

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JASON LEON CRUSE,
Petitioner

v.

THE STATE OF OKLAHOMA,
Respondent

*ON PETITION FOR WRIT OF CERTIORARI
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS*

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020) applies retroactively to convictions that were final when it was decided?

Table of Contents

QUESTION PRESENTED.....	i
Table of Contents	ii
TABLE OF AUTHORITIES.....	iii
OPINION BELOW	1
JURISDICTION	2
RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS.....	2
STATEMENT	2
A. <i>McGirt v. Oklahoma</i> , 140 S.Ct. 2452 (2020).....	2
B. <i>State ex rel. Matloff v. Wallace</i> , 497 P.3d 686 (Okla. Crim.Appl 2022)	5
C. Mr. Cruse’s Case	6
REASONS FOR GRANTING THE PETITION.....	8
A. <i>McGirt’s</i> Rule is Substantive and Retroactive on Collateral Review	9
B. The Order Below Upends the Constitution’s Federal Structure, Violates Due Process, and Ignores the History of Habeas Corpus	15
CONCLUSION	18
APPENDIX	
Pet. App. A – Order Below	A-1
Pet. App. B – Other Orders	B-1
Pet. App. C – Constitutional & Statutory Provisisions.....	C-1
Pet. App. D – Other Materials	D-1

TABLE OF AUTHORITIES

Cases

<i>Abbate v. United States</i> , 359 U.S. 187 (1959)	11
<i>Bosse v. State</i> , 499 P.3d 771 (Okla. Crim. App. 2021)	4, 12
<i>Boumediene v. Bush</i> , 553 U.S. 723 (2008)	16
<i>Bousley v. United States</i> , 523 U.S. 614 (1998)	9
<i>Cruse v. State</i> , 67 P.3d 920 (Okla. Crim. App. 2003)	7
<i>Ex Parte Crow Dog</i> , 109 U.S. 556 (1883)	18
<i>Ex parte Lange</i> , 85 U.S. 163 (1873)	17
<i>Ex parte Wilson</i> , 114 U.S. 417 (1885)	17
<i>Frank v. Mangum</i> , 237 U.S. 309 (1915)	16
<i>Gamble v. United States</i> , 139 S. Ct. 1960 (2019)	11, 12
<i>Gosa v. Mayden</i> , 413 U.S. 665 (1973)	14
<i>Heath v. Alabama</i> , 474 U.S. 82 (1985)	11
<i>Int’l Longshoremen’s Ass’n v. Davis</i> , 476 U.S. 380 (1986)	14
<i>McGirt v. Oklahoma</i> , 140 S.Ct. 2452 (2020)	passim
<i>Merrell Dow Pharms. Inc. v. Thompson</i> , 478 U.S. 804 (1986)	15

<i>Michigan v. Long</i> , 463 U.S. 1032 (1983)	14
<i>Montgomery v. Louisiana</i> , 577 U.S. 190 (2016)	passim
<i>Negonsott v. Samuels</i> , 507 U.S. 99 (1993)	3
<i>Nitro-Lift Techs., LLC v. Howard</i> , 568 U.S. 17 (2012)	14
<i>Oklahoma Bosse</i> , No. 21-186	8
<i>Parish v. Oklahoma</i> , No. 21-467	1
<i>Rice v. Olson</i> , 324 U.S. 786 (1945)	15
<i>Rivers v. Roadway Express, Inc.</i> , 511 U.S. 298 (1994)	13
<i>Schriro v. Summerlin</i> , 542 U.S. 348 (2004)	passim
<i>Standard Oil Co. v. Johnson</i> , 316 U.S. 481 (1942)	15
<i>State ex rel. Matloff v. Wallace</i> , 497 P.3d 686 (Okla. Crim.App. 2022)	5, 8, 13, 14
<i>Teague v. Lane</i> , 489 U.S. 288 (1989)	5, 14
<i>The Ku Klux Cases</i> , 110 U.S. 651 (1884)	17
<i>Three Affiliated Tribes of the Fort Berthold Rsrv. v. Wold Eng’g, P.C.</i> , 467 U.S. 138 (1984)	15
<i>United States v. Wheeler</i> , 435 U.S. 313 (1978)	11
<i>Waley v. Johnston</i> , 316 U.S. 101 (1942)	10
<i>Worcester v. Georgia</i> , 31 U.S. 515 (1832)	3, 12, 13, 15

