

19-6428

ORIGINAL

NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

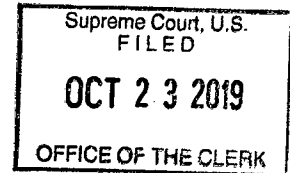
KEITH ELMO DAVIS.

Petitioner, Pro Se,

VS.

THE STATE OF OKLAHOMA

Respondent(s)



ON PETITION FOR WRIT OF CERTIORARI TO

THE OKLAHOMA COURT OF CRIMINAL APPEALS

PETITION FOR WRIT OF CERTIORARI

KEITH ELMO DAVIS, ODOC# 519111

JOSEPH HARP CORRECTIONAL CENTER

PO BOX 548, 16161 MOFFAT ROAD

LEXINGTON, OKLAHOMA, 73051.

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QUESTION(S) PRESENTED

WHETHER THE CHOCTAW NATIONS 10,864 SQUARE MILES LOCATED IN SOUTH-EASTERN PART OF THE STATE OF OKLAHOMA CONSTITUTED A RESERVATION UNDER 18 USCA 1151 WITHIN ITS MODERN-DAY JURISDICTIONAL BOUNDARIES THAT'S NEVER BEEN DIMINISHED, EXTINGUISHED, DISESTABLISHED, BY ANY ACT OF CONGRESS, IS INDIAN COUNTRY USA-TODAY ?

WHETHER THE CHOCTAW NATION IS INDIAN COUNTRY DEFINED DEPENDENT INDIAN COMMUNITY ?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- [] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

TABLE OF CONTENTS

OPINION BELOW.....	
JURISDICTION.....	
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	
STATEMENT OF THE CASE.....	
REASONS FOR GRANTING THE WRIT.....	
CONCLUSION.....	

INDEX TO APPENDICES

APPENDIX A. OCCA ORDER FILED AUGUST 20, 2019, NO. PC-2019-451.	
APPENDIX B. LATMER COUNTY DISTRICT COURT ORDER FILED JUNE 10, 2019, NO. CF-2004-65.	

TABLE OF AUTHORITIES CITED

CASES

CHOCTAW NATION V. OKLAHOMA 397 U.S. 620, 90 S. CT. 1328, 25 L. Ed. 2d. 615 (Decided April 27, 1970).....

UNITED STATES V. CHOCATW NATION 179 U.S. 494, 21 S. CT. 149, 45 L.Ed. 291 (Decided December 10, 1900).....

SOLEM V. BARTLETT 465 U.S. 463, 104 S. CT. 1161, 79 L. Ed. 2d. 443 (Decided February 22, 1984).....

CHOCTAW NATION V. UNITED STATES 119 U.S. 1, 75 S. CT. 90, 30 L. Ed. 2d 306 (Decided November 15, 1886).....

CHOCTAW NATION V. SEAY 235 F.2d 30 (10thCir.1956).....

CHOCTAW, CHICKASAW NATIONS V. CHEROKEE NATION 393 F. Supp. 224 (E.D.Okla. April 25, 1975).....

CHOCTAW, CHICKASAW NATIONS V. ATCHISON, T. 7 S.F. RY CO., 396 F. 2d 578 (10th Cir. 1968).....

STATUTES AND RULES

43 U.S.C.A. 1311

18 U.S.C.A. 1151

18 U.S.C.A. 1152

18 U.S.C.A. 1153

18 U.S.C.A. 3231

18 U.S.C.A. 3242

28 U.S.C.A. 1257

28 U.S.C.A. 1251

28 U.S.C.A. 2101

74 O.S. 2012, SECTION 1221-Indian Tribes

OTHER

JUNE 22, 1855, 11 Stat. 611. New Treaty Superseding All Former Treaties between Choctaw and Chickasaw Nations.

35 U.S. Op. Atty Gen. 251, 1927 WL 2311, Junly 12, 1927. Title To Land In Bed Of Red River.

FORD V. HARRIS, 1963 OK 147, 383 P. 2d. 21. June 18, 1963.

STATE OF OKLAHOMA., CHOCTAW, CHICKASAW, CITY OF OKLAHOMA CITY WATER SETTLEMENT (AUGUST 2016)

THE CHOCTAW-CHICKASAW-CHEROKEE BOUNDARY DISPUTE ACT APPROVED DECEMBER 20, 1973, ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED.

