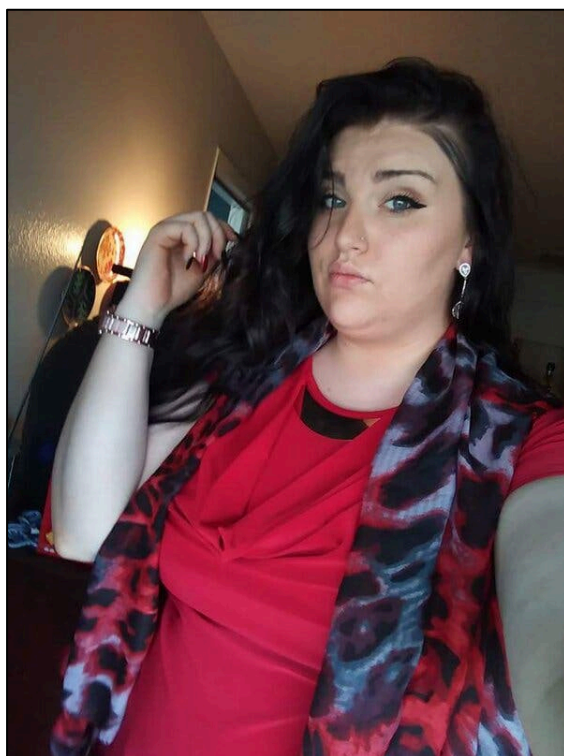


# The New York Times

## ***A Historic Supreme Court Ruling Upends Courts in Oklahoma***

*Local prosecutors are referring criminal cases to the federal and tribal courts, which are now flooded with new cases.*



*Kelsey Lipp, a member of the Cherokee Nation who was charged with murder and robbery, saw her legal case turned upside down by a landmark Supreme Court ruling that limited Oklahoma's ability to prosecute tribal citizens.*

By Jack Healy  
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TULSA, Okla. — Kelsey Lipp was sitting in jail, charged with robbery and murder, when her lawyer walked into court with three pieces of paper and a new plan to get her case thrown out.

The documentation he had looked sparse: A letter identifying Ms. Lipp as a citizen of the Cherokee Nation and grainy photocopies of her tribal identification card. But under a landmark Supreme Court decision last month declaring that a huge patch of Oklahoma sits on a Native American reservation, those papers now meant that the state could not prosecute Ms. Lipp or thousands of other tribal citizens like her.

“It’s a no-brainer,” her Tulsa County public defender, Jack Gordon, said.

The Supreme Court ruling recognizing the lands of the Muscogee (Creek) Nation was hailed as a historic win for tribes and their long struggle for sovereignty. On the ground, it has upended Oklahoma’s justice system, forcing lawyers and the police to rewrite the rules of whom they can and cannot prosecute inside the newly recognized

borders of a reservation that stretches across 11 counties and includes Tulsa, the state's second-largest city.

Prosecutors are giving police officers laminated index cards that spell out how to proceed depending on whether suspects and victims are "Indian" or "non-Indian."

"It's unprecedented," said R. Trent Shores, the United States attorney for the Northern District of Oklahoma in Tulsa.

Elected district attorneys handle most criminal cases in America, but they generally have little to no authority over tribal citizens for crimes committed on reservations. So now, from downtown Tulsa through rolling farms and dozens of small towns in eastern Oklahoma, local prosecutors are handing off hundreds of criminal cases involving tribal victims and defendants.

"My voice mail got filled up in two hours," said Stephen Lee, a criminal defense lawyer in Tulsa. "People with loved ones who are locked up, people with pending cases."

Local prosecutors are referring dozens of murders, robberies and sexual assaults to federal prosecutors, who have responsibility for major crimes on tribal lands. Lesser cases are being handed over to tribal courts, which can only hand down smaller fines and sentences of a year or less in most cases.

The flood of new cases is threatening to overwhelm the smaller rosters of judges, attorneys and victims' advocates in federal and tribal courts. There are just two judges on the Muscogee Nation's court, and tribal officials say they will need more money and staff to handle hundreds of additional cases.

The fatal shooting that led to Ms. Lipp's arrest began when a 25-year-old man was lured to her apartment in July 2018 on the promise he would get a kiss in exchange for \$100, investigators say. The victim, Dustin Barham, was robbed and shot, bleeding to death, prosecutors say. Ms. Lipp, her cousin and cousin's boyfriend have been charged in his killing.

Mr. Gordon, Ms. Lipp's lawyer, said Ms. Lipp denied any role in the murder, and hoped that moving the case from state court to federal court could lead to a plea deal or re-examination of what he called a flawed case against Ms. Lipp. "We're better off over there," he said.

Mr. Barham's mother, Andra, said she had already waited two years for justice for her dead son, whom she called a "good-hearted person," and worried that refiling the criminal case in federal court would add years of additional delays.

"We're looking at starting over," she said. "It's frustrating."

