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

REPLY IN SUPPORT OF APPLICATION TO STAY MANDATE

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REPLY

Respondent never contests two essential issues: (1) nothing in federal law prohibits Oklahoma law from imposing procedural or equitable bars on respondent's postconviction claim, which *McGirt* explicitly contemplated would be applied; and (2) nothing in the plain text of the General Crimes Act (or any other federal statute) divests the State from prosecuting respondent, a non-Indian who victimized Indians. Respondent instead attempts to evade the weighty issues in this case by pretending the decision below and this Court's precedent say things they don't.

I. The decision below erroneously held federal law prohibits state procedural or equitable bars to postconviction Indian country claims.

1. At this point, there is no dispute that federal law does not prohibit states from imposing procedural or equitable bars in cases such as this. *See* Appl. 8-11.[1] Perhaps more notable, respondent wholly fails to acknowledge, much less address, this Court's statement in *McGirt* that those who, like respondent, attempt "to challenge their state convictions may face significant procedural obstacles, thanks to well-known state and federal limitations on postconviction review in criminal proceedings," citing to the Oklahoma Court of Criminal Appeals ("OCCA") decision in *Logan* on waiver. *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2479 & n.15 (2020) (cited at Appl. 2, 7). Respondent waves away this Court's *later* statements in *McGirt* applying similar principles more broadly, including to the civil and regulatory context, *see* Resp. 8, pretending the Court's earlier statements in the criminal realm don't exist.

[1] Herein, "Appl." refers to the Application for a Stay at bar, "App." refers to the Appendix to that Application, and "R.A." refers to respondent's appendix.

2. Keeping up the pretense, respondent then makes much of the State's prior reading of state case law on postconviction review in the *McGirt* and *Murphy* litigation. Resp. 1, 4, 8. Whatever the State's earlier positions, those arguments did not carry the day, with this Court offering a different interpretation of the availability of Oklahoma state law postconviction bars. *McGirt*, 140 S. Ct. at 2479 & n.15. To the extent the State has changed its tune, it's because this Court conducted a shift on that score. Meanwhile, the parties ending up on the winning side—the state inmates represented by the same entities as respondent here, as well as the tribe—insisted to the Court that state postconviction procedural and equitable bars were available under Oklahoma law. Resp. *Murphy* Br. in Opp. 33; Creek *Murphy* Suppl. Br. 11-12; Resp. *Murphy* Suppl. Reply Br. 11; Creek *McGirt* Br. 42-43.

3. With little justification for affirmance on the question presented, respondent insists that, in fact, the decision below rested solely on state law. Resp. 2, 5-10. But the OCCA's discussion began with interpreting this Court's decision in *Gonzalez v. Thaler*, 565 U.S. 134 (2012), to require subject matter jurisdiction never be deemed waived, followed by citations to two Tenth Circuit decisions. App. 1 at 18. The OCCA went on to cite some state court cases too, yet it is not clear those decisions were based on an interpretation of state law, or instead a (mis)interpretation of federal limits on state postconviction statutes. *Id.* Indeed, nothing in the plain language of the state postconviction statutes exempts jurisdictional challenges from the restrictions on collateral review, so the best explanation for the OCCA's refusal to bar such claims must be its belief that federal constitutional law requires that result.

If any state law interpretation is at issue, it is only to be found in the OCCA's statement that "*McGirt* provides a previously unavailable legal basis for this claim," perhaps invoking one of the statutory exceptions to the state's procedural bar. *Id.* at 19. As respondent notes, this also may have been the basis of the OCCA's earlier decision in this case. Resp. at 9-10 (citing R.A. 141). But any such application of a state law exception to the statutory procedural bar itself rests on an erroneous reading of federal law—yet another reason to grant review. *See* Appl. 11 n.3.

