

**FINAL REPORT: U.S. DEPARTMENT OF JUSTICE CONSULTATION ON POSSIBLE
LEGISLATIONS TO ADDRESS
THE SUPREME COURT'S DECISION IN *OKLAHOMA V. CASTRO-HUERTA***



OCTOBER 2026

INTRODUCTION

In 2022, the Supreme Court ruled in *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022) that states have concurrent jurisdiction over crimes committed by non-Indians against Indians in Indian country. In the wake of that decision, the Department of Justice (Department) and the Department of the Interior held joint listening sessions on September 26-27, 2022, to discuss the Supreme Court’s decision with Tribal representatives and its implications on Tribal communities. More than 500 Tribal leaders and other Tribal representatives participated in these discussions. Several clear themes emerged from these sessions and in written comments, most of which demonstrated unease and dissatisfaction with the exercise of state jurisdiction over certain crimes committed in Indian country. This Tribal consultation was a continuation of that discussion. The focus of this consultation was to further assess the effects of *Castro-Huerta* and to seek Tribal input on potential legislative proposals that would preempt State jurisdiction over crimes committed by non-Indians in Indian country.

BACKGROUND

On June 29, 2022, the Supreme Court held that the General Crimes Act (18 U.S.C. § 1152)¹ does not preempt or otherwise limit a state’s criminal jurisdiction to prosecute non-Indian defendants who commit crimes against Indian victims in Indian country, and that states thus have concurrent jurisdiction over such crimes.² *Castro-Huerta*, 587 U.S. at 647. The decision altered the conventional and widely held view that, under the General Crimes Act, federal jurisdiction is exclusive of state jurisdiction in Indian country over crimes committed against Indian victims unless Congress has statutorily provided for state authority.³ The Court’s decision was not limited to the State of Oklahoma and “applies throughout the United States.”⁴

Nevertheless, *Castro-Huerta* did not disturb “the ancient rule that States cannot prosecute crimes by Native Americans on tribal lands without clear congressional authorization—for that would touch the heart of ‘tribal self-government.’”⁵ Additionally, it is well-established that Indian Tribes have inherent sovereign authority “to address ‘conduct [that] threatens or has some direct

¹ Although Indian tribes possess inherent criminal jurisdiction over Indians, Congress established federal jurisdiction over certain crimes committed in Indian country with the enactment of the General Crimes Act, 18 U.S.C. § 1152, and the Major Crimes Act, 18 U.S.C. § 1153.

² In *Castro-Huerta*, the Supreme Court expressly stated that it was not addressing the question of a State’s prosecutorial authority over crimes committed by Indians in Indian country. See 597 U.S. at 639 n.2

³ Br. for United States, *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), available at https://www.supremecourt.gov/DocketPDF/21/21-429/220251/20220404203500611_21-429bsacUnitedStates.pdf.

⁴ See *Castro-Huerta*, 597 U.S. at 655 n.9.

⁵ See *id.* at 693 (Gorsuch, J., dissenting).

effect on the health or welfare of the tribe.’’⁶ *Castro-Huerta* did not address inherent Tribal authority, which still encompasses a Tribe’s prosecutorial authority over Indian defendants.⁷

In response to the decision, Indian tribes throughout the country continue to raise concerns that *Castro-Huerta* has the potential to be interpreted more broadly to assert that states also have criminal jurisdiction over Indians, as well as jurisdiction over civil matters. Congress, exercising its plenary power over Indian affairs, could potentially address the *Castro-Huerta* decision through legislation.⁸ In the absence of such congressional action, States may continue to exercise jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country without any authorization from Congress or any consent from the governing Tribal nations.

TRIBAL CONSULTATION

The purpose of this consultation was for the Department to consider whether to propose legislation to restore the jurisdictional regime to the pre-*Castro-Huerta* understanding of federal jurisdiction over non-Indians in Indian country. On January 3, 2025, the Department’s Office of Tribal Justice (OTJ) issued an invitation and framing paper to the leaders of all 574 federally recognized Tribes, informing them of the opportunity to provide comments and testimony. The Department subsequently held virtual consultation sessions on January 10, February 5, and February 6, 2025. Written comments were accepted until March 6, 2025.

