ORIGINAL

No. 21-6927

In The Supreme Court of the United States

Indians

Petitioner

v.

Oklahoma

Respondent

On A Writ of Certiorari from the Tenth Circuit Court of Appeals from a Denial of Certificate of Appealability To Justice Neil Gorsuch over Indian Treaty

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Questions Presented for Review

Does text and meaning of Article (3) *Treaty of February 27 1867 15 Stat. 531* between United States and Potawatomi Tribe of Indians stating inter alia; "Reservation".....shall never be included within the jurisdiction of any state or territory" remain valid in full force and survive today (A) based on relevant promises and statements during Treaty negotiations to Tribe by United States representatives (B) In the sense or spirit which the Tribe understood it in 1867 under basic canons of liberal construction applicable to Indian Treaties (C) To cases of Indian character emanating within original geographical boundaries of Treaty area under *28 U.S.C.A §1304; 18 U.S.C.A. § 1152; 18 U.S.C.A §1153*

Jurisdictional Statement

Court has jurisdiction pursuant to *28 U.S.C. § 1254 (1)*

which permits a writ of certiorari to be granted upon the petition of any party to any civil or criminal case before or after rendition of judgment or decree

Extra Jurisdictional Statement

Jurisdiction over Treaty is proper in this court cause in *Ex Parte Mayfield 11 S.Ct. 939 (1891)* [T]his court has, held , however in a multitude of cases, that it had power to inquire, with regard to the jurisdiction the inferior of court, either in respect to the subject matter or the person, even if such inquiry involved an examination of facts outside of, but not inconsistent with the record')

[T]he faith of this nation having been pledged in the Treaties, the honor of the Nation demands; and the jurisdictional Act requires; that these long settled grievances be settled by this court in simple justice to a down trodden people" *Northwestern Band of Shoshone Indians v. U.S. 65 S.Ct. 690 (1945) see* Justice Douglas dissenting)

[F]rom their very weakness and helplessness, so largely due to the course of dealing of the Federal government with them and the Treaties in which it has been promised there arises a duty of protection, and with it the power. This has always been recognized by the Executive and by Congress and by this court whenever the question has arisen" *U.S. v. Kagama 118 U.S. 375 (1886)*

Statement of case

Petition is brought *pro se* on behalf of all Indians similarly situated who's criminal complaints emanate from within original exterior boundaries of Citizen Band Potawatomi Nations Treaty area.

Oklahoma court of Criminal Appeals (OCCA) and local trial courts who have confronted issue have never determined whether reservation lines where erased or abolished , or applied Art. (3) Treaty text as understood by Tribe in 1867,and erroneously determined entire Reservation was disestablished by text of General Allotment Act of 1891 and have failed to follow *Mc Girts* mandate or applied *Solem* th the following issues stated herein, therefore Justice Neil Gorsuch's guidance is requested

Reasons for granting Certiorari

1.) Citizen Band Potawatomi Nation (Tribe) ceded a portion of reservation did not relinquish "...all tribal interest" *McGirt 140 S.Ct. at 2463 (2020)* and since 1867 has consistently maintained allotments, then Trust Land and a resilient presence within original historic reservation boundaries that were never erased or abolished by Congress with "clear and explicit language" or intent and continues today to appear in "Tribal Jurisdictional" Maps wherein its exterior jurisdictional boundaries (which are same as 1867 Treaty area) are recognized by State and

clearly marked with signpost by Oklahoma Department of Transportation see (Exs-1-2)

Tribe continues to exercise governmental jurisdiction and authority over Treaty area according to signed letter from Tribe (Ex-3) pursuant to Article 4 Sections 1-2 of Tribes Constitution enacted by Oklahoma Indian Welfare Act of 1936 *25 U.S.C. § 501 et seq. (OIWA)*as successfully argued by United States as Amicus for the Tribe in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe 498 U.S. 505 (1991)* wherein U.S. stated "...these promises have never been revoked" citing Appellate Brief 1990 WL 10012682 U.S. Appellate Brief No. 89-1322)(adopted in part)

2.) Treaty of Feb. 27 1867 15 Stat. 531 between U.S. and Tribe specifically jurisdictional right under Article (3)'s text remains valid cause ;

