The Supreme Court granted certiorari to determine whether a state possesses concurrent jurisdiction with the federal government to prosecute crimes committed by non-Indians against Indians in Indian Country.[98] The Court granted certiorari considering the sudden public policy implications and questions of "public safety and the criminal justice system in Oklahoma" arising from the fact that numerous non-Indian criminals were receiving lighter sentences in federal court after having their state convictions vacated on jurisdictional grounds.[99] Castro-Huerta himself received the benefit of this jurisdictional dispute when he was indicted for the same conduct by a federal grand jury in Oklahoma.[100] Castro-Huerta took a "plea agreement for a 7-year sentence followed by removal from the United States" as Castro-Huerta is not a citizen of the United States and was in the country unlawfully.[101]

The dispute over jurisdiction in *Castro-Huerta* arose because of the vast amount of Indian Country within Oklahoma's borders.[102] "Indian Country"

93. McGirt v. Oklahoma, 140 S. Ct. 2452, 2459 (2020).
94. *Castro-Huerta*, 142 S. Ct. at 2491.
95. *Id.* at 2492.
96. *Id.*
97. *Id.*
98. *Id.* at 2492-93.
99. *Id.* at 2492.
100. *Id.*
101. *Id.*
102. *Id.* at 2493.

is defined in part in federal law to include "all land within the limits of any Indian reservation under the jurisdiction of the United States Government."[103] The Supreme Court noted that, because Indian Country is "part of the State, not separate from the State," a state is permitted under the Constitution to exercise jurisdiction in Indian Country unless federal law provides otherwise.[104] The Supreme Court essentially decided four issues when resolving the jurisdictional dispute in its *Castro-Huerta* decision. The Court ruled that the General Crimes Act does not prohibit the State from "prosecut[ing] non-Indians who commit crimes against Indians in Indian country."[105] The Court also held that Public Law 280 does not serve to prevent a state from exercising "any preexisting or otherwise lawfully assumed jurisdiction" over the prosecution of crimes in Indian Country.[106] Additionally, the Court held that the Oklahoma Enabling Act does not prevent Oklahoma's authority to bring criminal charges against a non-Indian for child neglect, even when that crime was committed against an Indian in Indian Country.[107] Finally, the Court held that the federal government has concurrent jurisdiction with the State over prosecutions of crimes committed by non-Indians against Indians in Indian Country.[108]

IV: Analysis of the Oklahoma v. Castro-Huerta *Decision and Its Implications for Tribal Sovereignty and the Rights of American Indian Women*

A. How the Oklahoma v. Castro-Huerta *Decision Encroaches on Tribal Sovereignty in Oklahoma*

The *Castro-Huerta* majority ignored long-standing Supreme Court precedent and congressional statutes when ruling that the State of Oklahoma possesses jurisdiction over prosecution of crimes committed by non-Indians against Indians in Indian Country.[109] The protection of tribal sovereignty from the interference of state governments was first seen in *Worcester v. Georgia* in 1832.[110] Chief Justice Marshall wrote for the Court and refused to "sanction Georgia's power grab" by voiding Georgia's "assertion of

103. *Id.* (quoting 18 U.S.C. § 1151).
104. *Id.*
105. *Id.* at 2495.
106. *Id.* at 2499.
107. *Id.* at 2503.
108. *Id.* at 2504-05.
109. *Id.* at 2527 (Gorsuch, J., dissenting).
110. 31 U.S. (6 Pet.) 515, *cited in Castro-Huerta*, 142 S. Ct. at 2493 (majority opinion).

jurisdiction over the Cherokee nation," reasoning that the United States Constitution grants only the federal government authority over the tribes.[111] Shortly after the *Worcester* decision, the Senate ratified the Treaty of New Echota with the Cherokee in 1836.[112] As previously discussed, the Treaty of New Echota promised self-governance to the Tribe when they were removed from Georgia to the western territory that would eventually become Oklahoma.[113] When Oklahoma became a state in 1906, Congress ensured that the State reaffirmed this promise to the American Indians living within its borders.[114] Oklahoma's admission to the Union was conditional upon it permanently disclaiming "all right and title in or to" any land within the state's borders "held by any Indian, tribe, or nation."[115] Congress further provided that tribal lands were to remain under the jurisdiction and authority of the federal government.[116] To make the limits of its authority glaringly clear for Oklahoma, Congress further provided that Oklahoma's new state constitution would not be interpreted to inhibit or restrict the authority of the federal government over Indian territory.[117] Oklahoma adopted a constitution inconsistent with these instructions from Congress and has yet to amend it to disclaim jurisdiction over tribal lands.[118] Due to Oklahoma's failure to amend its constitution to reflect Congress' instructions, the State remains, in the eyes of Congress, a state "'not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country . . . within' its borders."[119]