In its framing paper, the Department reiterated that Congress could address federal criminal jurisdiction in Indian country through legislation. Appendix A includes the two draft proposals that the Department provided for Tribal review and consideration. Proposal 1 was drafted by the Department. Proposal 2 was drafted and adopted by the National Congress of American Indians (NCAI) with a proposed edit by the Department (explained below). The Department also asked for information regarding any effects of *Castro-Huerta* on Tribal law enforcement and public safety in Indian country.

Both proposals in Appendix A would remove State jurisdiction over crimes within Indian country committed by or against Indians, unless expressly authorized by another federal statute.⁹ Both proposals also require that unless otherwise authorized by federal statute, States must (1) comply with certain procedures for obtaining Tribal consent of the impacted Indian Tribe as outlined in

⁶ See *United States v. Cooley*, 593 U.S. 345, 347 (2021) (quoting *Montana v. United States*, 450 U. S. 544, 566 (1981)).

⁷ See, e.g., *United States v. Wheeler*, 435 U.S. 313, 323 (1978) (“It is evident that the sovereign power to punish tribal offenders has never been given up by [Tribes] and that tribal exercise of that power today is therefore the continued exercise of retained tribal sovereignty.”); see also *United States v. Lara*, 541 U.S. 193, 204 (2004).

⁸ See *Castro-Huerta*, 597 U.S. at 637; see also *id.* at 695 (Gorsuch, J., dissenting).

⁹ The federal government retains exclusive jurisdiction over crimes committed by Indians in Indian country. As noted above, the Court in *Castro-Huerta* explicitly stated that it was not deciding the question of whether States may exercise jurisdiction over crimes committed by Indians against non-Indians in Indian country. See 597 U.S. at 655 n.9.

25 U.S.C. § 1321, and (2) where applicable, comply with 25 U.S.C. § 1324, before a State may exercise such jurisdiction.

Proposal 1 contains two additional clarifications. First, Proposal 1 expressly clarifies that the provision does not impact federal or Tribal jurisdiction in Indian country. Second, Proposal 1 makes clear that the provision would apply prospectively.

In addition, the Department is considering where a potential amendment should be placed within the U.S. Code. We noted that there have been differing views regarding where such legislation should be located. Possible placements include within the Indian Civil Rights Act of 1968 (25 U.S.C. § 1321 et seq.), within Public Law 82–280 (18 U.S.C. § 1162), or elsewhere within Title 18. The proposals in Appendix A consider two different placements, but the Department was interested in hearing from Tribes about these options and about other ideas.

SUMMARY OF COMMENTS AND TESTIMONY

In both their oral testimony and written comments, many Tribes provided their view that the Supreme Court’s decision in *Castro-Huerta* is in direct tension with longstanding precedent and well-established principles of Tribal sovereignty, because it could potentially circumvent Congress’ exclusive authority over Indian affairs and threaten the balance of powers embodied in the U.S. Constitution. They expressed their concerns that the decision undermines the widely held rule that states are presumed to lack such authority unless explicitly granted by Congress. Tribes also commented that the *Castro-Huerta* decision recalls a paternalistic approach to Tribal affairs that was ultimately detrimental to Indian Tribes. Tribes conveyed their belief that the decision strays away from the recognition of Tribes as sovereign nations with the ability to govern their own communities, a tenet that has been affirmed since the early 1800s.

Tribes also shared their concerns that *Castro-Huerta* negatively affected cooperative agreements and relations between Tribes and states in general. Others pointed to increased confusion and uncertainty concerning the already complex framework of criminal jurisdiction in Indian country. They asserted that such agreements rely on clear jurisdictional boundaries and mutual cooperation. Thus, if states attempt to assert authority in areas historically governed by Tribes, the concern is that deficient communication and the erratic exercise of criminal jurisdiction could impair the work of Tribal law enforcement and justice systems.

