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SUPREME COURT, U.S.

21-7885

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES DEON LADD,

Petitioner,

v.

STATE OF OKLAHOMA

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Pro-Se

Charles Deon Ladd

OK DOC#507488

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Lawton, Oklahoma 73501

QUESTION PRESENTED

Whether *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), is a
Substantive ruling or a Procedural ruling.

PARTIES TO THE PROCEEDINGS

The parties to this action are names in the caption.

RELATED PROCEEDINGS

Charles Deon Ladd v. The State of Oklahoma, No. PC-2021-1168, Oklahoma Court of Criminal Appeals, appealing the denial of Petitioner's Application for Post-Conviction Relief by the District Court of Tulsa County in the State of Oklahoma. Denied March 15, 2022.

Charles Deon Ladd v. The State of Oklahoma, No. CF-2010-0874, Tulsa County District Court, Application for Post-Conviction Relief on the basis that the state lacked subject matter jurisdiction. Denied September 3, 2021.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Charles Deon Ladd respectfully petitions for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals in this case.

OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals affirming the denial of Petitioner's Application for Post-Conviction Relief is unpublished but available Petitioner's Appendix A.

The opinion of the Tulsa County District Court in the State of Oklahoma denying the Petitioners Application for Post-Conviction Relief is unpublished but available Petitioner's Appendix B.

JURISDICTION

The Oklahoma Court of Criminal Appeals affirmed the denial of Petitioner's Application for Post-Conviction Relief on March 15th, 2022. This Petitioner is being filed within 90 days of that denial. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Indian Commerce Clause of the United States Constitution, Article I, Section 8, provides in relevant part:

The Congress shall have power...to regulate commerce...with the Indian Tribes.

The Supremacy Clause to the Untied States Constitution, Article VI, provides in relevant part:

This Constitution, and the laws on the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United

States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the Constitution or laws of any state to the contrary notwithstanding.

The Due Process Clause of the Fourteenth Amendment, Section 1, to the U.S. Constitution provides in relevant part:

No state shall...deprive any person of life, liberty, or property, without due process of law.

Title 18, United States Code, Section 1151 (Indian country defined) provides:

Except as otherwise provided in section 1154 and 1156 of this title, the 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, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

Title 18, United States Code, Section 1152 (Laws governing) provides in relevant part:

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

Section 1080 of Title 22 of the Oklahoma Statutes provides:

Any person who has been convicted of, or sentenced for, a crime and who claims:

- (a) that the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this state;
- (b) that the court was without jurisdiction to impose sentence;
- (c) that the sentence exceeds the maximum authorized by law;
- (d) that there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (e) that his sentence has expired, his suspended sentence, probation, parole, or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or

(f) that the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy;

may institute a proceeding under this act in the court in which the judgment and sentence on conviction was imposed to secure the appropriate relief. Excluding a timely appeal, this act encompasses and replaces all common law and statutory methods of challenging a conviction or sentence.

Section 1089(D) of Title 22 of the Oklahoma Statutes provides in relevant part:

8. If an original application for post-conviction relief is untimely or if a subsequent application for post-conviction relief is filed after filing an original application, the Court of Criminal Appeals may not consider the merits of or grant relief based on the subsequent or untimely original application unless:

a. the application contains claims and issues that have not been and could not have been presented previously in a timely original application or in a previously considered application filed under this section, because the legal basis for the claim was unavailable, or...

9. For purposes of this act, a legal basis of a claim is unavailable on or before a date described by this subsection if the legal basis:

a. was not recognized by or could not have been reasonably formulated from a final decision of the United States Supreme Court, a court of appeals of the United States, or a court of appellate jurisdiction of this state on or before that date, or

b. is a new rule of constitutional law that was given retroactive effect by the United States Supreme Court or a court of appellate jurisdiction of this state and had not been announced on or before that date.

STATEMENT OF CASE

The State of Oklahoma charged Charles Deon Ladd (Petitioner) by felony information on March 5, 2010. The information charged Petitioner with (Count One) Felony Murder, in violation of 21 O.S. § 701.8, (Count Two) Arson – First Degree, in violation of 21 O.S. § 1401, and (Count Three) Manufacturing Controlled Dangerous Substance, in violation of 63 O.S. § 2-401 G.

Petitioner was tried by jury and convicted and sentenced for the offense of Count One, Murder in the Second Degree. Petitioner perfected a direct appeal proceeding from his judgment and sentence to the Oklahoma Court of Criminal Appeals (OCCA), which affirmed Petitioner's judgment and sentence in an unpublished summary opinion.