Specifically, Oklahoma law allows a successive postconviction application if "the legal basis for the claim was unavailable," meaning that the legal basis "was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court" or a state or federal appellate court, or that it was "a new rule of constitutional law." Okla. Stat. tit. 22, § 1089(D)(8)-(9). Here, as a matter of federal law, *McGirt* proclaimed exactly the opposite: the Court was "say[ing] nothing new" and applied the Major Crimes Act and the line of cases exemplified by *Solem v. Bartlett*, 465 U.S. 463 (1984). *McGirt*, 140 S. Ct. at 2464-65, 2468-69. The Tenth Circuit said the same three years earlier in *Murphy v. Royal*, 875 F.3d 896, 937-54 (10th Cir. 2017); *see also id.* at 966-67 (Tymkovich, J.) (concurring in denial of rehearing en banc "since Supreme Court precedent precludes any other outcome").

So it came to be that Mr. Murphy first raised his claims about disestablishment in 2004 and Mr. McGirt in 2018—respondent waited until 2019, after briefing and argument in *Murphy* took place in this Court, but before a decision. Appl. 4. Unless this Court erred in *McGirt* and the dissent was correct that the majority

"disregard[ed]" earlier precedent, 140 S. Ct. at 2482 (Roberts, C.J., dissenting), respondent's claim here was not previously unavailable under this Court's decisions. And as a decision where the "state court's interpretation of state law has been influenced by an accompanying interpretation of federal law," review is available—and here, urgent. *Three Affiliated Tribes of Fort Berthold Rsrv. v. Wold Eng'g, P.C.*, 467 U.S. 138, 152 (1984); *see also Foster v. Chatman*, 136 S. Ct. 1737, 1747 n.4 (2016).

4. Without a decision that rests on state law, respondent and the Chickasaw Nation point to *other* decisions from the OCCA they claim more clearly rely on state law. Resp. 11; Chickasaw Amicus Br. 9. Those cases are of little additional help. *Ryder v. State* declined to apply the state procedural bars because "[u]nder the particular facts and circumstances of this case … the legal basis for the claim was unavailable." 2021 OK CR 11, ¶ 5. That necessarily relies on the same erroneous interpretation of federal law discussed above. The only other state law basis *Ryder* cites are the earlier state court cases that, as already noted, are unclear as to whether they are based on purported federal limitations on state postconviction statutes. The same is true of the OCCA's decision in *Bench v. State*, 2021 OK CR 12, ¶ 15. Regardless, in *this* case, not some other case, "the adequacy and independence of any possible state law ground is" far from "clear from the face of the opinion," and instead "fairly appears to rest primarily on federal law, or to be interwoven with the federal law." *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983) (emphasis added).

5. Respondent is left only to misquote this Court's standard in *Michigan v. Long*. Resp. 11-12 n.3. As the quote above demonstrates, respondent misleadingly

flips the "fairly appears" standard to apply to a state court's reliance on state law—which instead must be "clear from the face of the opinion" in order to preclude review. That is, the Court will "resolve any uncertainty over the [state court]'s decision in favor of the possibility that it was influenced by a misunderstanding of federal law." *Three Affiliated Tribes*, 467 U.S. at 158. And contrary to respondent's assertions, nothing in *Long* is limited to the interplay between federal and state constitutional provisions. *See, e.g.*, *id.* at 151-57; *Foster*, 136 S. Ct. at 1746-47.

Without an escape provided by independent state law, respondent makes no attempt to defend the merits of the decision below that federal precedent precludes the application of state procedural bars. And with many, many cases like this working their way through state courts with all the attendant public safety implications, Appl. 11-14, certiorari is reasonably probable and reversal is significantly possible, if not certain. A stay is thereby warranted pending this Court's review.

II. Whether states may exercise concurrent jurisdiction over non-Indians who commit crimes against Indians in Indian country is a question worthy of certiorari with a significant possibility of reversal.

1. *McGirt* emphasized in Indian law, no less than in other areas, the text of statutes enacted by Congress controls. 140 S. Ct. at 2468-69. Yet respondent makes no effort to parse the text of the General Crimes Act, alleges no ambiguity therein, and does not dispute the plain words of that statute say nothing preempting state jurisdiction. *See* Appl. 18-20. No one defends the OCCA's conclusion that "the clear language of … statute" precludes concurrent state jurisdiction here. App. 1 at 19-20.

