ORIGINAL

20-6593

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Dustin L. MacLeod
Petitioner

v.

WILLIAM MORITZ, Director,
MI Dept. of Natural Resources, et al.,

Respondent

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit
Case No. 19-1887; Originating Case No. 5:18-cv-11653

Dustin L. MacLeod, *in pro per*
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QUESTION PRESENTED (Rule 14.1(a))

Is an "Indian Treaty" the Supreme Law of the Land?

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IN THE SUPREME COURT OF THE UNITED STATES

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MI Dept. of Natural Resources, et al., Respondent

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Petitioner, **Dustin L. MacLeod**, respectfully asks that a writ of certiorari issue to review the judgment, opinion, and mandate of the US Sixth Circuit Court of Appeal, filed on June 8, 2020.

OPINION BELOW

The US Sixth Circuit Court of Appeal's order denying *en banc* review, dated May 29, 2020, is attached as Appendix C.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). The decision of the US Sixth Circuit Court of Appeal denying Petitioner's request for an en banc review, for which petitioner seeks review, was issued on May 29, 2020. This petition is filed within 90 days of that Order.

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Circuit's Order conflicts with the Supremacy Clause of the US Constitution:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." (US Constitution, Article VI, Clause 2).

STATEMENT OF CASE

Furthermore, the US Supreme Court recently affirmed that "Indian Treaties" are indeed the Supreme Law of the Land, and state courts, and appeals courts, are bound thereby (*McGirt v. Oklahoma*, 591 U.S. ___ (2020)). The section of the ruling relevant to this case is quoted below:

> Under our Constitution, States have no authority to reduce federal reservations lying within their borders. Just imagine if they did. A State could encroach on the tribal boundaries or legal rights Congress provided, and, with enough time and patience, nullify the promises made in the name of the United States. That would be at odds with the Constitution, which entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and statutes are the "supreme Law of the Land." Art. I, §8; Art. VI, cl. 2. It would also leave tribal rights in the hands of the very neighbors who might be least inclined to respect them. (McGirt v. Oklahoma, 591 U.S. ___ (2020), page 7; emphasis added).

In reviewing materials for this Writ, petitioner searched the Defendants' filings for any valid reference to any "Indian Treaty" case. There are none. Furthermore, during the pendency of this case, the US Supreme Court issued its "Indian Treaty" ruling in the *McGirt* case, cited and quoted, above.

Consequently, Petitioner simply asks this Honorable Court to retroactively apply that *McGirt* ruling to this case and reaffirm that "Indian" Treaties are indeed the Supreme Law of the Land, and, therefore, the "usual privileges of occupancy," including "the construction and use of a sweat lodge" (the "reserved right" lying at the core of this case, as the record shows: see *United States, et al. v. Michigan, et*

al., US Dis. Court. MI Western Dis., File No. 2:73-CV-26 ("Consent Decree").Section 6.2(a)(ii) of that Decree)), which constitutes a solemn promise by the US Government, codified as Article XIII of the 1836 Treaty of Washington (see Appendix A), is the Supreme Law of the Land.

Despite this clear and unequivocal language, the "local" court referred to above simply refused to recognize that the 2007 Inland Consent Decree applied to individual human beings, Ignoring this plain "tribal member" language, the local court Judge, instead, ruled that "tribes" can construct and use sweat lodges, and other Ceremonial Sacred Structures on "state land," but human beings cannot.

That is, state and federal "inferior" courts have ruled that human beings, individual Tribal members, have no rights under "Indian Treaties" that the state, or district federal courts, or a federal court of appeals, are obliged to recognize –it is unconstitutionally-claimed that those rights belong to the tribes, not to individual human beings, not to individual Tribal members. This spurious "ruling" has led to the filing of the Civil Rights lawsuit under review by this Court.

Consequently, following that perverted "logic," all of the courts who have reviewed this case have ruled that if the victims of a Hate Crime are American Indians, they have no rights under the Constitution that state or federal courts are obliged to recognize. To that end, Petitioner would also like the Court to add to its deliberations in this case its recent ruling in the *Herrera v. Wyoming,* case (139 S. Ct. 1686, 1697 (2019)) wherein it states that Clavin Herrera, and individual human being, an individual Tribal member, was "entitled to a treaty-based defense" (page 1693). In the *Herrera* case, the US Supreme Court also stated that: "Treaty analysis begins with the text"; to wit, in this case, with "the usual privilege of occupancy" reserved rights of Article XIII of the 1836 Treaty of Washington to construct and use a sweat lodge.

Petitioner also asks this Court to consider the Canons of Treaty Construction as set out in the Marshall Trilogy. (*Johnson and Graham's Lessee v. M'Intosh,* 21 U.S. (8 Wheat.) 543 (1823); *Cherokee Nation v. Georgia,* 30 U.S. (5 Pet.) 1 (1831); and *Worcester v. Georgia,* 31

U.S. (6 Pet.). 515 (1832)); *Herrera v. Wyoming*, 139 S.Ct. 1686, 1699 (2019) (citations omitted). That is, federal Indian Law Canons of Treaty Construction provide that "Indian treaties" 'must be interpreted in light of the parties' intentions, with any ambiguities resolved in favor of the Indians' and the words of a treaty must be construed 'in the sense in which they would naturally be understood by the Indians.'"