(A) Treaty was preserved under *25 U.S.C. § 71* which "...saved existing treaties from being invalidated or impaired " under *U.S. v. Lara 124 S.Ct. 1628 (2004) : Antione v. Washington 95 S.Ct. 944 (1975)*

B.) Treaty survived cause Tribe ceded only "...a portion" but not all of its "Reservation" or allotments as stipulated by state courts in *Bentley v. Oklahoma case S.Ct. no. 19-5417 reversed and vacated to OCCA case no . PC-2018-743; CF-2015-1240, relying on Holland v. State PC-2020-927* emanating from same trial court and Judge rendering exhaustion futile based on courts continuing pattern

and practice, failure to apply Treaty text on its plain terms, as Indians understood Treaty in 1867, that Congress never explicitly erased original reservation boundary lines per Treaty and recognize allotments and trust land suggest continuing reservation status under *Mattz v. Arnett 412 U.S. 481 (1973) : McGirt v. Oklahoma 140 S.Ct. (2020)*

(*Bentley* and *Holland* appended hereto as Exs-4-5)

C.) Treaty was not entirely abrogated by General Allotment Act 1891, statehood or other subsequent Acts of Congress, cause none of these Acts use "textual hallmarks", "explicit statutory language" or even mention invalidating Tribes Jurisdictional right or Treaty under Article (3) as explained by Court in *Washington v. Washington State Commercial Passenger Fishing Vessel Association 99 S.Ct. 3055 (1979); Herrera v. Wyoming 139 S.Ct. 1686 (2019) ; Washington State Dept. of Licensing v. Cougar Den Inc. 139 S.Ct. 1000 (2019)* as successfully argued by U.S. stating "...these promises have never been revoked" citing Appellate Brief 1990 WL 10012682 U.S. Appellate Brief No. 89-1322) *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe 498 U.S. 505 (1991)* [A]bsent explicit statutory language, we have been extremely reluctant to find congressional abrogation of Treaty rights" *Menominee Tribe v. 88 S.Ct. 1705*

D.) As stipulated by U.S. Treaty promises "have never been revoked " and were specifically saved, preserved and protected by textual hallmarks and explicit statutory language in Congressional Acts which authorized statehood citing *Organic Act May 2 1890 26 Stat. 81 § 1: Enabling Act June 16, 1906 34 Stat. 262 § 1 ; Proclamation of Statehood Nov. 16 1907 n. 6869*;

Stipulated to and required by state citing Oklahoma Constitution *Art. 1§1; Art. 1§3; Art. 5§6* as successfully argued by Tribe and related *Amici* in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe 498 U.S. 505 (1991)*

E.) Tribe was mis-lead and reassured its Treaty rights "...shall never be included within jurisdiction of any state or territory" shall never be extinguished by U.S. representatives during treaty negotiations as similarly noted in *Herrera, Cougar Den and Fishing Vessel* discussing Governor Stevens statements to Yakima mis-representing himself as "The Great White Father " and the Tribe as "..his children"

F.) This is a novel question of law as it pertains to this specific Tribes, Treaty, Constitution , legislative history , Congress' continued recognition, subsequent treatment and criminal jurisdiction over original Treaty area.

If this court does not intervene and make a definitive adjudication concerning Treaty or present day reservation status, Oklahoma will naturally continue its campaign to wrongfully prosecute Tribal/Federal cases of Indian

character by usurping and abandoning its obligation to honor Tribes Treaty under *U.S. Constitutions Supremacy Clause Art. 6§2* as evident by *Bentley, Holland* and related cases emanating from Potawatomi County Oklahoma *supra*

G.) Congress has continued to recognize Tribes Treaty rights in reservation through various Acts, federal funding, statutes and regulations that define qualified "Reservation" for their purpose in Oklahoma *eg; 25 U.S.C.A. 3653 (3) ;15 U.S.C.A § 6312 (a) cited by Okla. AG Opinion 06-39 2006 WL 3751277 and 11 Okla. Attn'y Gen. 345 1979 WL37653 : 7U.S.C. §1985 (e)(1)(D)(ii); 25 U.S.C.A § 2022(b)(3); 29 U.S.C.A. §750 (c); 42U.S.C.A.§682(i)(6) ; 42 U.S.C.A § 5718 (n)(2)*

