



McGirt v. Oklahoma: Considerations for the Energy Industry



Speakers



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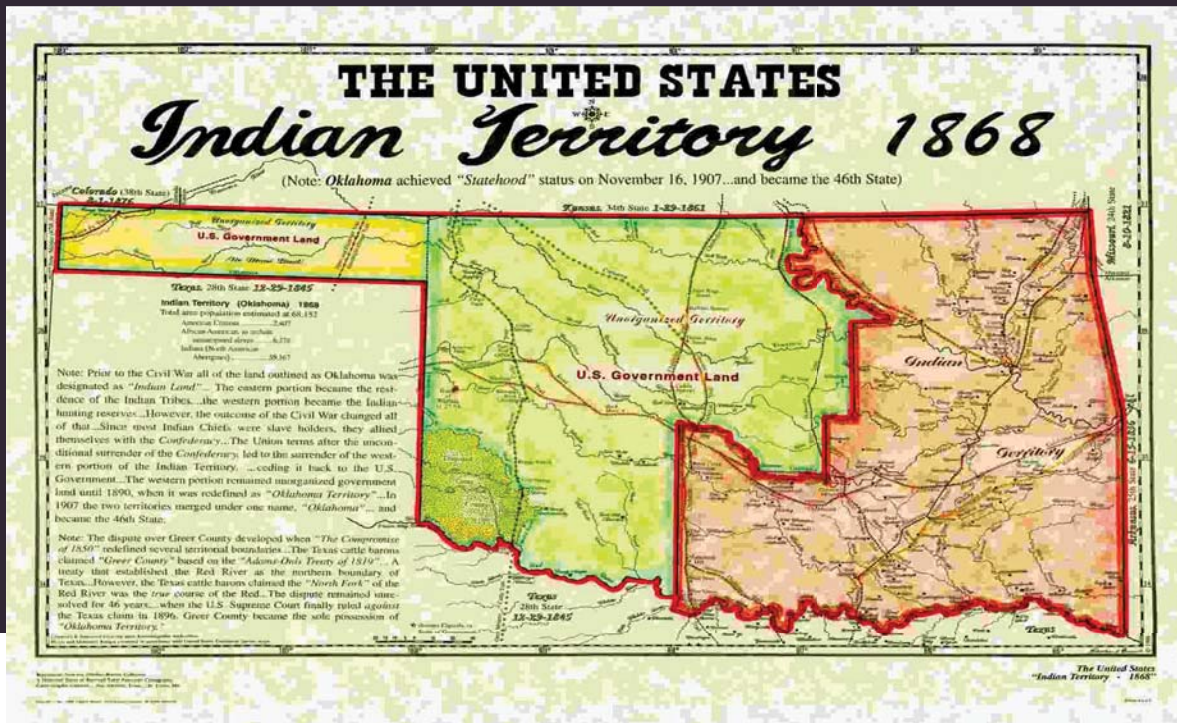
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MCGIRT V. OKLAHOMA (2020)



McGirt Was A Case About Boundaries . . .



The Muscogee (Creek) Reservation Today



Enter, the Oklahoma Court of Criminal Appeals . . .



Cherokee Nation – [Hogner v. State](#) (March 2021)

Chickasaw Nation – [Bosse v. State](#) (March 2021)

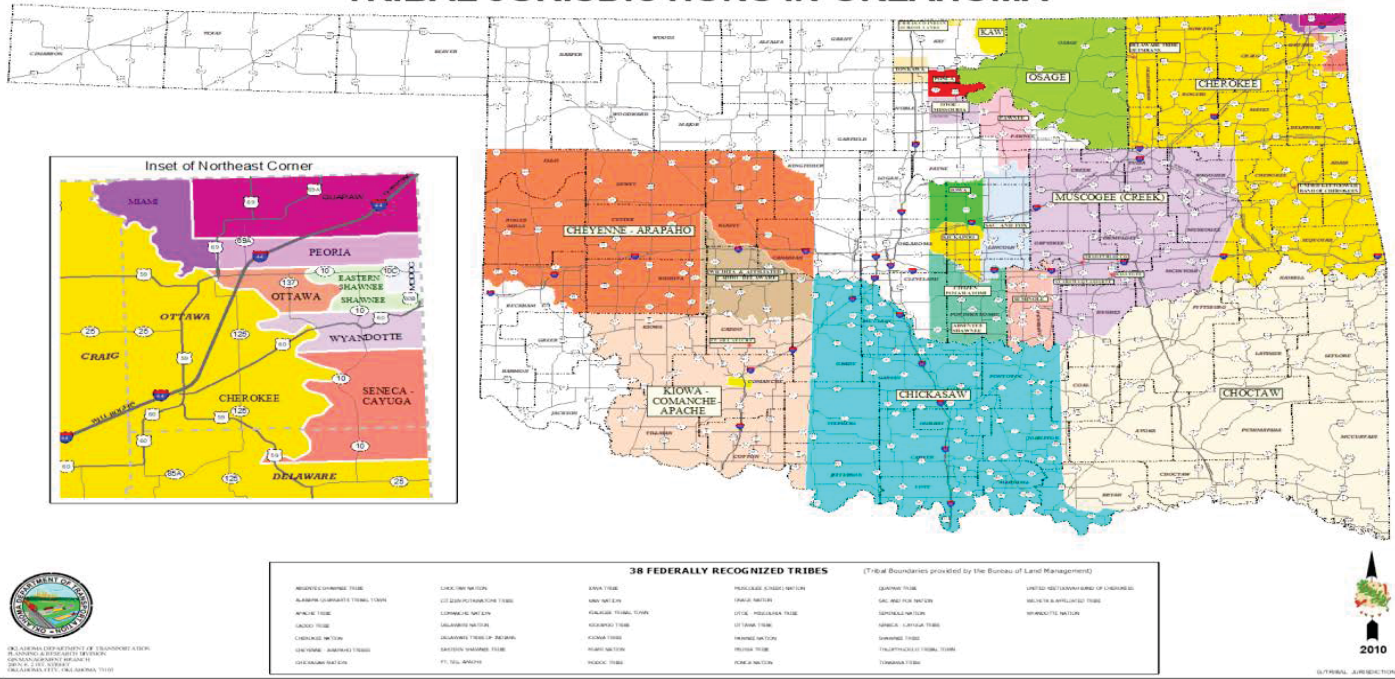
Choctaw Nation – [Sizemore v. State](#) (April 2021)