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☐ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

- ☐ reported at PC-2019-451; or,
☐ has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

- ☐ reported at _____; or,
☐ has been designated for publication but is not yet reported; or,
☐ is unpublished.

JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was Aug. 20, 2019. A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: NA, and a copy of the order denying rehearing appears at Appendix NA.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including NA (date) on NA (date) in Application No. ____ A ____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A. CONST. AMENDMENT V.

28 U.S.C.A. 1257.(a)

28 U.S.C.A. 1251. (b)(2)

28 U.S.C.A. 2101. (c)

28 U.S.C.A. 2102

28 U.S.C.A. 2104

28 U.S.C.A. 2106

28 U.S.C.A. 116.(b)

18 U.S.C.A. 1151.(a)

18 U.S.C.A. 1151. (1)

18 U.S.C.A. 1153.(a)

18 U.S.C.A. 3231

18 U.S.C.A. 3242

U.S.C.A. CONST. ART VI, CLAUSE 2. THE SUPREME LAW OF THE LAND

U.S.C.A. CONST. ART. 1, SECTION 8. POWERS OF CONGRESS

U.S.C.A. CONST. ART. 1, SECTION 10. RESTRICTION OF POWERS OF STATES

OKLAHOMA CONSTITUTION ARTICLE 7, SECTION 8

TREATIES

JUNE 22, 1855, 11 STAT. 611. NEW TREATY SUPERCEDING ALL FORMER
TREATIES BETWEEN CHOCTAW AND CHICKASAW NATIONS.

STATEMENT OF THE CASE

June 10th, 2019, CF-2004-65, the District Court of Latimer County, State of Oklahoma denied Application for Post-Conviction Relief raising State lacked Jurisdiction for crime committed within the reservation boundaries of the Choctaw and Chickasaw Nations. Title 22 O.S. 2018, Section 1080(b), 1084, 1085. Appendix “B”

August 20th, 2019, Case No. PC-2019-451, the Oklahoma Court of Criminal Appeals affirmed the District Court of Latimer County District Court denying post-conviction relief. The OCCA did not address the State lack of jurisdiction to prosecute an enrolled member of a tribe for a crime committed within an Indian Reservation boundary of the Choctaw and Chickasaw Nations. Appendix “A”

REASON(S) FOR GRANTING THE WRIT

THE CHOCTAW NATION'S 10,864 SQUARE MILES LOCATED IN SOUTH-EASTERN PART OF THE STATE OF OKLAHOMA CONSTITUTED A RESERVATION UNDER 18 USCA 1151 WITHIN ITS MODERN-DAY JURISDICTIONAL BOUNDARIES THAT'S NEVER BEEN DIMINISHED, EXTINGUISHED, DISESTABLISHED, BY ANY ACT OF CONGRESS, IS INDIAN COUNTRY USA-TODAY.

The State of Oklahoma and the Choctaw Nation and other nations recently settled a Dispute over water rights on the reservation. See State of Oklahoma, Choctaw, Chickasaw, City of Oklahoma City water Settlement (August 2016), Available at <https://www.Waterunityok.com/Media/1075/Agreement-160808.Pdf> ("Settlement"). The Settlement addresses water appropriation and use in the "Settlement Area," **"Defined as bounded by the South Canadian River, the Oklahoma-Arkansas State line, the Oklahoma Texas State line, and the 98th Meridian—that is the Nations Reservation.** See Settlement Section 1.58 (Defining Settlement Area); 1866 Treaty, art. 1 (defining Patent Boundaries); also see Settlement Section 2.1.1.5 (referencing treaties as source of nations claims). Congress approved the Settlement, See Water Infrastructure Improvements for the nation Act of 2016, Pub. L. No. 114-322, Section 3608, 130 Stat. 1627, 1796-1814, and that Act expressly recognizes the boundaries of the Settlement Area, *Id.* Section 3608 (b)(18), 130 Stat. at 1798-99. See 35 U.S. Op. Atty. Gen. 251, 1927 WL 2311.

The Choctaw's 10,864 square miles of tribal lands located in the South-eastern State of Oklahoma supports the fact a reservation exists under 18 USCA 1151(a), within it's modern-day jurisdictional boundaries. See The Choctaw Nation, Chickasaw Nation V. The Cherokee Nation, 393 F. Supp. 224 (E.D.Okla. April 18, 1975)(the Choctaw-Chickasaw-Cherokee Boundary Dispute Act approved December 20, 1973). The Choctaw Nation and Chickasaw Nation V. Seay, 235 F.2d 30 (10thCir. June 8, 1956), Opinion, Circuit Judge held that:

"The Choctaw and Chickasaw Nations claim title to all of the lands between the Medial Line and the south or right Bank of Red River, extending from the 98th Meridian east to the Boundary Line between Arkansas and Oklahoma."

