

Oliphant v Suquamish Indian Tribe, 43 U.S. 191 (1978)

Tribes do not have criminal jurisdiction over non-Indians.

Duro v Reina, 495 U.S. 676 (1990)

Tribes do not have criminal jurisdiction over non-member Indians.

Indian Civil Rights Act, 25 U.S.C. 1301 (1990)

Congress allegedly overturned Duro v Reina by amending the ICRA to provide tribal criminal jurisdiction over all Indians within their borders.

Means v Northern Cheyenne Tribal Court, 9th Circuit 1998.

Tribal courts do not have criminal jurisdiction over non-member Indians. The ICRA amendment is a delegation from Congress, not an inherent exercise of criminal jurisdiction. Therefore, all the U.S. Constitution applies when tribes are exercising delegated federal jurisdiction.

U.S. v Robert Lee Weaselhead, Jr., No. 97-4397, 8th Circuit 1998

Robert Lee Weaselhead, Jr. appeals from an order by the district court denying his amended motion to dismiss Count III of the indictment arguing it offends the Double Jeopardy Clause of the Fifth Amendment. We reverse. Weaselhead was a non-member Indian charged in both federal and tribal court for the same crime. This is not possible under the Double Jeopardy Clause because the criminal authority flows from the same sovereign Congress. Congress delegated to the tribe criminal jurisdiction over non-member Indians pursuant to the 1990 amendments to the Indian Civil Rights Act after the Supreme Court decision in Duro v. Reina. In Duro, the Court held that a tribe did not have inherent jurisdiction to criminally charge a non-member. Congress attempted to overturn Duro by stating that tribes have inherent criminal jurisdiction over all Indians within their boundaries stretching back in time. The 8th Circuit held that Congress delegated authority to tribes to prosecute non-member Indians, the authority does not flow from a tribe's inherent sovereignty.

[NOTE: This case is on appeal to the Supreme Court.]