

No. 20A161
CAPITAL CASE

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF OKLAHOMA, *Applicant*,

-vs-

SHAUN MICHAEL BOSSE, *Respondent*.

To the Honorable Neil M. Gorsuch,
Associate Justice of the United States Supreme Court and
Circuit Justice for the Tenth Circuit

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE*
BRIEF OF THE CHICKASAW NATION**

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Pursuant to Supreme Rule 22, the Chickasaw Nation (“Nation”) respectfully requests that it be allowed to file the attached *amicus curiae* brief, opposing the State of Oklahoma’s (“State”) motion for an order “granting or extending a stay of the mandate of the Oklahoma Court of Criminal Appeals (“OCCA’”) until the Court denies the State’s anticipated petition for certiorari or rules on the merits of this case.

Good cause exists for granting this motion. The State is seeking a further stay of a criminal case in which it seeks to challenge the OCCA’s ruling upholding the exclusivity of the federal government’s jurisdiction over crimes that were committed against Chickasaw Indians on the Chickasaw Nation’s Reservation in Oklahoma. The Nation has a significant sovereign interest in this case arising from its subject matter and from the Nation’s ongoing inter-governmental work to fully implement both this Court’s decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) and the OCCA’s ruling applying that decision to uphold the continuing existence of the Chickasaw Reservation. The Nation’s ability to work with other governments to address the reallocation of jurisdiction in accordance with these cases is plainly affected by any delay in the date on which the mandate in this case is issued.

The State’s request for a stay directly affects the Nation’s sovereign interests because the Nation asserts the correctness of the OCCA’s ruling that is the subject of the State’s request. That ruling addresses the scope of federal and state criminal jurisdiction on the Chickasaw Nation’s Reservation. The State has indicated that it will seek certiorari in that case on both or one of two grounds, each of which implicates the Nation’s sovereign interests in its Reservation. First, the State has said it may

seek certiorari on the question of whether the existence of Indian country is a jurisdictional question that can be waived in applications for post-conviction relief in state court. That is a question of legal importance to the Nation. Second, the State has said it may seek certiorari on the question of whether the State has criminal jurisdiction on the Chickasaw Nation's Reservation under the General Crimes Act, 18 U.S.C. § 1152, concurrent with the federal government's criminal jurisdiction under the Act. The scope of different sovereign governments' criminal jurisdiction on the Chickasaw Nation's Reservation is obviously of great legal and practical importance to the Nation. That is true as a general matter, but it is especially important to the Nation's ongoing inter-governmental work to implement this Court's decision in *McGirt*. The distribution of law enforcement authority between federal, state, and Tribal law enforcement is critical to that work. In particular, negotiation and cooperation between the federal, state, local, and Nation's governments requires a clear understanding of where jurisdiction lies.

Additionally, the State has also put at issue the extent to which the federal, state, and Nation's governments' efforts to implement *McGirt* impose irreparable harm on the State. The Nation has an interest in how jurisdictional questions in Indian country on its Reservation are being resolved, as well as how participants in the resolution of those questions present and discuss those efforts in court.

The Nation also has a unique and valuable perspective on the exercise of criminal jurisdiction within its Reservation. In recognition of that perspective, the OCCA already granted a motion by the Nation to participate in briefing on whether

to stay its mandate in this case. The Nation respectfully request that it be given the same opportunity here.

Pursuant to the Court's Order of April 15, 2020, the Nation has submitted this motion and the attached *amicus curiae* brief on 8½ by 11-inch paper, consistent with the formatting for requests for stay under Supreme Court Rule 33.2.

Respectfully submitted,



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