



May States Prosecute Non-Indians who Commit Crimes against Indians in Indian Country

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In [Oklahoma v. Castro-Huerta](#) the U.S. Supreme Court will decide whether a state has authority to prosecute non-Indians who commit crimes against Indians in Indian country.

Per the Major Crimes Act, the federal government has exclusive authority to prosecute certain felonies committed by Indians in Indian country. The General Crimes Act provides the federal government with authority to prosecute general federal criminal law violations where either the defendant or the victim was an Indian and the other party was not.

In *McGirt v. Oklahoma* (2019) the Court held that historical Creek territory in Oklahoma constituted Indian country for purposes of the Major Crimes Act, meaning the state has no authority to prosecute such crimes committed by Indians in Indian country.

After *McGirt*, in [Bosse v. State](#) the Oklahoma Court of Criminal Appeals held that the “clear language” of the General Crimes Act preempts state prosecutions for crimes committed by non-Indians against Indians in Indian country.

In [Oklahoma v. Castro-Huerta](#) Victor Castro-Huerta, who is non-Indian, was convicted in state court of child neglect occurring in Indian country (per *McGirt*) against his step-daughter, who is Indian. Relying on *Bosse*, the Oklahoma Court



of Criminal Appeals concluded Oklahoma lacked jurisdiction to prosecute this case.

The General Crimes Act states that, “[e]xcept as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States . . . shall extend to the Indian country.”

Oklahoma [argues](#) that “[n]othing in that text acts to relieve a State of its prosecutorial authority over non-Indians in Indian country. As the Court has explained, the phrase ‘sole and exclusive jurisdiction’ is used to ‘describe the laws of the United States’ that extend to Indian country; it does not concern the discrete question of who has prosecutorial authority within Indian country.”

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