

**In the Supreme Court of the United States**

---

---

STATE OF OKLAHOMA,

*Petitioner,*

v.

GRANT N. JACKSON, IV,

*Respondent.*

---

**On Petition for a Writ of Certiorari to the  
Oklahoma Court of Criminal Appeals**

---

---

**PETITION FOR A WRIT OF CERTIORARI**

---

---

JOHN M. O'CONNOR

*ATTORNEY GENERAL*

MITHUN MANSINGHANI

*SOLICITOR GENERAL*

*COUNSEL OF RECORD*

CAROLINE HUNT

JENNIFER CRABB

*ASSISTANT ATTORNEYS GENERAL*

BRYAN CLEVELAND

RANDALL YATES

*ASSISTANT SOLICITORS GENERAL*

OFFICE OF THE OKLAHOMA

ATTORNEY GENERAL

313 N.E. TWENTY-FIRST STREET

OKLAHOMA CITY, OK 73105

(405) 522-4392

MITHUN.MANSINGHANI@OAG.OK.GOV

**QUESTION PRESENTED**

Whether *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), should be overruled.

**LIST OF PROCEEDINGS**

Oklahoma Court of Criminal Appeals

No. F-2016-453

*Grant N. Jackson IV*, Appellant v.

*The State of Oklahoma*, Appellee

Date of Final Order: March 18, 2021

---

Oklahoma District Court (Tulsa County)

No. CF-2014-5892

*State of Oklahoma*, Plaintiff v.

*Grant N. Jackson IV*, Defendant

Date of Judgment and Sentence: May 16, 2016

**TABLE OF CONTENTS**

	Page
QUESTION PRESENTED .....	i
LIST OF PROCEEDINGS.....	ii
TABLE OF AUTHORITIES .....	v
OPINIONS BELOW .....	1
JURISDICTION.....	2
STATUTORY PROVISIONS INVOLVED .....	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION.....	6
CONCLUSION.....	8

**TABLE OF CONTENTS – Continued**

Page

**APPENDIX TABLE OF CONTENTS**

Opinion of the Court of Criminal Appeals,  
State of Oklahoma (March 18, 2021) ..... 1a

District Court of Tulsa County, State of  
Oklahoma, Findings of Fact and Conclusions  
of Law (Signed November 6, 2020, Filed  
November 12, 2020)..... 11a

Agreed Stipulation  
(September 25, 2020)..... 17a

Order of the Court of Criminal Appeals, State of  
Oklahoma, Remanding for Evidentiary  
Hearing (August 19, 2020) ..... 20a

## TABLE OF AUTHORITIES

Page

### CASES

<i>McGirt v. Oklahoma</i> , 140 S. Ct. 2452 (2020) .....	passim
<i>Oklahoma v. Bosse</i> , Petition for Writ of Certiorari, No. 21-186 (U.S.) .....	3, 6, 7, 8

### STATUTES

18 U.S.C. § 1151 .....	2
18 U.S.C. § 1153(a) .....	2
28 U.S.C. § 1257(a) .....	2

### JUDICIAL RULES

Sup. Ct. Rule 12.7 .....	3
--------------------------	---

---

---

**In the Supreme Court of the United States**

STATE OF OKLAHOMA,

*Petitioner,*

v.

GRANT N. JACKSON IV,

*Respondent.*

---

**On Petition for a Writ of Certiorari to the  
Oklahoma Court of Criminal Appeals**

---

---

**PETITION FOR A WRIT OF CERTIORARI**

---

---

**OPINIONS BELOW**

The opinion of the Oklahoma Court of Criminal Appeals, dated March 18, 2021 is included in the Appendix at App.1a-10a. The order of the Oklahoma Court of Criminal Appeals, dated October 9, 2020, remanding the case for an evidentiary hearing is included below at App.20a-24a. The Order of the District Court in and for Tulsa County, State of Oklahoma, dated November 12, 2020 is included below at App.11a-16a. These opinions and orders were not designated for publication.



## JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on March 18, 2021. App.1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).



## STATUTORY PROVISIONS INVOLVED

### **18 U.S.C. § 1151 (in relevant part) Indian Country Defined**

[T]he term ‘Indian country’, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

### **18 U.S.C. § 1153(a) Offenses Committed Within Indian Country**

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under

section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.



## STATEMENT OF THE CASE

Thousands of state criminal prosecutions have been called into question by this Court’s decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). Like the pending petition in *Oklahoma v. Bosse*, No. 21-186, this case presents the question whether *McGirt* should be overruled. For the same reasons given in the *Bosse* petition, review is warranted here to examine that question. The petition for a writ of certiorari in this case should either be granted or, if the petition in *Bosse* is granted, held pending a decision in *Bosse* and then disposed of as is appropriate.

1. On the morning of November 1, 2014, four year old L.W. soiled his pants (Tr. 515, 518).<sup>1</sup> Respondent’s eight year old daughter, O.J., heard respondent yelling, “sit down” and she heard L.W. crying loudly (Tr. 520). She heard the bathwater running, after which respondent came downstairs, calmly carrying L.W. and left (Tr. 521-22).

