United States v. Hemingway, 2023 WL 8004817 (E.D. Okla. Nov. 17, 2013).

- **Holding**: Justice Gorsuch's concurrence in *Haaland v. Brackeen, calling* into question the holding in *U.S. v. Kagama*, the 1886 case that upheld the constitutionality of the Major Crimes Act (MCA) as an exercise of Congress' plenary power over tribal affairs, was not a basis for dismissing charges filed against defendant pursuant to the Major Crimes Act.
- **Summary**: Defendant charged with crimes pursuant to Major Crimes Act (MCA) argued that the MCA was unconstitutional, and that under its terms it did not reach some of the crimes at issue. In arguing the unconstitutionality of the MCA, the Defendant relied on Justice Gorsuch's concurrence in *Haaland v. Brackeen,* which the Defendant asserted called into question the holding in *U.S. v. Kagama*, the 1886 case that upheld the constitutionality of the MCA soon after its passage (Justice Gorsuch asserted that in *Kagama*, "[i]nstead of examining the text and history of the Indian Commerce Clause, the Court offered a free-floating and purposivist account of the Constitution [that] extend[ed] broad "power [to] the General Government" over tribal affairs," and wrote that the notion of federal plenary power over tribal affairs was an "'inconceivable' suggestion for anyone who takes the Constitution's original meaning seriously").

  The district court rejected the Defendant's argument, holding that *Kagama* had not been overturned, citing an unpublished, pre-*Brakeen* Tenth Circuit decision (*United States v. Barnes*, 846 F. App'x 730, 731 (10th Cir. 2021)) that upheld the constitutionality of the MCA.

  The court also rejected Defendant's argument that two counts of the indictment were not within the scope of the MCA: defendant was charged with violating 18 U.S.C. § 924(j)(1): Causing the Death of a Person in the Course of a Violation of Title 18 U.S.C. § 924(c). and with violation of 18 U.S.C. § 924(c), Use, Carry, and Discharge of a Firearm During and in Relation to a Crime of Violence. The court held that "[e]ven if Defendant's contention is true, however, the MCA is not the only path to federal jurisdiction over Indian individuals. Rather, courts have consistently held that 'general federal criminal statutes like § 924(c)' reach 'Native Americans on tribal lands just as it would apply to anyone nationwide.'"
- **Relevant (2023) Deskbook Sections**: 4:3, 4:9