

## SCOTUS Opinion: Court Preserves Indian Treaty Hunting Rights

20 May 2019

In 1868, the United States and the Crow Tribe entered into a treaty in which the U.S. got most of the Tribe's land in modern-day Montana and Wyoming, in exchange for hunting rights in unoccupied land. In [Herrera v. Wyoming](#), Tribe member Clayvin Herrera was charged with off-season hunting in the Bighorn National Forest, and Wyoming's appellate courts affirmed his conviction per the U.S. Supreme Court's holding in *Ward v. Race Horse*, 163 U.S. 504 (1896), which held that the treaty expired upon Wyoming's statehood. The Court, in a 5-4 opinion by Justice Sotomayor, reversed, holding that the Court's subsequent opinion in *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172 (1999), effectively repudiated *Race Horse*. Essentially, *Race Horse* reasoned that Wyoming's creation as a state severed the treaty because the State was vested with the power to regulate game within its borders, while *Mille Lac* changed the standard to inquire whether Congress "clearly express[ed]" an intent to abrogate a treaty right, or the treaty expired under its terms. Under *Mille Lac*, the majority held that the creation of Wyoming as a state did not convey a clear expression to end the treaty, the creation of the Forest did not render the land "occupied," and that Herrera was not barred from bringing his defense. Justice Alito, joined by Chief Justice Roberts, and Justices Thomas and Kavanaugh, dissented, arguing that prior litigation should have barred Herrera from arguing his defense. A link to the opinion is [here](#).

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SCOTUS OPINION: COURT PRESERVES INDIAN TREATY HUNTING RIGHTS

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