

In the
Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

VICTOR MANUEL CASTRO-HUERTA,

Respondent.

On Writ of Certiorari to the
Oklahoma Court of Criminal Appeals

BRIEF OF AMICUS CURIAE
OKLAHOMA ASSOCIATION OF CHIEFS OF POLICE
IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST¹

The Oklahoma Association of Chiefs of Police (“OACP”) is the largest law enforcement executive and administrative association in Oklahoma. Its membership comes from many professional agencies and departments throughout the state.

OACP possesses a strong commitment to professional conduct in law enforcement. This commitment is promoted through education, professional training, communications, and improving laws that protect the citizens of communities throughout Oklahoma.

OACP membership includes campus law enforcement, corporate protection and security, federal agencies, state agencies, municipal chiefs, tribal law enforcement, county sheriffs, public safety and highway patrol, and many other law enforcement entities in Oklahoma. OACP seeks to protect and to serve all citizens of Oklahoma.

In *McGirt v. Oklahoma*, 591 U.S. ___, 140 S.Ct. 2452, 2477 (2020), the Court emphasized the importance of a “clear expression of the intention of Congress[.]” Oklahoma municipalities, especially those located in the former Indian Territory, have that clear

¹ Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and that no entity or person, aside from *amicus curiae*, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.2, counsel of record for all parties received notice of the intent to file this brief at least 10 days before it was due and have consented to this filing.

expression, through Congressional passage—more than a century ago—of Section 14 of the Curtis Act, 30 Stat. 499 (1898).

Among other things, the Curtis Act provides that municipalities in Indian Territory possess authority over “all inhabitants of such cities and towns, without regard to race,” and further declares that individuals, including tribal members, “shall be subject to all laws and ordinances of such city or town governments[.]” That section of the Curtis Act was “expressly preserved” by reference in § 73 of the Act of July 1, 1902, 32 Stat. 716 (1902). See *Brief of Amicus Curiae Historians, Legal Scholars and Cherokee Nation in Support of Respondent, Carpenter v. Murphy*, U.S. Supreme Court, No. 17-1107, at 25 (“the ratified agreement . . . expressly preserved only §§ 14 and 27 of the Curtis Act”).² This broad grant of authority under federal law equips municipalities with a baseline assurance that local order can be enforced on all individuals in the city for municipal violations such as disorderly conduct, Tulsa tit. 27, § 1402, local hate crimes such as malicious harassment, Muskogee ord. § 54-47, or assisting prisoners to escape, Okmulgee tit. 9, § 4.030.

While this authority aids in the provision of safety in Oklahoma municipalities in the former Indian Territory, it does not provide local authorities with the ability to enforce Oklahoma’s criminal code against tribal member perpetrators. Municipal courts are

² The Act of 1902 is relevant because the incident in this case involved a member of the Cherokee Nation in Cherokee Country. To be sure, each of the Five Civilized Nations came to an agreement with the United States as required by the Curtis Act, each with its own terms, and each retaining § 14.

restricted to imprisonment lengths of six months by statute. *See* 11 O.S. 28-102 (enumerates municipal courts of record punishment limits.) *See also* 11 O.S. 27-122.1 (enumerates municipal courts not of record punishment limits.) As a result of this Court’s ruling in *McGirt*, local Oklahoma peace officers must determine, prior to arrest, if a perpetrator is a non-Indian or an Indian. If the suspect is a tribal member, the officer may make a *United States v. Cooley*, 593 U.S. ___, 141 S.Ct. 1638 (2021) detention before turning the perpetrator over to the tribal or federal authority, if that authority arrives at all. Hughes County Sherriff Marcia Maxwell recently withdrew from a cross-deputization agreement with the Muscogee Creek Nation over “the tribe’s inability or refusal to assist on tribal calls in Hughes County and lack of prosecution of cases[.]” Open letter from Marcia Maxwell, Hughes County Sherriff (February 8, 2022), *viewed at* <https://nondoc.com/wp-content/uploads/2022/02/Hughes-County-Sheriff-letter.pdf>. Sherriff Maxwell’s public perspective is not the exception in the law enforcement community. Crimes and their perpetrators are falling through the cracks, creating an unworkable regime that makes Eastern Oklahoma less safe.

Should this Court rule that federal law precludes Oklahoma jurisdiction over non-Indians that commit a crime against a tribal member, the result will hamper local law enforcement even further, and will require OACP membership and the law enforcement officers they lead to wonder reflexively against what sliver of individuals it does possess authority to enforce the law.



SUMMARY OF ARGUMENT

Following this Court's ruling in *McGirt*, Oklahoma's criminal justice system has been hobbled. Law enforcement officers have been forced to react immediately to an ill-defined fundamental shift in how they do their job. Questioning and self-doubt, in a profession where those traits can lead to poor outcomes, have grown. The municipal law enforcement community has faced significant challenges when working to enforce state and municipal law, particularly when trying to determine over whom officers have jurisdictional authority.

In *McGirt*, this Court has already revoked an important, long-standing element of jurisdictional authority of state and local law enforcement. Should this Court restrain Oklahoma's jurisdiction over non-tribal members, the result will be additional confusion over who law enforcement can arrest and exercise jurisdiction.



ARGUMENT

I. PUBLIC SAFETY IS OF TRANSCENDENT VALUE TO OKLAHOMANS.

A. *McGirt* Has Confused Basic Jurisdictional Questions.

Despite its clear and recognized authority, the Curtis Act has not insulated municipalities from this jurisdictional quagmire. Doubts exist about whether law enforcement officers even have authority to stop an individual for minor traffic offenses or misdemeanors. When a suspect claims tribal membership, law enforcement’s hands are tied—there is no database or other tool that allows law enforcement to determine whether suspects (or victims) are members of a tribe.