The Petitioner then filed an Application for Post-Conviction Relief on September 24, 2020, wherein he contended that based on this Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452, 20 L. Ed. 2d 985 (2020) the courts of the State of Oklahoma lacked subject matter jurisdiction to enter a judgment and sentence against him. Within that motion, the following was found as fact:

1. A representative of the Cherokee Nation Citizenship Office would testify that Petitioner was a citizen of the Cherokee Nation on the date of the offense on October 24, 2009. This representative would testify Petitioner became enrolled as a citizen of the Cherokee Nation on July 20, 2001.
2. A representative of the Cherokee Nation Citizenship Office would testify that Petitioner has 1/64 degree of Cherokee blood.
3. The Cherokee Nation is a federally recognized tribe.
4. A representative of the Tulsa Police Department would testify that Petitioner committed the offenses he was convicted of within Tulsa County in the State of Oklahoma.
5. A representative of the Muskogee Creek Nation or a representative of the Cherokee Nation, or an expert witness testifying on Petitioner's behalf, would testify that the location of the offense Petitioner was convicted of occurred within the Muskogee Creek Nation and/or the Cherokee Nation.

On September 3, 2021, the District Court of Tulsa County in the state of Oklahoma filed its order denying Petitioner's Application for Post-Conviction Relief, Stating that due to a ruling by the Oklahoma Court of Criminal Appeals in *State ex rel, District Attorney v. Wallace*, 2021 OK CR 21, __ P.3d __, 2021 WL 3578089, the ruling by this Court in *McGirt v. Oklahoma* was a new procedural ruling and therefore not to be applied retroactively.

The Petitioner appealed this denial to the Oklahoma Court of Criminal Appeals on October 25, 2021, but this was denied in an unpublished decision on March 15, 2022, based on the same decision made in *State ex rel. Matloff v. Wallace* and the Oklahoma Court of Criminal Appeals decision to construe the *McGirt* ruling as a "new procedural rule...not retroactive..." that "does not void final state convictions..."

INTRODUCTION

In *McGirt v. Oklahoma*, 140 S. CT. 2452 (2020), this Court held that the federal government must be held to its word. Because the United States promised to reserve certain lands for tribes in the nineteenth century and never rescinded those promises, those lands remain reserved to the tribes to this day. In particular, these lands remain "Indian country" within the meaning of the Major Crimes Act (MCA), which divests States of jurisdiction to prosecute "[a]ny Indian" who committed one of the offenses enumerated in Section 1153(a) of Title 18 of the U.S. Code while in "Indian country," 18 U.S.C. §1153(a). Only the federal government may prosecute such crimes.

Oklahoma, to combat the ruling made in *McGirt v. Oklahoma*, 140 S. CT. 2452 (2020), has taken the view that *McGirt* amounts to a mere "Procedural rule" that determined only "which sovereign must prosecute major crimes committed by or against Indians within" Indian country.

Despite this Court's emphatic holding that the State lacked power to prosecute Indians for major crimes on tribal land, the Oklahoma court believed that the *McGirt* rule affected "only the manner of determining the defendant's culpability," and thus "imposed only procedural changes." *Id.* (quoting *Schrivo v. Summerlin*, 542 U.S. 348, 353 (2004)). Because it viewed *McGirt* as a new rule of criminal procedure, the Oklahoma court held that this Court's holding did not apply retroactively to convictions that were final when *McGirt* was announced.

That decision is biased and wrong: *McGirt* is not only not a new rule, but is a substantive rule with constitutional force, not a procedural rule. It thus applies retroactively on collateral review as a matter of federal law. *McGirt* "place[s] certain criminal laws and punishments altogether beyond the State's power to impose," *Montgomery v. Louisiana*, 577 U.S. 190, 201 (2016), and "alters... the class of persons that the law punishes," *Schrivo*, 542 U.S. at 353. Because *McGirt* announced a substantive rule enforced by the Supremacy Clause, federal law requires its retroactive application in state-court proceedings. *Montgomery*, 577 U.S. at 205.

The Oklahoma court's ruling also has sweeping implications. It upends the Constitution's structural allocation of authority between the state and federal governments. It allows States to usurp authority that Congress has reserved to the United States and the State's refusal to grant relief from its *ultra vires* convictions violates fundamental due process principles that have long been vindicated on habeas corpus, *viz.* that only a court of competent jurisdiction may impose a valid criminal conviction or sentence.

