



OACP Police Chief Administrative and Command Staff Training

Oklahoma Indian Country Jurisdiction

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(Kiowa/Comanche)

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U.S. Attorney's Office - Western District of Oklahoma



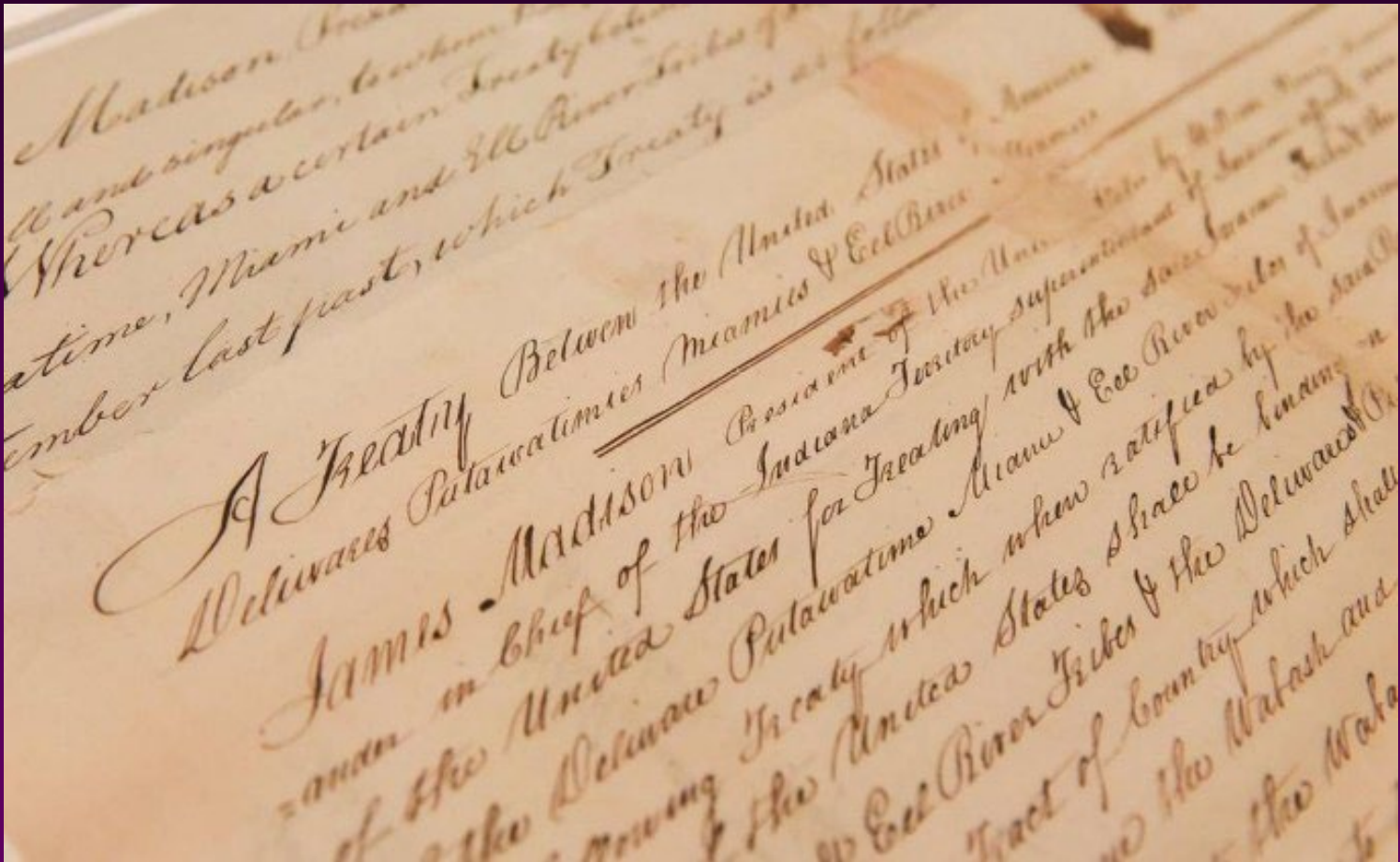
Cherokee Nation v. Georgia, 30 U.S. 1 (1831)

Worcester v. Georgia, 31 U.S. 515 (1832)

**Indian Tribes = Domestic Dependent Nations
Beyond the Authority of States**

**“The U.S. secures jurisdiction and government of the tribe in the west...
No part of the land shall ever be embraced in any territory or state”**

Treaty of Dancing Rabbit Creek with Choctaw Nation, 1830



Articles of a Treaty concluded at New Echota
in the State of Georgia on the 29th day of Decr 1835 by Genl
William Carroll & John B. Schomburgh Commissioners on
the part of the United States and the Chiefs head men & people
of the Cherokee tribe of Indians

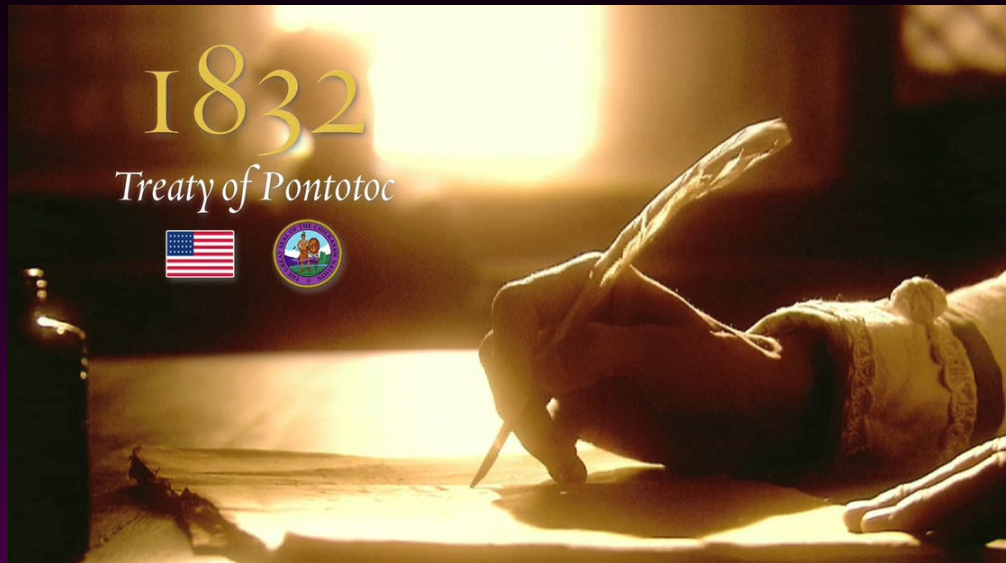
Whereas the Cherokees are anxious to make
some arrangements with the Government of the United States
wheroby the difficulties they have experienced by a residence
within the settled parts of the United States under the Jurisdic-
tion and laws of the State Governments may be terminated
and adjusted; And with a view to reuniting their people
in one body and securing a permanent home for themselves
and their posterity in the Country selected by their fore-
fathers without the territorial limits of the State Sovereig-
ties; And where they can establish and enjoy a Govern-
ment of their choice and perpetuate such a state of so-
ciety as may be most consonant with their views habits
and condition; and as may tend to their individual
comfort and their advancement in civilization.

And Whereas a Delegation of the Cherokee Nation
composed of Messrs John Ross Richard Taylor Land
McBay and Saml Smith & William Rogers with full power
and authority to conclude a Treaty with the United
States did on the 28th day of February 1835 depute &
agree with the Government of the United States to submit
to the Senate to fix the amount which should be allowed
the Cherokees for their claims and for a cession of their
lands East of the Mississippi River And agree to abide
by the award of the Senate of the United States therein
and to recommend the same to their people for their
people for their final determination

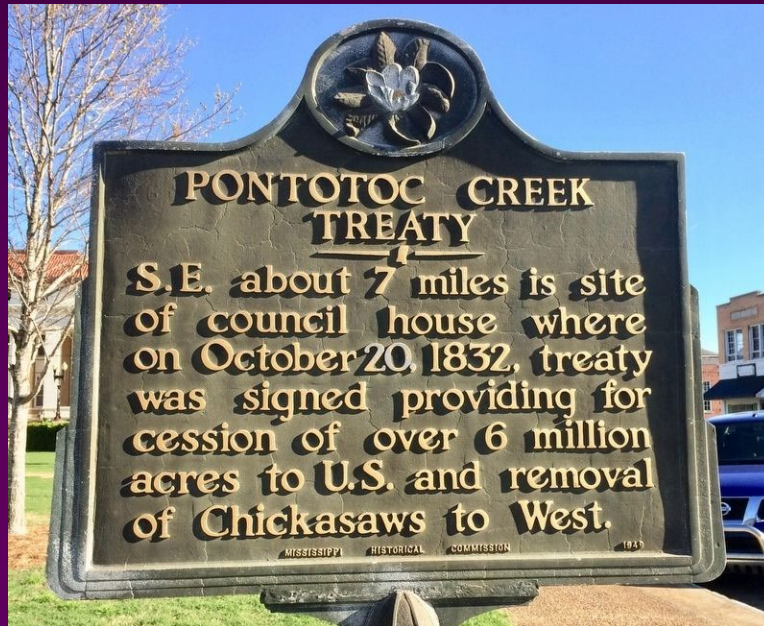
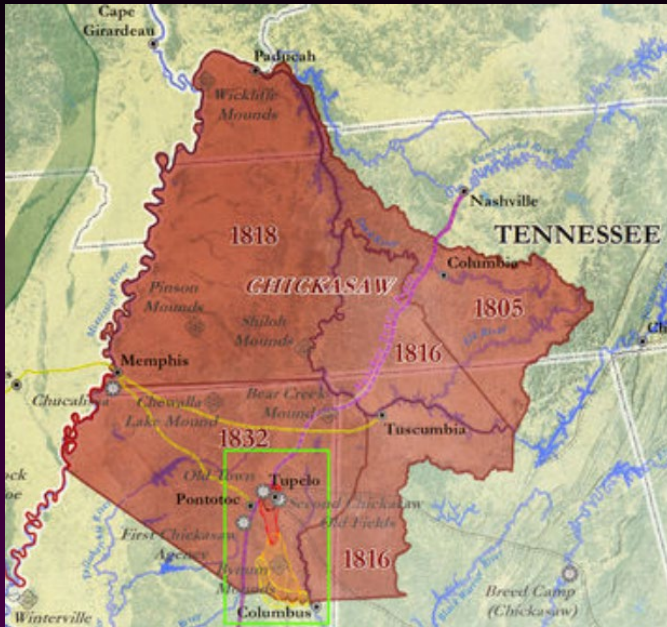
And whereas on such submission the Senate advised
"that a sum not exceeding five millions of Dollars be paid
to the Cherokee Indians for all their lands West of
East of the Mississippi River."

And Whereas this delegation after said award

The United States hereby covenant
and agree that the lands ceded to the
Cherokee nation in the forgoing
article shall, **in no future time**
without their consent, be included
within the territorial limits or
jurisdiction of any State or
Territory. But they shall secure to
the Cherokee nation the right by
their national councils to make and
carry into effect all such laws as
they may deem necessary for the
government and protection of the
persons and property within their
own country - **Treaty of New**
Echota, 1835



The Chickasaw Nation find themselves oppressed in their present situation; by being made subject to the laws of the States in which they reside... Rather than submit to this great evil, they prefer to seek a home in the west, where they may live and be governed by their own laws. And believing that they can procure for themselves a home, in a country suited to their wants and condition, provided they had the means to contract and pay for the same, they have determined to sell their country and hunt a new home. The President has heard the complaints of the Chickasaws, and like them believes they cannot be happy, and prosper as a nation, in their present situation and condition, and being desirous to relieve them from the great calamity that seems to await them... *Treaty of Pontotoc, October 20, 1832.*





Removal of the 5 Tribes to Indian Territory

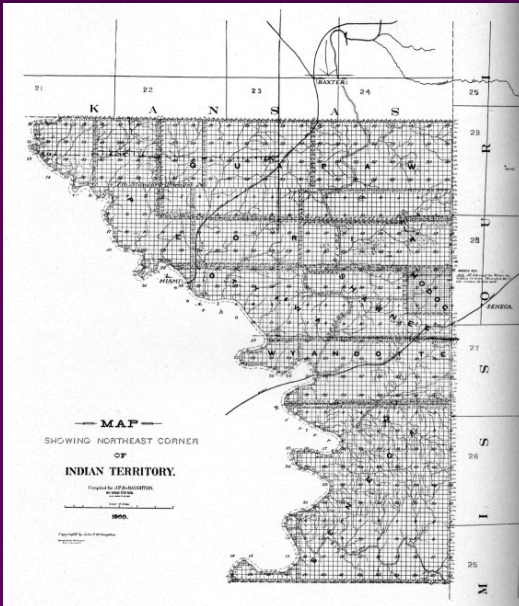
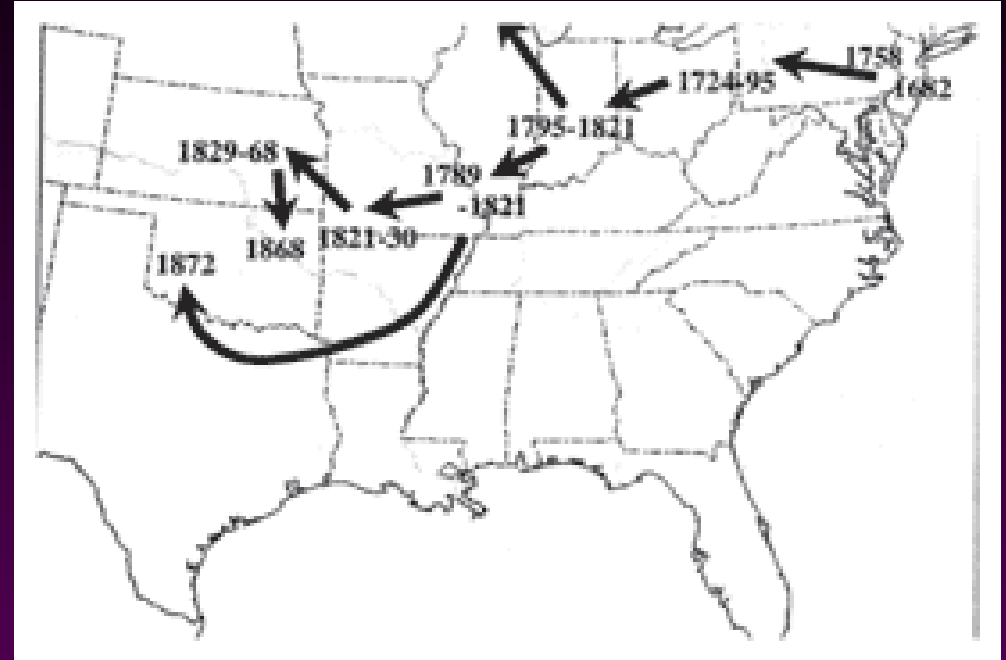


Tribal Capitol Buildings



Tribes Removed from other areas of the nation

★ Delaware



★ Modoc, removed from California & Oregon



Over 70 tribes are Moved to Oklahoma by 1889



MEDICINE LODGE TREATY – United States:

The Government of the United States desires peace, and its honor is here pledged to keep it.

No ... cession of any portion or part of the reservation ... shall be of any validity or force..., unless executed and signed by at least three-fourths of all the adult male Indians.

Medicine Lodge Treaty, Article Provisions, 1867



MEDICINE LODGE TREATY – Kiowa, Comanche & Apache:

I come to say that the Kiowas and Comanche have made with you a peace, and they intend to stick to it. If it brings prosperity to us, of course we will like it better. If it brings poverty and adversity, we will not abandon it, because it is our contract, and it will stand.

Your people shall again be our people, and peace shall be our mutual heritage. If wrong comes we shall look to you to right them. We know you will not forsake us. Tell your people to be as you have been.

Set-Tainte, Kiowa Chief at Medicine Lodge Treaty Council, 1867



General Crimes Act: 18 U.S.C. §1152 (1834)

Federal Jurisdiction over Indian Country

...but not for Indian v. Indian crimes or where Indian has been punished by the local law of the tribe (1854)



1883 Indian v. Indian Homicide

No Federal Jurisdiction in Indian Country for Indian v. Indian crimes

No federal jurisdiction over Indian v. Indian homicide in Indian country under 18 U.S.C. §1152, confirming offenses by Indians against Indians were “left to be dealt with by each tribe for itself according to its local customs.”

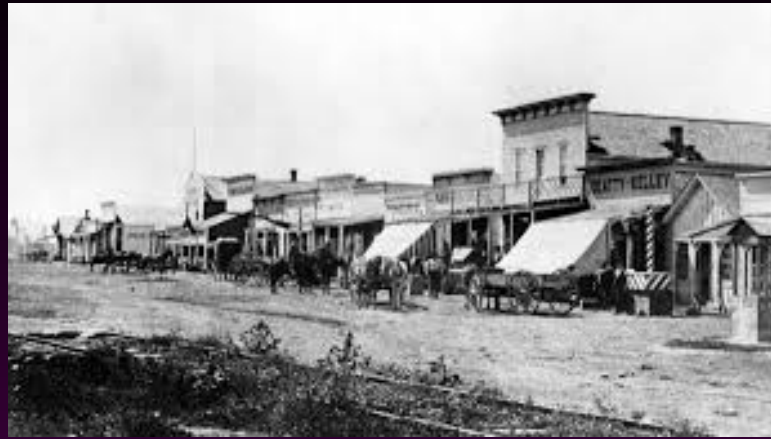
Ex Parte Crow Dog, 109 U.S. 556 (1883)



Major Crimes Act: 18 U.S.C. §1153 (1885)