Statutes

18 U.S.C. § 21	2
18 U.S.C. § 1151	3
18 U.S.C. § 1153	3
18 U.S.C. § 1153(a)	3
28 U.S.C. § 1257(a)	2
OK ST T. 21 § 701.7	6

Other Authorities

1 William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 135 (1765)	17
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Constitutional Provisions

Due Process Clause	2
Indian Commerce Clause	2
Major Crimes Act	3, 4, 8, 12, 14
Supremacy Clause	2, 8, 12
U.S. Const., art. VI, cl. 2	12, 15

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PETITION FOR WRIT OF CERTIORARI¹

Jason Leon Cruse (Mr. Cruse) respectfully petitions for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals (OCCA).

OPINION BELOW

The unpublished order of the OCCA affirming the District Court of Murray County's denial of Mr. Cruse's request for post-conviction relief

¹ The undersigned wishes to acknowledge the indebtedness of this petition to the petition for certiorari in *Parish v. Oklahoma*, No. 21-467, and its authors.

is included in the appendix to this petition. Pet. App. A at 1-3.²

JURISDICTION

The OCCA affirmed the District Court’s denial of Mr. Cruse’s request for post-conviction relief on January 19, 2022. Pet. App. A at 1-3. This petition is filed within 90 days of that affirmance. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Indian Commerce Clause, the Supremacy Clause, the Due Process Clause, and the relevant provisions of Title 18 of the United States Code and Title 21 of the Oklahoma Statutes, are included in the appendix. Pet. App. C at 1-8.

STATEMENT

A. McGirt v. Oklahoma, 140 S.Ct. 2452 (2020)

This Court has recognized that “[t]he whole intercourse between the United States and [Indian tribes], is, by our Constitution and laws,

² Materials in the appendix will be cited by their appendix letter, followed by page number; i.e., “Pet. App. B at 25.”

vested in the Government of the United States.” *Worcester v. Georgia*, 31 U.S. 515, 561 (1832). The Major Crimes Act (MCA), 18 U.S.C. § 1153, exemplifies this principle. The MCA vests the federal government with exclusive jurisdiction to prosecute certain felonies committed by Indians in “Indian country.” 18 U.S.C. § 1153(a); 18 U.S.C. 1151; Pet App. C at 4-5. Absent an Act of Congress providing to the contrary, states lack jurisdiction to prosecute “offenses covered by the Indian Major Crimes Act.” *Negonsott v. Samuels*, 507 U.S. 99, 102-03 (1993).

In *McGirt*, this Court held unlawful Oklahoma’s “longstanding practice of asserting jurisdiction over Native Americans” for crimes covered by the MCA. 140 S. Ct. at 2470-71. Oklahoma had prosecuted and convicted McGirt, an enrolled member of the Seminole Nation, for MCA-covered offenses that were committed on the Creek Reservation. *Id.* at 2459. McGirt argued in post- conviction proceedings that the State lacked jurisdiction to prosecute him, mandating that any new trial take place in federal court. *Id.* Oklahoma denied that the Creek Reservation remained “Indian country.” *Id.* at 2460.

This Court disagreed with Oklahoma. It explained that “Congress established a reservation for the Creeks [i]n a series of treaties.” *Id.* at

2460- 62; *see id.* at 2472-76. No “Acts of Congress,” rescinded that reservation. *Id.* At 2462-68. And courts and “States have no authority to reduce federal reservations.” *Id.* at 2462. Nor could “historical practices and demographics. . . around the time of and long after the enactment of all the relevant legislation. . . prove disestablishment.” *Id.* at 2468. Lastly, this Court rejected the Oklahoma’s argument that the MCA was inapplicable to the State, or some geographic part of it. *Id.* at 2476-78.

“Congress allowed only the federal government, not the States, to try tribal members for major crimes.” *Id.* at 2480. Nevertheless, Oklahoma has prosecuted many Indians for such offenses. Among them is Mr. Cruse, an enrolled member of the Choctaw Nation. Pet. App. D at 1-4 and 92. In 2000-2001, Oklahoma prosecuted Mr. Cruse for conduct that he contends took place within the boundaries of the Chickasaw Reservation and/or a “dependent Indian community.” Pet. App. B at 1-19; Pet. App. D at 1-4.