See U.S. V. Choctaw Nation, 179 U.S. 494, *501, 21 S. Ct. 149, *152, 45 L.Ed 291 (Decided December 10, 1900)(A diagram incorporated into Opinion of the Court of Claims reproduced to show land ceded was determined sufficiently accurate for the purpose of the present discussion reflect boundary of Choctaw & Chickasaw Nations.

THE CHOCTAW NATION IS INDIAN COUNTRY

The Organic Act sets forth the separation of Oklahoma Territory and Indian Territory. May 2, 1890, c. 182, Section 1, 26 Stat. 81. May 2, 1890, c. 182, Section 29, 26 Stat. 93. May 2, 1890, c. 182, Section 30, 26 Stat. 94. This separation of two sovereign nations were set forth in the Enabling and the Article provision of the Oklahoma Constitution. The Enabling Act of June 16, 1906, c. 3335, Section 1, 34 Stat. 267. June 16, 1906, c. 3335, Section 22, 34 Stat. 278. Okla. Const. Art. 1 Section 3. Disclaimer by the State of Oklahoma over all lands, property, held or own by any Indian tribe or Nation.

Disagreements continued to exist between the Government of the United States and the Choctaw Indian nation, and on June 22, 1855, 11 Stat. 611, a new treaty, by its terms superseding all former treaties between the United States and the Choctaws and also superseding all treaty stipulations between the United States and the Chickasaws and between the Choctaws and the Chickasaws inconsistent with it, was made, in which the territorial limits of the Choctaw and Chickasaw Indian Nations were described as follows:

***Beginning at a point on the Arkansas River, one hundred paces east of old Fort Smith, where the western boundary line of the State of Arkansas crosses the said river, and running thence due south to Red River; thence up Red River to the point where the meridian of *one hundred degrees west longitude* *34 crosses the same; thence north along said meridian to the main Canadian River; thence down said river to its junction with the Arkansas River; thence down said river to the place of beginning.

Out of this a *district* for the Chickasaw was established, described as follows:

***beginning on the north bank of Red River, at the mouth of Island Bayou, where it empties into Red River, about twenty-six miles on a straight line, below the mouth of False Wachitta; thence running a northwesterly course along the main channel of said bayou, to the junction of the three prongs of said bayou, nearest the dividing ridge between Wachitta and Low Blue Rivers, as laid down on Capt. R.L. Hunter's map; thence northerly along the eastern prong of Island Bayou to its source; thence due north to the Canadian River; thence along the main Canadian to the *ninety-eighth* degree of west longitude; thence south to Red River; thence down Red River to the beginning.

April 28, 1866 by Treaty (14 Stat. 769) the Choctaws, Chickasaws ceded to the United States that portion of their territory west of the ninety-eighth meridian known as the Leased District. By a treaty between the United States and the Kiowa, Commanche, and Apache Indians, concluded in 1867, the territory north of the middle of the main channel of the Red River, and between the ninety-eighth meridian and the North Fork was set apart as a reservation and permanent home for those tribes. (15 Stat. 589; Oklahoma V. Texas, 258 U.S. 574, 592) That reservation was maintained until Congress passed the Act of June 6, 1900 (c.813, sec. 6, 31 Stat. 672, 676). Pursuant to that Act and the Act of June 5, 1906 (c. 2580, 34 Stat. 213), and amendments, lands on the northern bank of the river between the ninety-eighth meridian and the North Fork were disposed of by Indian allotments and in other designated modes.

Solem V. Bartlett, 465 U.S. 463, 470, n.[7], 79 L.Ed.2d 443, 450, n. [7], 104 S. Ct. 1161, reh den (US) 80 L.Ed.2d 535, 104 S. Ct. 2148 (Decided February 22, 1984) held that:

Our precedents in the area have established a fairly clean analytical structure for distinguishing those surplus land Acts that diminished reservations from those Acts that simply offered non-Indians the opportunity to purchase land within established reservation boundaries. The first and governing principle is that only Congress can divest a reservation of its land and diminish its boundaries. Once a block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise. See United States Celestine, 215 US 278, 285, 54 L.Ed 195, 30 S. Ct. 93 (1909).