Federal Jurisdiction in Indian Country

created for listed offenses committed by Indians
against Indians or Non-Indians



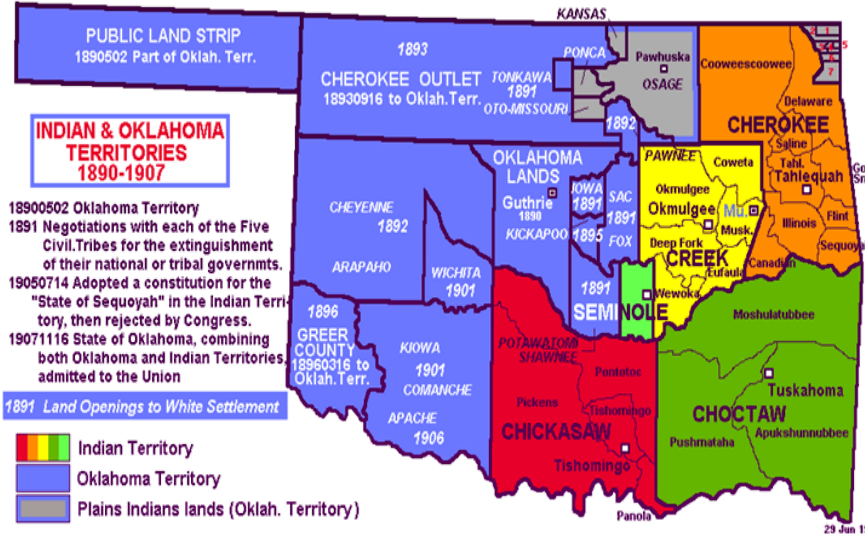
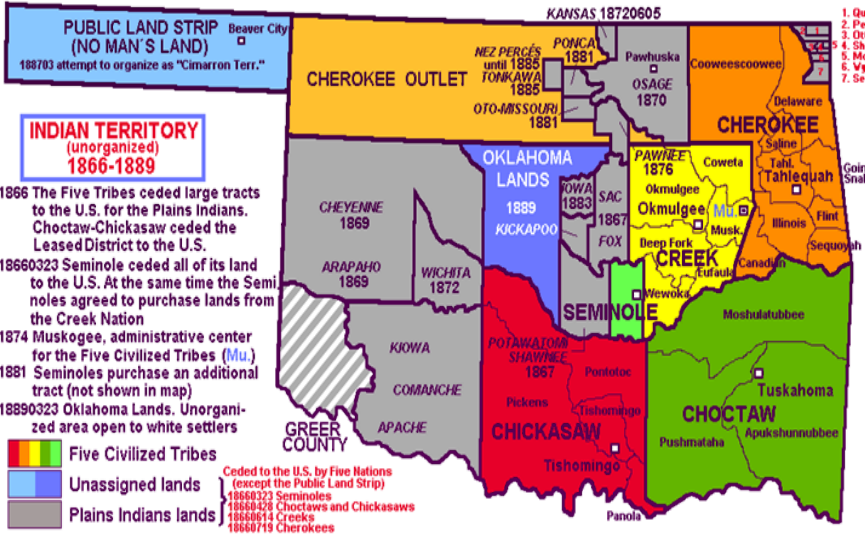
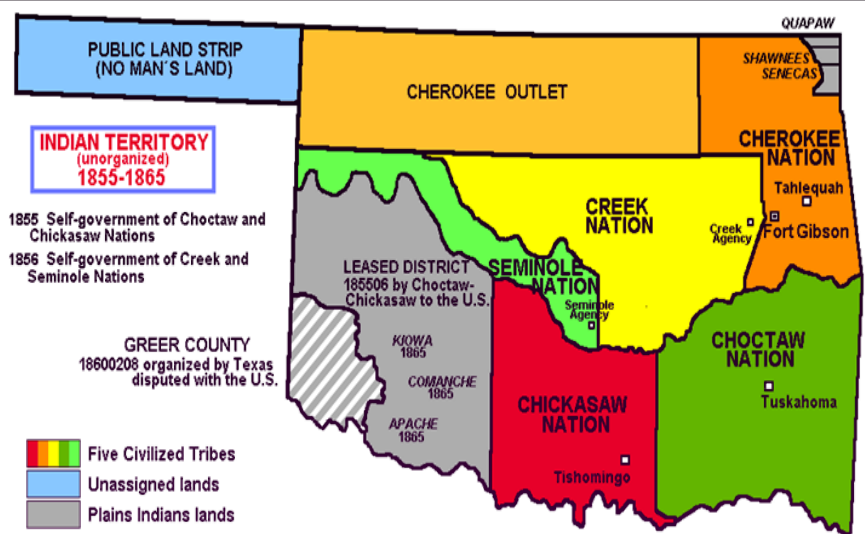
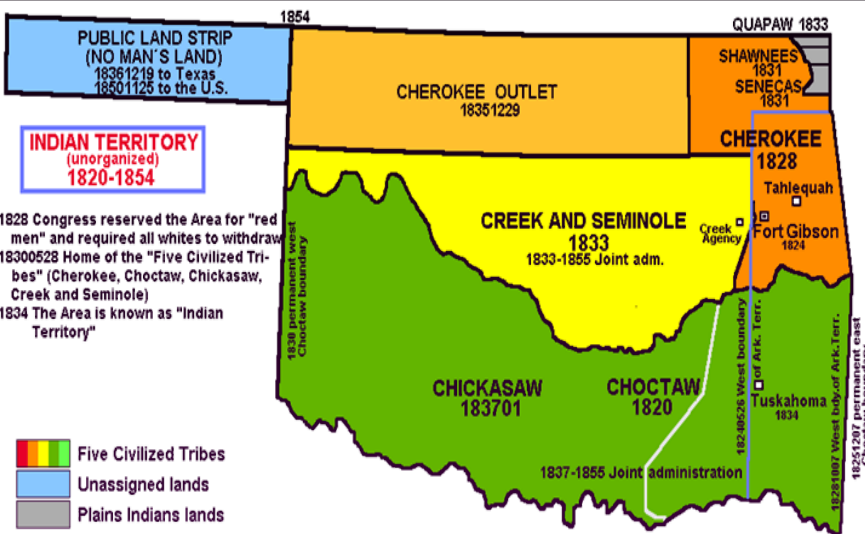
1881 Non-Indian v. Non-Indian Homicide
“The McBratney Exception”

State Jurisdiction in Indian Country authorized
because no Indian was involved

Non-Indian vs. Non-Indian Crimes

U.S. v. McBratney – 104 U.S. 621 (1881)

Non-Indian Victimless Crimes



Changing Boundaries as Many Tribes are Removed

INDIAN LAND FOR SALE

GET A HOME

OF
YOUR OWN

*
EASY PAYMENTS



PERFECT TITLE

*
POSSESSION

WITHIN
THIRTY DAYS

FINE LANDS IN THE WEST

IRRIGATED
IRRIGABLE

GRAZING

AGRICULTURAL
DRY FARMING

IN 1910 THE DEPARTMENT OF THE INTERIOR SOLD UNDER SEALED BIDS ALLOTTED INDIAN LAND AS FOLLOWS:

Location.	Acres.	Average Price per Acre.	Location.	Acres.	Average Price per Acre.
Colorado	5,211.21	\$7.27	Oklahoma	34,664.00	\$19.14
Idaho	17,013.00	24.85	Oregon	1,020.00	15.43
Kansas	1,684.50	33.45	South Dakota	120,445.00	16.53
Montana	11,034.00	9.86	Washington	4,879.00	41.37
Nebraska	5,641.00	36.65	Wisconsin	1,069.00	17.00
North Dakota	22,610.70	9.93	Wyoming	865.00	20.64

FOR THE YEAR 1911 IT IS ESTIMATED THAT **350,000 ACRES** WILL BE OFFERED FOR SALE

For information as to the character of the land write for booklet, "INDIAN LANDS FOR SALE," to the Superintendent U. S. Indian School at any one of the following places:

CALIFORNIA: Hoopa. COLORADO: Ignacio. IDAHO: Lapwai. KANSAS: Horton. Nadeau.	MINNESOTA: Osigum. MONTANA: Crow Agency. NEBRASKA: Macy. Santee. Winnebago.	NORTH DAKOTA: Fort Totten. Fort Yates. OKLAHOMA: Anadarko. Cantonment. Colony. Darlington. Muskogee, and Pawnee.	OKLAHOMA—Con. Sac and Fox Agency. Shawnee. Wyandotte. OREGON: Klamath Agency. Pendleton. Roseburg. Siletz.	SOUTH DAKOTA: Cheyenne Agency. Crow Creek. Greenwood. Lower Brule. Pine Ridge. Rosebud. Sisseton.	WASHINGTON: Fort Simcoe. Fort Spokane. Tekoa. Tulalip. WISCONSIN: Oneida.
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WALTER L. FISHER,

Secretary of the Interior.

ROBERT G. VALENTINE,

Commissioner of Indian Affairs.

Federal Indian Policy
Changes as a Result of
coalition between
railroads, former
abolitionists and land
interests

Result is the
“Allotment Policy”
aimed at opening
reservations, taking
Indian land
individualizing tribal
land, & promotion of
farming

THE PRESIDENT

In his last message to Congress, strongly recommends that the Indian Territory be opened for settlement, and there is no doubt but that Congress at its present session will pass the necessary act declaring the unoccupied lands in

INDIAN TERRITORY

THAT
GARDEN OF THE WORLD,
OPEN FOR
HOMESTEAD AND PRE-EMPTION



MAP OF INDIAN TERRITORY.

Showing the Lands that will be subject to Homestead Entry and How to Reach Them.
White indicates Homestead Lands, of which there will be over 10,000,000 Acres.

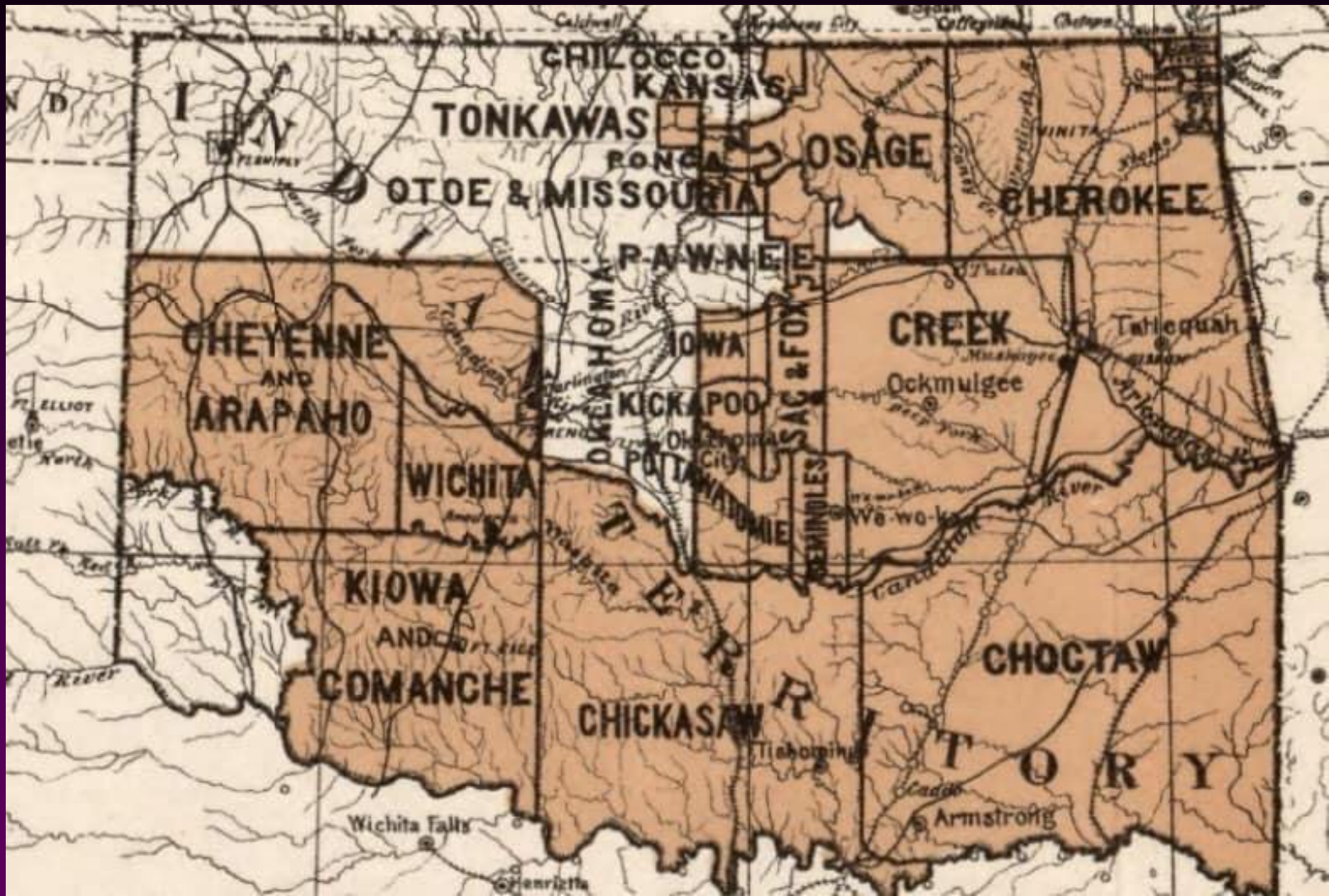
In view of the early opening of the Territory, it is necessary for those who would improve the opportunity to secure Free Land and Homes in this beautiful country, to be prepared to start as soon as the lands are declared by Congress to be subject to Homestead Entry. The rush will be great, and early comers will have every advantage.

**Every Person 21 Years of Age or Over will be
ENTITLED TO 160 ACRES.**

Treaty promises and covenants are ignored and broken

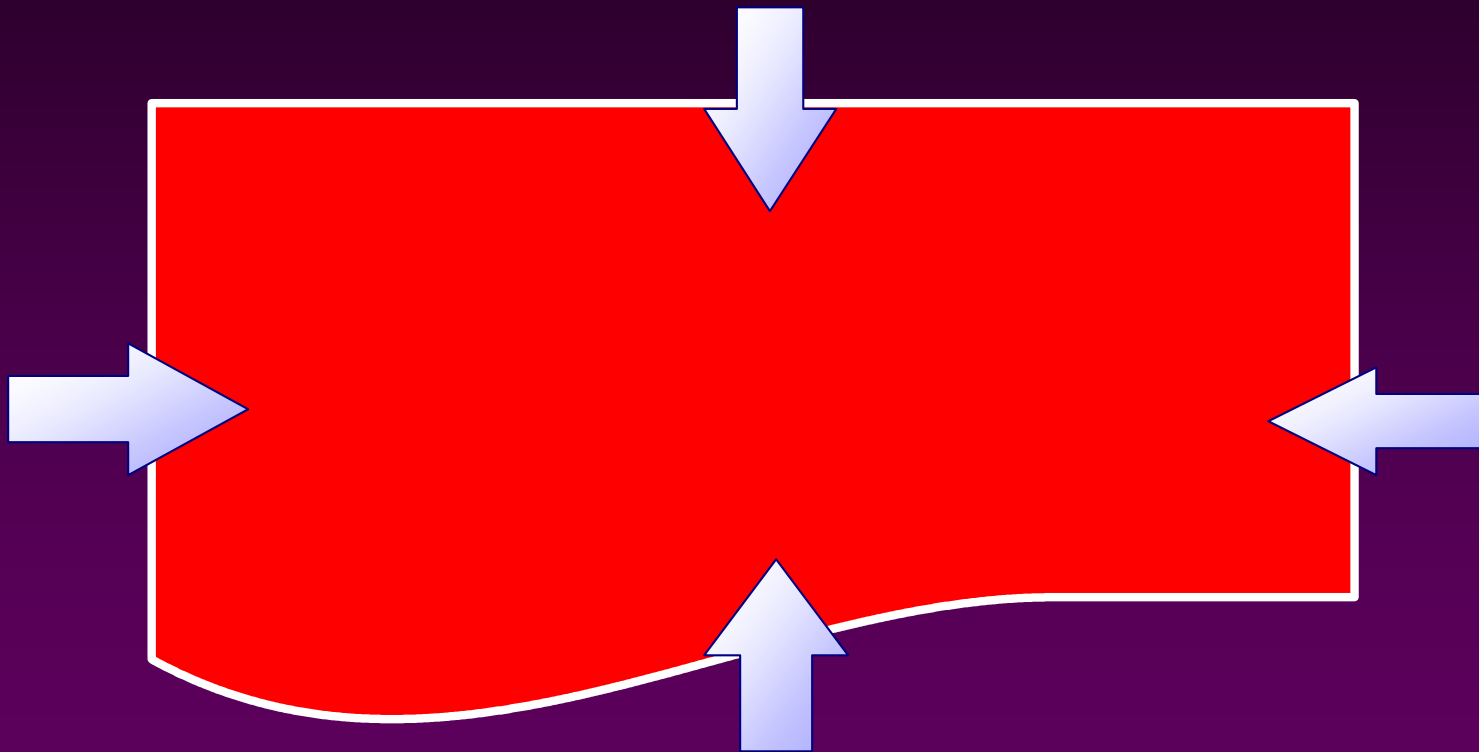
The General Allotment Act is a “mighty pulverizing engine to break up the tribal mass....”

President Roosevelt, 1901





**Original Reservation
before Land Runs or Openings**



Land Runs



UNCLE SAM Opens the way to the INDIAN LANDS

By act of Congress, restrictions will be removed on July 27th, 1908, from more than

EIGHT MILLION ACRES

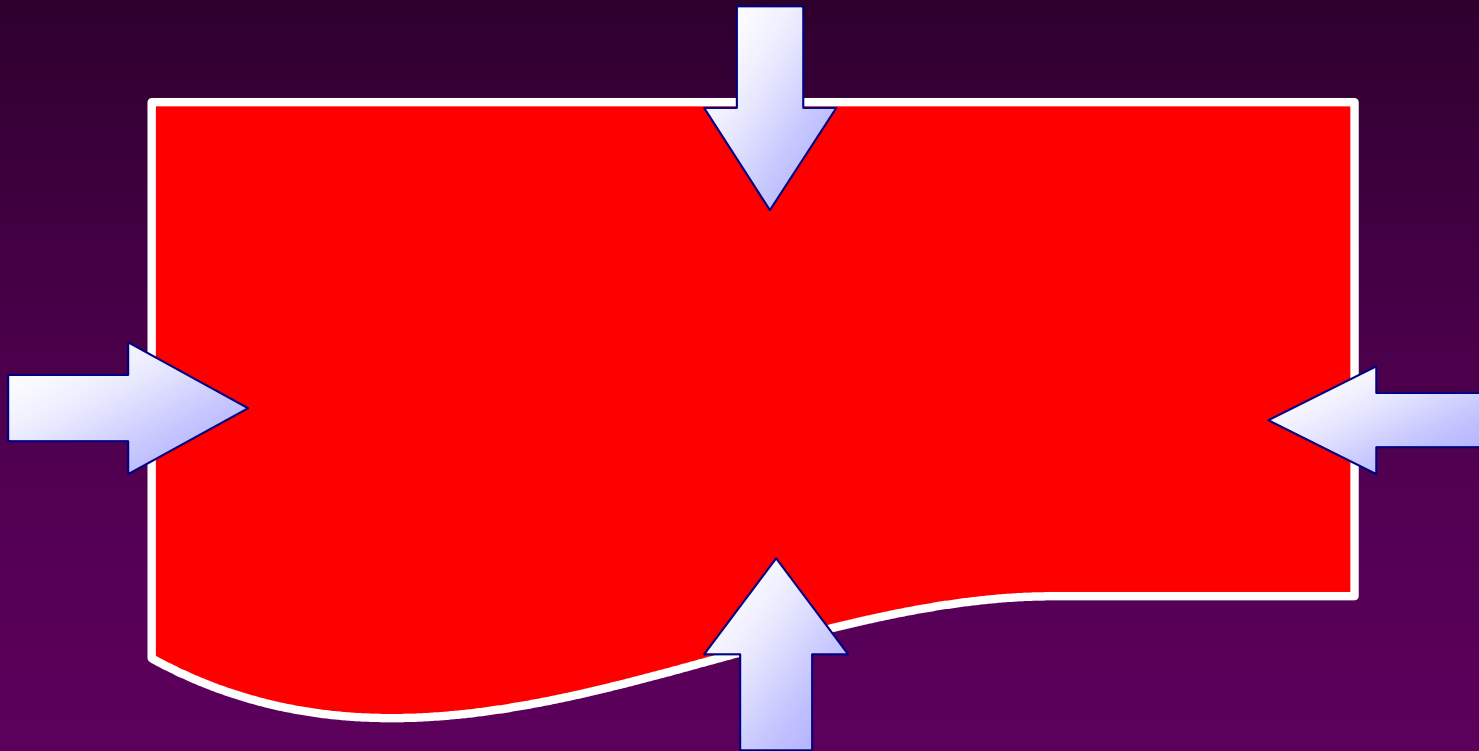
of land now belonging to the Cherokee, Creek, Seminole, Choctaw and Chickasaw Indians in the new state of Oklahoma.

This means that from the above date there will be no restriction on the sale of this land; the Indian owner may sell it to any person that chooses to buy it.

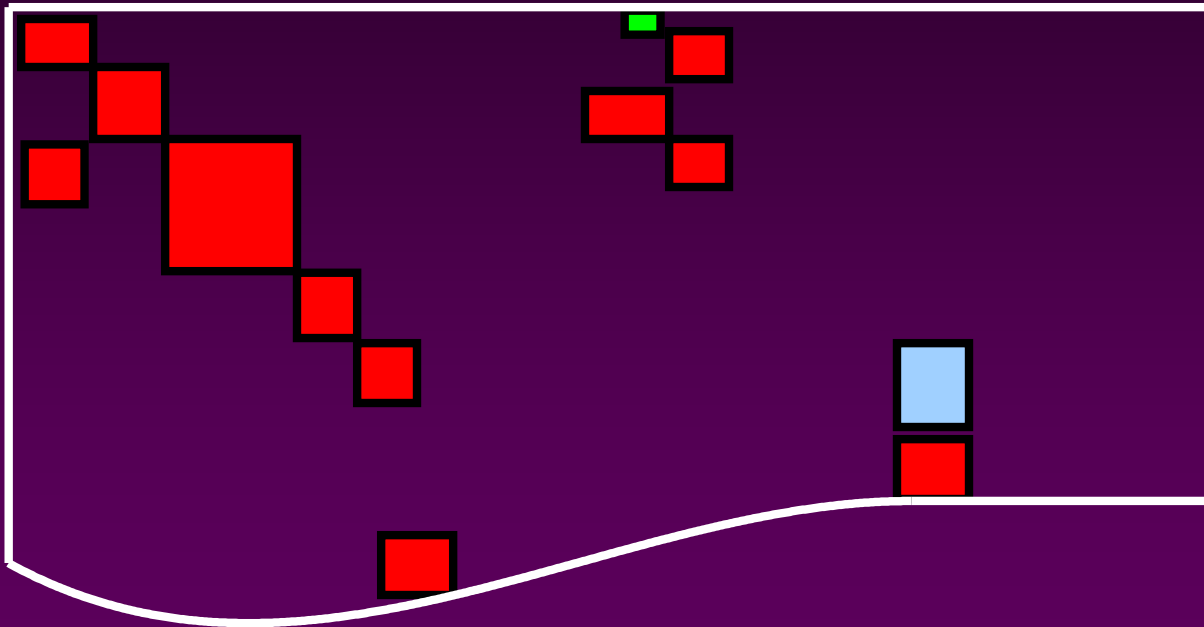
This will give to the homeseeker an exceptional opportunity to purchase some of the most fertile land of Oklahoma at prices from \$10 to \$30 an acre.