But the Chickasaw Reservation persists today and is “Indian country” within the meaning of the MCA. *Bosse v. State*, 499 P.3d 771, 774 (Okla. Crim. App. 2021) (“Applying the Supreme Court’s analysis in *McGirt*, we also affirm the trial court’s legal conclusion that the

Chickasaw Reservation was never disestablished by Congress, and the lands within its historic boundaries are Indian Country.”). Oklahoma therefore lacked jurisdiction to prosecute Mr. Cruse for a listed major crime.

***B. State ex rel. Matloff v. Wallace*, 497 P.3d 686
(Okla. Crim. App. 2022)**

In *State ex rel. Matloff v. Wallace*, 497 P.3d 686, 688-689 (Okla. Crim. App. 2022), the OCCA opined that whether a petitioner was entitled to post-conviction relief under *McGirt* depended on Oklahoma’s doctrine governing when new rules apply to convictions that were final when the rule was announced. According to the OCCA, that doctrine “draw[s] on, but” is “independent from, the Supreme Court’s non-retroactivity doctrine in federal habeas corpus,” as developed in *Teague v. Lane*, 489 U.S. 288 (1989). *Matloff*, 497 P.3d at 689.

The OCCA stated that “new rules” of “criminal procedure” “generally do *not* apply retroactively to convictions that are final, with a few narrow exceptions.” *Id.* On the other hand, “a new *substantive* rule” applies “to final convictions if it placed certain primary (private) conduct beyond the power of the Legislature to punish, or categorically

barred certain punishments for classes of persons because of their status (capital punishment of persons with insanity or intellectual disability, or juveniles, for example).” *Id.*

The OCCA then held that *McGirt* does “not apply retroactively to void a conviction that was final when *McGirt* was decided” because it “announced a rule of criminal *procedure*.” *Id.* at 691. In its view, “*McGirt* did not ‘alter [] the range of conduct or the class of persons that the law punishes,’” but instead “decided *which sovereign* must prosecute major crimes committed by or against Indians within its boundaries.” *Id.* (quoting *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004)). Thus, it believed that “the extent of state and federal criminal jurisdiction affected ‘only the *manner of determining* the defendant’s culpability.’” *Id.* (quoting *Schriro*, 542 U.S. at 353).

C. Mr. Cruse’s Case

In 2000, Oklahoma charged Mr. Cruse with a single count of first degree murder, in violation of OK ST T. 21 § 701.7, in the District Court of Murray County. Pet. App. C at 6-8. Before trial, Mr. Cruse filed an objection arguing that Oklahoma lacked jurisdiction to try him, an Indian, because his alleged crime took place in an apartment building

that was either within the bounds of the Chickasaw Reservation, or constituted a “dependent Indian community.” Pet. App. D at 1-2.

Although not disputing that Mr. Cruse and his alleged victim were both Indians, Pet. App. D. at 3-4, Oklahoma maintained that the locus of the charged crime was not within the Chickasaw Reservation, or a dependent Indian community. Pet. App. D. at 3-4. The District Court rejected Mr. Cruse’s argument. Pet. App. B at 1-15.

Mr. Cruse then stood trial, and the jury convicted him of first degree murder. Pet. App. B at 16. The District Court sentenced him to life in prison without parole, while suspending the “without parole” provision of the sentence. Pet. App. B at 17-19.

Mr. Cruse appealed his conviction to the OCCA, pressing, *inter alia*, his claim that Oklahoma lacked jurisdiction to try him. *Cruse v. State*, 67 P.3d 920, 923 (Okla. Crim. App. 2003); Pet. App. B at 20-24; Pet. App. D. at 5-34 and 81-82. Oklahoma again disputed that claim. Pet. App. D. at 35-80. The OCCA disagreed with Mr. Cruse’s arguments, including his jurisdictional contention, and affirmed his conviction while modifying his sentence to life imprisonment. *Cruse*, 67 P. 3d at 923-924; Pet. App. B. at 20-24.