Determining tribal status does not end the analysis. Municipalities must then determine if the alleged perpetrator is considered “Indian for purposes of federal criminal jurisdiction even if he or she is not formally enrolled in any tribe.” *Parker v. State*, 2021 OK CR 17, ¶ 9, 495 P.3d 653, (2021). Further complicating the issue is the lack of any recognized factors for determining whether a person is recognized as an Indian under *McGirt*. See *id.*, at ¶ 40 (detailing four possible approaches). Such a determination often requires a lengthy hearing and analysis—something municipal law enforcement officers are ill-equipped to accomplish during a routine traffic stop.

As a result, *McGirt* has made it exceptionally difficult for law enforcement officers to protect and to serve the citizens of Eastern Oklahoma.

B. The Federal–Tribal Criminal Justice System Is Failing Oklahomans.

When this Court entered its ruling in *McGirt*, the Court acknowledged that it “proceed[ed] well aware of the potential for cost and conflict.” *McGirt*, at *41, 2481. But that understates what occurred within even the first year following the ruling.

Overnight, Oklahoma became the federal murder capital of the nation. According to statistics from the Administrative Office of the U.S. Courts, federal murder prosecutions nationwide increased 112%. Virtually all of the increase in prosecutions occurred in Oklahoma. The number of homicide prosecutions in the Eastern District of Oklahoma has increased from 33 homicides in FY2020, *Judicial Business, Table D-3*, Administrative Office of the U.S. Courts, September 30, 2020, https://www.uscourts.gov/sites/default/files/data_tables/jb_d3_0930.2020.pdf, to 169 homicides at the conclusion of FY2021. *Judicial Business, Table D-3*, Administrative Office of the U.S. Courts, September 30, 2021, https://www.uscourts.gov/sites/default/files/data_tables/jb_d3_0930.2021.pdf. The Eastern District of Oklahoma alone now represents 57% of all federal homicide prosecutions.

As federal homicide prosecutions in Oklahoma sky-rocketed after *McGirt*, one might reasonably have presumed that prosecutions for other crimes would experience a similar increase. That has not been the case. To the contrary, other prosecutions have not increased proportionately. According to the same report exhibiting the staggering number of federal homicides being tried in Oklahoma, the Eastern District of Oklahoma did not claim a similarly appreciable increased share of other crimes. Robberies comprise

only 6% of the national total, while assaults comprise 8%, and burglaries, larcenies, and thefts make up only 2% of the federal prosecutions. *Judicial Business, Table D-2*, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, September 30, 2021, https://www.uscourts.gov/sites/default/files/data_tables/jb_d2_0930.2021.pdf

There is a meaningful disconnect in these numbers that points directly to the issue Oklahoma law enforcement officials find in their daily jobs: “lesser” crimes are going unprosecuted, and criminals are rapidly returning to the street. “Our goal and duty is to protect our citizens both native and non-native but when we arrest a native suspect, he or she is rarely prosecuted and very rarely spends any time in jail.” Marcia Maxwell, Hughes County Sherriff (February 8, 2022), *viewed at* <https://nondoc.com/wp-content/uploads/2022/02/Hughes-County-Sheriff-letter.pdf>. Because of this, eastern Oklahoma has become a hot spot for a variety of crimes.

For example, in 2019, a woman caught her male neighbor filming her in her shower through a bathroom window. The perpetrator was charged with a felony peeping Tom offense. However, the charge was dropped when it was determined that the woman had a small amount of Cherokee blood and lived within the boundaries of the Cherokee Nation. While the federal authorities could prosecute, nothing has been done.³

In another case, a man in the former Indian Territory came home to find his two small dogs near

³ *The Native American Victims of McGirt*, WALL STREET JOURNAL, January 9, 2022, https://www.wsj.com/articles/the-native-american-victims-of-mcgirt-oklahoma-supreme-court-11641589074?mod=article_inline.

death after his neighbor's large dogs broke through a privacy fence and entered the home through a doggie door. When municipal law enforcement responded, the owner of the large dogs ordered the officers off of his property, asserting law enforcement lacked jurisdiction because of his tribal heritage. No charges will be brought against the individual because the Muscogee Nation lacks a criminal law that would apply in this situation. Acknowledging this deficiency, the Muscogee Nation admitted that, "In many cases, our laws do not mirror those of Oklahoma nor the widely varied laws of individual municipalities, like Broken Arrow."⁴

All of this occurred in the aftermath of *McGirt* and with the specter of this case looming. If Respondent is correct in his assertion that Oklahoma does not have jurisdiction over him, the byproduct is that the authority of local law enforcement will be reduced to an impotent fraction of what it was before July 2020, leaving communities desperately unprotected and unable to enforce the safety measures they elected their local governments to provide.

⁴ Killman, Curtis, *Bizarre Dog Killing Exposes Limits to Cross-Deputization Agreements in Wake of McGirt Ruling*, TULSA WORLD, January 16, 2022.



CONCLUSION

Following *McGirt*, OACP, its members, and their police officers, have faced significant challenges in protecting and defending the citizens—Tribal and non-Tribal—of Eastern Oklahoma. Continued erosion of state jurisdiction further reduces law enforcement’s ability to respond to criminal activity. This erosion has allowed—and will continue to allow—perpetrators to walk away unscathed, leaving victims with little recourse for justice. OACP asks this Court to consider the impact of its ruling in this case on law enforcement and safety in the former Indian Territory.

Respectfully submitted,

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MARCH 7, 2022