However, a constitutional revision is not Oklahoma's only available route for obtaining the power grab over Indian territory that it desperately seeks. Oklahoma also has at its disposal the regime set out in Public Law 280. "Public Law 280 affirmatively grants certain states broad jurisdiction to prosecute state-law offenses committed by or against Indians in Indian country."[120] Public Law 280 only grants this right to certain, enumerated states and permits other states to opt into the regime should they obtain tribal

111. *Worcester*, 31 U.S. at 561-62, *quoted in Castro-Huerta*, 142 S. Ct. at 2507 (Gorsuch, J., dissenting).

112. *See* Treaty of New Echota, Cherokee-U.S., Dec. 29, 1835, 7 Stat. 478.

113. *Castro-Huerta*, 142 S. Ct. at 2507-08 (Gorsuch, J., dissenting).

114. *Id.*

115. *Id.* at 2508 (quoting Oklahoma Enabling Act, ch. 3335, § 25, 34 Stat. 267, 270 (1906)).

116. *Id.*

117. *Id.*

118. *Id.* at 2509.

119. *Id.* (quoting 25 U.S.C. § 1321(a)).

120. *Id.* at 2499 (majority opinion).

consent.[121] However, Oklahoma has not obtained tribal consent and thus has not yet opted into the Public Law 280 scheme. Additionally, Oklahoma has not persuaded Congress to "adopt a state-specific statute authorizing it to prosecute crimes by or against tribal members on tribal lands."[122]

Despite the several lawful avenues Oklahoma has at its disposal to obtain jurisdiction over prosecution of these crimes, Oklahoma has chosen another path: seizing power via subterfuge. Over the years, Oklahoma has consistently tried to encroach on tribal sovereignty by merely disregarding the provisions set out in its own constitution. For example, despite the condition precedent to Oklahoma's joining the Union in 1906, Oklahoma courts have since "asserted the power to hear criminal cases involving Native Americans on lands allotted to and owned by tribal members."[123] This behavior is diametrically opposed to explicit commands laid out in the Oklahoma Enabling Act and the Oklahoma State Constitution. When the State's authority over the tribes was challenged in 2020 in *McGirt*, Oklahoma again declined to take the upstanding route of requesting state-specific legislation from Congress or receiving tribal consent to employ the procedures of Public Law 280. Nonetheless, the State again failed to engage in a by-the-book response and instead attempted to bully their target into a posture of defeat. The State employed aggressive fear-mongering tactics by "respond[ing] with a media and litigation campaign seeking to portray reservations within its State . . . as lawless dystopias."[124] Oklahoma was concerned that *McGirt* would disrupt Oklahoma's criminal justice system, especially in Tulsa, by allowing individuals convicted of violent crimes in the state to get their convictions overturned or their sentences reduced simply by claiming tribal citizenship.[125] The State posited that, because tribal citizenship is based on race, individuals could be as little as "1/500th or 1/1000th" percent Indian blood to qualify for tribal citizenship.[126] The Governor stated that convicted offenders are submitting DNA tests such as 23andMe to get their violent crime convictions overturned.[127] While this is an arguably valid concern of the State, Oklahoma released data that mitigates

121. *Id.*

122. *Id.* at 2509 (Gorsuch, J., dissenting).

123. *Id.*

124. *Id.* at 2510.

125. *See* Matt Irby, *Why Conservatives Are Losing Their Minds Over the Supreme Court's* McGirt v. Oklahoma *Decision*, BALLS & STRIKES (Apr. 18, 2022), https://ballsandstrikes.org/law-politics/mcgirt-v-oklahoma-explained/.