Subsequent to this Court’s decision in *McGirt*, Mr. Cruse filed an application for post-conviction relief in the District Court of Murray County, reasserting his jurisdictional argument. Pet. App. D at 83-92. The District Court initially ordered an evidentiary hearing on Mr. Cruse’s application, Pet. App. B at 25-26, but then stayed the proceedings pending the expiration of this Court’s stay in *Oklahoma Bosse*, No. 21-186. Pet. App. B at 27-28. However, while that stay was in effect the OCCA decided *Matloff*. Relying on *Matloff*, the District Court summarily denied Mr. Cruse’s request for relief on August 13, 2021. Pet. App. B at 29-33. Mr. Cruse appealed, and the OCCA affirmed the District Court’s denial on January 19, 2022. Pet. App. B at 1-3; Pet. App. D at 93-103.

REASONS FOR GRANTING THE PETITION

McGirt gave effect to a fundamental principle: States have no authority to prosecute crimes covered by the MCA. The order below ignores that principle by persisting in the position that *McGirt* is a procedural rule that is not retroactive to cases on collateral review. This approach violates the Supremacy Clause because it treats an exclusive allocation of power to the federal government as a mere regulation of

the State’s “manner” of trying a case. It also violates a fundamental principle of due process and ignores historic understandings of habeas corpus. A conviction cannot stand where a state lacks authority to criminalize the conduct, and habeas courts have long set aside convictions by courts lacking that authority.

If left to stand, the order below and others like it would condemn substantial numbers of Native Americans in Mr. Cruse’s position to bear convictions and serve sentences for crimes Oklahoma had no power to prosecute. In light of the legal and practical importance of the issues in this case, this Court’s review is warranted.

**A. *McGirt’s* Rule is Substantive and Retroactive
on Collateral Review.**

“New *substantive* rules generally apply retroactively” while “[n]ew rules of procedure. . . generally do not.” *Schriro*, 542 U.S. at 351-52.

Substantive rules include those that “alter [] the range of conduct or the class of persons that the law punishes.” *Id.* at 352. “Such rules apply retroactively because they ‘necessarily carry a significant risk that a defendant’ . . . faces a punishment that the law cannot impose upon him.” *Id.* (quoting *Bousley v. United States*, 523 U.S. 614, 620 (1998)).

Thus, “when a State enforces a proscription or penalty barred by the Constitution, the resulting conviction or sentence is, by definition, unlawful” and “void.” *Montgomery v. Louisiana*, 577 U.S. 190, 200- 03 (2016).

The rule announced in *McGirt* is substantive. By excluding a certain class of defendants from state prosecution for certain crimes, it both “place[s] certain criminal laws and punishments altogether beyond the State’s power to impose,” *id.* at 201, and “alters . . . the class of persons that the law punishes,” *Schriro*, 542 U.S. at 352. And, where a State has no authority to prosecute, there can be no “possibility of a valid result.” *Montgomery*, 577 U.S. at 201. Convictions imposed by a court lacking jurisdiction are, “by definition, unlawful” and “void.” *Id.* at 201, 203; *see Waley v. Johnston*, 316 U.S. 101, 104- 05 (1942) (per curiam) (“[J]udgment of conviction is void for want of jurisdiction of the trial court to render it.”).

The OCCA’s characterization of *McGirt*’s rule as procedural, and therefore prospective only, is wrong. Procedural rules “are designed to enhance the accuracy of a conviction or sentence by regulating ‘the manner of determining the defendant’s culpability.’” *Montgomery*, 577

U.S. at 201 (quoting *Schriro*, 542 U.S. at 353) (emphasis omitted).

“Those rules ‘merely raise the possibility that someone convicted with use of the invalidated procedure might have been acquitted otherwise.’”