2. Bereft of statutory text, respondent resorts to mischaracterizing this Court's case law interpreting the General Crimes Act. Respondent presents these cases as if they determined the scope of state jurisdiction, Resp. 13-14, when in fact they concerned the scope of federal jurisdiction, *see United States v. McBratney*, 104 U.S. 621 (1881); *Draper v. United States*, 164 U.S. 240 (1896); *Donnelly v. United States*, 228 U.S. 243 (1913). As the case names suggest, they all arose in the context of federal prosecutions.

To the extent they touched on state jurisdiction, it was to determine whether state jurisdiction was *exclusive*—not whether the state had no jurisdiction at all. *McBratney* held that state jurisdiction was exclusive of federal jurisdiction with respect to non-Indian on non-Indian crimes on a reservation. 104 U.S. at 624. The Court clarified, however, that "[t]he record before us presents no question under the provisions of the treaty as to the punishment of crimes committed by or against Indians," only whether federal courts have "jurisdiction of the crime of murder committed by a white man upon a white man within the Ute Reservation." *Id.*

Then in *Draper*, the Court once again rejected federal jurisdiction over a non-Indian on non-Indian crime, focusing like *McBratney* on the text of the particular state's enabling act: "this court held that where a state was admitted into the Union, and the enabling act contained no exclusion of jurisdiction as to crimes committed on an Indian reservation by others than Indians, or against Indians, the state courts were vested with jurisdiction to try and punish such crimes." 164 U.S. at 242-43. *Draper* held that Montana's enabling act provision "reserving to the United States

jurisdiction and control over Indian lands … was not intended to deprive that state of power to punish for crimes committed on a reservation or Indian lands by other than Indians or against Indians." *Id.* at 247. But the Court also hastened to add that "the construction of the enabling act here given is confined exclusively to the issue before us, and therefore involves in no way any of the questions fully reserved in *U.S. v. McBratney*, and which are also intended to be fully reserved here." *Id.* Contrary to respondent's repeated misdirection, Resp. 2, 13, 14, 15-16, *Draper* did not in fact hold that federal jurisdiction over crimes by non-Indians against Indians is exclusive.[2]

The question reserved in *McBratney* and *Draper*—federal jurisdiction over crimes by or against Indians—was ultimately answered in *Donnelly*. There, the respondent contended that admission of California into the Union "conferred upon the state *undivided* authority" to prosecute non-Indians, even those who commit crimes against Indians on a reservation, such that the federal government lacked jurisdiction. 228 U.S. at 271 (emphasis added). The Court characterized *McBratney* and *Draper* as holding the "admission of states qualified the former Federal jurisdiction over Indian country included therein by withdrawing from the United States and conferring upon the states the control of offenses committed by white people against whites, in the absence of some law or treaty to the contrary," but

[2] In fact, this Court later confirmed that these enabling act provisions, like Montana's and Oklahoma's more narrow version, did *not* impact a state's governmental power, but instead solely functions to preserve the federal government's jurisdiction over Indian property without reducing the new state's jurisdiction; that is, federal jurisdiction is "undiminished, not exclusive." *Organized Vill. of Kake v. Egan*, 369 U.S. 60, 69-71 (1962).

"reserved as to the effect of the admission of the state into the Union upon the Federal jurisdiction over crimes committed by or against the Indians themselves." *Id.* Answering the reserved question, the Court held the federal government retained jurisdiction over crimes committed by or against Indians "as the wards of the nation." *Id.* at 271-72. Respondent, in an exercise of wishful reading, three times characterizes this holding as concerning "exclusive" federal jurisdiction, Resp. 14, but neither the word nor the notion of "exclusive" federal jurisdiction appear in the relevant portions of *Donnelly*, 228 U.S. at 271-72. Instead, *Donnelly* held that admission of a state did not "effect" or "withdraw[]" federal jurisdiction over crimes by or against Indians, such that state jurisdiction over the same was not "undivided." *Id.*

The remaining cases cited by respondent and the tribe do not confront the text of the General Crimes Act or otherwise analyze whether states have jurisdiction over non-Indians who victimize Indians on Indian country, at most only mentioning in passing states lack such jurisdiction. Resp. 14-15; Chickasaw Amicus Br. 21-23. Respondent admits that in none of those cases has the Court ever done what the court below did here: "reversed a state-court conviction of a non-Indian defendant based on lack of jurisdiction." Resp. 16. We have a word for such "general expressions" in opinions that "go beyond the case": it's called dicta. *Cohens v. Virginia*, 19 U.S. 264, 399-400 (1821); *see also Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 548