H.) The state courts are not Article. 3 courts , however Federal courts of competent jurisdiction continue to recognize Tribes "Treaty Rights" by Congress enlarging "Oklahoma Reservation" westward some [900 miles square] to satisfy original Treaty obligations of [30 square mile tract] to compensate Tribe for land allocated to neighboring Absentee Shawnee Tribe *see Citizen Band of Potawatomi Indians of Oklahoma v. U.S. Docket 96 ICC Sept. 18 1958 as explained by Board of Indian Appeals Administrative Law Judge see In Re Estates of Wallace J. Cook et al. (Tribal Heirship of Interest in Absentee Shawnee Allotments 58 IBIA 87 2013 WL6211799* stating *inter alia:*

[A]mong the issues presented to the ICC was 'whether [CPN] ever acquired a right, title or compensable interest of any kind or character in and to all or any part of the "Oklahoma Reservation" *ie*, the 30-mile square tract *Citizen Band of Potawatomi Indians of Oklahoma v. United States 6 I.C.C. 647*

The ICC found that the tract was pursuant to the Treaty, to be set apart as a Reservation for the sole use and occupancy of CPN" the same to be patented to [CPN] and that by approving the selection of the tract the Secretary had "unequivocally recognized [CPN's] ownership" by recognizing its entitlement to the tract *Id* at 649-650. The ICC found that the Potawatomi's had expressed a willingness not to disturb the Absentee Shawnee's "but asked that their reservation be extended westward so as to include an additional equivalent area" and thus had not waived any right to the entire tract *Id* at 652. The ICC also found that the 1867 Treaty 'did not contain present words of grant nor a description by metes and bounds of land" but that it did contain a "clear and unequivocal promise to issue a patent to [CPN] to a home in the Indian Country of an area not exceeding thirty miles square" to be set apart for CPN's exclusive use and occupancy *Id* at 660, 661. The ICC concluded that the Treaty was a 'contract to convey land' which established for CPN a 'compensable right and interest to the extent of full ownership in and to the 575,877 acres ....known as the Oklahoma Reservation' *Id* at 661,665 see Id at 659 ("if not a grant of title [the Treaty] was a contract to grant title " to CPN) The ICC awarded CPN compensation for 362,832.22 acres, the difference between 575,877 and the 213,044.78 acres allotted to 1,487 members of CPN *Id* at 655, 665)

Petitioner assert that the issues in this case are nearly identical to the situation this court faced in *Mattz v. Arnett 412 U.S. 481 93 S.Ct. 2254 (1973)* where like the Potawatomi the Yurok or Klamath River Reservation was also "enlarged", extended, allotted" determining that policy of General Allotment Act was to continue reservation system ("...allotment under the 1892 Act is completely consistent with continued reservation status"....Act did not terminate ....Reservation is reinforced by repeated recognition of the reservation status of the

land after....extending period of trust allotments....restoring to tribal ownership certain vacant and un-disposed of ceded lands in the reservation")

I.) This case is stronger than the situation faced by the court in *Nebraska v. Parker S.Ct. (2016)* cause Potawatomi Tribe never abandoned original Treaty area, has maintained a consistent presence in allotments, then acquired Trust Land in 1960's and 70's and is a positive economic driving force since 1867

1.) Tribe controls all 911 dispatch calls for all surrounding towns and cities inside and outside Treaty area as well as its own police as evident by cross Deputization agreement filed January 19 2007 with Oklahoma Secretary of State Resolution 07-41 as stipulated by Federal Court in *Ouart v. Fleming W.D. Okla. 2010 WL 1257827) discussing reservation as "checkerboard", that Tribe and state must pass thru each others jurisdiction)*

2.) Tribe exercises sovereignty, civil and criminal codes and procedure, authority through Tribal courts *see Barrett v. Barrett 878 P.2d 1051, 1054 (Okla. 1994)*

3.) Tribe receives federal funding to maintain Indian Hospital (IHS), various roads and bridges and other necessary infrastructure discussed in *Bentley supra*

4.) Tribe has Tag agency issuing tribal Tags which requires Indian Country status as discussed in *Oklahoma Tax Comm. v. Sac and Fox Nation 508 U.S. 114, 113 S.Ct 1985 (1993)*

5.) Tribe owns and operates trucking companies, concrete plant and other various businesses in its industrial complex which precipitated litigation in *C and L Enterprises Inc. v. Citizen Band Potawatomi Indian tribe of Oklahoma 2001 WL43672*