Tribal commenters also fear that the Supreme Court’s ruling allowed states to expand their criminal jurisdiction in Indian country and potentially laid the foundation for additional state assertions of jurisdiction regarding areas they perceive as exclusively within Tribes’ sovereign authorities. Tribes voiced that without legislative intervention, states may begin asserting regulatory and civil authority in ways that further diminish Tribal governance. Moreover, some Tribes articulated there is a dearth of adequate law enforcement funding at the state level, and

expanded state jurisdiction and reliance on states to exercise concurrent jurisdiction under *Castro-Huerta* will lead to fewer police and more crimes.¹⁰

All of the Tribes that participated in this consultation called for a legislative response to the *Castro-Huerta* decision. Most observed that Congress retains the authority to correct the negative impacts wrought by *Castro-Huerta* through its plenary power over Indian affairs, as upheld by the Supreme Court.¹¹ While some of the commenters supported Proposal 1 in the framing paper, many of the commenters also supported both of the Department's legislative proposals. A slight majority of Tribes seemed to advocate for Proposal 2, which is akin to legislation drafted and adopted by the National Congress of American Indians.

Lastly, nearly all the commenting Tribes believe they are best positioned to manage law enforcement and criminal justice matters within their borders. They asked the federal government to fulfill its obligation to provide adequate support and funding for Tribes to manage their public safety needs effectively. And when Tribes lack sufficient resources, they asserted that it is the federal government's duty, and not the states, to assist them.

TRIBAL COMMENTS

In this consultation, the Department solicited feedback on two legislative proposals that it is considering to address concerns resulting from the Supreme Court's decision in *Castro-Huerta*. The Department likewise requested input on related issues, as outlined in its framing paper, including the negative impacts of the decision on public safety in Indian country. We provide a summary below of the comments that we received over the course of this consultation.

A. State Responses to the *Castro-Huerta* Decision

Comment: Many Tribes described harmful effects resulting from the *Castro-Huerta* decision, particularly that courts and other entities across the country are seeking to extend the ruling to curtail or eliminate Tribal jurisdiction. Specifically, several Tribes in Oklahoma emphasized that local district attorneys in Oklahoma are currently using the *Castro-Huerta* decision to assert jurisdiction over Tribal citizens improperly.

Comment: Many commenters articulated concerns that state courts are attempting to assert previously unrecognized jurisdiction in the wake of *Castro-Huerta*. For example, the Oklahoma Supreme Court in a recent decision held that Tribal nations no longer have exclusive jurisdiction over adoption cases under the Indian Child Welfare Act that involve Tribal members within a

¹⁰ These concerns are consistent with conclusions issued in a 2007 report funded by the National Institute of Justice on the effects of Public Law 280 on law enforcement in Indian country. See Carole Goldberg & Duane Champagne, "Law Enforcement and Criminal Justice Under Public Law 280" (November 1, 2007), available at <https://www.ojp.gov/pdffiles1/nij/grants/222585.pdf>.

¹¹ *Haaland v. Brackeen*, 599 U.S. 255, 272-73 (2023) ("In a long line of cases, we have characterized Congress's power to legislate with respect to the Indian tribes as 'plenary and exclusive.'") (citing cases).

reservation.¹² Many Tribes cited to the Oklahoma Court of Criminal Appeals recent decision in *City of Tulsa v. O'Brien*, in which the state court ruled that Oklahoma possesses criminal jurisdiction over crimes committed by non-member Indians in Indian country.¹³ In that case, which occurred on the Muscogee Reservation, the Indian defendant was not a citizen of the Muscogee (Creek) Nation and was instead an enrolled citizen of the Osage Nation.

Comment: One Tribe commented that another result of the *Castro-Huerta* decision is the possibility of states pressuring defendants to waive jurisdiction. The Tribe shared that in certain circumstances, the Oklahoma Court of Criminal Appeals ruled that a jurisdictional waiver occurs when a defendant enters a plea of any sort. State district attorneys have also reportedly solicited express waivers of jurisdiction in exchange for favorable treatment during plea negotiations. Accordingly, an uncounseled defendant can unwittingly waive a right to contest jurisdiction at his or her first appearance in a state court by entering a plea of not guilty. The Tribe thus recommended that any draft legislation resolve the waiver issue and include a more robust statement as to whether jurisdiction can be waived.