(2013); *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 35 (2012); *Central Va. Community College v. Katz*, 546 U.S. 356, 363 (2006).[3]

So it can hardly be said that Congress has adopted respondent's interpretation of the General Crimes Act and the Oklahoma Enabling Act when respondent's reading of the cases is simply wrong. *See* Resp. 15-16. Nor do later enacted statutes provide much guidance as to Congress's intent a hundred years earlier. *See* Appl. 23. Indeed, respondent acknowledges that perhaps Congress was "overinclusive" with the conferral of jurisdiction in these statutes. Resp. 17 n.5.

3. Left without an answer to the question presented in statutory text or binding precedent, respondent and the tribe resort to the long-abandoned notion that absent affirmative congressional authorization, states are wholly without jurisdiction on Indian reservations. Resp. 18-20; Chickasaw Br. 14-16. Harkening back to this Court's decision in *Worcester v. Georgia*, they assert state laws have "no force" in Indian country but instead such lands are "completely separate from that of the States" and "all intercourse with them shall be carried on exclusively by the

[3] To illustrate, one of the cases respondent relies upon quotes *McClanahan v. State Tax Comm'n of Arizona*. But the dicta in that case also characterizes the Five Tribes of Oklahoma as "Indians who have left or never inhabited reservations." 411 U.S. 164, 167 (1973). It in turn cites to *Oklahoma Tax Comm'n v. United States*, which stated that the Five Tribes' independent political status was "a condition which has not existed for many years in the State of Oklahoma," and instead "they are actually citizens of the State with little to distinguish them from all other citizens except for their limited property restrictions and their tax exemptions." 319 U.S. 598, 602-03 (1943). As a result of being "full fledged citizens of the State of Oklahoma," the State "supplies for them and their children schools, roads, courts, police protection and all the other benefits of an ordered society." *Id.* at 608. The Court in *McGirt* nonetheless disregarded this dicta in favor of examining statutory text. The same should be true here.

government of the union." 31 U.S. 515, 557-562 (1832). But as Justice Scalia wrote for the Court, quoting Justice (Thurgood) Marshall, "it was 'long ago' that 'the Court departed from Chief Justice Marshall's view that "the laws of [a State] can have no force" within reservation boundaries.'" *Nevada v. Hicks*, 533 U.S. 353, 361-62 (2001) (quoting *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 141 (1980)). Instead, this Court's "cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation" and "State sovereignty does not end at a reservation's border." *Hicks*, 533 U.S. at 361. "[A]n Indian reservation is considered part of the territory of the State." *Id.* at 361-62 (citation and internal marks omitted); *see also Organized Vill. of Kake v. Egan*, 369 U.S. 60, 72 (1962).

Thus, states generally may exercise jurisdiction unless preempted by federal law or that jurisdiction "infringe[s] on the right of reservation Indians to make their own laws and be ruled by them." *Bracker*, 448 U.S. at 142-43. The latter consideration is used to presume lack of state jurisdiction in cases "[w]hen on-reservation conduct involving only Indians is at issue," but "where, as here, a State asserts authority over the conduct of non-Indians engaging in activity on the reservation," the presumption is quite different. *Id.* at 144-45; *see also* Appl. 21-22. And given the assertion of concurrent jurisdiction over non-Indians who victimize Indians advances the joint interests of the tribe, state, and federal government, there is no reason to assume

state jurisdiction is preempted without clear statutory text. Appl. 22. Again, neither the General Crimes Act nor any other statute provides that text.[4]

Similarly, in the criminal context, *McBratney* emphasized that a state presumptively has "criminal jurisdiction over its own citizens and other white persons throughout the whole of the territory within its limits, including the [] Reservation." 104 U.S. at 624. And this Court upheld the constitutionality of the Major Crimes Act in part because, since it only applies to crimes committed *by* Indians, "[i]t does not interfere with the process of the state courts within the reservation, nor with the operation of state laws upon white people found there." *United States v. Kagama*, 118 U.S. 375, 383 (1886).[5]