Respondent took L.W. to Hillcrest Hospital with burns from his waist down (Tr. 561). The burns were

---

<sup>1</sup> All fact citations are to the transcript of respondent’s jury trial (Tr.), which is available below. See Sup. Ct. R. 12.7.

so severe that the skin was coming off of L.W.'s body (Tr. 563-65).

L.W. sustained a second and third degree burn to thirty percent of his body, involving both his legs, his genitals and the sides of his thighs, as well as his buttocks and the front of his pubis (Tr. 701-02). The burn pattern was symmetrical on both legs and in a straight-line distribution on either side of his body (Tr. 702). This indicated that L.W. was forcibly immersed into hot water (Tr. 702).

Respondent told a social worker at the hospital that L.W. had defecated in his pants and he was in trouble for that (Tr. 588-89). Respondent admitted to spanking L.W. and placing him in the bath, although he claimed the water felt fine (Tr. 588-89). Respondent was tried by jury, convicted of child abuse by injury, and sentenced to four years in prison.

2. After this Court issued its decision in *McGirt*, the Court of Criminal Appeals remanded the case to the trial court for an evidentiary hearing. On remand, the trial court found, based on the stipulations of the parties, that respondent has 17/128 Indian blood and was enrolled in the Muscogee (Creek) Nation at the time of the offense. App.12a-13a. The court thus concluded that respondent is an Indian. App.16a. The court further found, based on the parties' stipulations and *McGirt*, that the crime was committing within the Creek reservation boundaries. App.15a-16a.

The Court of Criminal Appeals vacated the conviction, adopting the trial court's conclusions and holding that the federal government had exclusive authority to prosecute respondent for the crimes at issue. App.4a.

Two judges wrote separate opinions. Judge Lumpkin concurred in the result. App.7a-9a. He expressed his view that the Court's opinion in *McGirt* "contravened \* \* \* the history leading to the disestablishment of the Indian reservations in Oklahoma," but concluded that he was bound to follow it. App.7a.

Judge Hudson specially concurred. App.10a. Like Judge Lumpkin, he concurred "as a matter of *stare decisis*," but he observed that *McGirt* has a "far-reaching impact on the criminal justice system in Oklahoma. . . ." App.10a.



## REASONS FOR GRANTING THE PETITION

In the decision below, the Oklahoma Court of Criminal Appeals applied *McGirt* to free yet another criminal from state custody, exacerbating the crisis in the criminal-justice system in Oklahoma. As the State of Oklahoma explains in its petition in *Bosse*, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. This case presents yet another opportunity to end the damage caused by *McGirt*. For the same reasons offered in *Bosse*, this petition should either be granted or, if the petition in *Bosse* is granted, held pending a decision in *Bosse* and then disposed of as is appropriate.

As explained more fully in *Bosse*, *McGirt* was wrongly decided, and the Court's review is urgently needed because no recent decision has had a more immediate and disruptive effect on life in an American State. *McGirt* contravened longstanding precedent on the disestablishment of Indian reservations. 140 S. Ct. at 2485 (Roberts, C.J., dissenting). It did so by wrongly reasoning that historical materials showing the original public meaning of statutes may be considered in the disestablishment inquiry "only" to "clear up" statutory ambiguity. *See id.* at 2467-2468, 2469-2470 (majority opinion). But consideration of history is necessary precisely because it is unclear whether Congress's alienation of Indian lands at the turn of the century changed the Indian country status of the land. *See id.* at 2488 (Roberts, C.J., dissenting). Under the correct framework prescribed by this Court's precedent, it is clear that Congress disestablished the Creek territory

in Oklahoma, as well as the territories of the four other Oklahoma tribes. And with that conclusion, it is clear that the decision below is incorrect and warrants reversal.

Overruling *McGirt* and restoring the state jurisdiction it stripped is important not only for this case and the victims of the terrible crimes at issue. As the Chief Justice correctly predicted, the “burdens” of the *McGirt* decision on the State of Oklahoma have been “extraordinary.” 140 S. Ct. at 2500. The challenges from that seismic shift in jurisdiction have rippled through every aspect of life in Oklahoma. Most immediately, *McGirt* has jeopardized the state’s jurisdiction over thousands of criminal cases—this case being just one of them.

The question presented in this case is materially identical to the third question presented in *Bosse*. For the compelling reasons explained in the petition in *Bosse*, review should be granted in that case. The Court should then either grant review in this case or hold the petition pending the resolution of the third question presented in *Bosse*.



## CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, if the petition in *Oklahoma v. Bosse*, No. 21-186, is granted, the petition in this case should be held pending a decision there and then disposed of as is appropriate.

Respectfully submitted,

JOHN M. O'CONNOR

*ATTORNEY GENERAL*

MITHUN MANSINGHANI

*SOLICITOR GENERAL*

*COUNSEL OF RECORD*

CAROLINE HUNT

JENNIFER CRABB

*ASSISTANT ATTORNEYS GENERAL*

BRYAN CLEVELAND

RANDALL YATES

*ASSISTANT SOLICITORS GENERAL*

OFFICE OF THE OKLAHOMA

ATTORNEY GENERAL

313 N.E. TWENTY-FIRST STREET

OKLAHOMA CITY, OK 73105

(405) 522-4392

MITHUN.MANSINGHANI@OAG.OK.GOV

*COUNSEL FOR PETITIONER*

AUGUST 16, 2021