

Testimony of
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Before the
United States House Committee on Natural Resources
Subcommittee for Indigenous Peoples of the United States
“Examining Oklahoma v. Castro-Huerta: The Implications of the Supreme Court's Ruling on Tribal Sovereignty”
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Madame Chairwoman and members of the committee, thank you for the opportunity to testify. My name is Cheryl Andrews-Maltais. I am the Chairwoman of the Wampanoag Tribe of Gay Head Aquinnah, located on the Island of Martha’s Vineyard, seven miles off the coast of Massachusetts. I am serving in my fourth term as Chairwoman. I also serve on the Board of Directors of the United South and Eastern Tribes (USET), the Eastern Region Delegate on the BIA Tribal Self-Governance Advisory Committee, the IHS Office of Self-Governance Advisory Committee, the Tribal-Interior Budget Council (TIBC), and the Health and Human Services Secretary’s Tribal Advisory Committee (HHS-STAC), the Homeland Security Advisory Council (HSAC) and the Government Accountability Office - Tribal Advisory Committee (GAO-TAC).

The Wampanoag Tribe of Gay Head Aquinnah is part of the Great Wampanoag Tribal Nation, known as *The People of the First Light*. We have occupied our homelands since time immemorial. Our ancestors were signatories to the 1621 Treaty of Peace between the Wampanoag Nation and King James I of England. This treaty recognized and respected the sovereignty of the two nations. Like other New England Tribes who were among the first Indian Nations to encounter European settlers and explorers, we endured centuries of warfare, disease, loss of our aboriginal lands, discrimination and forced acculturation. However, like all indigenous peoples of the United States, we maintained our cultural and religious practices, language, heritage, and Tribal government.

In the wake of the Supreme Court’s decision in *Oklahoma v. Castro-Huerta*, much has been said about the negative impacts that this ruling will have. While it is true that this decision will result in some very specific harms, it is important to note that *Castro-Huerta* itself is a manifestation of a larger problem that has been ongoing for decades across Indian Country--- unjustifiable laws that prevent Tribal Nations from exercising jurisdiction over its lands to protect all citizens and to exercise our right of self-determination. My Tribe, the Wampanoag Tribe of Gay Head (Aquinnah) is the poster child for what could and does happen when state and local jurisdictions are allowed to interfere in the decisions of the Tribe as it pertains to the exercise of our governmental authority over our lands. My testimony will touch on both the impacts on tribal criminal jurisdiction and tribal civil regulatory authority.

First, current laws prevent tribal governments from prosecuting non-Indians who commit crimes on their reservations. Other laws that place arbitrary three-year sentencing caps on tribal governments often prevent tribal courts from delivering the full measure of justice that reflects the

severity of the crimes committed. Such laws have left Native communities at the mercy of overworked, underfunded and often inattentive agencies that are not able or willing to prioritize public safety on Indian lands. And in the worst instances, are simply disinterested in seeing justice served for our Tribal communities.

The consequences of this system have been as terrible as they were predictable. Today, our Native women, girls, and Two Spirit relatives are more likely to be murdered or go missing than any other segment of the United States population. On some reservations, Native women are murdered at rates ten times the national homicide rate. And the Department of Justice has reported that a majority of Native victims have been victimized by a non-Indian perpetrator. But instead of restoring the inherent tribal jurisdiction of Tribal Nations to prosecute these crimes against our own citizens, the Supreme Court, in *Castro-Huerta*, gave it to the States. This situation not only undermines our sovereignty and the authority of our Tribal Courts, perpetrators rely on the fact that most states are not readily willing to prosecute crimes committed on Tribal Lands, which gives them license to commit these heinous crimes.

In creating previously non-existent jurisdiction for states over tribal lands, the *Castro-Huerta* decision furthers the divisive checkerboard approach to jurisdiction and creates perverse incentives for governments to shift desperately needed funds away from tribal governments to other agencies.