Id. (quoting *Schriro*, 542 U.S. at 352). But as this Court has said, “[t]he same possibility of a valid result does not exist where a substantive rule has eliminated a State’s power to proscribe the defendant’s conduct or impose a given punishment.” *Id.*

The OCCA’s understanding of *McGirt* as merely determining which sovereign may prosecute a crime is inconsonant with our federal system. A state crime is not the same offense as a federal crime; rather, as the Double Jeopardy Clause’s dual sovereignty doctrine recognizes, the states and the federal government are separate sovereigns imbued with independent powers to proscribe conduct and punish transgressions of those proscriptions. “[A] crime under one sovereign’s laws is not ‘the same offence’ as a crime under the laws of another sovereign.” *Gamble v. United States*, 139 S. Ct. 1960, 1964 (2019); see *Heath v. Alabama*, 474 U.S. 82, 92 (1985); *Abbate v. United States*, 359 U.S. 187, 195 (1959); *United States v. Wheeler*, 435 U.S. 313 (1978).

The dual sovereignty doctrine ordinarily allows both the state and

federal governments to prosecute a defendant for the same conduct. *Gamble*, 139 S. Ct. at 1964. But the Major Crimes Act *precludes* the States from prosecuting the crimes listed within it. This allocation of authority is the heart of the Constitution’s divestment of state authority to proscribe and prosecute major crimes by Indians on federally recognized reservations. *See Worcester v. Georgia*, 31 U.S. 515, 561 (1832). And under the Supremacy Clause, the federal divestiture of state jurisdiction is the “supreme Law of the land.” U.S. Const., art. VI, cl. 2; Pet. App. C at 2. So Oklahoma continues to hold Mr. Cruse for no offense at all.

In *McGirt*, this Court determined that the Creek lands qualify as a reservation under duly ratified treaties that Congress has not disavowed. That conclusion applies equally to the Chickasaw Reservation at issue in this case. *Bosse*, 499 P.3d at 774. Federal law therefore mandates retroactive application of *McGirt*’s substantive rule here. “[W]hen a new substantive rule of constitutional law controls the outcome of a case, the Constitution requires state collateral review courts to give retroactive effect to that rule.” *Montgomery*, 577 U.S. at 200. Moreover, this Court’s interpretation of federal treaties and

statutes is inherently retroactive to the date of their ratification and enactment. *See Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 313 n.12 (1994) (“[W]hen this Court construes a statute, it is explaining its understanding of what the statute has meant continuously since the date when it became law.”).

Thus, Oklahoma’s prosecution of Mr. Cruse is “repugnant to the Constitution, laws, and treaties of the United States,” *Worcester*, 31 U.S. at 561, and that federal law determination is “binding on state courts,” *Montgomery*, 577 U.S. at 200. Accordingly, because *McGirt* is a “substantive” rule with constitutional force, federal law requires that state courts apply it on collateral review. *Id.* at 205 (“Where state collateral review proceedings permit prisoners to challenge the lawfulness of their confinement, States cannot refuse to give retroactive effect to a substantive constitutional right that determines the outcome of that challenge.”).

Nor is *Matloff*’s assertion that Oklahoma’s state retroactivity rules alone bar the application of *McGirt* to cases that are, like Mr. Cruse’s, on collateral review, a defense to these conclusions.

First, if Mr. Cruse is right that *McGirt* is a substantive

constitutional rule under *Montgomery v. Louisiana*, it is retroactive as a matter of federal law. As *Montgomery* explained, “[i]f . . . the Constitution establishes a rule and requires that the rule have retroactive application, then a state court’s refusal to give the rule retroactive effect is reviewable by this Court.” 577 U.S. at 197. Oklahoma cannot escape mandatory federal retroactivity by relying on a holding that state law is to the contrary. State law principles can’t preempt the operation of federal law. See *Nitro-Lift Techs., LLC v. Howard*, 568 U.S. 17, 19-20 (2012) (per curiam); *Int’l Longshoremen’s Ass’n v. Davis*, 476 U.S. 380, 387-88 (1986).

Second, notwithstanding the OCCA’s assertion that it was applying state law principles, *Matloff* “fairly appears to rest primarily on federal law, or to be interwoven with the federal law,” and so this Court enjoys jurisdiction. *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983); see *McGirt*, 140 S. Ct. at 2479 n.15 (applying *Long* to determine that this Court had jurisdiction to review the OCCA’s decision on the effect of the MCA on McGirt’s conviction). *Matloff* borrowed its retroactivity principles from this Court. 497 P.3d at 689- 691 (citing *Teague*, *Gosa v. Mayden*, 413 U.S. 665 (1973), and *Schriro*). Thus, “the adequacy and independence of any state law ground is not clear from the face of the