126. *See id.*

127. *Id.*

these concerns and shows that of the 235 inmates who were released due to the *McGirt* ruling, "more than 71%[] were charged either in federal or tribal court or held on unrelated charges," and of the sixty-eight individuals who were released in-full, the majority "were serving nonviolent or drug-related charges."[128]

However, Oklahoma's acting as if it already had jurisdiction to prosecute crimes committed by non-Indians against Indians on tribal lands does not make it so. Tribes are sovereign, and within their sovereign authority, is the reality that "criminal laws of the States" do not have effect "on tribal members within tribal bounds unless and until Congress clearly ordains otherwise."[129] Disestablishment requires a clear expression of intent from Congress.[130] The *Castro-Huerta* majority displays a fundamental misunderstanding of federal Indian law in its claim that *Worcester v. Georgia* is no longer good law simply because "*Worcester*-era understanding of Indian country as separate from the State was abandoned" in the late 1800s.[131] As noted in *Solem*, until and unless Congress explicitly declares the disestablishment of a reservation, the reservation remains established and autonomous, regardless of its subsequent treatment by the state.[132] Congress' prolific "series of laws governing criminal jurisdiction on tribal lands" do not revoke the notion that tribes are sovereign, nor displaces the authority of the tribes.[133] Thus, nothing in Congress' progeny has granted Oklahoma the authority it repeatedly seeks to assert in Indian Country.[134] Only tribal jurisdiction or the jurisdiction of the federal government expressly conferred by Congress exclusively applies to crimes committed by or against an Indian.[135] The Court addressed Oklahoma directly and reminded them of this reality in 1926 in *United States v. Ramsey*.[136]

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128. *Jan 9, 2022: Most Released Due to* McGirt *Have Been Charged Either Federally or Tribally, Tulsa World Analysis Finds*, TULSA WORLD (June 16, 2023), https://tulsaworld.com/jan-9-2022-most-released-due-to-mcgirt-have-been-charged-either-federally-or-tribally/image_e7966160-7872-11ec-961b-3f1e0dea5f83.html.

129. *Castro-Huerta*, 142 S. Ct. at 2511 (Gorsuch, J., dissenting).

130. McGirt v. Oklahoma, 140 S. Ct. 2452, 2463 (2020).

131. *Castro-Huerta*, 142 S. Ct. at 2497 (majority opinion).

132. Solem v. Bartlett, 465 U.S. 463, 470 (1984).

133. *Castro-Huerta*, 142 S. Ct. at 2513 (Gorsuch, J., dissenting).

134. *Id.*

135. *Id.* at 2518.

136. 271 U.S. 467, 469 (1926) ("The authority of the United States under section 2145 to punish crimes occurring within the state of Oklahoma, not committed by or against Indians, was ended by the grant of statehood.").

Additionally, the *Castro-Huerta* majority misconstrued the Major Crimes Act of 1885 (MCA) to confer jurisdiction to the states to prosecute crimes committed by non-Indians against Indians on Indian land. In the Major Crimes Act, Congress ordered that the federal government, not the tribes, have the power to "prosecute certain serious offenses by tribal members on tribal lands."[137] As the Court continued to cherry-pick its way through ancillary cases, it relied in part on *United States v. McBratney* to give Oklahoma the power it attempted to assert, by stating that "this Court held that States have jurisdiction to prosecute crimes committed by non-Indians against non-Indians in Indian country."[138] The Court went on to remark that *McBratney* "remains good law."[139] Whether *McBratney* is still good law is irrelevant as it did nothing to revoke Congress's promise that "states could play no role in the prosecution of crimes by *or* against Native Americans on tribal lands."[140]

The Court relies on the premise that Oklahoma retains "inherent" sovereign authority over prosecution of crimes in Indian Country until that authority is preempted by Congress.[141] The Court recognizes Oklahoma's jurisdiction over crimes committed by non-Indians against Indians within tribal reservations by relying on the argument that states typically possess broad police powers "within their borders absent some preemptive federal law."[142] However, tribes do not fall within the reach of the state police power paradigm.[143] Tribes are sovereign and are not subject to the preemption rule applicable within a state police power analysis .[144] With tribal sovereignty comes the reality that a state cannot impose its criminal laws on tribal members within tribal borders "unless and until Congress clearly ordains otherwise."[145] An intrinsic aspect of sovereignty is the "power to punish crimes by or against one's own citizens within one's own territory to the exclusion of other authorities."[146] By allowing Oklahoma to exercise jurisdiction over the prosecution of crimes committed by non-Indians *against*

137. *Castro Huerta*, 142 S. Ct. at 2508 (Gorsuch, J., dissenting) (citing 18 U.S.C. § 1153(a)).

