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Frequently Asked Questions Related to *McGirt v. Oklahoma* and the Proposed Legislative Framework Document

Background

The recent landmark ruling in *McGirt v. Oklahoma* stated that the Muscogee (Creek) Nation currently has a reservation in eastern Oklahoma and that either the federal government or the Muscogee (Creek) Nation, not the State, should have prosecuted tribal members for committing a crime on that reservation.

We share a commitment with the Creek Nation to maintaining public safety and long-term economic prosperity for all Tribal Nations and Oklahoma.

The Office of the Attorney General is closely working with federal and tribal partners to make sure criminals are still being arrested and prosecuted. We also released a framework for Congress to consider when crafting legislation, on which we have received many questions.

Frequently Asked Questions

Do I still own my house in eastern Oklahoma?

- Yes. The Supreme Court's decision has no effect on property ownership. All existing contracts, leases, and titles remain valid.

If I am a non-Indian, does having a business in eastern Oklahoma subject me to tribal law?

- Any contracts, leases, or other agreements with a Tribe are still valid, but mere operation of a business in eastern Oklahoma does not subject you to tribal jurisdiction.

What does *McGirt v. Oklahoma* mean for law enforcement in eastern Oklahoma?

- The State continues to have significant law enforcement and civil authority on the reservation. State law remains applicable in large measure, especially with respect to persons who are not members of the Muscogee (Creek) Nation and on lands not owned by the Tribe or tribal members.

Will any prisoners be automatically released?

- No. Any challenged conviction will be evaluated on its own merits, case-by-case, and any person whose conviction may be affected by the ruling will either remain in prison or may face re-prosecution and re-incarceration by federal or tribal authorities.

Will people living in the reservation still have protection from criminals?

- Yes. No person in Oklahoma—whether they are a member of a federally-recognized Tribe or not—is above the law. Crimes cannot be committed with impunity. As a general matter, tribal members who commit crimes will be subject to federal or tribal prosecution, and non-Indians will remain subject to state prosecution.

Does this mean the Muscogee (Creek) Reservation is no longer part of Oklahoma?

- No. Oklahoma's boundaries have not changed. The Muscogee (Creek) reservation is still part of Oklahoma, and those living within the reservation, Indian and non-Indian alike, are still citizens of Oklahoma. The privileges of citizenship—including voting, schooling, and many other rights guaranteed by state law—remain unaltered.
- Since the Office released a proposed framework for Congress to consider in response to the Supreme Court's decision in *McGirt v. Oklahoma*, much misinformation has emerged regarding this document. Fundamentally, the agreement in principle document establishes a framework we think will be useful as the State and the Tribes engage with Congress.
- The remaining responses address some of the misinformation being propagated related to the framework document.

What does the framework do?

- On its own, the framework does not do anything. The document released on July 16, 2020, proposes a set of principles to guide our engagement with Congress as it considers legislation in response to the Supreme Court's recent decision in *McGirt v. Oklahoma*.
- The framework would support seeking to *restore* state jurisdiction called into question by the Supreme Court's ruling while *reaffirming* the Five Tribes' boundaries and jurisdiction—all in the interest of promoting public safety and economic prosperity on reservations and throughout Oklahoma.
- In no way does the Attorney General seek to undermine the Tribes' sovereign governments or the boundaries *McGirt v. Oklahoma* affirmed.

Is the Attorney General seeking to undermine the protection for Native women in the Violence Against Women Act (VAWA)?