For further particulars, see pages 49 and 50 of this folder.

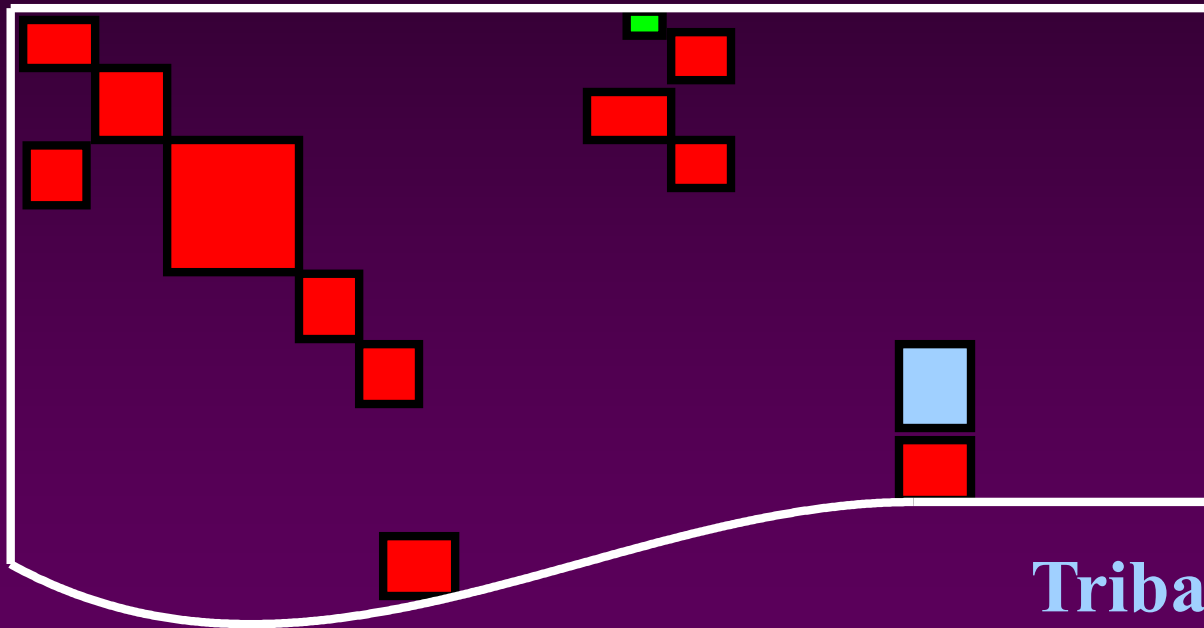
Federal Protective Restrictions Removed – 5 Tribes



Land Runs



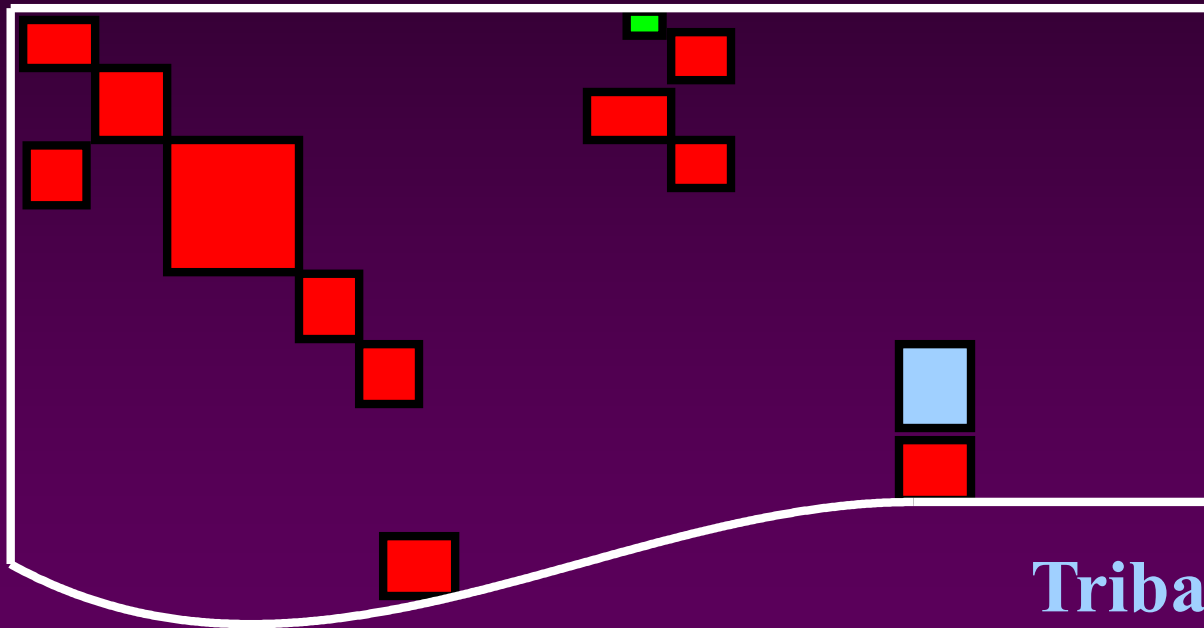
**Indian Allotments owned by 1
or more individual Indians**



**Indian Allotments owned by 1
or more individual Indians**

**Tribal Trust
Lands owned
by Tribal
Govt.**

Dependent Indian Community

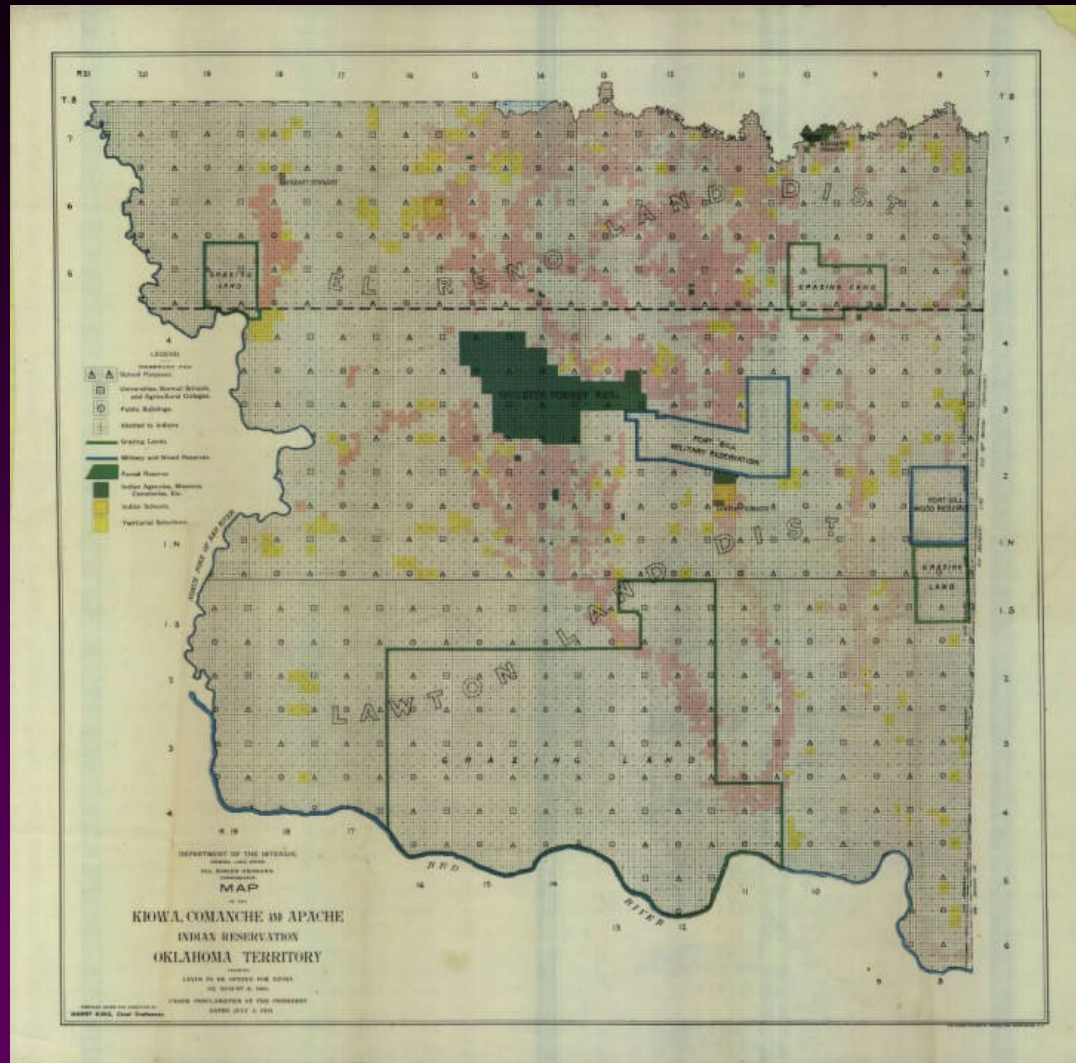


**Indian Allotments owned by 1
or more individual Indians**

**Tribal Trust
Lands owned
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Govt.**

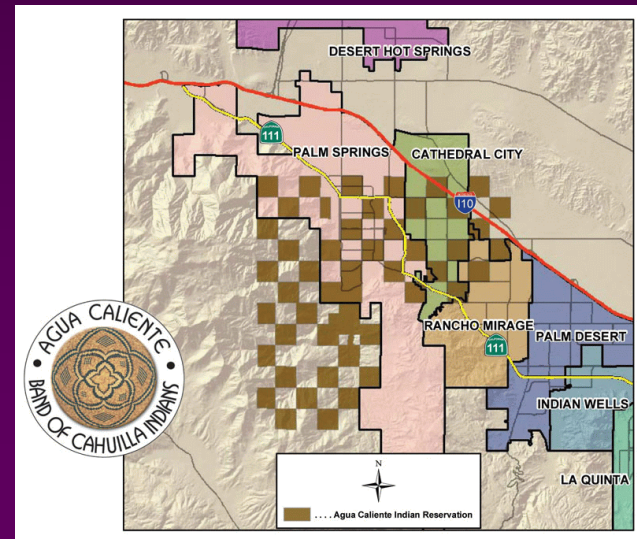
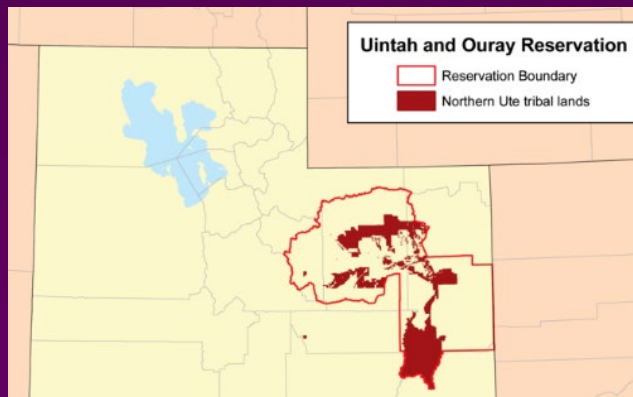
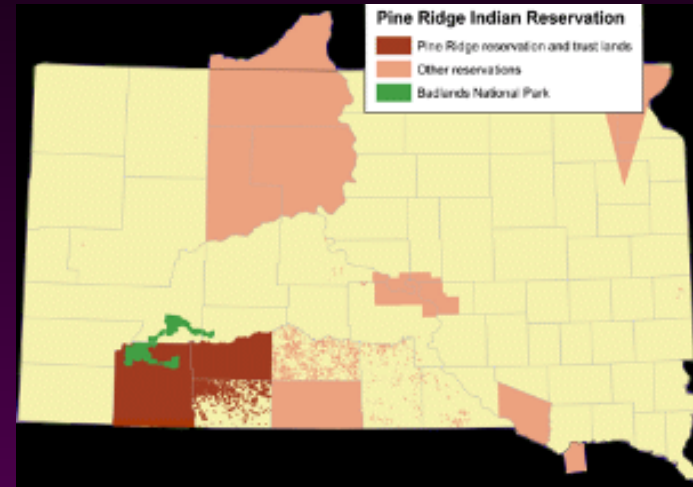
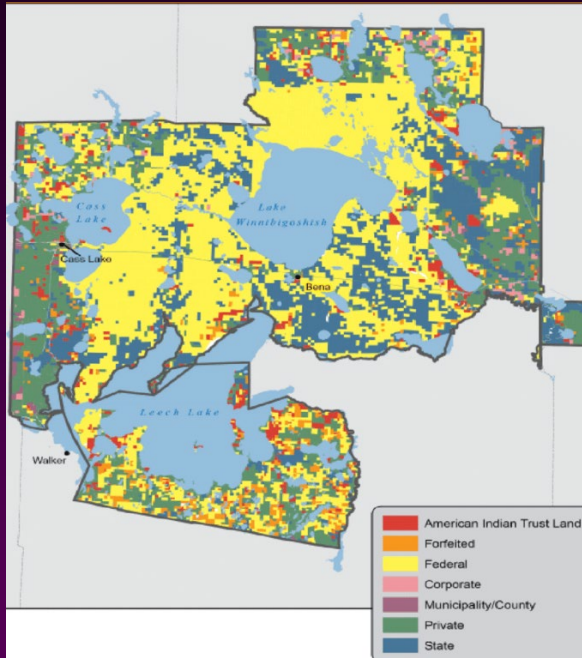


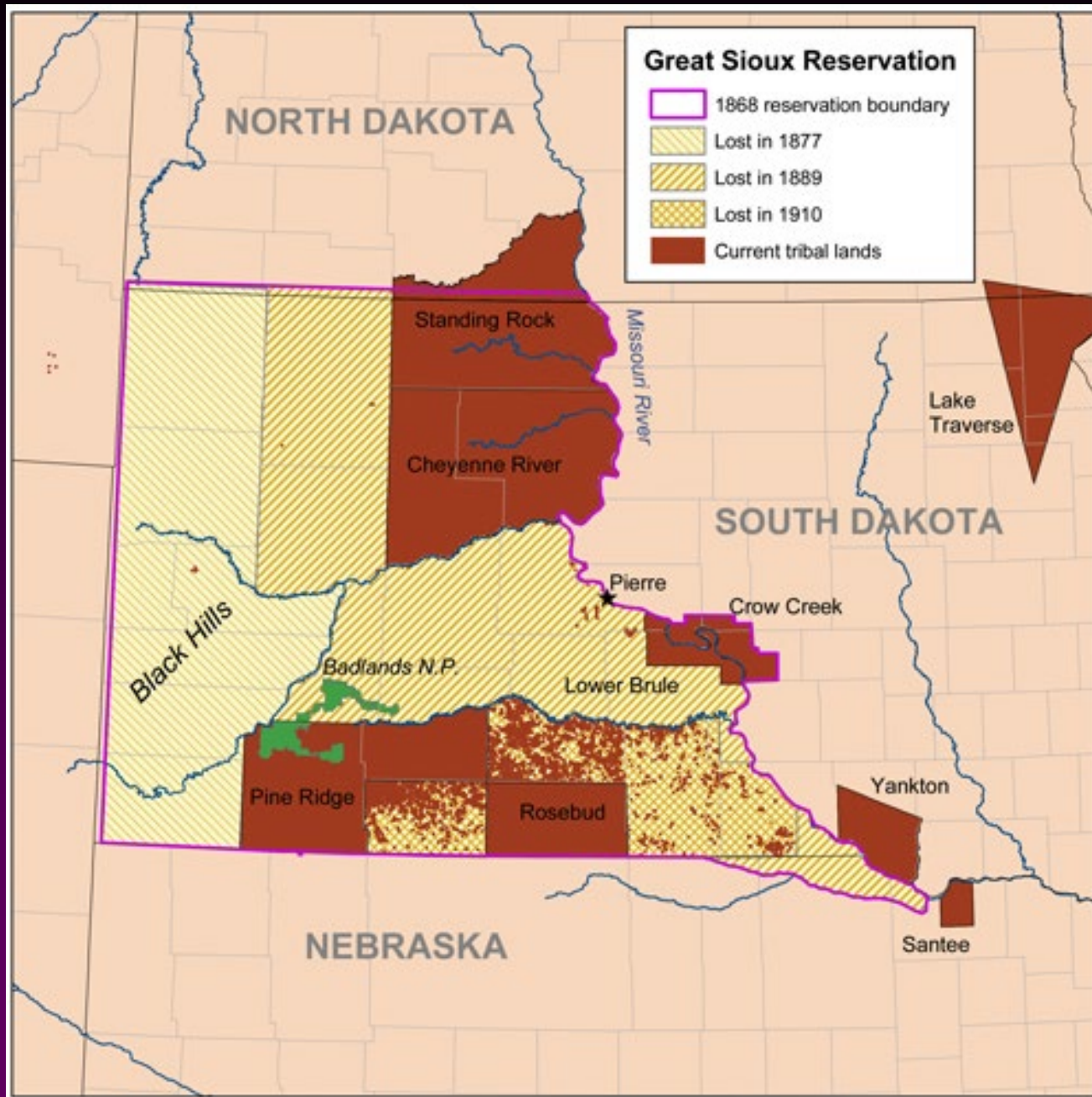
Kiowa-Comanche-Apache Reservation, 3 million acres

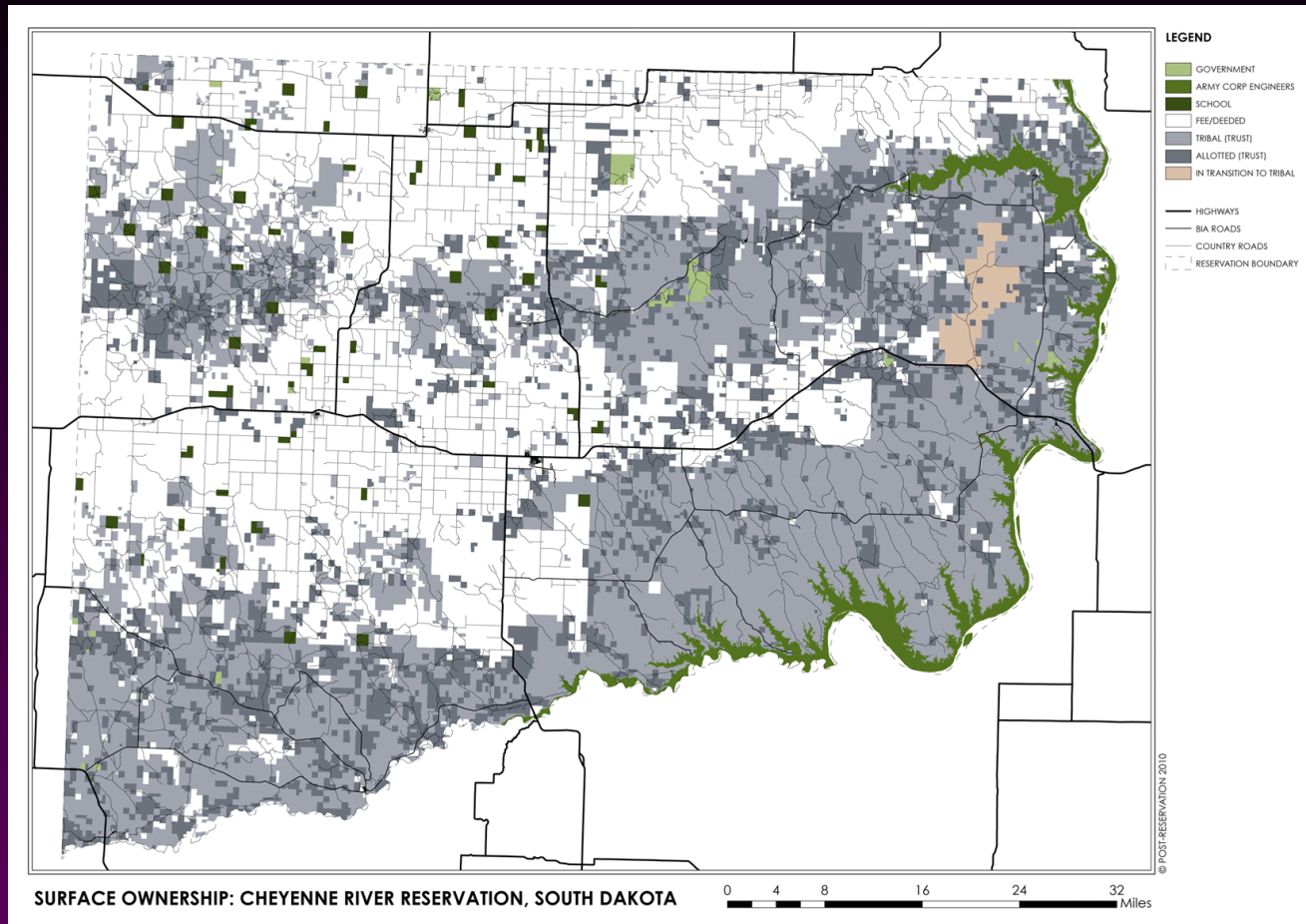


After Allotment only 500,000 acres owned by individual Indians
 2.5 million acres declared “surplus” & taken by non-Indians