Respondent and the tribe's position that states presumptively lack jurisdiction on a reservation—including over the acts of their own non-Indian citizens—whenever an Indian or tribe is involved would require a massive shift backwards in the law.[6]

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[4] *See also People of State of N.Y. ex rel. Ray v. Martin*, 326 U.S. 496, 499 (1946) ("[I]n the absence of a limiting treaty obligation or Congressional enactment, each state ha[s] a right to exercise jurisdiction over Indian reservations within its boundaries."); *United States v. McGowan*, 302 U.S. 535, 539 (1938) ("Enactments of the federal government passed to protect and guard its Indian wards only affect the operation, within the colony, of such state laws as conflict with the federal enactments."); *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930) (Indian reservations are considered "part of the state within which they lie," and all state laws, "civil and criminal, have the same force therein as elsewhere," subject to the limit that they cannot "impair the effective use of the reservation for the purposes for which it is maintained").

[5] That the Major Crimes Act does not address non-Indian crimes is one reason why respondent's appeal to the Major Crimes Act and associated precedent is unavailing. Resp. 21. And this is in addition to the markedly different text of the Major Crimes Act, both as originally enacted and as it stands today. *See Kagama*, 118 U.S. at 376-77; 18 U.S.C. § 1153.

[6] *See Dep't of Tax'n & Fin. of New York v. Milhelm Attea & Bros., Inc.*, 512 U.S. 61, 75 (1994) (on-reservation non-Indian sellers ("Indian traders") are not immune from state taxes); *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505,

Worcester notwithstanding, "[t]his Court's more recent cases have recognized the rights of States, absent a congressional prohibition, to exercise criminal (and, implicitly, civil) jurisdiction over non-Indians located on reservation lands." *Cty. of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 257-58 (1992). That is why the Creek Nation assured the Court of the state's continued jurisdiction on reservation fee land in *Murphy* and *McGirt*. Creek *Murphy* Br. 34-37; Creek *McGirt* Br. 43-44. And why counsel for the inmate here and in those cases agreed: "State authority over non-Indians on fee land … continues largely unchanged: the State retains jurisdiction unless specifically preempted." Resp. *Murphy* Br. 56; *see also* Pet. *McGirt* Br. 40. The General Crimes Act does no such thing.

4. All this shows respondent and the tribe are quite wrong to claim the question of state jurisdiction over non-Indians who commit crimes against Indians has been settled for over a century. Indeed, it has not been so long since the Department of Justice struggled with and vacillated on the issue. In 1979, the Office of Legal Counsel issued an opinion concluding that "[a]lthough *McBratney* firmly establishes that State jurisdiction, where it attaches because of the absence of a clear Indian victim, is exclusive, we believe that, despite Supreme Court *dicta* to the contrary, it does not necessarily follow that, where an offense is stated against a non-Indian defendant

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512 (1991) (state can require tribe to collect cigarette tax from non-Indians at tribe's convenience store); *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 187 (1989) (state can tax non-Indian lessees' production of oil and gas on leased tribal lands); *Washington v. Confederated Tribes of Colville Indian Rsrv.*, 447 U.S. 134, 159 (1980) (state can require Indian seller to record all cigarette sales to non-Indians); *Moe v. Confederated Salish & Kootenai Tribes of Flathead Rsrv.*, 425 U.S. 463, 483 (1976) (state can require Indian seller to collect cigarette tax from non-Indians).

under Federal law, State jurisdiction must be ousted." 3 U.S. Op. Off. Legal Counsel 111, 117 (1979). It did so after careful analysis of the history of criminal jurisdiction on reservations, the differences between the Major Crimes Act and General Crimes Act, this Court's case law, and the various governmental interests involved when states assert jurisdiction over non-Indians as opposed to Indians. *Id.* at 117-120.