The Muscogee Nation established its court system in 1867, and tribal prosecutors and judges say their courtrooms are the best forums for Indigenous people to get justice and a fair hearing. "We understand these people are going back into our community," said Gregory Bigler, one of the Muscogee district judges.

But they are now confronting a thicket of complications: How will the tribal court in the small town of Okmulgee, home of the Muscogee (Creek) Nation's headquarters, handle cases when people are arrested an hour away in Tulsa for shoplifting or low-level drug possession? Does it make sense to spend money jailing them or transporting them to hearings?

"We're going to have to grow exponentially," said Shannon Prescott, the other Muscogee district judge.

One recent morning, the tribal court was shuffling through the day's criminal charges and pleas through a video hearing when a bald man in an orange jumpsuit shuffled in front of the camera. He had been arrested in Tulsa on a charge of threatening violence but was brought to the Okmulgee County Jail and handed over to tribal court when the police realized he had an Osage ancestry.

"That would have been a Tulsa case," Mark Thetford, a Muscogee prosecutor, said. "It's kind of crazy right now."

In Tulsa, federal prosecutors have vowed "seamless jurisdiction" and said tribes and law enforcement agencies have a long history of cooperation. Nevertheless, the federal government is scrambling to find more lawyers and staff members to handle the surge. The U.S. attorney's office in Tulsa files about 250 felony cases annually, compared with the 6,000 felonies that churn through Tulsa's county courts each year.

"It's a lot more than we normally do," Mr. Shores, the United States attorney, said. "There's only so much we're able to take."

Native Americans convicted by state courts have begun filing appeals arguing the state did not have the power to try them. Four Cherokee citizens have filed a class-action lawsuit demanding that Oklahoma return millions of dollars in court fees and fines that Indigenous defendants have been ordered to pay over the years.

Some criminal cases have been upended when the victim, not the defendant, turns out to be a tribal member.

Dustin Dennis, who prosecutors said was not a tribal member, was charged with second-degree murder in July after his young son and daughter, Teagan, 4, and Ryan, 3, were found dead in his sweltering pickup. The children climbed into the car and were apparently overcome by the heat while Mr. Dennis slept, prosecutors said.

Tulsa County prosecutors had to drop the case when it turned out the children were Cherokee on their mother's side. Mr. Dennis was charged federally with child neglect, but the Tulsa district attorney, Steve Kunzweiler, said it had been devastating to tell the children's mother he was dropping the case.

"She thinks she's on her path to justice, and I'm telling her I have to dismiss this charge," Mr. Kunzweiler said. "I'm just worried about all these victims out there who've believed they're getting justice only to have justice interrupted."

Mr. Shores, the U.S. attorney in Tulsa, said his office had reached out to the children's mother to assure her they were continuing the case. In a brief interview, the mother, Cheyenne Trent, said that "I just want justice for my two babies, that's it."

Beyond crime scenes and courtrooms, the ripples are radiating to other reservations across Oklahoma.



*Steve Kunzweiler, the Tulsa district attorney, fears that disruption to the courts will mean delays in justice for victims and their families. Credit...Chris Creese for The New York Times*

The Supreme Court's decision dealt with the boundaries of the Muscogee (Creek) Nation, but nearly half of Oklahoma rests on land of five tribes whose members were forced west along the Trail of Tears in the 1800s — an expanse with nearly 2 million residents.

Legal experts say that eastern Oklahoma's other tribes — the Choctaw, Chickasaw, Seminole and Cherokee nations — now have strong arguments that their lands should also be legally recognized as reservations.

The question now, Indigenous leaders and activists said, is whether they will be able to hold on to their recent gains or see them undone.

To address the "unpredictability" created by the Supreme Court decision, Gov. Kevin Stitt, a Republican, created a 10-member commission to study the fallout and make recommendations to the state. But tribal leaders say they were excluded from the panel, which is led by a former oil executive and made up of Republican politicians and business leaders.

Indigenous activists say they are worried that industry leaders, to protect their interests against any new regulations, will push through legislation that could dilute tribal powers or even basically dissolve their reservations.

The question of whether to work with Congress on a new law addressing tribal sovereignty has divided Oklahoma's tribes. The Muscogee and Seminole nations are opposed. But Principal Chief Chuck Hoskin Jr. of the Cherokee Nation said the tribes could either work with Congress or become the victims of yet another law stripping them of land and power.

"I know my history, and I know when we've made advances, Congress can push back," Mr. Hoskin said. "They possess the power to do injury to us. I don't have the luxury of closing my eyes and covering my ears and hoping for the best."

Alison Arkeketa is among those hoping their loved ones can get a fresh chance at justice from a different court. Her fiancé is facing up to 10 years in prison for illegally possessing a gun as a felon convicted of assault, but Ms. Arkeketa said he needed substance-abuse counseling and not another decade in prison — "to be treated like a human."

That decision will now likely lie with a federal or tribal judge. A lawyer for her fiancé recently filed a motion arguing for a dismissal because his Creek citizenship put him out of reach of the local county court.