6.) Tribe maintains and hosts numerous events, Pow-wow's on traditional ceremonial grounds and camp grounds see Tribes website at Potawatomi. org

7.) Tribe owns and operates world class Golf Course, Restaurants, Hotels and collects taxes at its various –Fire Lake-Casinos, grocery and general stores including smoke shops which prompted litigation to Court in *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe 498 U.S. 505 (1991)(which highlights numerous statutes defining "reservation")*

8.) Tribes Reservation, jurisdictional area, exterior boundaries appear on Maps and are marked with signs posted from Oklahoma Dept. of Transportation (Exs-1-2) as discussed by Court stating [N]otices were placed in prominent places at the entrances to the Port Madison Reservation informing the public that entry onto the Reservation would be deemed implied consent to the criminal jurisdiction

of the Suquamish Tribal court *see Fn-2 in Oliphant v. Suquamish Indian Tribe 98 S.Ct. 1011 (1978)*

In this case the Tribe and Congress must have 'understood' jurisdictional right to survive statehood and General Allotment Act or at least be revived under (*OIWA*) as stated by various interested tribes in Amicus Briefs 1990 WL10012684 no.89-1322 which the state never challenged essentially confessing too :

" [E]ach tribe maintains the position that their original reservation boundaries were not disestablished, or the at worst, their reservation was diminished but not disestablished in the allotment process. This question has not yet been authoritively determined ender the modern definition of Indian Country, or the modern test for reservation disestablishment or diminishment as adopted by this court in response to the enactment of *18 U.S.C.A §1151*")

Article (3) in Treaty still survives according to the Tribe based on text in Tribes Constitution Article (4) Tribal Jurisdiction Sections 1 and 2 confirm this fact :

Section-1: The jurisdiction and governmental powers of The Citizen Potawatomi Nation shall consistent with applicable Federal Law, extend to all persons and to all real and personal property, including lands and natural resources, and to all waters and air space within the Indian Country as defined in 18 U.S.C. section 1151 or its successor over which the Citizen Potawatomi Nation has authority

Section -2: The jurisdiction and governmental powers of the Citizen Potawatomi Nation shall also consistent with applicable Federal Lew, extend outside the exterior boundaries of the citizen Potawatomi Nation to all Tribal members. These powers shall also extend to any persons or property which are or as may here after be included within the jurisdiction of the Citizen Potawatomi Nation under any laws of the Citizen Potawatomi Nation and state or the United States

Petitioner is well aware of limitations of Tribes authority through its Constitution over non-Indians as discussed in *Oliphant v. Suquamish (1978)*

Tribes Constitution shows that tribe treaty and reservation still exists cause tribe retains *Winters* rights under Courts decision in *Winters v. U.S. 207 U.S. 564 28 S.Ct. 207, 52 L.Ed. 3401 (1908)* (the creation of an Indian reservation carries an implied right to unapropriated water 'to the extent needed to accomplish the purpose of the reservation [omitted] These reserved rights are known as *Winters* rights. They arise as an implied right from the treaty, Federal statute or execution order that that set aside the reservation and they vest on the date of the reservation creation....*Winters* rights.....for the purpose of maintaining the..... Tribes Treaty rights" *U.S. v. Adair 723 F.2d 1394, 1410 9th. 1983)*

However Congress seemed to preserve certain Treaty jurisdiction rights in last lines of *18 U.S.C.A §1152* cause *§1152* appears bi-fecturated and delineates under certain Treaty conditions by using text "or" ".....[or] to any case where by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively')

A similar disclaimer is provided in 18 U.S.C.A § 1162 (b) provided however "Nothing in this section ....shall deprive any Indian tribe, band or community of any right, privilege or immunity afforded under Federal Treaty, agreement or statute with respect to hunting, trapping or fishing or the control licensing or regulation thereof" see Fn-1 *Mattz v. Arnett 412 U.S. 481 93 S.Ct. 2254 (1973)*

These Indian Lands are within area described in Tribes Constitution Article (4) Sections 1-2 approved by Dept. Of Interior under *OIWA* and are therefore "...under the super intendance of the Government *U.S. v. Pelican 232 U.S. 442, 449 (1914)* as the text-language in *OIWA* and *IRA* make it clear, when combined with statutes cited supra that Congress still considered these areas as "Indian Reservations" over which those Acts applied in original Treaty area.