Although the Department of Justice later switched positions, it acknowledged that "[i]f the Court were writing on a clean slate, it might conclude that federal jurisdiction under Section 1152 is not exclusive" in part because "[t]he State has a strong interest in enforcing its criminal laws against non-Indians, and state jurisdiction would not necessarily interfere with federal or tribal interests." U.S. Br., *Arizona v. Flint*, 492 U.S. 911 (June 1989).[7] The Department ended up concluding otherwise based on "shared assumption[s]," but recognized that under the rules set forth in cases like *Bracker*, "a strong argument could be made for permitting the State to exercise jurisdiction." *Id*.

The question the Justice Department then characterized as "exceedingly difficult," *id.*, has now become exceedingly important, Appl. 15-18. The recent recognition of the Five Tribes' reservations means that non-Indians live on Indian country in numbers—well over a million—heretofore unseen. Respondent denigrates the importance of the 20% of the Indian-involved cases the State estimates will be affected, Resp. 22—a conservative estimate, Appl. 17—but 20% of thousands of cases a year is no small matter, especially to the victims of crimes like respondent's. And

[7] https://www.justice.gov/osg/brief/state-arizona-petitioner-v-conrad-marion-flint

because the State is arguing for concurrent jurisdiction, federal prosecutions and convictions under the General Crimes Act would be unaffected, rendering respondent's concerns about disrupted "understanding[s]" academic at best. Resp. 22-23. Given the difficult and important question this case presents on state jurisdiction over non-Indians who victimize Indians on reservations within the State's borders, a stay is warranted pending this Court's full consideration.

III. A stay would prevent likely irreparable harm.

Respondent purports to guarantee the federal government will return him to death row if the State prevails here, Resp. 23-24, but whether and how the Interstate Agreement on Detainers applies is subject to significant uncertainty, especially in the context of death sentences. *E.g.*, *People v. Guest*, 503 N.E.2d 255, 275 (Ill. 1986). The federal government before has attempted to avoid its responsibilities under that Act. *See United States v. Mauro*, 436 U.S. 340 (1978). And respondent appears to question whether the IADA applies at all, discussing it only because "Oklahoma invokes" it, which would leave no duty for the federal government to return him. *See* Resp. 23.

Both respondent and the tribe are naïve to think a stay from this Court will not guide lower courts in the many follow-on cases raising one or both questions presented here. Resp. 3, 25; Chickasaw Br. 30-31. Courts in Oklahoma are already staying implementation of the decision below in other cases until this Court decides this application.[8] They did the same after the Tenth Circuit stayed its mandate in

[8] *See, e.g.*, *State v. Taylor*, No. CF-08-362, Order (Cherokee Cnty. Apr. 29, 2021), *available at* https://www.oscn.net/dockets/GetCaseInformation.aspx?db=cherokee&number=cf-2008-362;

Murphy and before this Court decided that case along with *McGirt*. Of course, the State will not hesitate to seek a stay in those cases too if necessary, but granting a stay here will likely obviate the need for repeated applications to this Court.

Finally, the tribe (though not the public defender) questions the relevance of federal statutes of limitations to prevent prosecutions in cases such as this. Chickasaw Br. 28. But "most federal crimes," such as second-degree murder, manslaughter, and robbery, are subject to a five-year statute of limitations. *United States v. Bater*, 594 F.3d 51, 54 (1st Cir. 2010) (citing 18 U.S.C. § 3282(a)). The tribe's attempt to nitpick the State's examples of such cases fails too. Chickasaw Br. 28 n.11. With respect to Mr. Worthington, for example, the tribe points to an extended statute of limitations for certain sexual offenses enacted in 2006, but even if it covers the types of crimes in Worthington's case, he committed his crimes in the mid-1980s—before that exception to the general five-year statute of limitations existed. *Cf. United States v. Nader*, 425 F. Supp. 3d 619, 623 (E.D. Va. 2019). Nor does the tribe account for the many other problems that arise when attempting to prosecute decades-old crimes, *i.e.*, the sorts of crimes that are the subject of the first question presented. We cannot lightly pretend no harm comes when longstanding convictions and systems of criminal justice are thrown into doubt.

CONCLUSION

For the foregoing reasons, this Court should grant the application to stay.

State v. Grass, No. CF-97-311, Order (Cherokee Cnty., Apr. 30, 2021), *available at* https://www.oscn.net/dockets/GetCaseInformation.aspx?db=cherokee&number=cf-1997-311.

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