opinion.” *Long*, 463 U.S. at 1040-41. To the contrary, “the most reasonable explanation” of the Oklahoma court’s decision is “that the state court decided the case the way it did because it believed that federal law required it to do so.” *Id.* at 1041. This Court has jurisdiction to review the state court’s application of federal standards. *See, e.g., Merrell Dow Pharms. Inc. v. Thompson*, 478 U.S. 804 (1986); *Three Affiliated Tribes of the Fort Berthold Rsrv. v. Wold Eng’g, P.C.*, 467 U.S. 138 (1984); *Standard Oil Co. v. Johnson*, 316 U.S. 481 (1942).

B. The Order Below Upends the Constitution’s Federal Structure, Violates Due Process, and Ignores the History of Habeas Corpus.

The OCCA’s order upends the Constitution’s allocation of authority over Indian tribes. The Constitution “entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and statutes are the ‘supreme Law of the Land,’” *McGirt*, 140 S. Ct. at 2462 (quoting U.S. Const., art. VI, cl. 2); Pet. App. C at 2. This preeminent role of the federal government in Indian affairs has long been recognized. *Worcester*, 31 U.S. at 561. Without Congress’s say-so, the states had no power to act in this sphere. *Rice v. Olson*, 324 U.S. 786, 789 (1945) (“The policy of leaving Indians free from state

jurisdiction and control is deeply rooted in this Nation's history."). The order below cannot be reconciled with these structural features of the Constitution.

The OCCA's order also intrudes on a hallmark of individual liberty traditionally protected by the writ of habeas corpus. More than a century ago, this Court deemed it "perfectly well settled" that, to accord with "'due process' in the constitutional sense," "a criminal prosecution in the courts of a state" must be in "a court of *competent jurisdiction*." *Frank v. Mangum*, 237 U.S. 309, 326 (1915) (emphasis supplied); Pet. App. C at 3. The order below violates that bedrock principle. The Oklahoma courts lacked jurisdiction to convict or sentence Mr. Cruse. The Oklahoma legislature lacked power to confer that jurisdiction on the Oklahoma courts. Mr. Cruse's conviction violates a foundational precept of due process -- that a court without jurisdiction cannot impose a valid criminal judgment. Pet. App. C at 3.

Further, originating in England, the writ of habeas corpus allowed courts "to enforce the King's prerogative to inquire into the authority of a jailer to hold a prisoner." *Boumediene v. Bush*, 553 U.S. 723, 741 (2008). It protected any defendant who'd been "restrained of his liberty

by order or decree of any illegal court” -- including a court lacking jurisdiction to impose the conviction or punishment. 1 William Blackstone, COMMENTARIES ON THE LAWS OF ENGLAND 135 (1765).

This Court has repeatedly confirmed that a court’s lack of jurisdiction is a quintessential basis for invoking the writ of habeas corpus. In *Ex parte Lange*, 85 U.S. 163 (1873), this Court held that the defendant was entitled to the writ because the trial court lacked jurisdiction to impose his sentence. In *Ex parte Wilson*, 114 U.S. 417 (1885), this Court held that the defendant was entitled to a writ of habeas corpus because the trial court exceeded its jurisdiction by trying, convicting, and sentencing him. In *The Ku Klux Cases*, 110 U.S. 651 (1884), this Court found it “well settled that when a prisoner is held under the sentence of any court of the United States in regard to a matter wholly beyond or without the jurisdiction of that court, it is not only within the authority of the supreme court, but it is its duty, to inquire into the cause of commitment when the matter is properly brought to its attention, and if found to be as charged, a matter of which such court had no jurisdiction, to discharge the prisoner from

confinement.” *Id.* at 653. And in *Ex Parte Crow Dog*, this Court applied that principle to vacated as “void” a federal conviction where the federal territorial court lacked “jurisdiction” over Indian-on-Indian crime. 109 U.S. 556, 572 (1883).

Granting post-conviction relief to Mr. Cruse because the Oklahoma court lacked jurisdiction to convict him accords with the Constitution’s federal structure, honors the fundamental due process principle that only courts of competent jurisdiction may impose criminal penalties, and effectuates the original purpose of habeas corpus.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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