The retention of certain lands by U.S. in 1891 is highly suggestive of continuing Treaty and Reservation cause [T]he word is used in land law to describe any body of land, large or small, which congress has reserved from sale for any

purpose...the conditions of the Treaty with the Omaha's, made reference a part of the Treaty with the Tulalip Indians, providing for only a conditional alienation of the lands, make it clear that the special jurisdiction of the U.S. has not been taken away" *U.S. v. Celestine 30 S.Ct. 93 (1909)*

The Federal statutes which authorized statehood ie; Organic-Enabling Acts and Oklahoma Constitution *Art 1§1 Art 1§3 and Art 5§6* all contain specific text by which Oklahoma "forever" disclaimed any jurisdiction over "Indian Lands" and the operative term of art for lands over which an Indian Tribe has jurisdiction is "Indian Country" land "..validly set apart for the use of the Indians as such under the superintendence of the government" *Pelican*

Oklahoma's jurisdiction or lack thereof, is not determined by the word "reservation". The constitutional limitation on Oklahoma's jurisdiction refers to "..all lands"...owned or held by any tribe" *Ok. Const. Art 1 §3*

Whether the Potawatomi lands in original Treaty area are still part of a reservation or not they are- and always have been- lands "owned or held' by a "tribe" and Oklahoma disclaimed jurisdiction over "Indian Lands" long ago.

Some seventy years after 1891 Act Congress continued to recognize its Treaty obligation to Potawatomi Tribe by conveying and then taking land in Trust on two separate occasions that is previously retained for tribe.

Article (2) of the 1890 Agreement provided that certain ceded lands would be retained by the U.S. as long as they were needed for its use of for Indian purposes 26 Stat. 1017-1018. Several such tracts, totaling approximately 280 acres, that had been retained for the Shawnee Indian Agency and an Indian farm school were conveyed by Congress to the Tribe in fee in 1960 and 1964 Act of Sept. 13 1960 74 Stat. 903; Act of Aug. 11 1964 78 Stat. 392. In 1976, pursuant to a special Act of Congress, the land was conveyed back to the U.S., to be held in trust for the tribe Act of Jan. 2 1975 88 Stat. 1922.

That conveyance was intended to facilitate economic development on the land, since federal financial assistance was available for projects on land held in trust *S. Rep. No. 877, 93d. Cong. 2d Sess. 2, 4 (1974) H.R. Rep. No. 1586 93d Cong. 2d Sess. 2, 4 (1974)*

The tribe subsequently constructed a convenience store on a portion of the land, assisted by federal funds administered by the Dept. Of Housing and Urban Development.

In the years following the Tribe constructed a Casino on a portion of the land, which can only be done within the boundaries of an existing reservation under *Indian Gaming Regulatory Act (IGRA) 25 USC § 2701 et seq.* which essentially codifies courts holding in *Cabazon Band of Mission Indians 480 U.S. 202 (1987)* that state law did not apply to a tribal bingo game on an Indian Reservation see S. Rep. No. 446 100th Cong. 2d Sess. 6 (1988).

The IGRA broadly defines the "Indian Lands" on which a tribe may operate or regulate certain gambling operations to include not only lands within the limits of a reservation, but also *inter alia* "any lands title to which is....held in trust by the United States for the benefit of any Indian Tribe...and over which an Indian tribe exercises governmental power" *25 USC § 2703 (4)(B)*

As evident by the text of Art. (3) in 1867 Treaty, Article 4 Sections 1 and 2 of Tribes Constitution, language in cross deputization Agreement, Maps and signs indicating exterior boundaries of Treaty area all clearly show Tribe exercises "governmental power" over entire Treaty 1867 area. see also Ex-2 (Letter)

In addition, although the *IGRA* generally prohibits gaming on lands acquired by the Secretary in Trust for a Tribe *after* passage of the *IGRA*, there is an exception for lands located within or contiguous to a Tribes reservation and for lands in Oklahoma that are "...within the boundaries of the Indian Tribes former

reservation" or are "...contiguous to other land held in trust ----- for the Indian Tribe in Oklahoma *25 USC § 2719 (a)(2)(A)*

It is clear from the IGRA that Congress has concluded that general principles limiting application of state law to on-reservation activities of a tribe may properly be applied to tribal Trust Land and to original entire Treaty area such as that at issue here.