B. Other Effects Arising from the *Castro-Huerta* Decision

Comment: Several Tribal commenters expressed that the *Castro-Huerta* decision resulted in uncertainty that is affecting law enforcement on the ground. One Tribe expressed that it is now more difficult to maintain and enhance relationships with neighboring jurisdictions. The Tribe continually works to collaborate with and share resources with local jurisdictions through cross-deputization agreements, but since *Castro-Huerta*, these efforts are markedly harder. This Tribe also reported that it is more challenging to ensure professional and adequate law enforcement responses because the overlapping jurisdiction sometimes results in confusion as to which law enforcement agency is taking the lead for crimes occurring in Indian country.

This Tribe also noted that, post-*Castro-Huerta*, state and local law enforcement entities with cross-deputization agreements rarely notify the Tribe when they respond to calls and fail to collaborate or share information and resources. Consequently, there are duplicative efforts that waste scarce resources; inaccurate reporting of crime statistics; state and local investigations that never result in the filing of charges; and investigations riddled with procedural errors. The Tribe responds to every call for service on the reservation, and in many instances, finds that state and local agencies have not adequately assessed a scene, secured evidence, or satisfactorily investigated crimes. In some circumstances, victims speak to Tribal law enforcement days after an incident occurred, and after state or local law enforcement already spoke to the victim and declined to respond. When this occurs, evidence is prone to spoliation, and it becomes challenging to provide justice to victims.

Comment: One Tribe in Utah stated that because of *Castro-Huerta*, there are an increased number of state and country patrols on its reservation, which it views as an attack on its

¹² See *In the Matter of S.J.W.*, 2023 OK 49 (Okla. Sup. Ct. 2023).

¹³ See 2024 OK CR 31 (Okla. Crim. Ct. App. 2024).

sovereign jurisdiction. The Tribe is concerned that Tribal members unfamiliar with state and local personnel may view those officers as adversarial in tense situations. In addition, the Tribe noted that drugs such as fentanyl and guns are brought in from outside of its reservation, so states should address such illicit activities within their own jurisdiction first. After receiving calls, Tribal law enforcement dispatches its officers regardless of whether the victim is a Tribal member, non-member Indian, or a non-Indian before dispatching a police officer. When the Tribe does not have jurisdiction over the crime, the Tribal police will detain the individual until the appropriate authority arrives. The *Castro-Huerta* decision now adds jurisdictional confusion to what was a longstanding practice and procedure for the Tribe by assuming that state resources adequately supplement law enforcement in Indian country.

Comment: A chief prosecutor for a Tribe that exercises special Tribal criminal jurisdiction under the Violence Against Women Reauthorization Act of 2013 stated that following *Castro-Huerta*, the Tribe quickly entered into an interagency agreement to be notified of any state actions or investigations. However, the implementation of this agreement is inconsistent in practice. The Tribe is struggling to receive notifications or be consistently involved in state activities that occur on Tribal lands. In fact, there was a recent incident in which an individual possessed a gun unlawfully on the reservation, but the state assumed the case and allowed the defendant to plead without consulting the Tribe. The Tribe has a great interest in addressing violence that occurs on Tribal lands, especially because the reservation is small, but to the state it is just a small area, and crimes can get ignored. The Tribe has demonstrated through its exercise of special Tribal criminal jurisdiction that it can protect its community and still uphold principles of fairness and due process.

Comment: During one of the virtual sessions, one commenter raised that the Tribe is working with a state on enacting cross-deputization agreements but has run into significant roadblocks. The commenter described confusion concerning the authority of Tribal police working under special law enforcement commissions (SLECs) to enforce laws and resulting liability for officers.¹⁴ The commenter thus suggested that any legislative proposal address Tribal law enforcement's ability to detain or arrest perpetrators in addition to any prosecutorial authority.

Comment: A Tribe reported one prosecution under *Castro-Huerta*, in which the President of the Tribe was told informally from the prosecuting county that a non-Indian defendant had pleaded guilty and was imprisoned. The county never informed the Tribal prosecutor of the matter, and there was no coordination with respect to the venue of the case.

Comment: During a virtual consultation session, a Tribe in Oklahoma reported that Tribal IDs were being ignored by state law enforcement even before the Oklahoma Court of Criminal Appeals issued its decision in *O'Brien*. The Tribe is now trying to implement a public education campaign to encourage its members to carry and present their Tribal IDs.