Improving public safety in Indian Country should be a process of addition not subtraction; a process of collaboration, not disunity. Tribal Governments know best how to protect our own citizenry and we know all too well the value of intergovernmental collaborations.

At a time when crime is on the rise and both states and the federal governments are stretched to respond, we should be seeking ways to increase the contributions of Tribal Nations, not arguing over ways to limit them.

As such, I respectfully suggest that it would be in the interest of public safety for Congress to act immediately to address the root causes of *Castro-Huerta*. First, I would encourage Congress to protect its Constitutionally mandated and absolute plenary authority to make meaningful Indian policies for the United States and to move quickly to remove unjustifiable restrictions that prevent tribal governments from prosecuting any and all violators who commit crimes on our lands. Second, Congress should immediately move to align tribal sentencing authorities to mirror with those of the federal government for tribes that meet objective public safety standards. Last, it is well-known that cooperation and coordination among governments and agencies produces superior public safety results. So, Congress should put into place measures that require States seeking to exercise jurisdiction in Indian Country to collaborate and coordinate with Tribes through a constitutionally codified process, ensuring concurrence and not simply “box checking”.

For decades, Tribal Nations have been treated as second class sovereigns. Laws that arbitrarily limit the ability of our Tribal Governments to protect the public space within our borders are not rooted in public safety. They are rooted in ignorance and bias against Tribal Nations. It is long past time for these laws to change. Congress has the responsibility to correct this injustice; to affirm and ensure the sovereignty of Tribal Nations and Governments and our rights to protect our People. Our Women, Children and Two-Spirit citizens deserve no less protections than any other citizens

or vulnerable people. I respectfully urge Congress to use the *Castro-Huerta* decision as a catalyst to rise to this occasion, meet this moment, and address the challenges created by decades of misguided and inadequate federal policies.

Second, as I mentioned above, our Tribe has also been on the receiving end of a state and local government's continued efforts to suppress our Tribe's right to exercise authority over our lands. In 1987, after prolonged litigation, we reached a land claims settlement agreement with the United States, the Commonwealth of Massachusetts, and the Town of Gay Head (now Aquinnah). As part of that land settlement agreement, under duress, we were forced to agree to comply with the zoning regulations of the Town and to agree that we would "not exercise any jurisdiction over any part of the settlement lands in contravention of this Act, the civil regulatory and criminal laws of the Commonwealth of Massachusetts, the town of Gay Head, Massachusetts, and applicable Federal laws." Public Law 100-95, August 18, 1987. As a practical matter this requirement has allowed the Town to stymie any and all development of our settlement lands – including delaying the building of our community center, limiting the expansion of our housing authority, and even the siting of a small shed next to our water lab.

It was only after litigating to the Supreme Court, were we able to clarify that the Indian Gaming Regulatory Act does apply to us. However, even that win was challenged and today, we are required to comply with the permitting requirements of the Town if we are to construct a gaming facility on our tribal settlement lands. We are not alone in this, other tribes with similar land settlement agreements have faced similar challenges by their surrounding jurisdictions with similar results. While the impacts of *Castro-Huerta* are most clearly applicable to criminal jurisdiction, I fear that the astonishing dicta in the majority opinion will inflame those around us who are dedicated to suppressing the exercise of tribal governance generally. While we agree that the sky is not yet falling, I do fear that this is a tipping point and call upon Congress to act in its plenary authority to clarify that states do not have jurisdiction – criminal or civil – over tribal lands.

As Justice Gorsuch stated in his dissent, "Tribes are not private organizations within state boundaries... Tribes are sovereigns." We predate the formation of the United States, we predate the Constitution, we predate the Articles of Confederation. In fact, our tribe, the Wampanoag people, were here as thriving as a sovereign nation when the Pilgrims landed on this continent. While some on the SCOTUS may have forgotten this important fact, as Justice Gorsuch also stated, "the ball is back in Congress' court" and we urge you to lead this body back to the principles that respect Tribes and tribal sovereignty.