Other legislation manifests a similar purpose to affirm tribal sovereignty over tribal trust lands as well as other "Indian Lands" within original boundaries of Oklahoma Reservations *see 25 USC § 1452 (d)* "Reservation for purposes of Indian Financing Act includes "former Indian Reservations in Oklahoma")

25 USC § 1903(10) "Reservation" for purposes of Indian Child Welfare Act includes Indian Country as defined in *18 USC § 1151* and any other lands not covered by that section "title to which is ----held by the U.S. in trust for the benefit of any Indian Tribe") *33 USC § 1377(c)* sewage treatment grants for Indian Tribes available in "former Indian Reservations in Oklahoma") 42 USC § 2992c(2) "reservation" for purposes of Financial assistance under Native American Programs Act of 1974 includes "any former reservation in Oklahoma")

To be clear, the use of the term "former Indian Reservations" does not suggest disestablishment . The reference in some of these statutes to "former Indian Reservations in Oklahoma" is plainly intended to define the outer

boundaries of federal service areas as coinciding with the original boundaries of the reservations, not withstanding that some reservations may have been judicially determined to be diminished. Such references evince the continued significance of these boundaries for important federal purposes.

A similar interpretation was made in *Citizen Band Potawatomi Indian Tribe of Oklahoma v. Anadarko Area Director (BIA) 28 IBIA 169 1995 WL 610845* in Footnote (1) : [T]he Board use of the term 'former' should not be taken to mean that the Board itself has concluded that the Reservation has been terminated")

Within same Brief "[T]he Board finds that is reasonable for BIA to treat the entire former Potawatomi Reservation as the reservation of both tribes for purposes of 25 C.F.R part 151") see also Footnote 21: [W]ith respect to most of the original reservations in Oklahoma, there have been no definitive adjudications concerning their present day status. The Board is not aware of any such adjudication concerning the Potawatomi Reservation....[I]n a sense, of course, the Citizen Bands contention that it has authority to veto Absentee Shawnee land acquisitions under 25 C.F.R. § 151.8 is an assertion of territorial jurisdiction over entire former reservation")

According to the tribes position "[W]hile most if not all, reservations, as that term was perceived before the turn of the century, in Oklahoma have been significantly diminished by Acts of Congress and the Allotment process, only the

boundaries of the Ponca and Otoe and Missouri have been explicitly abolished *33 Stat 218)* Provides that "the reservation lines of the said Ponca and Otoe and Missouri Indian Reservations be, and the same are hereby, abolished" *see Brief of Amicus Curiae, the Inter-Tribal Council of the Five Civilized Tribes, in support of Respondent 1990 WL 10012687 no. 89-1322)*

Treaty was revived under *OIWA 25 USC § 501 et seq.* cause Potawatomi Reservation survived based on text in statute.

In 1936 Congress enacted the Oklahoma Indian Welfare Act OIWA 25 USC §501 to specifically address the status of Oklahoma Indian Tribes. OIWA passed nearly 30 years after statehood and authorized the Secretary: "...to acquire by purchase, relinquishment, or assignment, any interest in lands, water rights, or surface rights to lands within or without **existing Indian reservations**, including trust or otherwise restricted lands now in Indian ownership..."

25 USC§501(emphasis added)

It would seem difficult to understand why Congress would have referred to "existing Indian reservations" in 1936 if all reservations had been eliminated before 1906. The reason of course is that all reservations in Oklahoma had not been terminated and Congress clearly under stood that fact.