10,864 square miles of South-eastern part of the State of Oklahoma defines the limits within those reservation boundaries of the Choctaw Nation. There is nothing in the history of the Choctaw Nation and the treaties negotiated between the Choctaw Nation and the United States. Which inferred diminishment of reservation boundaries or disestablishment of tribal government as a sovereign nation with the State of Oklahoma. There is nothing in the allotment era that inferred Congress had any intent to diminish reservation status or disestablish Tribal government sovereignty. Indian Country included all lands held in fee by non-Indians with reservation boundaries of the Choctaw Nation 10, 864 square miles in South-eastern State of Oklahoma. Title 18 U.S.C.A. Section 1151(a), 1153, 3242, 3231. Oklahoma is preempted from prosecution of Major Crimes committed by Indian on

Indian, Indian on Non-Indian, and Non-Indian on Indian Victim. Subject Matter Jurisdiction is with the United States District Court for the Eastern District of Oklahoma for all Offenses committed within the reservation under the Major Crimes Act. Tribal Court Jurisdiction would cover other offenses not covered by the Major Crimes Act committed within it's Subject Matter Jurisdiction.

A congressional determination to terminate an Indian reservation must be expressed on the face of the Act or be clear from the surrounding circumstances and Legislative history. Note 3. Matz V. Arnett, 412 U.S. 481, 37 L.Ed.2d 92, 93 S. Ct. 2245 (Decided June 11, 1973).

The Choctaw-Chickasaw-Cherokee Boundary Dispute Act adjudicated by a Three Judge Court for the United States District Court for the Eastern District of Oklahoma considered Treaties between the United States and the Nations. This determination was based on historical fact long before Oklahoma was admitted into the Union on equal footing with other States on November 16, 1907. The United States Supreme Court decisions resolved the South Canadian River, Arkansas River and the Red River disputes in favor of the Nations. These Rivers/Streams did not pass to the State of Oklahoma on admission into the Union on November 16, 1907. These disputes between the United States and the Nations were decided long before Oklahoma became a part of the Union on November 16, 1907. It has already been decided that the Lands between the 98th-meridian and the Oklahoma-Arkansas boundary belong to the Choctaw and Chickasaw Nations as 10, 864 square miles of South-central Oklahoma. This no doubt resolves in favor of the Choctaw and Chickasaw nations as a reservation. These rivers/streams served as boundary lines for these two nations under treaties with the United States before Oklahoma became a State on November 16, 1907.

It has already been determined by Tenth Circuit Court of Appeals adjudication that the Choctaw and Chickasaw nations are dependent Indian communities dependent on the United States for it's protection and trust. This the respondent has not contested with the United States Supreme Court when Tenth Circuit entered that decision of dependent Indian Communities on part of the Choctaw and Chickasaw Nations at that time. Certainly Laches would apply against the respondent when the Tenth Circuit decision was not raised on Certiorari Review before the United States Supreme Court. See Choctaw Nation V. Atchison, T&S F. Ry. Co., 396 F.2d 578, n.[3-4] (10thCir.March 6, 1968). Respondent conceded that Choctaw and Chickasaw nations is dependent Indian communities when never contested by respondent. 18 U.S.C.A. 1151, 1153, 3242, 3231. This fact can be taken as true.

CONCLUSION

The Supreme Court of the United States should grant Certiorari to Review the Orders entered as Appendix A and Appendix B. PC-2019-451 due to the Public importance that would adversely affect numerous Native Americans living within the South-Eastern State of Oklahoma. Whom lives within reservation boundaries, former reservations, Allotments held in Trust by the United States for benefit of the Nations of the Five Tribes. Including the Tenth Circuit determination that Choctaw and Chickasaw Nations are an dependent communities under protection of the United States. The Supreme Court decisions will define the applicability of the Major Crimes Act for offenses committed by enumerated offenses within a reservation that preempted the State of Oklahoma from prosecution without subject matter jurisdiction of Indian Offenses. The additional fact is this Petition for Certiorari is case specific as to the boundaries of the Choctaw and Chickasaw Nations. 28 U.S.C.A. 1257(a), 1251(b)(2), 2101(c).

/s/ Keith Elmo Davis
Petitioner/Keith Elmo Davis

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