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Landmark Supreme Court Ruling Affirms Native American Rights in Oklahoma

A 5-4 decision declaring that much of eastern Oklahoma is an Indian reservation could reshape criminal justice in the area by preventing state authorities from prosecuting Native Americans.



The Supreme Court ruled on Thursday that much of eastern Oklahoma is an Indian reservation and that state authorities do not have the authority to prosecute criminal cases involving Native Americans. Credit...Anna Money maker for The New York Times

By Jack Healy and Adam Liptak
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The Supreme Court on Thursday ruled that much of eastern Oklahoma falls within an Indian reservation, a decision that could reshape the criminal justice system by preventing state authorities from prosecuting offenses there that involve Native Americans.

The 5-to-4 decision, potentially one of the most consequential legal victories for Native Americans in decades, could have far-reaching implications for the people who live across what the court affirmed was Indian Country. The lands include much of Tulsa, Oklahoma's second-biggest city.

The case was steeped in the United States government's long history of brutal removals and broken treaties with Indigenous tribes, and grappled with whether lands of the Muscogee (Creek) Nation had remained a reservation after Oklahoma became a state.

The decision puts in doubt hundreds of state convictions of Native Americans and could change the handling of prosecutions across a vast swath of the state. Lawyers

were also examining whether it had broader implications for taxing, zoning and other government functions. But many of the specific impacts will be determined by negotiations between state and federal authorities and five Native American tribes in Oklahoma.

Justice Neil M. Gorsuch, a Westerner who has sided with tribes in previous cases and joined the court's more liberal members to form the majority, said that Congress had granted the Creek a reservation, and that the United States needed to abide by its promises.

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

Muscogee leaders hailed the decision as a hard-fought victory that clarified the status of their lands. The tribe said it would work with state and federal law enforcement authorities to coordinate public safety within the reservation.

"This is a historic day," Principal Chief David Hill said in an interview. "This is amazing. It's never too late to make things right."

The ruling comes at an extraordinary time for Native Americans.

They are being ravaged by the coronavirus both in the soaring numbers of cases and deaths and the economic distress caused by closed casinos. But at the same moment, the nationwide movement to confront systemic racism has infused new energy and attention to generations-long fights by tribal nations and Indigenous activists over land, treaty rights and discrimination.

In the past few weeks, tribal activists garnered international attention after they blocked the roads outside Mount Rushmore to condemn President Trump's visit to what they called stolen lands. They won a fight to shut down an oil pipeline that crossed sacred ground in North Dakota. In the face of growing pressure from corporate sponsors, the Washington Redskins of the N.F.L. recently promised to re-evaluate their team name, which activists have denounced for years as racist.

On social media, people celebrated Thursday's decision with the declaration Native Lives Matter.

"This brings these issues into public consciousness a little bit more," said John Echohawk, executive director of the Native American Rights Fund, a nonprofit organization that has spent five decades fighting for issues like tribal sovereignty and recognition. "That's one of the biggest problems we have, is that most people don't know very much about us."

The court's decision means that Indigenous people who commit crimes on the eastern Oklahoma reservation, which includes much of Tulsa, cannot be prosecuted by state or local law enforcement, and must instead face justice in tribal or federal courts.

Chief Justice John G. Roberts Jr. warned in a dissenting opinion that the court's decision would wreak havoc and confusion on Oklahoma's criminal justice system.

"The state's ability to prosecute serious crimes will be hobbled and decades of past convictions could well be thrown out," Chief Justice Roberts wrote. "On top of that, the court has profoundly destabilized the governance of eastern Oklahoma."

Earlier, the Justice Department raised concerns about how federal prosecutors would cope with a new onslaught of cases they would be suddenly responsible for investigating. And lawyers were parsing whether the decision might affect taxes, adoption or environmental regulations on the reservation lands. But experts in Indian law said the decision's effects would be more muted, and would change little for non-Natives who live in the three-million-acre swath of Oklahoma that the court declared to be a reservation of the Muscogee (Creek) Nation.