¹⁴ SLECs are issued by the Bureau of Indian Affairs to give Tribal law enforcement officers the authority to make arrests for violations of federal criminal statutes and enforce federal fishing and wildlife regulations on Tribal lands.

C. Tribal Views on Legislative Proposals

Comment: In supporting both of the Department's proposals, one commenter advised that any Tribal consent for a state to exercise criminal jurisdiction on its Indian country lands should be revokable by the Tribe. Further, the same commenter asserted that any legislation should clarify it is a congressional act affirming that states lack criminal jurisdiction because of Tribes' inherent jurisdiction over their lands, as opposed to referencing Congress' plenary authority over Indian affairs. Any successive cooperative agreements by Tribes should therefore be characterized as an exercise of their inherent sovereign authority to make partnerships for law enforcement purposes. Lastly, the commenter advocated for any legislation to apply expressly to all federally recognized Indian Tribes, regardless of the existence of any restrictive settlement agreements such as the Maine Indian Claims Settlement Act.

Comment: Two Tribal commenters supported the legislative proposal approved by the NCAI in a resolution adopted in 2022 (Appendix B). This proposal is nearly identical to Proposal 2 in the Department's framing paper for its Tribal consultation on *Castro-Huerta*. However, NCAI's proposal would also amend the Indian Civil Rights Act to relax restrictions on Tribal criminal jurisdiction over non-Indians and eliminate certain sentencing limitations in the Indian Civil Rights Act. One Tribe expressed concern that neither legislative proposal contains language that constrains a state's efforts at exploiting waivers of jurisdiction.

Comment: One Tribe, in supporting Proposal 2, asserted that Proposal 1 is flawed in part because the proposed section 407(c) would abdicate plenary and exclusive congressional authority over Indian affairs in contravention of the U.S. Constitution. That provision states that the legislation would apply only prospectively and would not extinguish any previously incurred criminal liability under state law. The commenter stated that Proposal 2 is a direct clarification of the law and restores the jurisdictional balance by clarifying that a state lacks criminal jurisdiction over crimes by or against Indians in Indian country, absent Tribal consent or any statutory or constitutional amendments.

Comment: On the other hand, another Tribe preferred Proposal 1 because it ensures that state jurisdiction over crimes in Indian country is limited and contingent upon Tribal consent or express congressional authorization.

Comment: A Tribal commenter stated that any legislative proposal should empower Tribes, as sovereigns, to compact with state governments through intergovernmental agreements to coordinate more effectively in enhancing public safety in Indian country. This authority was previously embodied in H.R. 3901 and would be consistent with the United States' decades-old policy of self-determination for Indian Tribes.¹⁵ This commenter opposed both the Department's legislative proposals on the grounds that they perpetuate a Termination Era policy regarding Tribal consent by relying on 25 U.S.C. 1326. The Tribe explained that this provision of Public Law 280 bypasses Tribal governments to determine consent through the Department of the Interior's direct administration of a Tribal plebiscite vote. In the commenter's view, these

¹⁵ See H.R. 3901, Cherokee Nation and Chickasaw Nation Criminal Justice Compacting Act of 2021, 117th Cong., available at <https://www.congress.gov/bill/117th-congress/house-bill/3091>.

proposals would undermine Tribal self-determination and would revive a paternalistic approach to Tribal governments. The Tribe therefore urged caution for the Department to make any statutory reform effort that would invite federal courts to enlarge the Supreme Court's holding in *Castro-Huerta* and further erode Tribal sovereignty.

Comment: One Tribe generally urged the Department to support initiatives before Congress that would affirm Tribal sovereignty over Indian country and would require states to obtain express Tribal consent to exercise criminal jurisdiction within Indian country. Tribes may then have mechanisms in place to cross-deputize with state and local governments and enforce laws in other jurisdictions.

Comment: A commenter supported the removal of all statutory barriers to Tribes' full exercise of criminal jurisdiction over all individuals on Tribal lands, including amending the Indian Civil Rights Act. The commenter described in depth the erosion of the exercise of Tribal jurisdiction, from the Supreme Court's 1978 decision in *Oliphant v. Suquamish Indian Tribe*¹⁶ to the enactment of the Indian Civil Rights Act. Accordingly, the commenter called for the passage of a full *Oliphant* fix.