The Resulting Complex Indian Land Situation not Unique to Oklahoma



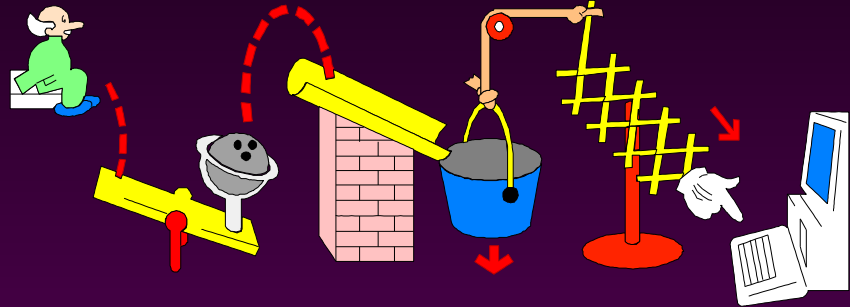


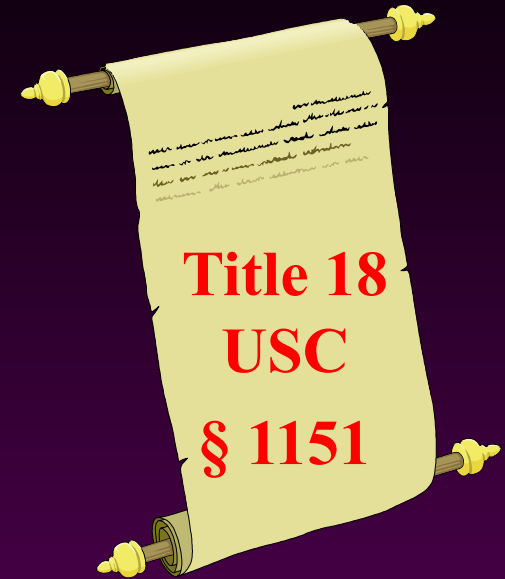


Cheyenne River Sioux Reservation, SD

Jurisdictional Basis for Indian Country Crimes

- ❖ Status of the Land
- ❖ Status of the Crime
 - ▶ Misdemeanor vs. Felony
- ❖ Status of the Person (Indian or Non-Indian)
 - ▶ As a defendant
 - ▶ As a victim





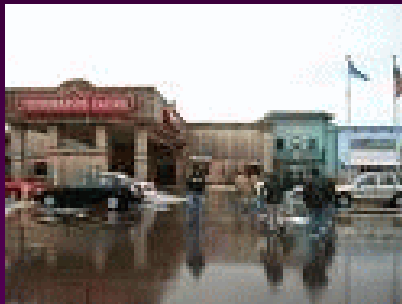
❖ Tribal Jurisdiction = “Indian Country”

- ▶ Subject to Federal and Tribal Jurisdiction
- ▶ Beyond State Jurisdiction in some instances
- ▶ Subject to Special Laws and regulations
- ▶ Under jurisdiction of a tribal & federal court



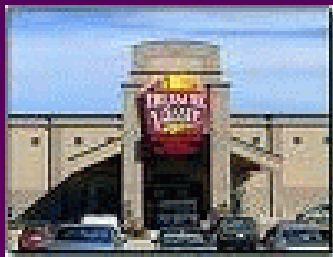
Indian Country Lands: 18 U.S. Code, Section 1151

- ❖ (A) All lands within formal & “informal” reservations
 - ▶ Tribal trust lands
 - ▶ Includes rights of way running through lands (roads)
- ❖ (B) Dependent Indian communities
 - ▶ Land set aside for Indian occupancy as a tribal community
 - WDOK - Riverside Indian School, Otoe Village -Noble County
 - Consult Venetie SCOTUS & Adair cases 10th Circuit
- ❖ (C) Indian Allotments held in Trust & Restricted Status
 - ▶ Includes rights of way running through lands (roads)



Casinos

18 USC § 1151(a)





Citizen Potawatomi



Choctaw

Tribal Offices & Headquarters

18 USC § 1151(a)



Wichita



Kiowa



Kaw



Concept of an “informal reservation”. *Okla. Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450, 453 n.2 (1995) (using term “informal reservation”); *Indian Country, U.S.A., Inc. v. Oklahoma*, 820 F.2d 967, 973 (10th Cir. 1987) (stating that “a formal designation of Indian lands as a ‘reservation’ is not required for them to have Indian country status.”).

Indian country clearly includes rights-of-way running through the reservation. *Ortiz-Barraza v. United States*, 512 F.2d 1176 (1975).

Can be fee land within reservation boundaries, even if owned by a non-Indian. *See United States v. John*, 437 U.S. 634 (1978); *Seymour v. Superintendent*, 368 U.S. 351 (1962).

Dependent Indian Community:

To qualify as dependent Indian community, land must be:

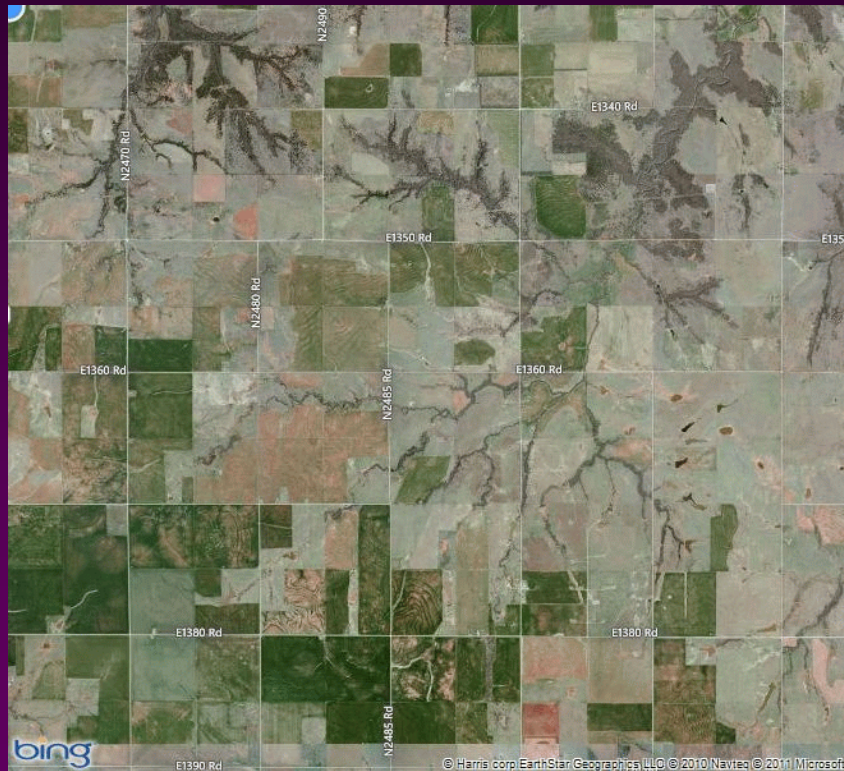
Set aside by Federal government
for the use of Indians, and
Under Federal superintendence.

*Alaska v. Native Village of
Venetie Tribal Government, 522
U.S. 520 (1998).*



Riverside Indian School, Caddo County, OK

Allotments:



Land owned by the U.S. in trust for an Indian (“trust allotment”), or owned by an Indian subject to a restriction on alienation in favor of the U.S. or its officials (“restricted fee” allotment). *United States v. Stands*, 105 F.3d 1656, 1571-72 (8th Cir. 1997) (quoting Felix S. Cohen’s Handbook of Federal Indian Law 615-16 (Rennard Stickland ed., 1982 ed.)); *United States v. Burnett*, 777 F.2d 593, 594 (10th Cir. 1985).

Allotments:

Include rights-of-way running through the allotment.

Cannot have extinguished title.

Has resulted in “checkerboard” patterns.

The Littlechief case, Western Dist. of Oklahoma

STATE v. LITTLECHIEF

1978 OK CR 2

573 P.2d 263

Case Number: O-77-107

Decided: 01/04/1978

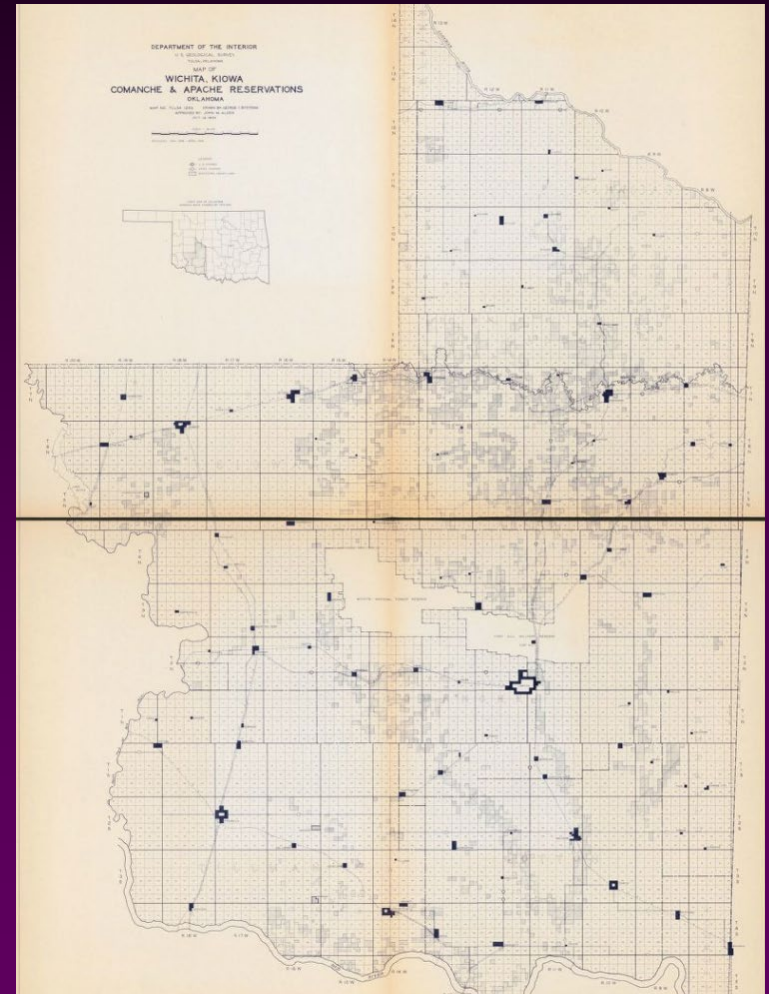
Oklahoma Court of Criminal Appeals

ORDER AFFIRMING DISMISSAL

[573 P.2d 264]

¶1 Brock Kenyon Littlechief was charged by information with Murder in the Second Degree in the District Court, Caddo County, on the 11th day of November, 1975. Thereafter, a motion to dismiss said information was filed and a hearing held thereon on August 10, 1976, at the conclusion of which the court sustained the motion to dismiss, finding as he did so that the lands upon which the homicide occurred were within lands defined as Indian Land, and that the State of Oklahoma was without jurisdiction to prosecute the defendant. Thereafter, the State of Oklahoma filed an appeal with this Court, but the issue sought to be raised has been determined by an order entered by the United States District Court for the Western District of Oklahoma, a copy of which is attached hereto and made a part hereof.

¶2 We find that the issue sought to be raised has been determined by the Honorable Fred Daugherty, and that said determination is binding on the State of Oklahoma since it involves the construction and application of Federal Statutes, to wit: Act of August 15, 1953, Public Law No. 83-280, 67 Stat. 588; and Title IV of the Civil Rights Act of 1968, 25 U.S.C. §§ 1321 through 1326. Said determination is binding on the State of Oklahoma unless and until it is overturned by the United States Court of Appeals for the Tenth Circuit or the Supreme Court of the United States. Although not discussed in this order we acknowledge the excellent brief filed by Mr. F. Browning Pipestem and Mr. William Douglas Giessmann on behalf of United Indian Tribes of Western Oklahoma and Kansas as amicus curiae.



Ross v. Neff, 905 F.2d 1349 (10th Cir. 1990)



Defendants also urge this court to recognize state criminal jurisdiction over the Greasy Ballpark, lest the park become "a land in which there is no law." Brief of Appellees at 4 (quoting statement of trial judge, IV R. at 247). We cannot tell from the record whether either the federal government or the Cherokee tribe have officers who police this Indian country. But even if both the federal government and the Cherokee tribe have abdicated responsibility for law enforcement at the Greasy Ballpark, this void does not empower Oklahoma or Adair County to assume general criminal jurisdiction simply because it is the nearest police authority. Avenues to extended jurisdiction must come from the legislature, not from the courts and not from the fiat of county governments.

We have implied that an arrest made outside of the arresting officer's jurisdiction *1354 violates the Fourth Amendment to the Constitution and is therefore actionable pursuant to 42 U.S.C. § 1983 under the appropriate circumstances. *Smith v. City of Oklahoma City*, 696 F.2d 784 (10th Cir. 1983). We now so hold expressly.⁶ A warrantless arrest executed outside of the arresting officer's jurisdiction is analogous to a warrantless arrest without probable cause. *See Karr v. Smith*, 774 F.2d 1029, 1031 (10th Cir. 1985) (warrantless arrest without probable cause is constitutionally invalid); *Hinshaw v. Doffer*, 785 F.2d 1260, 1266 (5th Cir. 1986) (same). Absent exigent circumstances, such an arrest is presumptively unreasonable. *Michigan v. Summers*, 452 U.S. 692, 700, 101 S.Ct. 2587, 2593, 69 L.Ed.2d 340 (1981).⁷

We do not in this opinion intend to cast doubt upon the constitutional validity of extra-jurisdictional arrests made by police officers in "hot pursuit."

Our decision is not undermined by the fact that McLemore was technically an invitee of Mose Killer at the time he made the arrest. McLemore was clearly acting in his capacity as a deputy sheriff when he made the arrest. There is no evidence that Mose Killer had the authority to extend the jurisdiction of Adair County into Indian trust land by cross-deputizing county officers. *See Blatchford v. Sullivan*, 904 F.2d 542, 548 n. 5 (10th Cir. 1990); *United States v. Reid*, 517 F.2d 953, 963 (2d Cir. 1975) (noting that local sheriffs may be cross-deputized by the Indian tribes).

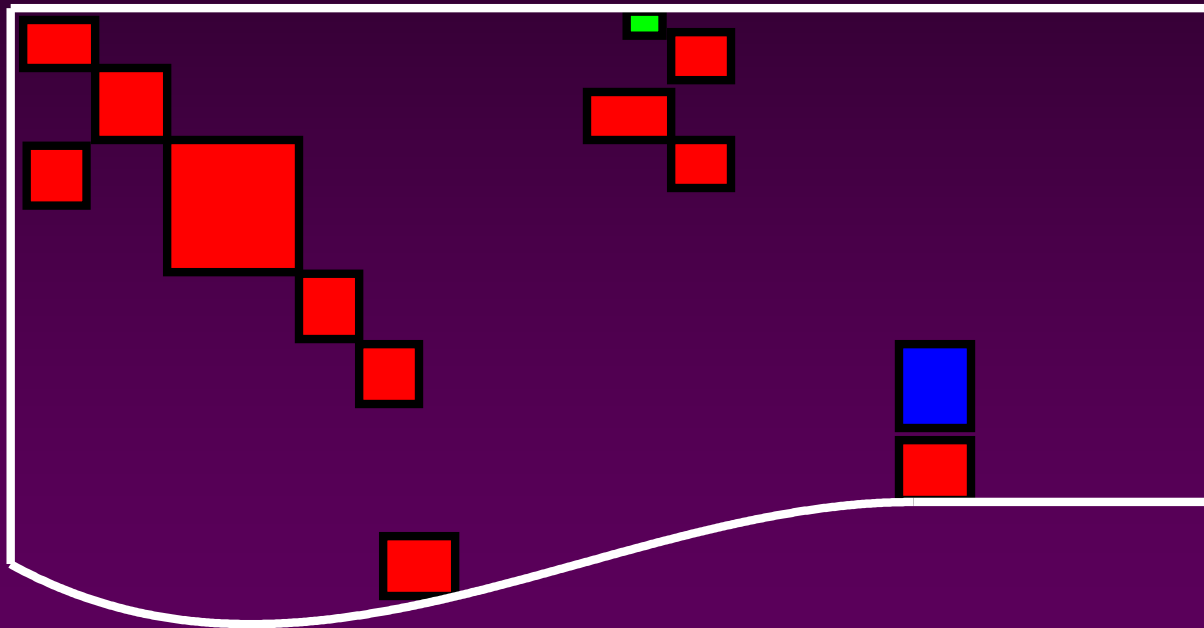
Police officers, however, sued in their individual capacity, are entitled to qualified immunity when they could not reasonably have known that their challenged actions violated the law. *Anderson v. Creighton*, 483 U.S. 635, 639, 107 S.Ct. 3034, 3038, 97 L.Ed.2d 523 (1987) ("[W]hether an official protected by qualified immunity may be held personally liable for an allegedly unlawful official action generally turns on the 'objective legal reasonableness' of the action . . . assessed in light of the legal rules that were 'clearly established' at the time it was taken." (citations deleted)).