"Not one inch of land changed hands today," said Jonodev Chaudhuri, ambassador for the Creek Nation. "All that happened was clarity was brought to potential prosecutions within Creek Nation."

In a statement, Mike Hunter, Oklahoma's attorney general, said the state and the Muscogee (Creek), Cherokee, Chickasaw, Choctaw and Seminole Nations were working on an agreement to present to Congress and the U.S. Department of Justice addressing jurisdictional issues raised by the decision.

"We will continue our work, confident that we can accomplish more together than any of us could alone," he said.

Still, the decision could have far-reaching implications on tribes beyond the reservation boundaries in eastern Oklahoma.

The case sprang from the state-level criminal conviction of Jimcy McGirt, a Seminole man who was found guilty of sex crimes that occurred within the Muscogee (Creek) Nation's historical boundaries. He said that only federal authorities were entitled to prosecute him.

Mr. McGirt argued that Congress had created the reservation and had never clearly destroyed the sovereignty of the Creek Nation over the area, even as much of the land was parceled off to private ownership.

Justice Gorsuch's opinion, tracing that history, began: "On the far end of the Trail of Tears was a promise." The reference is to the forced relocation of some 100,000 Native Americans from their home in the Southeast in the 1800s.

The opinion said that the promise was that Congress had guaranteed the Creek land for a permanent home in what became Oklahoma in exchange for forcing them from their ancestral lands in Georgia and Alabama during the 1830s.

The court was faced with the question of whether lands of the Muscogee (Creek) Nation had remained a reservation after Oklahoma became a state and the tribe's lands were fractured and sold off and its powers of self-governance were attacked by Congress.

Some Indigenous activists and lawyers said they were not surprised that Justice Gorsuch had broken with his fellow conservatives. On the court, he had provided the pivotal vote in favor of Indigenous rights in cases dealing with a Native American cited for illegal hunting in Wyoming, and about fuel taxes imposed on a business owned by a member of the Yakama Nation.

“Reading it, the understanding of what has happened to our people was nice to see acknowledged at this level of the government,” said Sarah Deer, a lawyer and a professor at the University of Kansas, who is also a citizen of the Muscogee (Creek) Nation. “It’s not something we’ve seen from the court very often. It has a lot of meaning.”

Some legal scholars said that Justice Gorsuch did not favor the tribes, but had simply adhered to the language of the treaties. For generations, tribes have been asking the United States to honor the written agreements they made.

Lindsay Robertson, who teaches federal Indian law at the University of Oklahoma College of Law, said Justice Gorsuch did just that: “It doesn’t matter that a million-plus non-Indians live there now. It doesn’t matter that the state of Oklahoma has been acting as if it were subject exclusively to state jurisdiction. What matters is what the language said.”

In arguing against the tribes, the solicitor general of Oklahoma took the opposite view, saying during arguments in May that “it was never reservation land, and it’s certainly not reservation land today.”

The case, *McGirt v. Oklahoma*, No. 18-9526, an appeal from a state court’s decision, was the Supreme Court’s second attempt to resolve the status of eastern Oklahoma.

In November 2018, the justices heard arguments in *Sharp v. Murphy*, No. 17-1107, which arose from the prosecution in state court of Patrick Murphy, a Creek Indian, for murdering George Jacobs in rural McIntosh County, east of Oklahoma City.

After he was sentenced to death, it emerged that the murder had taken place on what had once been Indian land. Mr. Murphy argued that only the federal government could prosecute him and that a federal law barred the imposition of the death penalty because he was an Indian.

Mr. Murphy and Mr. McGirt are expected to be retried in federal court. Legal experts said that other Indigenous people who had been prosecuted by the state for crimes on Creek land would have to ask federal courts to review their cases.

Madonna Thunder Hawk, an organizer with the Lakota People’s Law Project, said the court’s decision and a recent federal ruling that ordered the shutdown of the Dakota Access Pipeline in North Dakota had been cause for celebration. Just not too much.

“It’s a war for us,” she said. “There are some victories, but the war continues.”