Comment: A Tribe in its comments supported both the Department's proposals but added that Proposal 1 is a more comprehensive and precise framework for ensuring Tribal sovereignty in any jurisdictional arrangement. This is because Proposal 1 explicitly addresses the prospective application of the legislation and acknowledges the importance of safeguarding federal and Tribal jurisdiction. In addition, the Tribe strongly recommended that Congress introduce comprehensive findings in any bill that its legislative intent is to correct the disruption created by the *Castro-Huerta* decision; recognize inherent Tribal sovereignty; and acknowledge the federal government's trust and treaty obligations to ensure that the safety and welfare of Indian country remain under Tribal and federal jurisdiction, except where Tribal consent is explicitly given.

Comment: A commenter advised the Department to look at the 2005 amendments to the Pueblo Lands Act, which was upheld by the 10th Circuit, as an example of legislation that sets forth the United States' jurisdiction on Tribal lands.

D. Placement of Legislation Addressing *Castro-Huerta* in the United States Code

Comment: In response to the Department's question concerning the placement of proposed legislation within the U.S. Code, one commenter recommended codifying the proposals within Public Law 280,¹⁷ because this legislation relates to the scope of state jurisdiction, as opposed to Tribal jurisdiction in Indian country. Doing so would separate statutory provisions shaping Tribal nations' ability to exercise jurisdiction on their own lands.

Comment: Another Tribe advocated placing Proposal 1 in the Indian Civil Rights Act at 25 U.S.C. § 1301 *et seq.*, as suggested by the Department.

¹⁶ 435 U.S. 191 (1978) (determining that Tribal courts do not have criminal jurisdiction over non-Indians).

¹⁷ 18 U.S.C. § 1162.

Comment: Another Tribe recommended that any legislation addressing the *Castro-Huerta* decision be placed in both 25 U.S.C. § 1321 and 18 U.S.C. § 1162, because these sections collectively govern the circumstances in which jurisdiction is given to states in Indian country. Alternatively, the commenter suggested amending the Tribal Law and Order Act or the Violence Against Women Act provisions relevant to Indian country to affirm that Tribal courts have jurisdiction over non-Indians in cases where Tribes have established criminal jurisdiction under federal law. Lastly, the Tribe proposed amending 18 U.S.C. § 1152 to state that “Except as otherwise expressly provided by law, the general laws and exclusive jurisdiction of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.” (emphasis in original)

E. Other Related Issues Raised by Tribes

Comment: Several Tribes renewed their call for fully funding Tribal criminal justice and law enforcement. Tribes also stated that the Department should continue to provide clear guidance and support to Tribes in navigating the evolving legal landscape created by *Castro-Huerta*.

Comment: One Tribal commenter raised the potential impact of *Castro-Huerta* on Indian Tribes’ abilities to exercise special Tribal criminal jurisdiction pursuant to the reauthorizations of the Violence Against Women Act (VAWA) in 2013 and 2022. Specifically, there is a concern that Tribes may be unable to prosecute non-Indians for certain crimes if a state assumes jurisdiction of a case first and fails to share investigatory information with a Tribe. The Tribe emphasized that the potential for states to prosecute such cases without Tribal input or coordination not only undermines Tribal sovereignty but also risks creating a gap in criminal justice in which certain offenses are not prosecuted effectively.

Comment: A Tribe proposed that if the Department does not pursue a legislative solution to the *Castro-Huerta* decision, it should instead develop standards and procedures to require data sharing from states whenever a state prosecution or investigation occurs in Indian country. To that end, the Department should develop a database that states can use to input information pertaining to cases on Tribal lands and give Tribes access to this data to more effectively track calls, investigations, and prospective prosecutions within their jurisdiction.

Comment: A commenter during a virtual consultation session asked whether the Department has looked at potential civil rights violations for state arrests and prosecutions that exceed a state’s jurisdictional authority under *Castro-Huerta*.