This fact is further corroborated by Tribes Constitution Art (4) Sect. 1-2 asserting jurisdiction and governmental powers over "lands and natural resources and to all waters" approved under *OIWA* as *Winters* rights

Language and text in Indian Re-Organization Act also evidences Treaty and Reservation survived were applicable

The *IRA* of 1934 [d]efined Indians not only as all persons of Indian descent who are members of any recognized tribe [in 1934] now under Federal jurisdiction and their descendants, who then were residing on any Indian Reservation, but also as all other persons of one-half or more Indian blood *48 Stat. 988 25 USC§ 479 (1976 Ed.)*

There is no doubt that persons of this description lived in [Treaty area] and were recognized as such by Congress and by the Dept. of Interior at the time the Act was passed" *U.S. v. John 98 S.Ct. 2541 (1978)*

Therefore if IRA applied then Treaty and Reservation must have survived otherwise IRA would have been in-applicable to Potawatomi

Treaty survived 1891 Act

In fact Court determined Treaty survived subsequent Act stating: [T]o give to the clauses in the Treaty of 1868 and the agreement of 1877 effect, so as to uphold the jurisdiction exercised in this case, would be to reverse in this instance

the general policy of the government towards the Indians as declared in many statutes and Treaties.." *see Ex Parte Crow Dog 3 S.Ct. 396 1886)*

[I]n the absence of some affirmative showing of an intention to repeal, the only permissible justification for a repeal by implication is when the earlier and later statutes are irreconcilable' *Morton v. Mancari 95 S.Ct. 2474 (1974)*

Article (3) in Treaty is specific

1891 General Allotment Act is by its very nature and text "...of general application, where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment' *Mancari*

Tribes jurisdiction under Treaty is further re-affimed under *25 U.S.C.A §1304 Violence Against Women Act (VAWA)* repealing *Oliphant* in part and similarly re-affirmed under *18 U.S.C.A §2265(e)*

Congress seemed to anticipated or recognized a potential conflict under text of *28 U.S.C.A §2254(a)* as recently noted by Federal Court in Northern District of Oklahoma stating *inter alia*; [W]hen a petitioner, in custody under a criminal judgment issued by a state, request federal habeas relief, a federal court may grant relief from that judgment if the petitioner shows that he or she "is in custody in violation of the constitution or laws or **treaties** of the United States" *28 U.S.C.A §2254 (A) Deer Leader v. Crow 2021*

WL150014 no. 20-CV-0172-JED-CDL) DeerLeader calls for defendants immediate release and bars future prosecution cause the state can not conduct any further proceedings)

Petitioner also asserts *Deer Leaders* analysis, cause it is futile to exhaust Treaty issue and error under *Doctrine of Futility* cause state courts are not Article (3) courts and based on a consistent pattern, practice, custom amounting to law cause all Oklahoma Courts who have recently considered and dealt with this particular Tribes Treaty simply look to 1891 General Allotment Act , then to its own mis-guided precedent citing *Bentley, Holland supra.*

Each of these courts have failed to truly follow *Mc Girt's* mandate in its entirety "[T]his argument may seem to be a cruel joke to those familiar with the history of the execution of that Treaty, and of the Treaties that negotiated claims arising from it. And even if that Treaty were the only source regarding the status of these Indians in Federal law, we see nothing in it inconsistent with the continued federal supervision of them under the Commerce Clause" *U.S. v. John 98 S.Ct. 2541 (1978)*

Oklahoma Courts have failed to properly apply Treaty text in Article (3) stating ; "..shall never" survived 1891 Act and statehood under this courts analysis in *Mattz, Herrera, Fishing Vessel, Antoine and Cougar Den*

In this case the Treaty jurisdictional right under Art, (3) is stronger than hunting rights addressed in *Hererra* cause Potawatomi Treaty Art (3) specifically speaks to tribes concern of "jurisdiction of any state or territory' unlike the Wyoming constitution in *Herrera* that did not use textual hallmarks or explicit statutory language preserving tribes treaty rights the Oklahoma Constitution and congressional Acts leading to statehood specifically required and preserved treaty rights, showing there is no "...evidence in the treaty itself that congress intended the [jurisdictional] right to expire at statehood or that the ....tribe would have understood it to do so" *Herrera*

As further evidenced by the text in tribes Constitution Art 4 §§1-2 ratified in 2007 and in Cross Deputization Agreement filed Jan 19 2007 with Oklahoma Secretary of State Resolution # 07-41 (recognizing tribes sovereignty and Indian Country status)

The Drafters of the Treaty clearly understood this fact by Treaties very language by using "shall" and "never"

In fact The American Heritage Dictionary of the English Language 3rd Ed. defines " shall' as to command with force of must in statutes, deeds and other legal documents" and defines "never' as (A) not ever; on no occasion (B) at no time what so ever (2) not at all, in no way")