138. *Id.* at 2494 (majority opinion) (citing United States v. McBratney, 104 U.S. 621, 623-24 (1882)).

139. *Id.* at 2494.

140. *Id.* at 2508 (Gorsuch, J., dissenting) (emphasis added).

141. *Id.* at 2492-2501 (majority opinion).

142. *Id.* at 2511 (Gorsuch, J., dissenting).

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

Indians in Indian Country, the *Castro-Huerta* Court has stripped the tribes in Oklahoma of this inherent right of sovereignty. In doing so, Oklahoma and the Court have repudiated rulings from Oklahoma's own courts; ignored Oklahoma's 1991 "recognition that it lacks legal authority to try cases of this sort"; and disavowed "fundamental principles of tribal sovereignty," the Treaty of New Echota, and the Oklahoma Enabling Act.[147] Oklahoma and the Supreme Court have also ignored the paradigm set in Public Law 280 and, as a result, incorrectly applied the structure of the law to tribal sovereignty, thus stripping tribes of one of their most essential powers.

In his scathing dissent to the *Castro-Huerta* majority, Justice Gorsuch condemns the Court for "wilt[ing]" on a previously firmly held and persisting stance that only Congress has the power to explicitly strip Native American tribes of their sovereignty.[148] He goes on to highlight how the majority's decision rescinds a promise that the federal government made to the tribes "after the Cherokee's exile to what became Oklahoma": the promise that it would "remain forever free from interference by state authorities."[149] In ruling for Oklahoma, the Court announced to the world that "when it comes to crimes by non-Indians against tribal members within tribal reservations, Oklahoma may 'exercise jurisdiction.'"[150] Justice Gorsuch characterized this proclamation of the Court to be "unattached to any colorable legal authority" and further criticized the Court in saying that "a more ahistorical and mistaken statement of Indian law would be hard to fathom."[151] The *Castro-Huerta* majority seems to blatantly ignore the overwhelming amount of "statutes and precedents making plain that Oklahoma possesses no authority to prosecute crimes against tribal members on tribal reservations until it amends its laws and wins tribal consent."[152] However, the Court's turning of a blind eye to these statutes does not make them cease to exist. Although the Court chose to disregard precedent, it did "not purport to overrule a single one."[153] As Justice Gorsuch penned, the "Court may choose to ignore Congress's statutes, and the Nation's treaties, but it has no power to negate them."[154]

147. *Id.* at 2510.
148. *Id.* at 2505.
149. *Id.*
150. *Id.* at 2511.
151. *Id.*
152. *Id.* at 2521.
153. *Id.*
154. *Id.*

B. What Oklahoma v. Castro-Huerta *Means for Reproductive Rights of American Indian Women*

The *Castro-Huerta* decision came down just five days after the Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*.[155] While not a case directly dealing with the reproductive healthcare rights of American Indians, the *Castro-Huerta* decision creates some potential challenges for American Indian women in the wake of the overturning of *Roe*. The central question of *Castro-Huerta* is one of jurisdiction. Just as it was in the 1800s with *Worcester*, "jurisdiction is [still] about power."[156] The optimist among us might lean into the hope that perhaps, unlike the *Worcester*-era, the states of today will use their freshly granted power for good and not to "usurp tribal authority over their lands."[157] However, it would not be unreasonable to have doubts about seeing this optimistic notion come to fruition. As recently as late June of 2022, it was possible for the tribes or federal government to shield "access to reproductive care on tribal lands."[158] Now, in the wake of the *Castro-Huerta* decision and overturning of *Roe*, there is no legal structure in place to impede "a surrounding state from entering tribal lands and prosecuting non-Indian doctors or women" on tribal lands, regardless of whether the tribe consents.[159]