At the time Ross was arrested, the law regarding the jurisdiction of local police officers on Indian Tribal Trust land in Oklahoma was not clearly established. Broad language in Supreme Court opinions, some of which we have quoted above, gave the appearance of allowing state intervention when it was determined that such intervention would not compromise tribal or federal interests. *See Mescalero Apache Tribe*, 411 U.S. at 148, 93 S.Ct. at 1270;

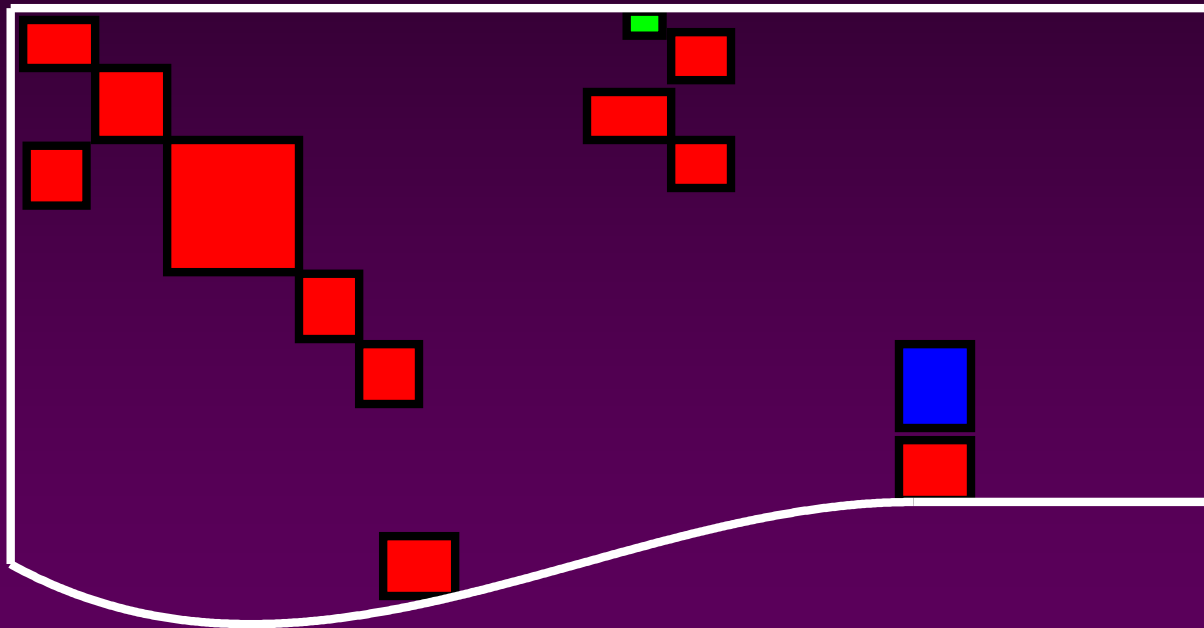
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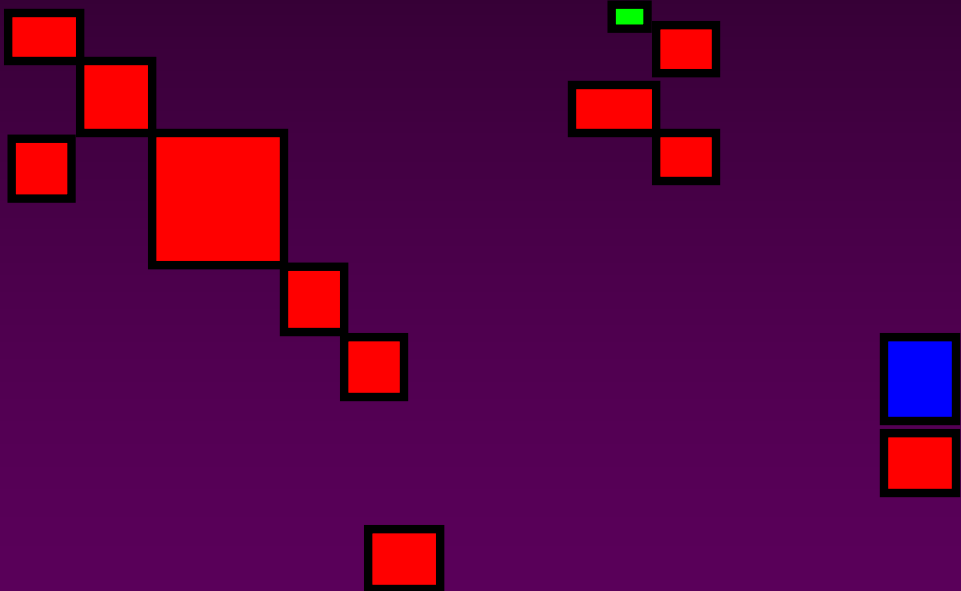
“Not Withstanding the Issuance of Any Patent”



“Not Withstanding the Issuance of Any Patent”

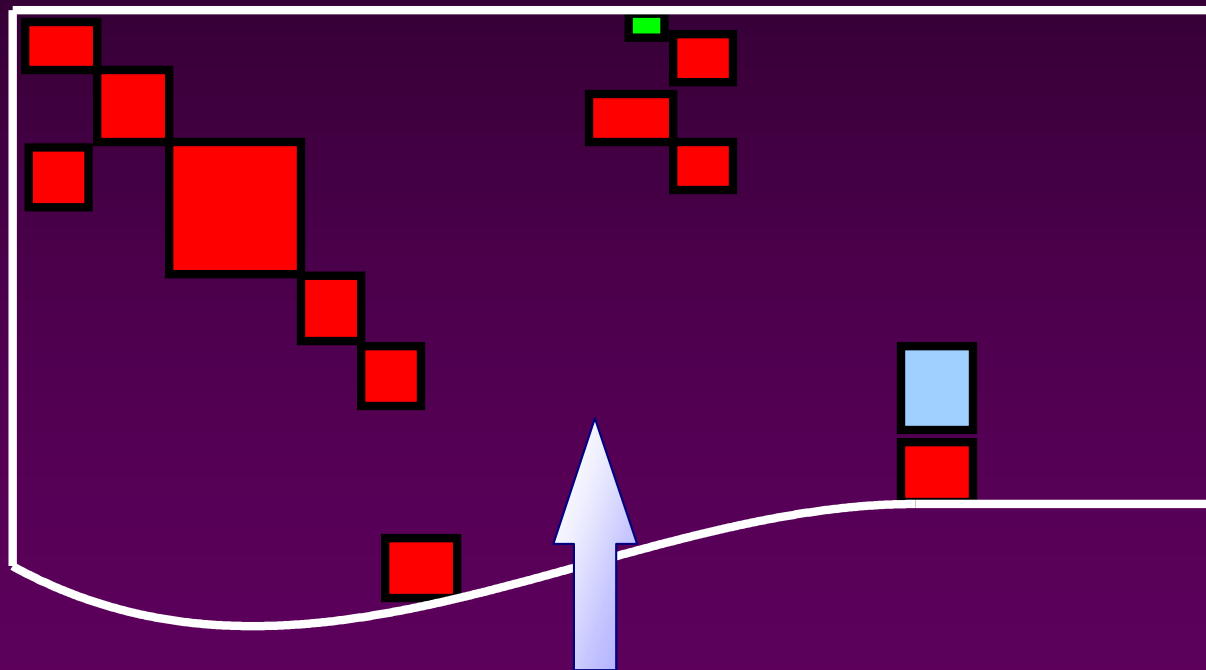


With Boundaries, Entire area is Indian Country



Without boundaries, only colored areas
remain Indian country

Majority of Litigation in the Civil Arena Today is Focused on Scope of Tribal Authority Over non-Indian Owned “Fee” Reservation Land



Scope of Tribal Authority in “Fee” land Areas

SUPREME COURT OF THE UNITED STATES

No. 18–9526

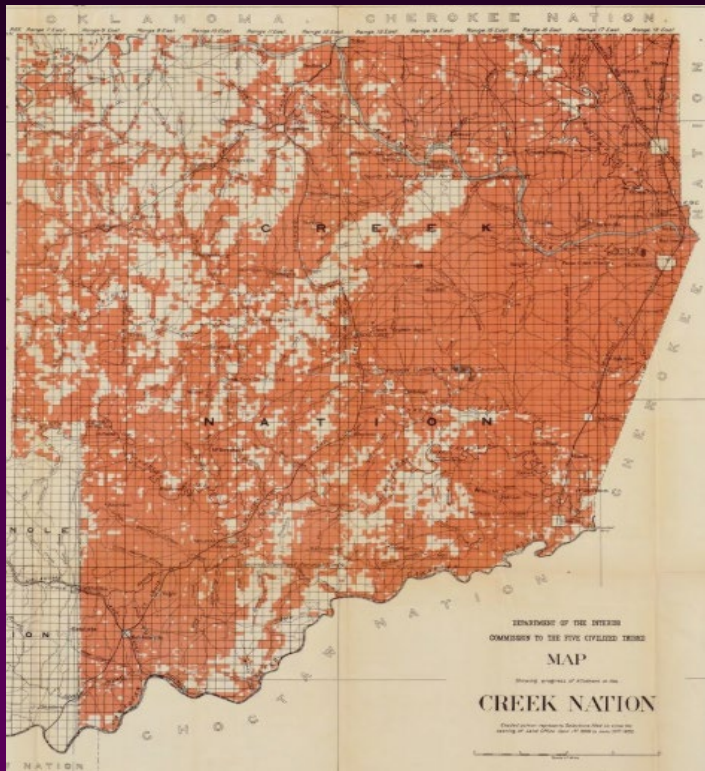
JIMCY MCGIRT, PETITIONER *v.* OKLAHOMA
ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL
APPEALS OF OKLAHOMA

[July 9, 2020]

JUSTICE GORSUCH delivered the opinion of the Court.

On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever. In exchange for ceding “all their land, East of the Mississippi river,” the U. S. government agreed by treaty that “[t]he Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians.” Treaty With the Creeks, Arts. I, XIV, Mar. 24, 1832, 7 Stat. 366, 368 (1832 Treaty). Both parties settled on boundary lines for a new and “permanent home to the whole Creek nation,” located in what is now Oklahoma. Treaty With the Creeks, preamble, Feb. 14, 1833, 7 Stat. 418 (1833 Treaty). The government further promised that “[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves.” 1832 Treaty, Art. XIV, 7 Stat. 368.

Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word.



Once a reservation is established, only Congress can diminish or disestablish it. Doing so requires a clear expression of congressional intent.

This Court has already rejected the argument that allotments automatically ended reservations

Oklahoma ultimately claims that historical practice and demographics are enough by themselves to prove disestablishment.

This Court has consulted contemporaneous usages, customs, and practices to the extent they shed light on the meaning of ambiguous statutory terms, but Oklahoma points to no ambiguous language in any of the relevant statutes that could plausibly be read as an act of cession.

Does McGirt apply only to the Five Tribes?

OCCA DECISIONS:

- ❖ CHEROKEE - Hogner, 2021 OKCR 4 (3/11/2021); Spears 2021 OKCR 7 (4/1/2021) (Direct Appeals)
- ❖ CHOCTAW – Sizemore, 2021 OKCR 6 (4/1/2021) (Direct Appeal)
- ❖ CHICKASAW - Bosse I , 2021 OK CR 3 (VACATED by 2021 OK CR 23)
Bosse II, 2021 OKCR 30 (10/7/2021) (Reissued Opinion)
- ❖ SEMINOLE – Grayson, 2021 OC CR 8 (4/1/2021) (Direct Appeal)

Does McGirt apply only to the Five Tribes? NO

news.bloomberglaw.com

Oneida Nation Wins Battle With Wisconsin Town After SCOTUS Boost

BY JACKLYN WILLE

July 30, 2020, 1:52 PM

- Seventh Circuit issues first major interpretation of *McGirt*
- Clear congressional intent to diminish reservation lacking

The Oneida Nation can run its annual Big Apple Fest without interference from the Village of Hobart, Wis., because the entire Oneida Reservation established by treaty in 1838 remains intact and outside the village's jurisdiction, the Seventh Circuit ruled Thursday.

This victory for the Oneida is the first major court decision to consider the U.S. Supreme Court's July 9 ruling in *McGirt v. Oklahoma*, which affirmed the 19th century reservation status of the Muscogee (Creek) Nation in



Oneida Reservation Boundaries Intact

Oklahoma v. Lawhorn;

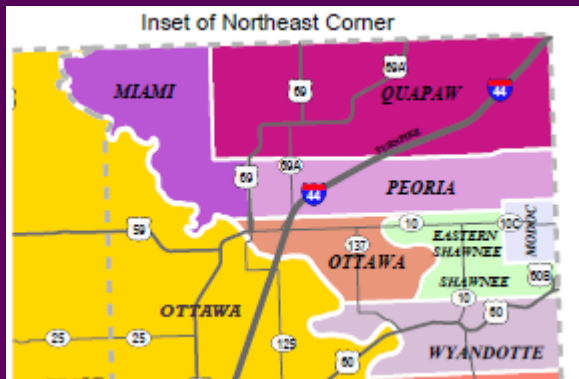
OCCA 2021 OK CR 37 (10/21/2021)

Quapaw Reservation Boundaries Intact

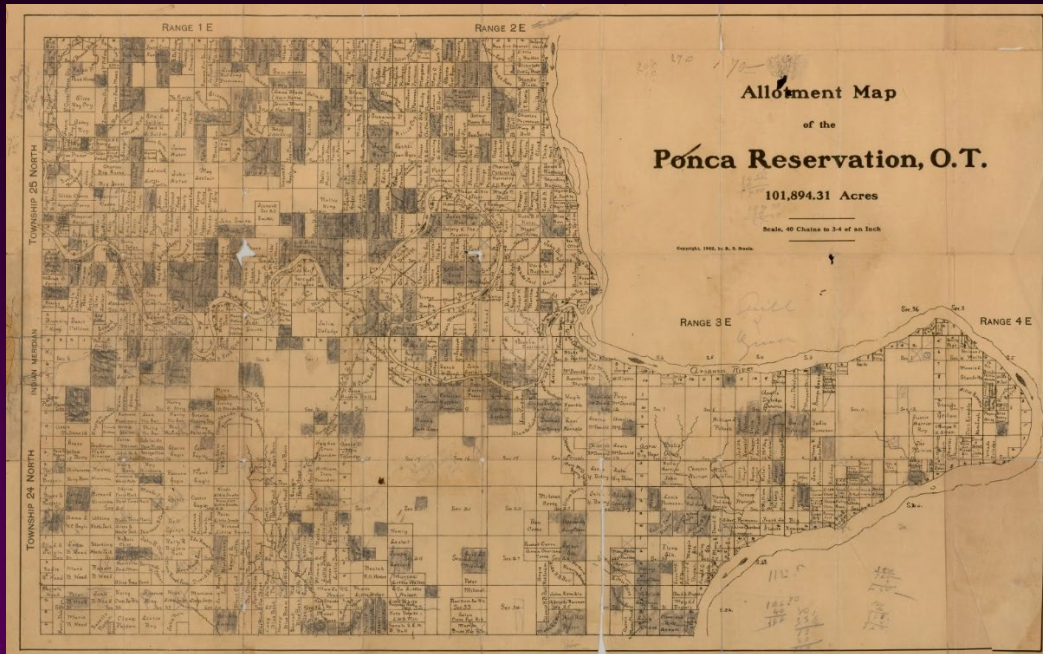
Brester v. Oklahoma;

2023OK CR10; 531 P3d 125

Ottawa & Peoria Reservation Boundaries Intact



Congress Knows How to Abolish Reservation Lines



1904 Act of Congress

acres in each of said reservations: *Provided further*, That the reservation lines of the said Ponca and Otoe and Missouria Indian reservations be, and the same are hereby, abolished; and the territory comprising said reservations shall be attached to and become part of the counties of Kay, Pawnee and Noble, in Oklahoma Territory, as follows:

Lands attached to counties, Oklahoma.

Each Tribe's Law & History will have to be analyzed regarding Boundary Status



" State handles all law and order problems and finances same on county basis. State jurisdiction exercised on Osage Reservation and all reservations under the Southern Plains Agency is subject to court attack due to absence of congressional authority.

U.S. Congress House Report No. 2503, 82 Congress, 2d Session (1953)

U.S. Congress in 1953 recognized state jurisdiction over existing reservations in S.W. Oklahoma & Osage being exercised illegally without authorization

Oklahoma v. Dustin Phillips, CF- 2019-327, Order of Aug. 29, 2022



The *Irby* court found, as does this Court, that the Osage Allotment Act and Oklahoma Enabling Act are ambiguous as to disestablishment of the Osage Reservation. The Oklahoma Enabling Act provides that the Osage Reservation shall remain separate “until the lands in the Osage Indian Reservation are allotted in severalty . . .” Act of June 16, 1906, ch. 3335, 34 Stat. 26, § 21. Shortly after passing the Oklahoma Enabling Act, Congress passed the Osage Allotment Act, which allotted the lands in the Osage Indian Reservation among the members of the Tribe. Act of June 28, 1906, ch. 3572, 34 Stat. 539, §§ 2-3. This legislative history strongly suggests that Congress intended to disestablish the Osage Reservation with the passage of the Osage Allotment Act. At the very least, the two Acts, when considered together, render Congressional intent as to the disestablishment of the Osage Reservation ambiguous.

Oklahoma v. Dustin Phillips, CF-2019-327, Order of Aug. 29, 2022

Because the relevant statutory texts are ambiguous, “we will consult contemporaneous usages, customs, and practices to the extent they shed light on the meaning of the language in question at the time of enactment.” *McGirt*, 140 S. Ct. 2468. Here, as the *Irby* court noted, “[t]he legislative history and the negotiation process make clear that all the parties at the table understood that the Osage Reservation would be disestablished by the Osage Allotment Act.” *Irby* 597 F.3d at 1125. Further, while subsequent events and the demographic history of the opened lands are the least probative factors in determining the meaning of the Acts in question, this Court finds that both considerations support a finding that the Osage Reservation was disestablished, or, at the very least, reduced to the mineral estate only.

Oklahoma v. Dustin Phillips, CF-2019-327, Order of Aug. 29, 2022

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❖ Statutory Text = Ambiguous

❖ Yet, the “Demographic History,” the least probative factor, controls
Osage Reservation “Disestablished”

Oklahoma v. Dustin Phillips, CF-2019-327, Order of Aug. 29, 2022

Because the relevant statutory texts are ambiguous, “we will consult contemporaneous usages, customs, and practices to the extent they shed light on the meaning of the language in question at the time of enactment.” *McGirt*, 140 S. Ct. 2468. Here, as the *Irbly* court noted, “[t]he legislative history and the negotiation process make clear that all the parties at the table understood that the Osage Reservation would be disestablished by the Osage Allotment Act.” *Irbly* 597 F.3d at 1125. Further, while subsequent events and the demographic history of the opened lands are the least probative factors in determining the meaning of the Acts in question, this Court finds that both considerations support a finding that the Osage Reservation was disestablished, or, at the very least, reduced to the mineral estate only.

“ State handles all law and order problems and finances same on county basis. State jurisdiction exercised on Osage Reservation and all reservations under the Southern Plains Agency is subject to court attack due to absence of congressional authority.”

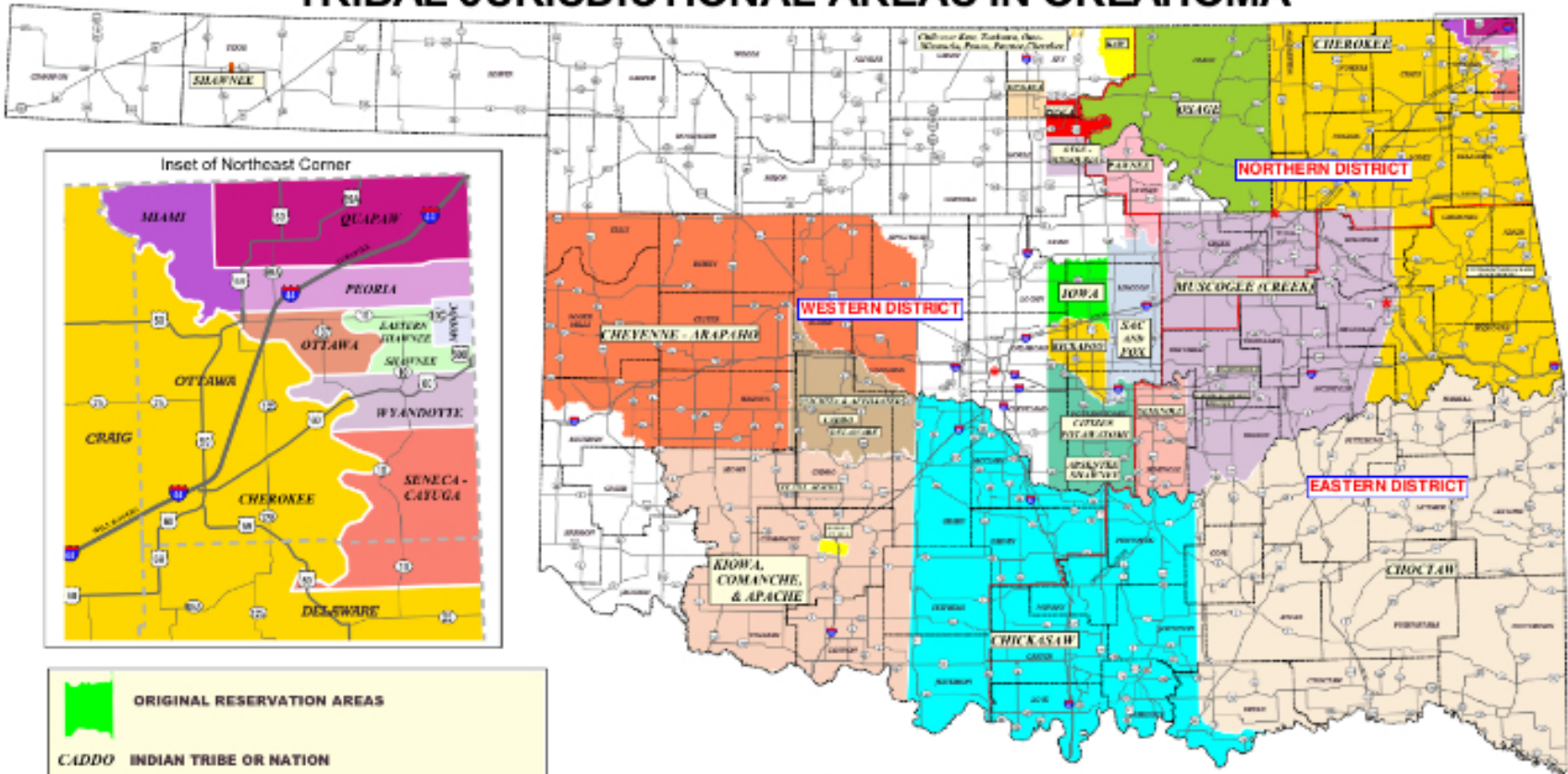
U.S. Congress House Report No. 2503, 82 Congress, 2d Session (1953)
(the “Doomsday Report”)



Does McGirt apply only to Criminal Cases?