Here is the core of this Writ: all of the lower Courts (state and federal), including the Sixth Circuit (both the 3-judge panel, and the entire court, *en banc*) agree (at least, they do in 2020): the 1836 "Indian" Treaty of Washington's Article XIII "usual privileges of occupancy," which, in plain and convincing language, includes the reserved occupancy right of individual human beings, individual Tribal members, to "construct and use a sweat lodge," **is <u>not</u> the Supreme law of the Land, despite the US Supreme Court's ruling in its recent *McGirt* case to the contrary.** (McGirt v. Oklahoma, 591 U.S. ___ (2020); (Section 6.2(a)(ii) of the 2007 Inland Consent Decree. See

also *United States, et al. v. Michigan, et al.,* US Dis. Court. MI Western Dis., File No. 2:73-CV-26 ("Consent Decree").

Petitioner would like to exposit on that *US v. Michigan* ruling, briefly. In that ruling, Judge Fox wrote:

> Before the filing of the complaint and continuously during the course of these proceedings, the State of Michigan and certain individually named state officials have acted in derogation of the vested aboriginal and federal rights of the plaintiff Indian tribes. The conflict between the state and tribal fisherman is notorious; scarcely a day goes by without an article appearing in one or more of the state's major newspapers concerning the controversy. That it is a passionate issue is exemplified by a recent wholly improper attempt to influence this Court through the circulation of petitions amongst sports fishermen which urged that the court rule against the Indians. The circulation of petitions is an action diametrically at odds with the methods of access to the courts mandated by the Federal Rules of Civil Procedure. This misguided action gave thousands of people the erroneous impression that constitutional rights are a matter of popular contest. This was a corruption of the concept of the Federal Judicial system. In a democracy, many times people violate Constitutional and Inalienable rights. The United States Courts exist to ensure guaranteed constitutional rights against the TYRANNY OF POPULAR MAJORITIES. Federal Court Judges are, or ought to be, custodians of secured constitutional right. (all-caps emphasis in original) *United States v. State of Mich.*, 471 F. Supp. 192 (W.D. Mich. 1979), page 205.

That is, Federal Court Judges, and Federal Appeals Court Judges, must act in order to secure the "Supreme Law of the land": the Petitioner's "Indian Treaty-based" constitutional right to engage in the "usual privileges of occupancy," which includes the reserved right to "construct and use a sweat lodge." Of course, in the absence of that action by the inferior courts, that guarantee of secured Constitutional rights against the TYRANNY OF POPULAR MAJORITIES lies with this Supreme Court.

CONSTITUTIONAL QUESTIONS

Is the 1836 Treaty of Washington the Supreme Law of the Land?

The US Supreme Court, in its 2020 *McGirt* decision, answered YES.

In its 1983 ruling on the "usual privilege of occupancy 'Indian Treaty' rights," the Sixth Circuit also answered YES, to wit:

> With respect to state court jurisdiction over cases involving Indian treaty fishing, we agree with the argument and position of the United States presented on June 19, 1981. While these questions concerning Indian treaty rights and the degree of permissible state regulation are pending in this Court

> and in the District Court, it is improper under the Supremacy Clause of the United States Constitution for the state courts to make orders inconsistent with those of the federal courts." *United States v. State of Mich.*, 653 F.2d at 279-80, US Court of Appeals, Sixth Circuit, 1983.

Yet, in its ruling at the heart of this case, in 2020, the Sixth Circuit answered NO, despite the fact that, in 1984 the Sixth Circuit said: "There is … the familiar rule that a panel of this court may not overrule a previous panel's decision. Only an *en banc* court may overrule a circuit precedent, absent an intervening Supreme Court decision. " *Meeks v. Illinois Central Gulf R.R*, 738 F.2d 748, 751 (6th Cir. 1984). Clearly, in 1984, the *en banc* Sixth Circuit did not overrule its own 1983 precedent, waiting until 2020 to do so in the case before this Court.

REASONS FOR GRANTING THE PETITION

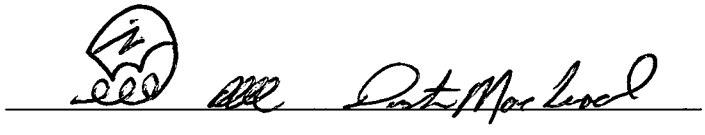
The granting of this Writ is necessary to reconcile the Sixth Circuit intra-panel contradictions, and the contradictions between the inferior courts and those of the US Supreme Court. Consequently, this case presents important issues over which the federal and state courts are

divided.

Petitioner urges this Court to take review in order to uphold its own decisions, and that of the 1983 Sixth Circuit, holding that "Indian Treaties" are indeed "the Supreme Law of the Land," and that "Indian Treaties" clearly recognize "reserved rights" that can be exercised by individual human beings, individual Tribal members.

CONCLUSION

For the foregoing reasons, petitioner requests that this Court grant the petition for certiorari.



Respectfully submitted, Dustin Lee MacLeod

Dated: 8-25-2020