Without clarification as to the type of ruling *McGirt* created, the Oklahoma court's decision will leave hundreds of individuals with state convictions that the State had no authority to impose. This Court should grant this petition to provide that clarification and reaffirm *McGirt's* jurisdictional holding, protect Congress's authority under the Supremacy Clause, and

vindicate the liberty interests of individuals to be free from punishment that the states have no power to impose.

REASONS FOR GRANTING THE WRIT

A. The Ruling Of This Court In *McGirt* Is A Substantive Rule And Not A Procedural Rule.

Federal law requires that *McGirt* be applied retroactively in state post-conviction proceedings. Under *McGirt*, the federal government has – and always had – exclusive jurisdiction to prosecute major crimes committed by Indians on Indian country. The State has no power to do so, and never has.

McGirt did not create that rule; rather, 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) ("When this Court construes a statute, it is explaining its understanding of what the statute has meant continuously since the date when it became law.")

That allocation of authority is not a mere procedural rule. Rather, it goes to the heart of the Constitution's divestment of state authority (absent a contrary provision by Congress) to proscribe and prosecute major crimes by Indians on federally recognized reservations. *See Worcester v. Georgia*, 31 U.S. 515, 561 (1832). Under the Supremacy Clause, the federal divestiture of state jurisdiction is the "supreme law of the land." U.S. Const., art. VI, cl. 2.

Because Oklahoma has no jurisdiction to proscribe and punish petitioner's conduct, the State is holding not only the petitioner, but many other Indians, without any valid authority to do so.

1. "New *substantive* rules generally apply retroactively" while "[n]ew rules of procedure...generally do not." *Schrivo v. summerlin*, 542 U.S. 348, 351-52 (2004).

The rule announced in *McGirt* is substantive. Substantive rules include those that "alter the range of conduct or 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 on him." *Id.* (quoting *Bousley v. United States*, 523 U.S. 614, 620 (1998)). In these cases, 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).

McGirt's ruling satisfies the standards for a substantive rule. By excluding a certain class of defendants from state prosecution for certain crimes, the *McGirt* rule 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," *Schrivo*, 542 U.S. at 352. Where a state has no authority to prosecute a defendant for a crime, no "possibility of a valid result" can exist. *Montgomery*, 577 U.S. at 201. All convictions by a court that lacks 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."

Here, the lack of jurisdiction is not solely a want of judicial power; Oklahoma lacks authority to criminalize major crimes by or against Indians in Indian country. Because Congress has given no authority to Oklahoma to extend its laws to Petitioner's conduct, the State's regulatory effort is "repugnant to the Constitution, laws and treaties of the United States" and in interference with power that, according to the settled principles of our Constitution, are committed exclusively to the government of the Union." *Worcester*, 31 U.S. at 561. *McGirt* thus means that Oklahoma is holding petitioner for an offense that, as to him, it lacked legislative power to enact, executive power to prosecute, and judicial power to enforce.

2. The Oklahoma Court of Criminal Appeals refused to apply *McGirt* retroactively because, it asserts, the rule is procedural. That conclusion 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 *Schrivo*, 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 *Schrivo*, 542 U.S. at 352). But that reasoning cannot apply when *no* state procedures could lead to a valid result. As this Court has explained, "[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.*

B. New Substantive Rules Apply Retroactively

In *McGirt*, this court held the MCA confers exclusive jurisdiction on the federal government over covered crimes, thereby overturning Oklahoma's longstanding practice of prosecuting Indians for major crimes committed in Indian country. *McGirt*, 140 S. Ct. at 2460-82. The rule announced in *McGirt* is substantive because it does not merely dictate procedures Oklahoma must follow to prosecute crimes covered by the MCA, but rather prohibits Oklahoma from prosecuting or punishing the conduct at all. *Id.* at 2460, 2478-82. Under this Court's precedents, decisions announcing substantive rules apply retroactively. *See, e.g., Montgomery v. Louisiana*, 577 U.S. 190, 200-01 (2016).

In refusing to vacate the Petitioner's conviction, along with an untold amount of other Native Americans currently in the same position as the Petitioner, the Oklahoma Court of Criminal Appeals reasoned that the rule announced in *McGirt* is procedural cause it merely shifts prosecutions for covered major crimes from state court to federal court. The *Matloff* court's reasoning is wrong.

Under *McGirt*, Oklahoma has no authority to prosecute crimes covered by the MCA committed by or against Indians in Indian country. It is true that the federal government may prosecute an Indian based on the same alleged underlying conduct, but that prosecution is for violating a federal law. The MCA and state criminal laws are separate and independent. They derive from separate sovereigns. Indians cannot be punished for committing a state law crime in Indian country based on alleged conduct that falls within the MCA. A rule that places conduct beyond the power of a state to punish is, in fact, substantive. *Teague v. Lane*, 489 U.S. 288, 307 (1989).