THE DEPARTMENT’S RESPONSE TO COMMENTS

A. Comments on Effects of *Castro-Huerta*

The *Castro-Huerta* decision reshaped the commonly held understanding of criminal jurisdiction in Indian country. It concluded that states share concurrent authority with the federal

government to prosecute non-Indians who commit crimes against Indians on Tribal lands.¹⁸ *Castro-Huerta* did not address the criminal authority of Indian Tribes. Accordingly, this consultation focused on federal jurisdiction in Indian country and potential legislation that would return the current jurisdictional scheme to the pre-*Castro-Huerta* understanding.

The Department thanks the participants in this Tribal consultation. We found the breadth of comments and testimony that we received to be very constructive as we consider possible statutory reforms to present to Congress. First, the Department is aware of and actively monitoring state court decisions citing *Castro-Huerta* and briefs filed in state court cases where the parties cite to and rely on *Castro-Huerta*. We encourage Tribes to notify us of any legal developments in which the holding in *Castro-Huerta* is expanded beyond the limits of what is permitted under established law, including the expanded exercise of state criminal and civil jurisdiction.

We note that in 2024 the Department filed an *amicus curiae* brief before the Oklahoma Court of Criminal Appeals arguing that *Castro-Huerta* did not overrule or alter principles of federal law under which states lack criminal jurisdiction over Indians in Indian country absent congressional authorization.¹⁹ With respect to concerns raised by Tribes regarding the impact of *Castro-Huerta* on the Indian Child Welfare Act, we further note that federal law articulates Tribal jurisdiction is exclusive “as to any State over any child custody proceeding involving an Indian child who resides or is domiciled within the reservation of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law.”²⁰

As some Tribes observed, the Department also filed lawsuits to prevent certain district attorneys from asserting Oklahoma has criminal jurisdiction over Indians for crimes committed in Indian country, and to prevent the state from unlawfully detaining and prosecuting Indians in Indian country. We appreciate being kept informed of the state court rulings on the waiver of jurisdiction based on the defendant entering a plea in a case and local jurisdictions attempting to have criminal defendants waive jurisdiction for alleged crimes committed in Indian country, and we will examine this issue. The Department urges Tribes to report all other instances of state, local or other actors attempting to exceed their authority and exercise criminal jurisdiction inconsistent with federal law to OTJ or a local U.S. Attorney’s Office.

Next, the Department finds the comments concerning the damaging impacts of *Castro-Huerta* on individual Tribes’ law enforcement and public safety efforts to be especially valuable. The Department appreciates the Tribes’ candor in sharing the practical effects of the decision on Indian country. In particular, the Department acknowledges that communication between states and Tribes following *Castro-Huerta* has at times been inconsistent and unpredictable. Although the Department recognizes the importance of agreements between states and Tribes, we

¹⁸ See *Castro-Huerta*, 597 U.S. at 632 (“This case presents a jurisdictional question about the prosecution of crimes committed by non-Indians against Indians in Indian country: Under current federal law, does the Federal government have *exclusive* jurisdiction to prosecute those crimes?”).

¹⁹ See *Stitt v. City of Tulsa*, Brief of Amicus Curiae United States of America, No. M-2022-984 (Okla. Crim. Ct. App. 2024).

²⁰ 25 U.S.C. § 1911(a).

understand that *Castro-Huerta* is negatively impacting these agreements in some circumstances and created more uncertainty. This could potentially result in deficient investigations and responses to crimes, as well as missed opportunities to bring justice to victims.

Lastly, it is important that the Department continue to receive this kind of information, which will be useful in crafting a potential legislative solution. We are aware that dangerous weapons and drugs do not originate in Indian country and will continue to combat the illegal trafficking of these harmful products. The Department likewise appreciates the information regarding the implementation of the SLEC program and the concern that confusion remains as to a Tribe's ability to detain a non-Indian until the appropriate jurisdiction arrives to take custody of the individual. The Supreme Court's *Cooley* decision should have resolved this issue, but we will share these concerns with others in the federal government. In any case, we would like to highlight that under the Supreme Court's decision in *United States v. Cooley*, 593 U.S. 345 (2021), Tribal police officers have the authority to detain temporarily and to search non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law. We share Tribal concerns of states not recognizing Tribal identification and will continue to stay abreast of similar issues. We applaud any Tribal efforts to keep its members informed.