Petitioner asserts that all parties understood the Treaty text "shall never" in Art (3) to never be abrogated and as this court has stated; [T]oday we are asked whether the land these Treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word" *McGirt 591 U.S. 2020)* "[I]t is held that the United States, as the party with the presumptively superior negotiating skill and knowledge of the language in which the Treaty is recorded, has a responsibility to avoid taking advantage of the other side" *Fishing Vessel* "[A]fter all the United States drew up this contract and we normally construe an ambiguities against the drafter who enjoys the power of the pen. Nor is there any question that the government employed that power to its advantage in this case" *Cougar Den*

Treaty termination point was never satisfied

The Potawatomie Treaty identifies "...situations that would terminate the right" *Herrera*

Article (3) is very clear on the jurisdictional right but is very ambiguous as to when Treaty terminates.

Article (3) states: Reservation shall never be included within the jurisdiction of any state or territory *unless* an Indian territory shall be organized as provided for in certain treaties made in Eighteen Hundred and Sixty-Six with the Choctaws and other Tribes occupying Indian

Country in which case *or* in case of the organization of a legislative council *or* other body, for the regulation of matters affecting the relations of the tribes to each other, the Pottawatomie's resident thereon shall have the right to representation, according to their numbers on equal terms with other tribes")

This is the part where Petitioner requires courts guidance cause termination point seems ambiguous, where termination point delineates after the word "unless" and seems to tri-fecturate by using words "or" twice, but does state "..Pottawatomie ....shall have the right....on equal terms with other tribes"

Courts and government have only recently recognized Treaties....with other tribes" rendering Treaty valid to this day citing *eg. McGirt v. Oklahoma 140 S.Ct. 2452 (2020) (Muscogee); Bosse v. Oklahoma 2021 Ok CR 3 no. PCD-2019-124(Chickasaw); Hogner v. State 2021 OK CR no. F-2018-138(Cherokee) ; Sizemore v. State 2021 WL1231493 OK CR 6 (Choctaw)*

Petitioner argues that if Potawatomi are truly "...on equal terms with other tribes" then Treaty "shall" still be just as valid as "..Choctaws and other tribes" based on literal meaning, liberal construction, language in text to Tribe by U.S. negotiators in 1867.

Text of General Allotment Act

Finally, Congress intended the General Allotment Act of 1891 actually preserved and did not take away Tribes promised jurisdictional Treaty right cause Act actually extended Federal jurisdiction over entire Allotment Acts defined areas based on the plain text and language in Act stating ; " An Act to provide for the Allotment of lands in severalty, to Indians on the various reservations and to **extend the protection of the laws, of the United States** and the territories over the Indians, and for other purposes" see (Ex-4_ attached hereto which is page 1017 from Fifty-First Congress Sess. 2 Chap. 543 1891

This text is conclusive to all parties then and now especially when viewed under the basis canons of liberal construction to benefit the Indian tribes in the way the Indians understood it in 1872 and 1891 because it was the U.S. who drafted Treaty and Acts then explained them to the Indians based on good faith toward an ignorant, and defenseless people who could not speak, read or write the Treaties and Acts language.

Relief Requested

Wallgren moves the court to vacate his conviction and issue mandate for his immediate release

Conclusion

Text of Article (3) in Treaty when combined with relevant Acts, Oklahoma and Tribes Constitutions, cited Federal statutes and case law, do not suggest Congress "..understood" or intended to end Tribes promised jurisdiction right in Treaty and " [I]f Congress seeks to abrogate Treaty rights it must clearly express its intent to do so. There must be clear evidence that Congress actually considered the conflict between its intended action on one hand and Indian Treaty right on the other, and chose to resolve that conflict by abrogating the Treaty" *Herrera*

"[I]n this case the analysis begins and ends with the plain language of the Treaty" *Bosse*

Relief Requested

Petitioner moves the court to hold [T]he parties to the terms of their deal. It is the least we can do" *Cougar Den* quoting Justice Neil Gorsuch.

Rickey Ray Wallgren Jr.

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Verification

Petitioner Rickey Ray Wallgren swears and affirms under penalty of perjury that the foregoing is true and correct and that on 12-17- 2021 I mailed writ of certiorari to the court clerk of the Supreme court 1 N.E. First Street Washington D.C. 20543-0001

Respectfully
Rickey Ray Wallgren