Whether a new rule applies on collateral review to cases in which a final judgment of conviction had been entered before the rule was announced turns on whether the new rule is substantive or procedural. *Edwards v. Vannoy*, 141 S. CT. 1547, 1562 (2021) ("[N]ew substantive rules apply...retroactively on federal collateral review."). A rule is substantive if it "places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe." *Teague*, 489 U.S. at 311 (internal quotes omitted). In other words, a substantive rule "alters the range of conduct or the class of persons that the law punishes." *Schrivo*, 542 U.S. at 353 (citation omitted) Accordingly, substantive rules include those that "place particular conduct or persons...beyond the State's power to punish." *Id.* at 352.

In contrast, procedural rules dictate the process that must be followed to impose a punishment. *Montgomery*, 577 U.S. at 201. A procedural rule therefore does not define or limit the state's power to criminalize particular conduct or to impose particular penalties. It does not question the right of the state to prosecute and convict the defendant for the crime alleged. Instead, a procedural rule determines the process that must be followed in prosecuting a defendant. *Id.*

The Rationale for applying substantive rules but not procedural rules retroactively is clear and compelling. Where a rule is substantive, a person convicted before the rule was announced "stands convicted of 'an act that the law does not make criminal' or faces a punishment that the law cannot impose upon him." *Schrivo*, 542 U.S. at 352 (quoting *Bousley v. United States*, 523 U.S. 614, 620 (1998)). In other words, when a state "enforces a proscription or penalty" in violation of a substantive rule, "the resulting conviction or sentence is, by definition, unlawful." *Montgomery v. Louisiana*, 577 U.S. 190, 201 (2016).

In contrast, violation of a procedural rule does not call into question the state's power to criminalize particular conduct or to impose a particular punishment. Rather, a procedural violation goes only to the process that the state followed in obtaining a conviction and imposing punishment. *Id.* at 200-03.

Montgomery illustrates the distinction between substantive and procedural rules well. There, the Court considered whether *Miller v. Alabama*, 576 U.S. 460 (2012), should be applied retroactively. In *Miller*, the Court held that "a juvenile convicted of a homicide offense [may] not be sentenced to life in prison without [the possibility of] parole, absent consideration" of the special characteristics of youth and the defendant's circumstances. *Montgomery*, 577 U.S. at 193. Accordingly the issue presented in *Montgomery* was whether *Miller's* limitation on the circumstances under which a state may impose a sentence of life without parole on a juvenile was substantive or procedural.

Reiterating that a rule is substantive if it "forbids 'criminal punishment of a certain primary conduct' or prohibits 'a certain category of punishment for a class of defendants because of their status or offense,'" *Id.* at 206 (internal citation omitted), the Court explained that the rule announced in *Miller* is substantive because it prohibits a category of punishment (life imprisonment without parole) on a class of offenders (juveniles convicted of a homicide) absent express consideration of the special circumstances.

The *Montgomery* Court acknowledged that *Miller* has a procedural component because it specifies a procedure that must be followed, namely that the sentencing court must "consider a juvenile offender's youth and attendant characteristics before determining that life without parole

is a proportionate sentence." *Id.* at 209-10. But the Court rejected the notion that a rule is procedural simply because it includes a procedural requirement. *Id.* at 210. In that regard, the Court emphasized that *Miller* created a substantive right for a juvenile not to be subject to a sentence of life without parole absent special circumstances. *Id.* at 208. That right is separate and distinct from the procedures that must be followed for determining whether those special circumstances are present. *Id.*

C. The Question Presented Is Important.

The question presented in this case warrants review because it raises significant issues implicating due process, the federal government's relationship with Native Americans, and the state power.

This Court's intervention is warranted not only to correct a fundamental legal error by the court below, but also because the Oklahoma court's decision undermines this Court's decision in *McGirt*, diminishes federal authority, disregards individual rights, and threatens to leave in place a significant number of state convictions that never had any valid legal basis.