Seminole Nation – [Grayson v. State](#) (April 2021)

Quapaw Nation – [State v. Lawhorn](#) (October 2021)



TRIBAL JURISDICTIONS IN OKLAHOMA



Federal, State, & Tribal Criminal Jurisdiction in Oklahoma Today



Criminal Jurisdiction in Indian Country

<u>Defendant</u>	<u>Victim</u>	<u>Jurisdiction</u>
Indian	Indian or Non-Indian	Federal or Tribal
Non-Indian	Indian	Federal (VAWA Exception)
Non-Indian	Non-Indian	State Jurisdiction Only
Non-Indian	Victimless	State Jurisdiction
Indian	Victimless	Federal and Tribal



Which Federal Agencies Can Work Cases in Indian Country?



With Which Oklahoma State Agencies Have Tribes in the NDOK Worked?

- County Sheriffs
- City Police
- Oklahoma Highway Patrol
- OSBI
- OBNDD
- DA Investigators



With What Kind of Tribal Agencies Does the U.S. Attorney's Office Work?

- Tribal Police Forces
- Attorneys General
- Gaming Regulators
- Tax Revenue Agents
- Auditors
- Indian Child Welfare
- Social Services
- Gaming Security
- Loss Prevention



How do separate sovereigns work together?

- Multi-jurisdictional task forces
- Cross-deputization agreements
- Joint investigations
- Special prosecutors
- Regular law enforcement & multi-disciplinary team meetings
- Joint trainings
- Victim-Witness Services



JOINT RESOURCES AVAILABLE

- NCIC (inc. P.O. verification)
- Tag Verification (Tribal & State)
- SOT Teams
- Bomb Squads
- Swift Water Rescue
- Dive Team
- K9s
- Laboratories
- Drug Task Forces
- Casino Surveillance Video
- Surveillance Equipment
- Domestic Violence Specialists
- Sexual Abuse/Rape Specialists
- DARE/ School Education
- Firing Ranges
- Intel



Federal and Tribal Civil Jurisdiction in Indian Country



THE U.S. SUPREME COURT'S MONTANA TEST

GENERAL RULE:

Tribes generally cannot exercise civil regulatory jurisdiction over non-Indians in Indian Country, unless certain circumstances exist.

To exert jurisdiction over non-Indians, an Indian Tribe must meet one of two exceptions:

1. When non-Indians enter into consensual relationships such as contracts with the Tribe or its members; or
2. When non-Indian's conduct "threatens or has some direct effect on the Tribe's well-being, including the political integrity, the economic security, or the health or welfare of the Tribe."



The Current Lessons of McGirt

1. In civil or administrative actions involving the Five Tribes, disestablishment or diminishment of their post-Civil War reservation boundaries will not be found;
2. Reliance defenses may be available to prevent the legal effect of the finding of no reservation disestablishment or diminishment.
3. *Montana* and its two exceptions will be critical when determining the limits of tribal jurisdiction over the conduct of non-Indians on non-Indian-owned fee land within a reservation.
4. States, tribes and other interested parties should work together to address uncertainties or concerns arising from the continuance of reservation boundaries from the 1866-era treaties.
5. At least with regard to McGirt related legal inquiries, federal courts will apply “textualism” and look to the plain language of statutes.



QUESTIONS?



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