Mustang Production v. Harrison, 94 F.3d 1382 (10th Cir. 1996)



TRIBAL JURISDICTIONAL AREAS IN OKLAHOMA



	ORIGINAL RESERVATION AREAS
C.LDDO	INDIAN TRIBE OR NATION
	FEDERAL COURTHOUSE & U.S. ATTORNEY'S OFFICE
IGY	COUNTY
WESTERN DISTRICT	FEDERAL JUDICIAL DISTRICTS

INDIAN COUNTRY PARCELS SUBJECT TO FEDERAL & TRIBAL JURISDICTION MAY BE FOUND WITHIN THE COLORED REGIONS
 (Unless tribal reservation boundaries are recognized, each parcel must independently qualify as Indian country for federal and tribal jurisdiction to exist)

Indian Country as defined by 18 U.S.C. Section 1151 (a), (b) & (c) -
 (a) formal [recognized reservation boundaries] & informal [tribal trust lands] reservations [including rights-of-way/roads running through the same], (b) dependent Indian communities, & (c) Indian allotments held in trust or restricted status [including rights-of-way/roads running through the same].

JULY 20, 2000 Adopted
 from a Map by the
 Oklahoma Department of
 Transportation

Who is an Indian?



Political Status, Not Race



In *Morton v. Mancari*, 417 U.S. 535 (1974) the Supreme Court held that **the federal government's special treatment of Indians is political and non-racial** when it "can be tied rationally to the fulfillment of Congress' unique obligation toward the Indians." Subsequent decisions have both reaffirmed the holding and made clear that it applies to the federal government's dealings with Indians generally. For example, in *United States v. Antelope*, 430 U.S. 641 (1977) the Supreme Court held in 1977 that "[f]ederal regulation of Indian tribes, therefore, is governance of once-sovereign political communities; **it is not to be viewed as legislation of a 'racial' group consisting of 'Indians.'**"


Tribal Membership

- ❖ Navajo
 - ❖ Citizen Potawatomi
 - ❖ Ft. Sill Apache
 - ❖ Cherokee
 - ❖ Kiowa
 - ❖ Seneca-Cayuga
- ❑ 1/4 Navajo
 - ❑ Any % CP blood
 - ❑ 1/16
 - ❑ Any % “Dawes blood”
 - ❑ 1/4 Kiowa/Captive
 - ❑ Any % of S-C blood

Federal Court - 2 Part Test...

- ❖ Indian Blood
- ❖ Recognition by Some Government Entity
 - ▶ Enrollment
 - ▶ Eligibility for Services
 - ▶ Recognition by Community
 - ▶ “capable of being enrolled” - ICWA
 - ▶ Maintaining “tribal relations”


**A CDIB
card is not
enough proof a
person is
Indian under
federal law**

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
TAHLEQUAH AGENCY**
Certificate of Degree of Indian Blood

This is to certify that _____

born _____ is 3 / 16 degree Indian blood
of the Cherokee Tribe.

11/19/1996 Lela J. Ummestick
Date Issuing Officer

**UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
TAHLEQUAH AGENCY**
Certificate of Degree of Indian Blood

This is to certify that BRIAN L. ...

born 6/28/1983 is 1/2 degree Indian blood
of the CHEROKEE Tribe.

9/6/1983 Joe M. Parker
Date Issuing Officer

This ID Doesn't show Indian Blood



Choctaw Veteran

Tribal Membership Card
**Choctaw Nation
of Oklahoma**
P.O. Box 1210
Durant, OK 74702-1210



CHOCTAW NATION
Faith • Family • Culture

Jane E. Billy
Jane Ellen (Doe) Billy
123 Main St
Durant, OK, 74701
Membership #: CN263498
DOB: 04/01/1954
Gender: Female

Date Approved: 8/29/2017
Date Expires: 8/29/2022

Terry Stephens
Director, CDIB/Membership

Lay Bette
Chief, Choctaw Nation

This ID Proves Membership AND Indian Blood = Proves the Person IS an Indian Under Federal Law

Date on Enrollment or Membership Card is not “effective” date that someone becomes an Indian



Kiowa Tribe of Oklahoma
Membership Identification



Whitney Rose C.
Anadarko, OK 73005

7/10/2015 ISSUED

Enrollment Number

1/4 Degree of Blood

Whitney Rose C.
Member's Signature



Wadkins v. State; 504 P.3d 605 (Okla. Crim. App. 2022)

2022 OK CR 2

District Court: Wadkins is not an Indian because he was not formally enrolled at the time of the crime...

The district court issued written Findings of Fact and Conclusions of Law, memorializing its ruling, stating:

- ❖ 1. The parties entered into a stipulation that Mr. Wadkins has a Certificate of Degree of Indian Blood (CDIB). That degree is 3/16 Indian blood of the Choctaw Tribe.
- ❖ 2. Mr. Wadkins was not an enrolled member of the Choctaw Tribe at the time of the offense. He did not possess a CDIB Card, nor had he applied for one.
- ❖ 3. Mr. Wadkins was convicted in May of 2018. He did not become an enrolled member of the Choctaw Nation of Oklahoma until October 9, 2020. The Defendant now has a Choctaw Nation Membership Card.
- ❖ 4. **This Court finds that at the time the crime was committed by Mr. Wadkins [he was not recognized as Indian because of his] failure to seek membership in the Choctaw Nation until after the conviction, [his] voluntary associations with the "Universal Aryan Brotherhood" (a white supremacist gang), his unfamiliarity with who tribal leaders were, [the] lack of any credible evidence that any benefits he may have received from the tribe were exclusive to members of the Choctaw Nation, [and] no credible (sic) evidence that the Defendant had social recognition as an Indian through living on a reservation and participating in Indian social life.**
- ❖ ¶5 **Based upon these findings, the district court concluded that Wadkins failed to meet "the standards set forth in the Rogers Test."**

Wadkins v. State; 504 P.3d 605 (Okla. Crim. App. 2022)

2022 OK CR 2

❖ Wadkins maintains on appeal that his subsequent tribal enrollment coupled with his membership eligibility at the time of the charged offenses is sufficient to prove recognition. The State, on the other hand, asks us to adopt a "bright line" test which bases recognition solely on tribal enrollment at the time of the offense(s). In *Parker*, we rejected a claim that eligibility alone was sufficient to establish tribal recognition and upheld the district court's ruling that *Parker* failed to prove the recognition prong of the Indian status test. *Id.* 2021 OK CR 17, ¶¶ 37-42, 495 P.3d at 666-67. We also rejected the State's plea to adopt a "bright line" test basing recognition solely on tribal enrollment at the time of the offense. *Id.* 2021 OK CR 17, ¶ 37, 495 P.3d at 666. We accepted as settled that a person may be Indian for purposes of federal criminal jurisdiction whether or not the person is formally enrolled in any tribe and cited with approval the factors (sometimes referred to as the St. Cloud factors) that most courts consider in some fashion in determining recognition. *Id.* 2021 OK CR 17, ¶¶ 36, 40, 495 P.3d at 665, 666. See also *United States v. Bruce*, 394 F.3d 1215, 1224-25 (9th Cir. 2005) (citing numerous cases holding that lack of enrollment is not determinative of recognition); *United States v. Drewry*, 365 F.3d 957, 961 (10th Cir. 2004), vacated on other grounds by *Drewry v. United States*, 543 U.S. 1103, 125 S.Ct. 987, 160 L.Ed.2d 1015 (2005) (affirming tribal enrollment is not the only way to prove a person is Indian for federal criminal jurisdiction); *St. Cloud*, 702 F.Supp. at 1461 (accepting a person may still be an Indian though not enrolled with a recognized tribe). **The factors courts consider for Indian recognition are: 1) tribal enrollment; 2) government recognition formally and informally through receipt of assistance reserved only to Indians; 3) enjoyment of the benefits of tribal affiliation; and 4) social recognition as an Indian through residence on a reservation and participation in Indian social life.** *Parker*, 2021 OK CR 17, ¶ 40, 495 P.3d at 666. See also *Bruce*, 394 F.3d at 1224 ; *Drewry*, 365 F.3d at 961.

Wadkins v. State; 504 P.3d 605 (Okla. Crim. App. 2022)
2022 OK CR 2

District court is reversed

❖ **The district court's conclusion--that Wadkins failed to establish recognition--is not supported by the record. While eligibility for tribal membership alone is insufficient to prove recognition, Wadkins's subsequent enrollment coupled with the other factors, specifically his possession of a CDIB card since childhood and receipt of Indian health services, showed he was recognized as Indian by the Choctaw Nation. Because he is an Indian for purposes of federal criminal law and the charged crimes occurred in Indian Country, the State lacked jurisdiction over this matter.**

❖ **The Judgment and Sentence of the district court is VACATED and the matter is REMANDED WITH INSTRUCTIONS TO DISMISS .**

Wadkins v. State; 504 P.3d 605 (Okla. Crim. App. 2022)

2022 OK CR 2

- ❖ **The district court's conclusion--that Wadkins failed to establish recognition--is not supported by the record. While eligibility for tribal membership alone is insufficient to prove recognition, Wadkins' subsequent enrollment coupled with the other factors, specifically his possession of a CDIB card since childhood and receipt of Indian health services, showed he was recognized as Indian by the Choctaw Nation. Because he is an Indian for purposes of federal criminal law and the charged crimes occurred in Indian Country, the State lacked jurisdiction over this matter.**
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Oklahoma v. Wadkins

[f](#) [in](#) [t](#) [e](#) [m](#) [Share](#)

Petition for certiorari denied on October 11, 2022

Docket No.	Op. Below	Argument	Opinion	Vote	Author	Term
21-1193	Okla. Crim. App.	N/A	N/A	N/A	N/A	OT 2022

Supreme Court rejects Oklahoma attempt to narrow Indian definition

135

Chris Casteel, Oklahoman

Tue, October 11, 2022 at 10:08 AM · 3 min read



The U.S. Supreme Court on Tuesday rejected [Oklahoma's attempt to narrow the definition of "Indian"](#) in criminal cases as it sought to reclaim more jurisdiction in the wake of the McGirt case.

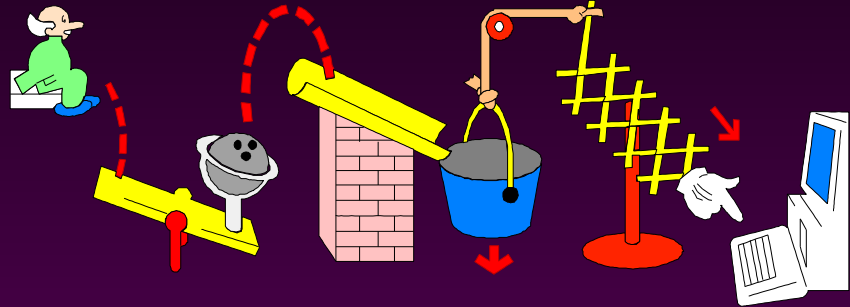
Without comment, justices declined to review the state's appeals in the cases of Robert Eric Wadkins and Emmitt Sam. In both cases, the state of Oklahoma wanted the high court to rule that the men should not have been deemed Indians because they were not members of a tribe when their crimes were committed.

Instead, the Supreme Court on Tuesday let stand the rulings by the Oklahoma Court of Criminal Appeals that the men proved their Indian blood and tribal connections through means other than official tribal membership.

The state court convictions of Wadkins and Sam were among many overturned since the [2020 decision in McGirt v. Oklahoma](#) led to the affirmation of six Indian reservations in Oklahoma. Now, most of eastern Oklahoma is Indian country, where federal law grants criminal jurisdiction to U.S. attorneys and tribal prosecutors in cases involving Native Americans.

Jurisdictional Basis for Indian Country Crimes

- ❖ Status of the Land
- ❖ Status of the Crime
 - ▶ Misdemeanor vs. Felony
- ❖ Status of the Person (Indian or Non-Indian)
 - ▶ As a defendant
 - ▶ As a victim



Tribal Jurisdiction in Indian Country in 1978

ONLY OVER INDIANS ONLY MISDEMEANORS



Tribe has no jurisdiction over crimes committed by non-Indians against Indians without the express consent of Congress. *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

Tribal Jurisdiction in Indian Country **NOW**

MISDEMEANORS & FELONIES BY INDIANS

- ❖ Indian Victimless Crimes
- ❖ Indian vs. Non-Indian Crimes
- ❖ Indian vs. Indian Crimes



Offenses in Tribal or CFR Code

Tribes Once Limited to Misdemeanor Penalties, now

Up to 3 years under the Tribal Law & Order Act

Tribal Jurisdiction in Indian Country **NOW**

MISDEMEANORS & FELONIES BY NON- INDIANS under VAWA 2013



- ❖ Domestic Violence Crimes
- ❖ Dating Violence Crimes
- ❖ Violation of Qualifying Protection Order Crimes

**“VAWA” – The Violence Against Women Act:
“affirmed tribal inherent authority to exercise
criminal jurisdiction over non-Indians”**

Tribal Jurisdiction in Indian Country

VAWA 2013 - Tribal Jurisdiction over non-Indians:

Amended the Indian Civil Rights Act (25 USC 1304) to recognize a tribe's inherent criminal jurisdiction over non-Indians for the crimes of:

- **Domestic Violence.**
- **Dating Violence.**
- **Criminal Violations of a Qualifying Protection Order.**
 - ✓ **The crime must occur within the tribe's Indian country;**
 - ✓ **The victim must be an Indian; and**
 - ✓ **The defendant must have sufficient ties to the community.**

Requires tribes to provide certain due process protections for non-Indian defendants.

- **Indigent defense counsel**
- **Non-Indians in jury pools, etc.**

Tribal Jurisdiction in Indian Country

VAWA 2022 - Tribal Jurisdiction over non-Indians:

After Oct. 1, 2022, adds recognition of a tribe's inherent criminal jurisdiction over non-Indians for:

- **Child violence**
- **Sexual violence**
- **Stalking**
- **Sex trafficking**
- **Assaults of tribal justice personnel**
- **Obstruction of justice**
 - ✓ **The crime must still occur within the tribe's Indian country;**
 - ✓ **The victim must be an Indian for most but not all crimes; and**
 - ✓ **The defendant's ties to the community are no longer a condition of tribal jurisdiction.**

Adds a requirement that tribes must provide notice in writing of federal habeas rights.

Tribal Jurisdiction in Indian Country

Specifically, the amendments to 25 USC 1304 will add categories of conduct that can be prosecuted in tribal court:

- **domestic violence (2013)**
- **dating violence (2013)**
- **protection order violations (2013)**
- **sexual violence (2022)**
- **stalking (2022)**
- **sex trafficking (2022)**
- **child violence (2022)**
- **obstruction of justice (2022)**
- **assaults against justice personnel (2022)**

Collectively these are referred to as “covered crimes.”

Tribal Jurisdiction in Indian Country

The amendments to 25 USC 1304 will also:

- **amend the definitions of “domestic violence” and “dating violence” to give additional deference to how these terms may be defined in tribal law.**
- **These changes remove the “violence committed” language that had left tribes unable to prosecute domestic violence crimes that were not sufficiently “violent.”**

Domestic Violence.—The term ‘domestic violence’ means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that is violence committed by—

- (A) a current or former spouse or intimate partner of the victim; by
- (B) a person with whom the victim shares a child in common; by
- (C) a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner; or by
- (D) a person similarly situated to a spouse of the victim under the domestic- or family-violence laws of an Indian tribe that has jurisdiction over the Indian country where the violation occurs.

State Jurisdiction in Indian Country



WHEN THERE IS NO “INDIAN” INVOLVED

“The McBratney Exception”

- ❖ Non-Indian vs. Non-Indian Crime of any type
 - ▶ U.S. v. McBratney - 1881 U.S. Supreme Court Case
- ❖ Non-Indian Victimless Crime

State Jurisdiction in Indian Country

In 1953 some states obtained Criminal & Civil jurisdiction through Public Law 280 – (CA, MN, NB, OR and WI and others later)

❖ Statement of President Eisenhower on Signing PL-280 in 1953

“My objection to the bill arises because of the inclusion in it of Sections 6 and 7. These Sections permit other states to impose on Indian tribes within their borders, the criminal and civil jurisdiction of the state, removing the Indians from Federal jurisdiction, and, in some instances, effective self-government. ***The failure to include in these provisions a requirement of full consultation in order to ascertain the wishes and desires of the Indians and of final Federal approval, was unfortunate. I recommend, therefore, that at the earliest possible time in the next session of the Congress, the Act be amended to require such consultation with the tribes prior to the enactment of legislation*** subjecting them to state jurisdiction, as well as approval by the Federal government before such legislation becomes effective.”

State Jurisdiction in Indian Country

After 1968, A State can obtain this jurisdiction through Public Law 280, but tribal consent is required by a special election

❖ **25 U.S.C. § 1326. Special election**

State jurisdiction acquired pursuant to this subchapter with respect to criminal offenses or civil causes of action, or with respect to both, ***shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction*** by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 per centum of such enrolled adults.

State Jurisdiction in Indian Country

It was thought that the state exercise of jurisdiction in *Non-Indian v. Indian Crime* did not apply – Unless Congress Acted

Every state court to address this issue, came to the same conclusion...

Federal Jurisdiction in Non-Indian v. Indian crime was exclusive

Concurrent state jurisdiction has, moreover, been rejected by the appellate courts of four states with substantial expenses of Indian country within their borders. *See State v. Larson*, 455 N.W.2d 600 (S. Ct. S.D. 1990); *State v. Flint*, 157 Ariz. 227, 756 P.2d 324 (Ct.App. Az. 1988), *cert. denied*, 492 U.S. 911 (1989); *State v. Greenwalt*, 204 Mont. 196, 663 P.2d 1178 (S. Ct. Mont. 1983); *State v. Kuntz*, 66 N.W.2d 531 (S. Ct. N.D. 1954).

Roth v. State

2021 OK CR 27 9/16/2021

The State of Oklahoma does not have jurisdiction to prosecute Appellant in this matter.¹ We herein reject the State's concurrent jurisdiction argument.² Federal law broadly preempts state criminal jurisdiction over crimes committed by, or against, Indians in Indian Country. 18 U.S.C. §§ 1151-1153. Title 18 U.S.C. § 1152, the Indian Country Crimes Act, specifically governs Appellant's case. Under Section 1152, the United States has jurisdiction in Indian Country over crimes that non-Indians commit against Indians. *McGirt*, 140 S. Ct. at 2479; *Williams v. United States*, 327 U.S. 711, 714 & n.10 (1946). Section 1152 "extends the general criminal laws of federal maritime and enclave jurisdiction to Indian country, except for those offenses committed by one Indian against the person or property of another Indian." *Negonsott v. Samuels*, 507 U.S. 99, 102 (1993) (internal quotation omitted).



Non-Indian v. Indian Crime

Significant Change under Oklahoma v. Castro – Huerta, U.S. Supreme Ct., Slip Op. 21–429, June 29, 2022

McBratney was extended to Non-Indian v. Indian crimes.

Despite no congressional enactment, such as PL-280 or other act permitting such jurisdiction, the U.S. Supreme Court the court found concurrent state jurisdiction existed over non-Indian v. Indian crimes, along with the federal government

Held: The Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. Pp. 4–25.

(a) The jurisdictional dispute in this case arises because Oklahoma’s territory includes Indian country. In the early Republic, the Federal Government sometimes treated Indian country as separate from state territory. See *Worcester v. Georgia*, 6 Pet. 515. But that view has long since been abandoned. *Organized Village of Kake v. Egan*, 369 U. S. 60, 72. And the Court has specifically held that States have jurisdiction to prosecute crimes committed by non-Indians against non-Indians in Indian country. *United States v. McBratney*, 104 U. S. 621; see

Non-Indian v. Indian Crimes

are now concurrent Federal & State Jurisdiction



(c) This Court has long held that Indian country is part of a State, not separate from it. Under the Constitution, States have jurisdiction to prosecute crimes within their territory except when preempted by federal law or by principles of tribal self-government. The default is that States have criminal jurisdiction in Indian country unless that jurisdiction is preempted. And that jurisdiction has not been preempted here. Pp. 21–25.