This is particularly troubling in Oklahoma where the current Governor, Kevin Stitt, has vowed to maintain his title of "most pro-life governor."[160] Senate Bill 918 came across Stitt's desk in 2021 and sought to repeal Oklahoma's abortion regulations.[161] The bill provided that Oklahoma would immediately outlaw abortions were the Supreme Court to ever overturn *Roe v. Wade* and *Planned Parenthood v. Casey*.[162] After the Supreme Court

155. Oklahoma v. Castro-Huerta, 142 S. Ct. 2486 (2022); Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228 (2022).

156. Gregory Ablavsky & Elizabeth Hidalgo Reese, Opinion, *The Supreme Court Strikes Again — This Time at Tribal Sovereignty*, WASH. POST (July 1, 2022, 7:00 AM), https://www.washingtonpost.com/opinions/2022/07/01/castro-huerta-oklahoma-supreme-court-tribal-sovereignty/.

157. *Id.*

158. *Id.*

159. *Id.*

160. Dillon Richards, *"Proud To Be Called the Most Pro-Life Governor": Gov. Kevin Stitt Signs Another Abortion Related Bill*, KOCO 5 NEWS ABC (Apr. 27, 2021, 1:34 PM), https://www.koco.com/article/proud-to-be-called-the-most-pro-life-governor-gov-stitt-signs-another-abortion-related-bill/36267627.

161. *Id.*

162. S.B. 918, 58th Leg., Reg. Sess. § 18 (Okla. 2021); *see* Richards, *supra* note 160.

overturned *Roe*, Oklahoma's Senate Bill 918 immediately went into effect, effectively outlawing abortion in Oklahoma.[163] In April of 2022, Stitt took things a step further and signed Senate Bill 612 into law, which makes "performing an abortion or attempting to perform one a felony punishable by a maximum fine of $100,000 or a maximum of 10 years in state prison or both."[164] Senate Bill 612 does not provide an exception for cases of pregnancy resulting from rape or incest.[165] Stitt has already previously warned the tribes "against setting up abortion clinics on their lands."[166] The Cherokee Nation, the largest tribe in Oklahoma, has referred to these warnings as "irresponsible speculation and an attack on tribal sovereignty."[167]

Unfortunately for the tribes in Oklahoma, however, tribal sovereignty seems to mean less and less. In a state with such draconian abortion laws, the idea of tribal lands as reproductive healthcare sanctuaries outside the reach of a power-hungry state is a hopeful notion. At first blush, the idea that an American Indian doctor in Indian Country, such as in Tulsa, could perform abortions and stay outside the reach of a state seeking to outlaw the procedure seems like a convenient haven for Oklahoma women seeking an abortion. However, such an already unlikely reality is essentially impossible with the Supreme Court conferring jurisdiction to the state to prosecute crimes involving Indians in Indian Country. Abortions provided on tribal land, except for those arising out cases of rape, incest, or threats to the mother's life, would require private funding due to Hyde Amendment restrictions, something that most tribes would not be able to afford.[168] A proposed potential workaround has been to have independent providers, not associated with a tribe, "[set] up abortion clinics on reservations."[169] After *McGirt*, a provider who was a tribal-citizen could have reasonably performed abortions on a tribal reservation to both American Indian and non-Indian patients

163. Richards, *supra* note 160.

164. Paul LeBlanc & Veronica Stracqualursi, *Oklahoma Governor Signs Near-Total Ban on Abortion into Law*, CNN POLITICS (Apr. 12, 2022, 5:26 PM), https://www.cnn.com/2022/04/12/politics/oklahoma-abortion-ban-kevin-stitt/index.html; *see* S. 612, 59th Leg. 1st Reg. Sess. (Okla. 2022).

165. LeBlanc & Stracqualursi, *supra* note 164.

166. Harmeet Kaur, *Why Tribal Lands Are Unlikely to Become Abortion Sanctuaries*, CNN (June 26, 2022, 12:01 PM), https://www.cnn.com/2022/06/26/us/tribal-lands-abortion-safe-havens-roe-cec/index.html.

167. *Id.*

168. *Id;* Hyde Amendment Codification Act, S. Res. 142, 113th Cong. (2013) (enacted).