- No, nothing is clearer in the framework than the fact that we want Native women to receive maximum protection from abuse. In *McGirt v. Oklahoma*, the State was seeking to defend the conviction of a man that sexually abused a four-year-old Seminole girl. The State and the Tribes are committed to protecting abuse victims, and the framework seeks to preserve or reaffirm tribal criminal and civil jurisdiction under Violence Against Women Act.
- As the framework states, the Tribes must be secured in their right to prosecute “domestic abusers covered by the Violence Against Women Reauthorization Act of 2013,” including non-Indian abusers of Indian women. And as it also says the Tribes’ civil jurisdiction over non-members is affirmed where “Federal law specifically grants Tribes jurisdiction”—which includes Congress’s 2013 VAWA reauthorization and its express provision that “a court of an Indian Tribe shall have full civil jurisdiction to issue and enforce orders.”
- The framework also states twice that the proposal would enhance tribal jurisdiction “without limiting the jurisdiction” of Tribes and “without limiting any authority possessed prior to legislation being enacted.” This means to the same extent Tribes had the power to protect Native women, the framework explicitly and repeatedly states it seeks only to *enhance* that power.
- Longstanding state law also gives full faith and credit to the judgments of tribal courts, including those that protect tribal women from abuse.
- But the framework goes even farther in seeking to protecting women: it also intends to recognize the State’s *concurrent* jurisdiction to prosecute non-Indians who abuse Native women. Thus, the framework intends to provide a second layer of protection to victims of domestic abuse, minimizing the chances that any victim falls through the cracks.

What about property rights? Will they be affected by this, including mineral interests?

- Neither *McGirt v. Oklahoma* nor the framework would have any effect on property rights.
- As intended by the framework, mineral interests would remain subject to the same laws as governed prior to *McGirt v. Oklahoma*. We appreciate the Tribes’ partnership and collaboration with us on this matter so important to Oklahoma’s general economy.

Will this agreement undermine the State’s sovereign rights or the Tribes’ sovereign rights?

- No. The intend of the framework is not undermine state or tribal sovereignty; rather, the agreement says its purposes are “enhancing and clarifying respective state and tribal jurisdiction, both criminal and civil, *without* limiting the jurisdiction or immunities of either the State or any Nation.”

Why is the Attorney General talking with the Tribes?

- The *McGirt* and *Murphy* cases raised significant issues of jurisdiction between the State and the Tribes, and as chief law officer of the state, the Attorney General has a duty to speak with the Tribes about how litigation can be resolved and avoided, including by intergovernmental agreements and proposed legislation.
- As the Oklahoma Supreme Court has ruled, the Attorney General “possesses complete dominion over every litigation in which he properly appears in the interest of the State” and thus “he has authority to compromise” to avoid further litigation. *State ex rel. Derryberry v. Kerr-McGee Corp.*, 1973 OK 132, 516 P.2d 813, 818.
- Throughout this time, the Attorney General has kept other state leaders, including the Governor and leaders of the Legislature, informed about discussions with the Tribes.
- Nothing in state law prohibits the Attorney General from talking with the Tribes, and the Attorney General looks forward to continuing these conversations with input from across the state.
- The agreement in principle is not a state-tribal compact but proposes a concept for Congress to consider.
- Ultimately, it is up to Congress to decide what legislation is appropriate.

Why is this up to Congress?

- Congress has the power to decide the rules for tribal members on reservations. As the Supreme Court said in *McGirt v. Oklahoma*, Congress has “no shortage of tools” to change how federal law applies on Indian reservations.
- On issues about criminal jurisdiction, only Congress can change the federal law that says the federal government has sole jurisdiction to prosecute major crimes committed by tribal members. Agreements between the State and the Tribes cannot change this rule and other similar laws—only Congress can do that.

Additional Resources

Read the agreement in principle here: [http://www.oag.ok.gov/Websites/oag/images/doc%20-%202020-07-15%20-%20murphy%20\(final%20-%20agreement-in-principle\).pdf](http://www.oag.ok.gov/Websites/oag/images/doc%20-%202020-07-15%20-%20murphy%20(final%20-%20agreement-in-principle).pdf)

Read the statement from the Oklahoma Congressional Delegation welcoming the proposed framework here: <https://www.lankford.senate.gov/news/press-releases/oklahoma-congressional-delegation-welcomes-proposal-to-congress-from-state-and-tribal-nations>

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