B. Comments on the Department's Legislative Proposals

The Department is continuing to consider its options in responding to the *Castro-Huerta* decision. We appreciate the diverse Tribal views on the Department's two proposals as described in its framing paper. The Department similarly values the Tribes' comments on the placement of any legislation in the United States Code. We received many other useful suggestions for fashioning a legislative response to *Castro-Huerta*, such as the recommendation that any new law include findings as to its legislative intent, as well as an affirmation of inherent Tribal sovereignty.

The Department acknowledges the frustration that many Tribes have experienced since the *Oliphant* decision restricted the criminal jurisdiction of Tribal courts over non-Indian defendants nationwide. However, this consultation is concerned primarily with reaffirming exclusive federal jurisdiction over Indian country crimes in the absence of express federal legislation authorizing state jurisdiction. Accordingly, any potential legislative proposal resulting from this consultation will not address the jurisdiction of Tribal courts.

Tribal commenters had contrasting perspectives on Proposal 1 and Proposal 2. There was also considerable support for NCAI's Legislative Proposal to Improve Public Safety in Indian Country adopted in 2022. The Department's Proposal 2 is substantively similar to NCAI's proposal, except it does not address Tribal jurisdiction. This consultation is instead focused on proposing a legislative remedy to the *Castro-Huerta* decision and solely addresses the confirmation of exclusive federal jurisdiction.

Moreover, in response to one commenter's objection to the use of Tribal consent in the legislative proposals, we note that Tribal consent in both draft bills would be voluntary. Even following *Castro-Huerta*, a Tribe does not currently require federal legislation to compact with states and local governments through intergovernmental agreements. In fact, the Department encourages such cooperation to enhance public safety in Indian country. To that end, the Tribal Law and Order Act of 2010 allows the Department to assist with, but does not require, the implementation of intergovernmental cooperative agreements in criminal justice matters.²¹

C. Other Tribal Comments

The Department welcomes all the comments related to public safety in Indian country in the jurisdictional landscape resulting from *Castro-Huerta*. As Tribes may be aware, both the Department's Executive Office for United States Attorneys and the Environment and Natural Resources Division issued guidance following the Supreme Court's opinion.

Importantly, the Department remains committed to ensuring public safety in Indian country. This includes providing technical assistance, support, and federal funding to Tribes so they can provide the necessary law enforcement and criminal justice services for their own citizens. The Department will also continue to provide essential training, both virtual and in-person, through the National Indian Country Training Initiative for Tribal law enforcement and criminal justice personnel.

Finally, the Department would like to underscore that state and local jurisdictions share criminal justice information with Tribes and other jurisdictions through the FBI Criminal Justice Information Services Division (CJIS) National Crime Information Center (NCIC), National Data Exchange (NDEx), Next Generation Identification (NGI), and other CJIS systems. Many Tribal criminal justice agencies access FBI CJIS systems through the DOJ Tribal Access Program (TAP) to assist with investigation, prosecution, and judicial services to successfully make Tribal communities safer. We encourage Tribes throughout the country to avail themselves of the TAP Program, which is invaluable in assisting in the protection of Tribal communities.

AGENCY RESPONSE TO CONSULTATION

The Department will continue to assess the need for potential legislation and continue to discuss these issues with Tribal authorities that are responding to the Supreme Court's *Castro-Huerta* decision. Throughout this consultation, the Department heard many concerns from Tribes related to *Castro-Huerta* and the exercise of state jurisdiction in Indian country, in general. Overall, there appears to be broad Tribal support for a legislative proposal that confirms exclusive federal jurisdiction over crimes committed by non-Indians against Indians in Indian country and that state jurisdiction over crimes in Indian country is restricted and subject to Tribal consent or express congressional authorization. We recognize the often-significant implications of *Castro-*

²¹ See 25 U.S.C. § 2815.

Huerta on Tribal communities and remain committed to supporting law enforcement and improving public safety in Indian country, as informed by this feedback from Tribes. We are grateful to all the Tribes and other participants that took the time to attend the Department's consultations and provide oral and written comments.