169. Kaur, *supra* note 166.

without being subject to state jurisdiction.[170] The *McGirt* decision affirmed that much of eastern Oklahoma, including Tulsa, Oklahoma's second-largest metropolis, is a reservation and therefore only subject to tribal and federal jurisdiction, which could have been a massive beacon of hope for women in Oklahoma facing the revocation of their reproductive healthcare rights.[171] Before *Castro-Huerta*, "a Native provider performing an abortion on a reservation" for both American Indian women and non-Indian women would have fallen under tribal and federal jurisdiction and thus likely been able to evade the state's harsh and restrictive penalties.[172] However, due to the *Castro-Huerta* ruling, state jurisdiction now extends into tribal land and would quash this already feeble loophole. Because *Castro-Huerta* allows for the state to prosecute crimes committed by non-Indians on Indian reservations, non-American Indian providers performing abortions for American Indian women in Indian country are likely to face the State's penalties.[173]

This residual effect from the *Castro-Huerta* decision is particularly devastating for American Indian women already at a disadvantage concerning access to reproductive healthcare. Most American Indians receive their healthcare "from the Indian Health Service, a division of the Department of Health and Human Services."[174] However, abortions are mostly excluded from IHS care due to the Hyde Amendment, "which prohibits the use of federal dollars on abortions except in the cases of rape, incest [or] threats to the mother's life."[175] Additionally, a survey conducted by the Native American Women's Health Education Resource Center found that "85% of Indian Health Service facilities did not provide access to abortion services or refer patients to abortion providers, even in situations [an abortion would be] allowed under the Hyde Amendment."[176] As one journalist stated, "Native women are already living in a post-Roe reality."[177] The *Castro-Huerta* ruling has seemingly put the last nail in the coffin for

170. *Id.*
171. *Id.*
172. *Id.*
173. *Id.*
174. *Id.*
175. *Id.*
176. *Id.* (noting KATI SCHINDLER ET AL., NATIVE AM. WOMEN'S HEALTH EDUC. RES. CTR., INDIGENOUS WOMEN'S REPRODUCTIVE RIGHTS 5 (2002)); Shane Beverly Arnold, *Reproductive Rights Denied: The Hyde Amendment and Access to Abortion for Native American Women Using Indian Health Service Facilities*, 104 AM. J. PUB. HEALTH 1892 (2014).
177. Kaur, *supra* note 166.

American-Indian women seeking fair and easily accessible access to reproductive health care—especially in Oklahoma.

V. Conclusion

The Court's ruling in *Castro-Huerta* granting Oklahoma concurrent jurisdiction with the federal government to prosecute crimes perpetrated by non-Indians against Indians in Indian Country is inconsistent with long-standing precedent that Congress alone can strip tribes of their inherent sovereignty. The Supreme Court turned a blind eye to the reality that the power to disestablish a reservation rests exclusively with Congress and to the fact that Congress has not yet ordained that the tribes no longer retain their authority. The *Castro-Huerta* majority broke in its ruling a centuries-old promise made by the federal government to the tribes of self-governance and freedom from state interference. The power to punish crimes committed by or against one's own citizens without the interference of other authorities is one of the most essential elements of sovereignty, which the Court blatantly overlooked in this decision. The holding in *Oklahoma v. Castro-Huerta* strips the tribes of this essential aspect of sovereignty and undoes years of precedent establishing the contrary.

Furthermore, the Court apparently ignored the significant consequences this holding will have on American Indian women and included no discussion of the potentially drastic implications for American Indian women. The holding now brings to the surface a bleak post-*Roe* reality for American Indian women, leveling any potential for implementation of a legal structure that obstructs Oklahoma from entering tribal lands and prosecuting non-Indian doctors or women in Indian Country. This is particularly devastating for American Indian women, who already face barriers to reproductive healthcare access in disparate proportions to their white counterparts. This decision further solidifies, and astronomically increases, the barriers American Indian women face when seeking access to reproductive healthcare in a state that already has extremely oppressive reproductive healthcare laws for women. The *Castro-Huerta* majority should have anticipated and considered this reality when deciding this case, but they unfortunately failed to do so.

Oklahoma v. Castro-Huerta does more than just incorrectly strip tribes of their inherent sovereignty. It pulverizes any hope of living in a state in which reproductive care and rights to bodily autonomy are protected for Oklahoma women—especially American Indian women. This decimation carries with

it drastic consequences—the gravity of which will be impossible to anticipate until it is unfortunately too late to prevent their deleterious realization.