

The Supreme Court – June 29, 2022

by Ian Blodger

Today, the Supreme Court of the United States issued two decisions:

Oklahoma v. Castro-Huerta, No. 21-429: This case involves whether a State has authority to prosecute non-Indians who commit crimes against Indians in “Indian country.” The defendant was convicted in Oklahoma state court of child neglect. While his appeal was pending, the Supreme Court decided *McGirt v. Oklahoma*, in which it held that the Creek Nation’s reservation in eastern Oklahoma had never been disestablished and therefore remained “Indian country.” In light of that decision, the defendant argued that the Federal Government had exclusive jurisdiction to prosecute him (a non-Indian) for a crime committed against his step daughter (a Cherokee Indian) in Tulsa (Indian country), so Oklahoma lacked jurisdiction to prosecute him. The Oklahoma Court of Criminal Appeals vacated his conviction. Today, the Supreme Court reversed. In a 5-4 decision authored by Justice Kavanaugh, the Court held that the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. Justice Gorsuch filed a dissenting opinion (in which Justices Breyer, Sotomayor, and Kagan joined), arguing that the State lacks criminal jurisdiction over crimes by or against Indians in Indian Country.

View the Court’s [decision](#).

Torres v. Texas Department of Public Safety, No. 20-603: Under the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), passed pursuant to Congress’s Article I power to “raise and support Armies,” returning military service members have the right to reclaim their prior jobs with state employers and may sue if the employers refuse to accommodate veterans’ service-related disabilities. Here, Le Roy Torres, a veteran, sought a reasonable accommodation from his former employer, the Texas Department of Public Safety (“Texas”), after returning from active duty in Iraq where he contracted constrictive bronchitis due to his exposure to toxic burn pits. Texas refused to make an accommodation for Torres, and Torres sued under USERRA, seeking damages. Texas argued that sovereign immunity precluded Torres’s

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claim. An intermediate appellate court agreed with Texas, holding that Congress could not authorize private suits against nonconsenting States pursuant to its Article I powers except under the Bankruptcy clause. In a 5-4 decision authored by Justice Breyer, the Supreme Court held that by ratifying the Constitution, the States agreed their sovereignty would yield to the national power to raise and support the Armed Forces and that Congress may exercise this power to authorize private damages suits against nonconsenting States, as in USERRA. Justice Thomas dissented, joined by Justices Alito, Gorsuch, and Barrett, arguing that the Constitution does not authorize private damages actions filed against nonconsenting States.

View the Court's [decision](#).