The Oklahoma Court of Criminal Appeals' ruling transgresses the constitutional allocation of authority over Indian tribes. as *McGirt* explained, the Constitution "entrusts Congress with the authority to regulate commerce with Native Americans, and directs that federal treaties and states are the 'supreme law of the land.'" 140 S. Ct. at 2462 (quoting U.S. Const. art. VI, cl. 2). The paramount federal role over Indian affairs has been recognized since the nation's early years. *See Worcester v. Georgia*, 31 U.S. 515, 561 (1832). Absent congressional authorization, the state has no power to act. *See Rule 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 decision below cannot be reconciled with these central structural features of the Constitution, nor can it be reconciled with *McGirt's enforcement* of the nation's promises to the tribes when they were relocated to their current territory. As this Court recognized, "[o]n the far end of the Trial of Tears was a promise," and the Court's decision "h[e]ld the government to its word." *McGirt*, 140 S. Ct at 2459. The decision below, treating *McGirt* as a mere procedural rule and allowing the State to maintain convictions that it never had authority to impose, diminishes *McGirt's* significance and undermines the Court's holding as well as the predominant congressional authority over Indian country crimes.

1. Wrongful treatment of Native Americans

As this Court acknowledged in *McGirt*, Indian tribes have suffered immensely over the years at the hands of both the federal government and the State of Oklahoma. The federal government displaced tribes through force and promises only to break many of those promises. Oklahoma for decades failed to recognize claims to land that rightfully belonged to tribes, and consequently it prosecuted untold numbers of Indians for major crimes under state statutes despite lacking the authority to do so.

Refusing to apply *McGirt* as a substantive ruling perpetuates the mistreatment of Native Americans. It allows Oklahoma to continue holding Native Americans wrongfully in prison based on convictions resulting from prosecutions Oklahoma had no authority to bring, for violating state laws that Oklahoma had no authority to enforce and entered by courts with no jurisdiction. Gore is just one of what is likely hundreds of Indians unlawfully prosecuted and convicted.

2. Interference with Federal-Native American relations.

In *United States v. Lara*, 541 U.S. 193 (2004), this Court held that "the Constitution grants Congress broad general powers to legislate in respect to Indian tribes, powers that we have consistently described as 'plenary and exclusive.'" 541 U.S. at 200 (citation omitted). *See also Michigan v. Bay Mills Indian Cnty.*, 572 U.S. 782, 788 (2014). This federal power derives from the Constitution's Indian Commerce and Treaty Clauses, which grant the federal government all power of Indian tribes. U.S. Const. art. I, §8, cl. (establishing that "Congress shall have power... [t]o regulate Commerce...with the Indian Tribes"); U.S. Const. art. II, §2, cl. 2 (establishing that the President "shall have power, by and with the advice and consent of the Senate, to make treaties.")

This Court recognized this point in *McGirt*, noting that 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 (citing U.S. Const. art. I, §8; quoting *id* at art. VI, cl. 2.). Oklahoma's refusal to apply *McGirt* as a substantive rule therefore interferes with the federal government's plenary and exclusive power over relationships with tribes.

3. Wrongful deprivation of individual liberty.

The Oklahoma Court's ruling also warrants review because of its intrusion on a core feature of individual liberty that has for centuries been 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. Magnum*, 237 U.S. 309, 326 (1915) (emphasis

added). The holding below violates that basic principle. Under the reasoning of *McGirt*, the Oklahoma Courts lacked jurisdiction to convict or sentence Petitioner. And the Oklahoma legislature lacked power to confer that jurisdiction on the Oklahoma courts as a result, petitioner's conviction violated a fundamental feature of due process that has prevailed for centuries – that a court without jurisdiction cannot impose a valid criminal judgment.

The question presented also determines the outcome of petitioner's request for post-conviction relief. The Oklahoma Court of Criminal Appeals relied only on retroactivity based on its ruling that *McGirt* was a new procedural rule as a bar to applying *McGirt* to Petitioner's conviction, not any waiver principle, and the State cannot now invoke a waiver rationale to shield its decision, because no such principle would be "consistently or regularly applied." *Johnson v. Mississippi*, 486 U.S. 578, 588-89 (1988).

According to one source, as of December 31, 2019, 1,887 Native Americans were incarcerated for offenses that occurred in "Indian country." Rebecca Nagle, *Oklahoma's Suspect Argument in Front of the Supreme Court*, Atl. (May 8, 2020)¹. That source estimates that less than ten percent of those prisoners could meet all requirements for obtaining post-conviction relief, which is not surprising considering that not all of them were convicted of crimes covered by the MCA and many were convicted of covered crimes may not meet the procedural requirements for post-conviction relief. Still, that leaves hundreds of people incarcerated unlawfully.

1: <https://www.theatlantic.com/ideas/archive/2020/05/oklahomas-suspect-argument-front-supreme-court/611284/>

CONCLUSION

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

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