Oklahoma v. Castro – Huerta, U.S. Supreme Ct., Slip Op. 21–429, June 29, 2022



MEMORANDUM

To: All Oklahoma Law Enforcement Agencies
From: Oklahoma Office of the Attorney General
Date: July 22, 2022
Re: Guidance for Oklahoma law enforcement following *Oklahoma v. Castro-Huerta*

On June 29, 2022, the U.S. Supreme Court held, in relevant part, that Oklahoma has jurisdiction over all non-Indian criminal defendants within its borders, including any land that may constitute Indian country. *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486 (2022). This memorandum is intended to provide guidance to law enforcement in light of the recent decision. This memorandum is a working document and will periodically be updated after further consultation with law enforcement.

First, all Oklahoma district attorneys and law enforcement agencies should resume pursuing state prosecutions of non-Indian offenders throughout Oklahoma, regardless of whether the location is considered Indian country. The race or ethnicity of the victim is no longer relevant to whether the State can prosecute a crime; we can now protect Oklahoma victims on a much more equal basis. Moreover, law enforcement officers should give their respective district attorneys the option to prosecute any non-Indian criminal defendants first, before any such case is referred to the federal government for prosecution.

Second, all Oklahoma district attorneys and law enforcement agencies should consider resuming prosecution of cases that the federal government declined or did not prosecute successfully. Specifically, district attorneys should contact and coordinate with all law enforcement agencies within their jurisdiction to obtain records of any non-Indian defendants who were referred to the federal government but not prosecuted. Law enforcement officers should also notify district attorneys of any non-Indian defendants who were referred to the federal government but not prosecuted.

Third, all Oklahoma district attorneys and law enforcement agencies should apply these guidelines on all land in Oklahoma, including any land considered as Indian country in this context and any restricted allotments. There is no longer any land within Oklahoma where a non-Indian defendant can escape justice.

The Attorney General's office recognizes that Oklahoma law enforcement is dedicated to protection of our citizens and has already been implementing some of these changes. If any law enforcement agency requires additional assistance in locating victims and pursuing charges in cases that were previously not prosecuted during the past two years, our office would be glad to help where needed. Law enforcement officials and agencies with inquiries should contact Chief Agent Brett Macy (brett.macy@oag.ok.gov), and district attorneys should contact Deputy Solicitor General Bryan Cleveland (bryan.cleveland@oag.ok.gov).

How are federal prosecutors even going to know about non-Indian v. Indian crimes?



MEMORANDUM

To: All Oklahoma Law Enforcement Agencies
From: Oklahoma Office of the Attorney General
Date: July 22, 2022
Re: Guidance for Oklahoma law enforcement following *Oklahoma v. Castro-Huerta*

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What about tribal prosecution under VAWA 2022? No mention at all of that...

Castro-Huerta & Civil Jurisdiction?

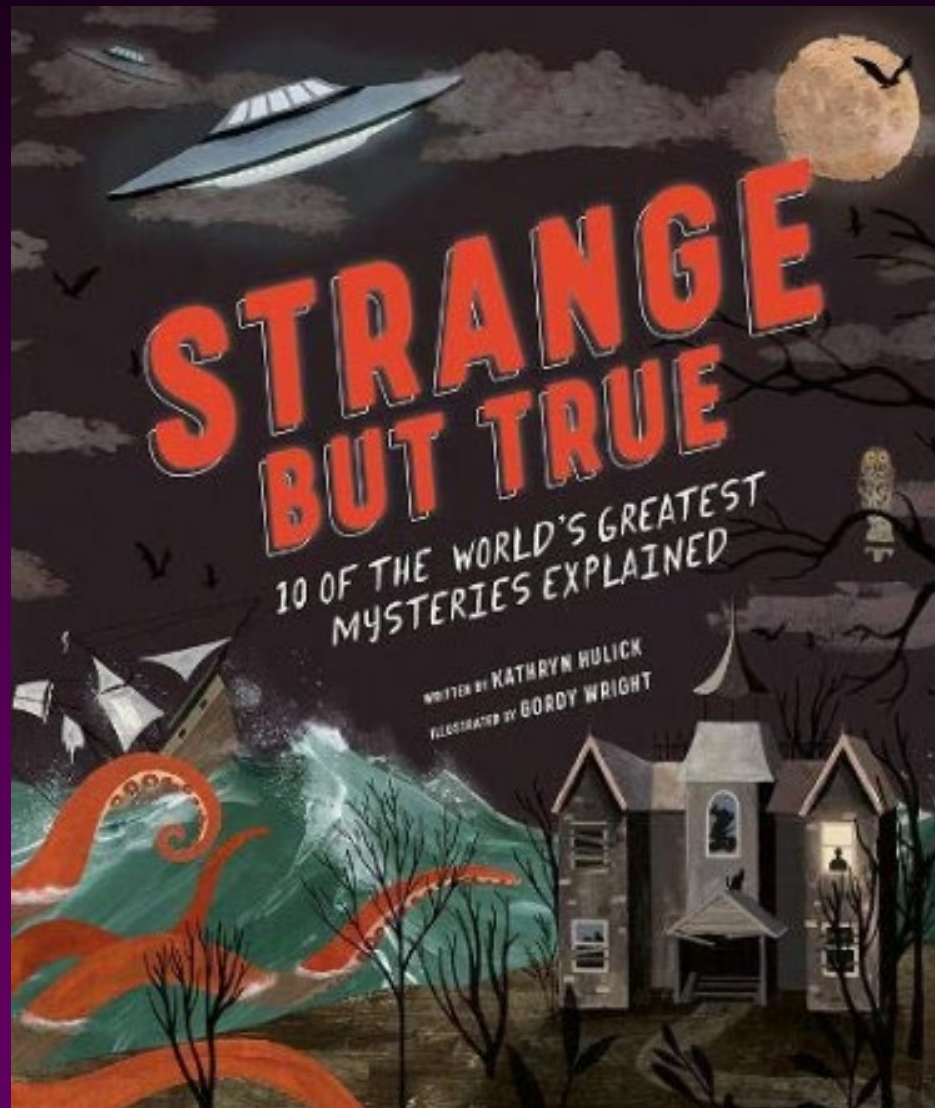


(Illustration by Street Roots/istock/jalippo/ NSA Digital Archive/ BrianPlrwin)

The Castro-Huerta ruling: A concerning attempt to limit tribal sovereignty

Tribes fear the Supreme Court decision will hamper the ability to protect their citizens.

Questionable Assertions of State Jurisdiction



“Section 14 of the Curtis Act gives Tulsa subject matter jurisdiction over all inhabitants, without regard to race...”

MUNICIPAL COURT
Conclusion

IN THE MUNICIPAL COURT OF THE CITY OF TULSA, OKLAHOMA

CITY OF TULSA,
a municipal corporation,

Plaintiff

vs.

JUSTIN SLADE HOOPER,

Defendant

MEMORANDUM

Before the Court is Defendant's Application for Post-Conviction Relief. Further, the Court has conducted a hearing on the Defendant's Application for Post-Conviction Relief. The City of Tulsa and the Defendant presented evidence (via video) at the hearing. The Court has reviewed the evidence and the transcript of the hearing. The Court finds that the City of Tulsa and the Defendant have not met their burden of proof to establish that the Defendant is entitled to Post-Conviction Relief. Therefore, the Court denies the Defendant's Application for Post-Conviction Relief.

For the reasons set forth above, this Court finds that Section 14 of the Curtis Act provides the City of Tulsa subject matter jurisdiction over all inhabitants, without regard to race, including Native Americans, alleged to have committed ordinance violations within the corporate city limits of the City of Tulsa and within the boundaries of the Muscogee (Creek) Nation Reservation. Accordingly, the Defendant's Application is *Denied*.

As this Court has previously stated, nothing in this opinion should be read to condone the wretched history of the treatment of Native Americans by the United States government. In the darkness of such treatment, there appeared to be a glimmer of hope in Section 14 of the Curtis Act - the idea that all people would be treated the same way under similar circumstances, without regard to race. For when a government does not apply the law to all citizens without regard to race or even gives the appearance that it does not apply the law to all citizens without regard to race, then the government at a minimum creates disenfranchised citizens or at the most violates constitutional rights, eroding public trust.

12

Case 4:21-cv-00165-WPJ-JFJ Document 1-1 Filed in USDC ND/OK on 04/09/21 Page 13 of 14

Curtis Act's Purported Municipal Grant of "Super Jurisdiction" ends up in Federal Court in the NDOK

The City contends that its authority to prosecute Indians for crimes committed within its borders derives from the remnants of the Curtis Act, specifically Section 14. However, that would be a power delegated to it by the federal government that was not delegated to the state. Further, it would give municipalities jurisdiction over matters that are outside the scope of the authority granted to the state – the political entity from which the City's authority flows. This construct ignores the fact that a municipal corporation is a political subdivision of the state, not the federal government.

It appears to be a well-established rule that a municipal corporation is but a political subdivision of the state, exists by virtue of the exercise of the power of the state through its legislative department, and that such municipalities have no power except as delegated by the sovereign. Such corporations being mere creatures of the state, their powers may be enlarged, modified, or diminished by the state without their consent, and the distinction between a municipality as an agent of the state for governmental purposes, and as an organization to administer local needs in a business or proprietary capacity, afford no ground for the

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State of New Jersey, 262 U.S. 182, 43 S. Ct. 534, 67 L. Ed. 937, 29 A.L.R. 1471; *Pawhuska v. Pawhuska Oil & Gas Co.*, 250 U.S. 394, 39 S. Ct. 526, 63 L. Ed. 1054; *Laramie County v. Albany County*, 92 U.S. 307, 25 L. Ed. 552; *Hunter v. City of Pittsburg*, 207 U.S. 161, 28 S. Ct. 40, 52 L. Ed. 151; *City of Sapulpa v. Okl. Natural Gas Co.*, 258 U.S. 608, 42 S. Ct. 316, 66 L. Ed. 788.

Tulsa v. Okla. Nat. Gas Co., 4 F.2d 399, 403 (E.D. Okla. 1925).

The City contends that through the Enabling Acts and the adoption of the Oklahoma Constitution, the municipalities remained vested with the authority granted to them by the Curtis Act. However, this legal fiction simply does not line up with the current legal landscape. Aside

Excerpt from Brief in Opposition to Tulsa's "Super Jurisdiction"

EDITOR'S PICK TOPICAL

City can still issue traffic citations to Native citizens despite McGirt, federal judge rules

Curtis Killman Apr 17, 2022 Updated May 29, 2022 0



NDOK: “The Curtis Act Grants the municipalities... jurisdiction... (over) any inhabitant..., including Indians”

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUSTIN HOOPER,
Plaintiff/Appellant,

v.

THE CITY OF TULSA,
Defendant/Appellee.

**MEMORANDUM OPINION AND OR
DIS**


THIS MATTER comes before the Court on Plaintiff's Complaint and Brief in Support of Plaintiff's Motion for Summary Judgment. Pursuant to the applicable law, the Court **GRANTS** it as to Count II (declaratory judgment) moot.

D. Conclusion

Plaintiff requested declaratory judgment “finding that the Curtis Act confers no jurisdiction to municipalities located within the boundaries of a reservation and any judgment rendered by such municipalities against an Indian would have been made without subject matter jurisdiction and is therefore void.” Doc. 1-1 at 5–6. Defendant moves to dismiss this request. Doc. 6. The Court **GRANTS** the motion to dismiss this request for declaratory judgment and finds for the above reasons that the Curtis Act grants the municipalities in its scope jurisdiction over violations of municipal ordinances by any inhabitant of those municipalities, including Indians.

Accordingly, Plaintiff's appeal of the decision denying postconviction relief for his speeding ticket fine (Count I of the Complaint) is **MOOT**.

IT IS SO ORDERED.


WILLIAM P JOHNSON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

JUSTIN HOOPER,
Plaintiff/Appellant,

v.

THE CITY OF TULSA,
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**MEMORANDUM OPINION AND OR
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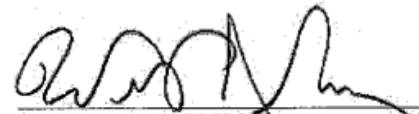
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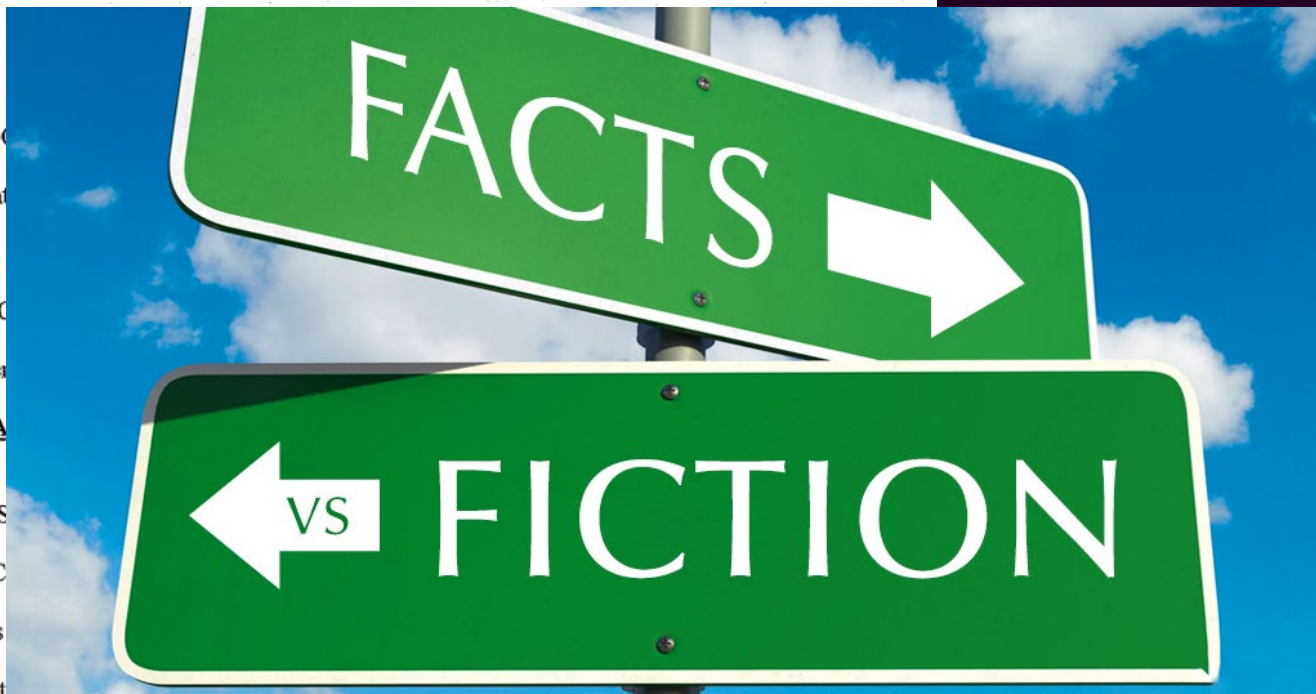
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On appeal to the 10th Circuit, May 2, 2022, No. 22-5037

IN THE MUNICIPAL CRIMINAL COURT OF THE CITY OF TULSA
TULSA COUNTY, STATE OF OKLAHOMA

CITY OF TULSA,
a municipal corporation,

Plaintiff,

vs.

SAMANTHA SHAFFER,

Defend:

Case No. 6108204

Judge Mitchell McCune

MEMO

Before the Court is Defendant's Motion for Subject Matter Jurisdiction (hereinafter "Motion") filed on December 1, 2020. The Defendant filed her Reply to the Motion on December 1, 2020. The Defendant filed its Surreply on December 1, 2020. At the hearing, the City of Tulsa presented its argument. I find, for the reasons set f

The City of Tulsa was incorporated under the provisions of the Curtis Act. After incorporating, the City of Tulsa has repeatedly passed and enforced ordinances. And, pursuant to the Curtis Act, the City of Tulsa has had subject matter jurisdiction to hear violations of its ordinances since 1898.

Following the passage of the Curtis Act, on March 1, 1901, the U.S. Congress passed "An Act to Ratify and Confirm an Agreement with the Muscogee or Creek Tribe of Indians, and for Other Purposes," 31 Stat. 861, § 41 (1901) (hereinafter "Creek Agreement"). Notably, the Creek Agreement expressly provided for the preservation of Section 14 of the Curtis Act. It states:

41. The provisions of section thirteen of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled "An Act for the Protection of the people of the Indian Territory, and for other purposes," shall not apply to or in any manner affect the lands or other property of said tribe, or be in force in Creek Nation, and no Act of Congress or treaty provision inconsistent with this agreement shall be in full force in said nation, **except section fourteen of said last-mentioned Act, which shall continue in force as if this agreement had not been made.** (Empahsis added.)

TUESDAY JANU 18th 1898.

Now on this 18th day of January 1898 in open Court came E. Calkins agent of the town of Tulsa heretofore duly appointed as such by this Court and filed the proof of publication of the order for notice heretofore made herein, and the petition of citizens and qualified voters of the town of Tulsa heretofore filed herein on December 15th 1897 coming on to be heard in accordance with orders heretofore made herein and the Court being satisfied as to publication of notice and that said petition is in good form and according to law it is by the court considered ordered and adjudged that said petition be granted and it is ordered that the incorporated town of Tulsa as named and described in said petition may be organized and now in open court the following agreement viz:

The within petition being duly presented in open court on the 18th day of January 1898 the time heretofore fixed by this court for the hearing thereon together with the proof of publication of notice as required by law and the court being satisfied after hearing said petition that at least twenty qualified voters reside within the limits described by said petition and that said petition has been signed by them and that said limits have been accurately described and an accurate map thereof made and filed and that the names proposed for said town is proper and sufficient to distinguish it from others of like kind in this territory and it is moreover deemed right and proper in the judgement and discretion of the court that said petition shall be granted, and it is therefore considered ordered and adjudged that the said petition be granted. And it is ordered that the incorporated town of Tulsa as named and described in said petition may be organized and it is further ordered that

Clerk's Certificate

this order by signed by the judge of this Court as such and delivered together with the within petition and map of said town to the Clerk of this Court by him to be recorded, preserved and certified as required by law.

Given under my hand this 18th day of January 1898.

Wm M. Springer, Judge.

Is made upon the said petition and duly signed by the Court and said petition together with the map of said town was delivered to the Clerk of this Court as the Recorder for the Northern District Ind.Ter.

Wm. M. Springer, Judge.

Filed for record in Common Record U. S. Court Northern District 11 T. Muskogee Record #10. Page #522


Tulsa was first organized January 18, 1898, 6 months before the Curtis Act was even passed, on June 28, 1898...

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On **January 18, 1898**, Tulsa was officially incorporated and elected Edward Calkins as the city's first mayor. Tulsa was still a micro town near the banks of the Arkansas River in 1901 when its first oil well, named Sue Bland No. 1, was established.

https://en.wikipedia.org/wiki/Tulsa,_Oklahoma

Tulsa, Oklahoma - Wikipedia 



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Despite opposition from the Chickasaws, Congress incorporated the Atoka Agreement into the Curtis Act, which passed on **June 28, 1898**. This act authorized the federal government to allot Chickasaw lands even though the tribe owned those lands.



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PROCLAMATION.

TO ALL WHOM IT MAY CONCERN:--

WHEREAS, it has been certified to me by the Corporate Authorities of the City of Tulsa, County of Tulsa, State of Oklahoma, that on the 22nd day of May, A.D. 1907, four suitable persons, to-wit: V. I. Shurtliff, Jacob Miran, W. P. Hall and J. E. Piersol, special census enumerators, duly appointed and authorized by the City Council of the said City of Tulsa, ascertained the population of said City to be in excess of twenty-five hundred inhabitants, all of which appears from the records on file in my office in the City of Guthrie, State of Oklahoma, and it further appearing that said

NOW, THEREFORE, I, C. N. Haskell, Governor of the State of Oklahoma, by virtue of authority vested in me by the laws of said state, do hereby DECLARE and PROCLAIM the said community of people in the City of Tulsa, in the County of Tulsa, State of Oklahoma, to be a city of the FIRST CLASS, under the name and

of the State to be hereunto affixed this twenty-seventh day of ,
December, A.D. nineteen hundred and seven.

(Signed) C. N. HASKELL.
Governor of the State of
Oklahoma.

ATTEST:

(Signed) HILL CROSS.
Secretary of State.

STATE SEAL.

Tulsa was later organized under **State of Oklahoma law** on
December 27, 1907

Tenth Circuit Court upholds tribal sovereignty in Hooper v. Tulsa

2 NEWS OKLAHOMA

REACTION TO HOOPER V. TULSA DECISION

"...the 10th Circuit upheld tribal sovereignty and settled federal law - reaffirming that states and municipalities do not have criminal jurisdiction over Indians in Indian country."

PRINCIPAL CHIEF CHUCK HOSKIN, JR.
CHEROKEE NATION

The graphic features a dark background with a portrait of Principal Chief Chuck Hoskin, Jr. of the Cherokee Nation. A blue and white circular graphic element is overlaid on the image.

It's about time to watch on your time.
Streaming local news 24/7.

2 NEWS OKLAHOMA | Search KJRH 2 on your device.
Roku firetv Apple TV androidtv

Watch 2 News Live 24/7

ADVERTISMENT

The advertisement shows a person's hands holding a tablet. A clock icon is positioned above the text. The 2 News Oklahoma logo is in the bottom left corner.



By: Braden Bates

Posted at 4:30 PM, Jun 28, 2023 and last updated 7:19 AM, Jun 29, 2023

TULSA, Okla. — The Tenth Circuit Court of Appeals reverses the district of Tulsa's ruling on the [Hooper v. The City of Tulsa](#) case Wednesday.



WHAT ARE THE TYPES OF
FEDERAL CRIMES THAT APPLY
TO INDIAN COUNTRY?



Federal Prosecution Because of the Location of the Offense

Major Crimes Act, 18 U.S.C. § 1153

Crimes by Indians against Indians or Non-Indians

General Crimes Act, 18 U.S.C. § 1152

Crimes by Indians against non-Indians

Crimes by Non-Indians against Indians

Major Crimes Act, 18 U.S.C. § 1153

❖ (a) Any **Indian** who commits against the person or property of **another Indian or other person** any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under Section 661 of this title within the Indian country, 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.

❖ (b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.

General Crimes Act, 18 U.S.C. § 1152,

Sometimes called the “Indian Country Crimes Act”

❖ Except 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, except the District of Columbia, shall extend to the Indian country.

❖ This section **shall not extend** to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively.

❖ Indian Country **Federal** Crimes Fall into two categories:

★ Crimes Occurring on Federal or Indian Lands

Federal Prosecution Because of the Location of the Offense, 1152 & 1153

★ Other Federal Crimes of General Applicability

Federal Prosecution Because of the Crossing of a State Line/Indian Country Boundary or Because of Interstate Commerce Nexus

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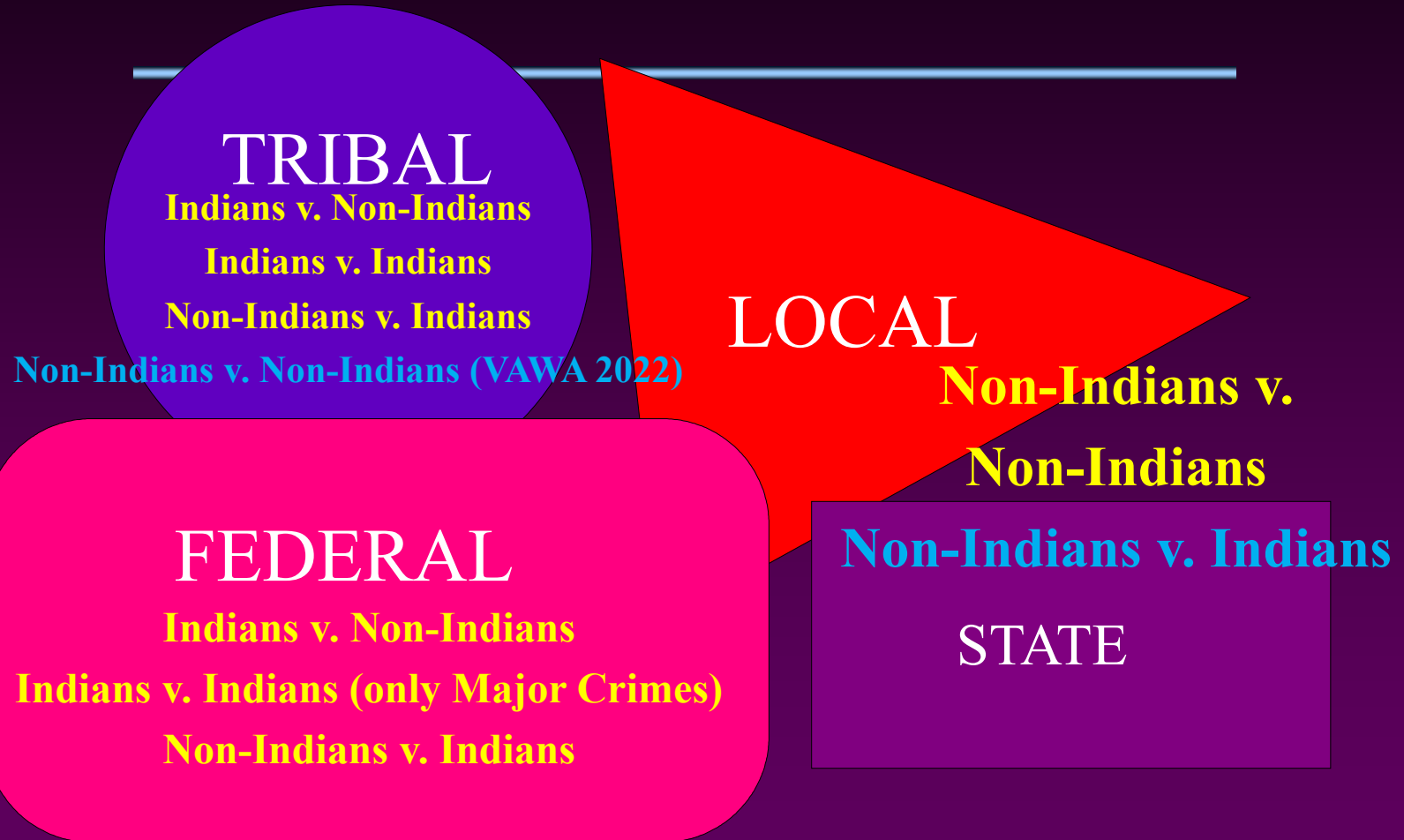
- **Habitual Domestic Violence, 18 U.S.C. § 117**
- **Failure to Register as Sex Offender, 18 U.S.C. § 2250**
- **Unauthorized Hunting & Fishing, 18 U.S.C. § 117**

❖ Indian Country **Federal** Crimes Fall into two categories:

★ Other Federal Crimes of General Applicability

Gun Crimes, Drug Crimes, Violence Against Women Act – Interstate Crimes, Interstate Kidnapping, Theft of Tribal or Government property, etc.

Prosecution of **Victim** Crimes



Prosecution of Victimless Crimes

TRIBAL
Indians

LOCAL

Non- Indians

FEDERAL
Indians

STATE

CROSS
DEPUTIZATION
IS AN EASY
SOLUTION TO
JURISDICTIONAL
COMPLEXITIES



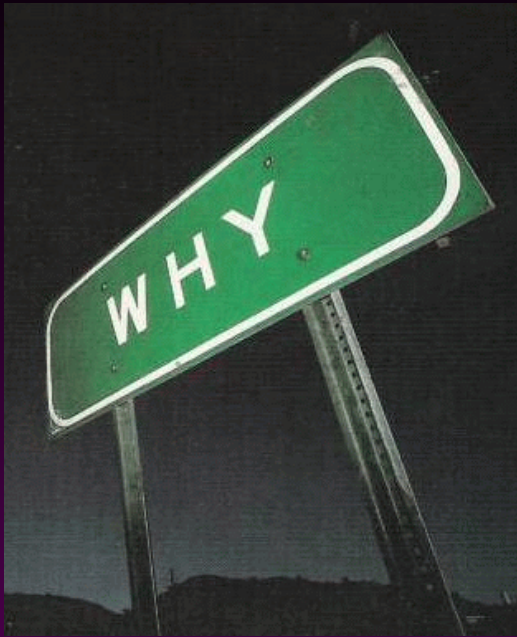
Indian Law Enforcement
Reform Act of 1990;

25 United States Code, Sec. 2801 – 2809

LAW ENFORCEMENT AUTHORITY SOURCES IN INDIAN COUNTRY CASES

State Officer	Tribal Officer	Federal Officer
X State Authority	State Authority * <ul style="list-style-type: none"> • “Peace Officer” on Indian Country or tribal fee land if have CLEET & SLEC under 21 O.S. § 99a 	State Authority * “Peace Officer” within Oklahoma in rendering assistance to any law enforcement officer in an emergency or to assist in an arrest under 21 O.S. § 99
Tribal Authority * Tribal Cross Dep. or * Federal Cross Dep. with SLEC w/tribal authority addendum	X Tribal Authority	Tribal Authority * Tribal Cross Dep.
Federal Authority *Federal Cross Dep. with SLEC	Federal Authority * Federal Cross Dep. With SLEC	X Federal Authority

* Applicable under 5 circumstances (21 O.S. § 99a (A) (1 – 5)) (emergency involving threat to life or property, with prior consent of head of state law enforcement agency, in response to a request for assistance under a mutual assistance agreement, in response to a request by another state peace officer, or while peace officer is transporting prisoner.



Cross deputization gives officers in the field authority under state, tribal, and in many cases, federal law so that officers can respond to a crime and not have to worry about identifying land boundaries and verifying the citizen status of individuals at the crime scene as to whether they are Indian or non-Indian

❖ Cross Deputization is a “Force Multiplier” that Benefits Public Safety:



❖ 1. Allows more authorized police officers to respond to a crime scene quickly, where resources are stretched thin, or where response times are long due to distance.



❖ 2. Provides officers legal authority at a location, such as Indian country, when outside their normal jurisdiction.

❖ *A state officer may be granted tribal and federal authority*

❖ *A tribal officer may be granted state and federal authority*

❖ *A federal officer may be granted state and tribal authority*

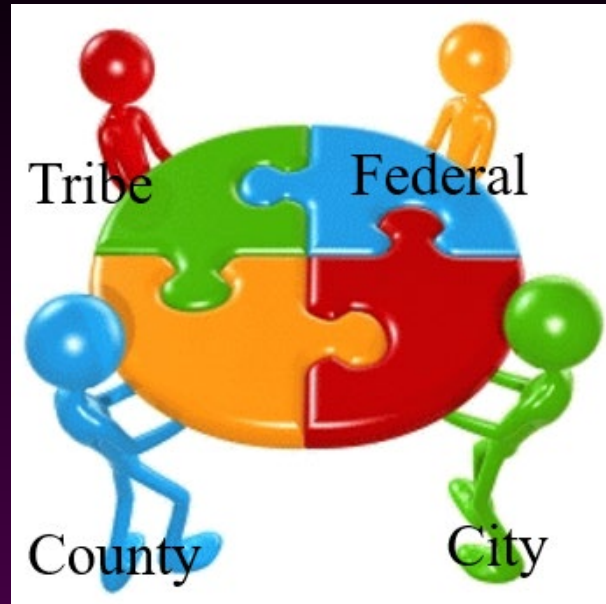
❖ 3. Prevents officers from having to immediately determine jurisdiction from land status and the status of persons as to whether they are Indian or non-Indian.



❖ 4. Protects evidence collection from challenge in areas where Indian country lands are intermingled between municipal, state, tribal and federal jurisdictional areas.



❖ 5. Does not involve extra cost or expense for a police department, sheriff's office, or law enforcement agency.



An SLEC permits the holder to enforce federal law within Indian country. In some cases, if the tribe so authorizes, it will also allow a holder to enforce tribal law in Indian country. Cross deputization has worked successfully around the nation and in Oklahoma in some areas for many decades.

Cross deputization by Indian tribes directly with state and local entities is also possible for the enforcement of tribal law, but involves a different process depending upon the tribal nation involved.



Cross deputization only affects the authority of an **INDIVIDUAL OFFICER**,

it does not change jurisdiction or alter which government ultimately has jurisdiction or prosecution authority



State
State
State &
Fed &
Fed
Tribal

In other words, a cross deputized officer can have authority to act as an officer under the state's law, the tribe's law, and the federal government's law

SLEC OFFICER QUALIFICATIONS

- * complete and submit a written application to BIA
 - * provide a background investigation
 - * provide fingerprints to the FBI & obtain clearance
 - * provide a passing firearms course qualification
 - * verify police academy certification
 - * verify status as full time peace officer
 - * confirm no prior misdemeanor domestic violence convictions
nor be subject to a court order prohibiting firearms
possession
 - * Sign BIA Code of Conduct and Ethics documentation
 - * Provide a valid state drivers license and educational diploma
proof
 - * take a 3 day course on “Criminal Justice in Indian Country” or
“CJIC” on federal jurisdiction, law, and procedure and
obtain a passing grade on a written exam
-

INDIAN COUNTRY CRIMINAL JURISDICTIONAL CHART

for crimes committed within Indian country as defined by 18 U.S.C. § 1151(a), (b) & (c) -

- (a) **formal** [recognized reservation boundaries] & **informal** [tribal trust lands] **reservations** (including rights-of-way/roads),
 (b) **dependent Indian communities**, & (c) **Indian allotments held in trust or restricted status** (including rights-of-way/roads).
 (applies where no U.S. Congressional grant of jurisdiction to the state/municipal government over the Indian country involved exists)

INDIAN OFFENDER :

1. VICTIM CRIMES: FOR OFFENSES AGAINST A PERSON OR A PERSON'S PROPERTY (not a tribal govt.)

WHO IS THE VICTIM?	WHAT WAS THE CRIME?	JURISDICTION
INDIAN (enrolled or recognized as an Indian by a federally recognized tribe or the federal government <u>and</u> possessing some degree of Indian blood)	Major Crimes Act Crimes: murder; manslaughter; kidnapping; maiming; sexual abuse/assault under Ch. 109-A; <u>incest</u> ; assault with intent to commit murder or in violation of 18 U.S.C. § 2241 or §2242; assault with intent to commit any felony; assault with a dangerous weapon with intent to do bodily harm; assault resulting in serious bodily injury as defined in 18 U.S.C. § 1365; assault resulting in substantial bodily injury of a spouse, intimate partner or dating partner, or on a person under 16 years old; assault of a spouse, intimate partner or dating partner by strangulation; <u>felony child abuse</u> or neglect; arson; <u>burglary</u> ; robbery; felony theft under 18 U.S.C. § 661. (Authority: Major Crimes Act - 18 U.S.C. § 1153) (underlined: assimilated state offense- 18 U.S.C. § 13)	FEDERAL #
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if a CFR Court of Indian Offenses)	TRIBAL *
NON-INDIAN	Major Crimes Act Crimes: murder; manslaughter; kidnapping; maiming; sexual abuse/assault under Ch. 109-A; <u>incest</u> ; assault with intent to commit murder or in violation of 18 U.S.C. § 2241 or §2242; assault with intent to commit any felony; assault with a dangerous weapon; assault resulting in serious bodily injury; assault resulting in substantial bodily injury of a spouse, intimate partner or dating partner, or on a person under 16 years old; assault of a spouse, intimate partner or dating partner by strangulation; <u>felony child abuse</u> or neglect; arson; <u>burglary</u> ; robbery; felony theft under 18 U.S.C. § 661. (Authority: Major Crimes Act - 18 U.S.C. § 1153) (underlined: assimilated state offense - 18 U.S.C. § 13)	FEDERAL #
	Federal Territorial Crimes: (unless the tribe has punished the Indian defendant) (Authority: General Crimes Act/Indian Country Crimes Act - 18 U.S.C. § 1152) including crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act: (18 U.S.C. § 13)	FEDERAL #
	All remaining crimes contained in tribal code: (Authority: tribal code or 25 CFR Pt. 11, if a CFR Court of Indian Offenses)	TRIBAL *

2. VICTIMLESS CRIMES: NO PERSON OR PERSON'S PROPERTY INVOLVED

(e.g., traffic violations w/ no injury/damage to a person or their property, disorderly conduct, prostitution, violation of court order, etc.)

a. Crimes in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act. (Authority: 18 U.S.C. §§ 1152 and 13)	FEDERAL #
b. Crimes in tribal code. (Authority: tribal code or 25 CFR Pt. 11, if CFR Court)	TRIBAL *

3. SPECIAL CRIMES APPLICABLE TO INDIAN COUNTRY (Indian or Non-Indian)

FEDERAL #

(Federal prosecution based on crime committed in Indian country)

(e.g., Habitual Domestic Violence, 18 U.S.C. § 117; Failure to Register as Sex Offender, 18 U.S.C. § 2250; Unauthorized Hunting/Fishing, 18 U.S.C. § 1165 [tribal trust land and allotments only]; and other statutes)

4. FEDERAL CRIMES GENERALLY APPLICABLE TO ANY PERSON NATIONWIDE

FEDERAL #

(Indian or Non-Indian) (Crime Affecting Interstate Commerce or a Federal Interest)

(Federal prosecution NOT based on territorial jurisdiction over location of crime)

(e.g., drug offenses, Violence Against Women Act (VAWA) offenses, firearm possession by prohibited person, tribal embezzlement, assault on a federal officer, theft from tribal casino, child porn., etc.) (Authority: individual federal statute)

NON-INDIAN OFFENDER:

1. VICTIM CRIMES: FOR OFFENSES AGAINST A PERSON OR PERSON'S PROPERTY (not a tribal govt.)

<i>WHO IS THE VICTIM?</i>	<i>WHAT WAS THE CRIME?</i>	<i>JURISDICTION</i>
INDIAN (enrolled or recognized as an Indian by a federally recognized tribe or the federal government and possessing some degree of Indian blood)	Federal Territorial Crimes: (Authority: General Crimes Act/Indian Country Crimes Act - 18 U.S.C. § 1152) including crimes contained in state code (where there is no federal statute for the category of offense) under the Assimilative Crimes Act: (18 U.S.C. §§13)	FEDERAL %
	Assaults of tribal justice personnel, child violence, dating violence, domestic violence, obstruction of justice, sexual violence, sex trafficking, stalking, and violation of a protection order (<i>Special Tribal Criminal Jurisdiction - "STCJ"</i>) (Authority: tribal code under 25 U.S.C. § 1304 – VAWA 2022) eff. 10/1/22	TRIBAL * ▲
	All crimes in state code. (Authority: <i>Oklahoma v. Castro-Huerta, No. 21-429 (U.S. Supr. Ct., 2022)</i>)	STATE
NON-INDIAN	All crimes in state code. (Authority: <i>U.S. v. McBramley, 104 U.S. 621 (1881)</i>)	STATE
	Assaults of tribal justice personnel or obstruction of justice (<i>Special Tribal Criminal Jurisdiction - "STCJ"</i>) (Authority: tribal code under 25 U.S.C. §1304 – VAWA 2022) eff. 10/1/22	TRIBAL * ▲

2. VICTIMLESS CRIMES: NO PERSON OR PERSON'S PROPERTY INVOLVED

(e.g., traffic violations w/ no injury/damage to a person or their property, disorderly conduct, prostitution, violation of court order, etc.)

STATE

3. SPECIAL CRIMES APPLICABLE TO INDIAN COUNTRY (Indian or Non-Indian)

(Federal prosecution based on crime committed in Indian country)

(e.g., Habitual Domestic Violence, 18 U.S.C. § 117; Failure to Register as Sex Offender, 18 U.S.C. § 2250; Unauthorized Hunting/Fishing, 18 U.S.C. § 1165 [tribal trust land and allotments only]; and other statutes)

FEDERAL #

4. FEDERAL CRIMES GENERALLY APPLICABLE TO ANY PERSON NATIONWIDE

(Indian or Non-Indian) (Crime Affecting Interstate Commerce or a Federal Interest)

(Federal prosecution NOT based on territorial jurisdiction over location of crime)

(e.g., drug offenses, Violence Against Women Act (VAWA) offenses, firearm possession by prohibited person, tribal embezzlement, assault on a federal officer, theft from tribal casino, child porn., etc.) (Authority: individual federal statute)

FEDERAL #

* A tribal court may be: 1) a tribal court established under tribal law; 2) or a "CFR" Court of Indian Offenses established under Title 25, Part 11, Code of Federal Regulations for a tribe without a court system; or 3) An Alaska Native Village Court with jurisdiction over Alaska Village land as defined by Section 812 (7) of VAWA 2022. 25 U.S.C. §1305

▲ Applicable in an Alaska village only if part of a designated U.S. Department of Justice "Pilot Project"

includes juveniles (under 18 YOA at time of the incident) prosecuted as delinquents under 18 U.S.C. § 5032, if the state lacks or refuses to assume jurisdiction or it is a felony crime of violence or specified offense listed in 18 U.S.C. § 5032 and there is a substantial Federal interest

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created by Arvo Q. Mikkanen, Assistant U.S. Attorney & Tribal Liaison,
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THANK YOU!

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