IN THE
SUPREME COURT OF THE UNITED STATES

22-6458

Brian L. Melson

Petitioner

vs.

The State of Oklahoma

Respondent

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES SUPREME COURT

PETITION FOR A WRIT OF CERTIORARI,
Pursuant to 28 U.S.C.A. § 1257 (a)[1]

November 23, 2022
"*ORIGINAL*" DATE SUBMITTED

December 21, 2022
"*AMENDED*" DATE SUBMITTED

[1] Mr. Melson provided his Tribal Registration and C.D.I.B. to the Trial Judge **PRIOR** to conviction, yet he was told "***I will never recognize Indian Jurisdiction in my court***". Further, the Judge repeatedly called him a ***half-breed.*** The State of Oklahoma has now implemented race and the most critical element in criminal proceeding(s) yet still refuse(s) to recognize Indian Jurisdiction. This Honorable Court is "***WE THE PEOPLE***" only voice and we pray we hear you loud and clear. As prior to trial, Mr. Melson presented all the requirements of the Tenth Circuit's ruling in "***Prentiss***" ["**United States v. Langford**" C.A.10 (Okla.) 2011, 641 F.3d 1195); & "**U.S. vs. Prentiss**" 273, F.3d 1277, 1280 (10th Cir. 2001)].

MR. MELSON PRESENTS THE FOLLOWING QUESTION(s):

1. *"Mr. Melson respectfully ask"*: Did Congress ever disestablish the ***Cherokee Nation*** and/or ***Reservation*** as a sovereign nation, [*within the State of Oklahoma*]? If so what was the exact statute and/or Act did Congress enact?

2. *"Mr. Melson respectfully ask"*: When the *[F]ramers* of the ***Oklahoma State Constitution,*** created and enacted ***Article I, § 3***, [*Unappropriated public lands - - Indian Lands - - Jurisdiction of United States*], did the State of Oklahoma and/or its Official(s) "***forever***" disclaim and/or waive jurisdiction within Indian Country? [2]

3. *"Mr. Melson respectfully ask"*: [Although the Mr. Melson is Native], is [R]ace a critical element in criminal proceeding(s) within the State of Oklahoma? Or will this destroy a ***century of justice reform*** and the ***abolishment of racism within our Jurisprudence***? [3]

4. *"Mr. Melson respectfully ask"*: What Congressional Law/Statute grants Oklahoma "***concurrent jurisdiction***" within Indian Country, *found within the borders of the State of Oklahoma?* [4]

[2] *As Congress took care to require Oklahoma to agree and declare that it would forever disclaim all right and title in or to ... all lands lying within [the State's] limits owned or held by any Indian, tribe, or nation.* ***34 Stat. 270.*** → ***Quoting the Honorable Neil Gorsuch***

[3] This question is extremely vital to the Petitioner's case as he was personally ***racially discriminated*** against be the State Judge(s) in this case. The ***Black Lives Mater Organization*** has completely deterred the Court(s) from racially discriminating against Americans of color, (black), and the Courts have now turned their racism towards Native American(s). This "critical" element adopted by Oklahoma will subject every citizen to racism for an eternity and/or until this Honorable Court removes the race from the elements and mandates that the Federal Government has sole jurisdiction of Major Crimes Act and the Tribes have sole jurisdiction pursuant to the General Crimes Act. Oklahoma simply has zero jurisdiction within Indian country, regardless of race.

[4] This question arises from this Honorable Court's ruling of "***Oklahoma vs. Castro-Huerta***" No. 21-429 (*April 27, 2022*).

PARTIES TO THE PROCEEDING AND LIST OF DIRECTLY RELATED PROCEEDINGS

- Mr. Melson in this case is *Brian L. Melson*, pro-se [*and no other(s)*], **PERSONALLY**.
- The Respondent in this case is the State of Oklahoma, who may be represented by and through the Oklahoma Attorney General's Office.
- The proceeding(s) of this matter arise from a "***timely filed post-conviction***" that has been ruled by the Oklahoma Court of Criminal Appeals.
- As this Certiorari is filed in **Direct Collateral Review** of his post-conviction, pursuant to ***28 U.S.C.A. § 1257 (a).***

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CONCISE STATEMENT(s) OF THE CASE

The Petitioner, [Brian Melson], was charged with:

The Mays County District Court case number is **CF-2016-408**

- Count One: 21 O.S. § 1123 and sentenced to 15 years in the Department of Corrections and that sentence is to be served Concurrent.

- Count Two: 21 O.S. § 1123 and sentenced to 15 years in the Department of Corrections and that sentence is to be served Concurrent.

On or about *21st day of September, 2016* the Prior Creek, Oklahoma police department arrested Mr. Melson for the above count(s).

On or about *21st day of September, 2018* Mr. Melson was physically and mentally coerced to sign the State's ambiguous plea of No-Contender.

On or about *4th day of January, 2019* Mr. Melson filed an appeal out of time with Mays County District Court.

On or about *4th day of February, 2019* Mr. Melson the Mays County District Court refused to provide an original certified copy of the order causing O.C.C.A. to refuse jurisdiction.

On or about *17th day of February, 2022* Mr. Melson filed a Motion to Vacate for lacking of Jurisdiction.

On or about *20th day of September, 2022* Mr. Melson the O.C.C.A. refused jurisdiction upon case number PC-2022-427.

PETITION FOR A WRIT OF CERTIORARI

Pursuant to *28 U.S.C.A. § 1257 (a)*

"Introduction"

Brian L. Melson, [*a destitute, pro-se, petitioner*], respectfully requesting a petition for a Writ of Certiorari to answer his meritorious, question(s) that will have a profound impact upon the **American Scheme of Justice** that will seriously affect the State's, Tribe's and the United States of America's criminal proceeding(s). The State of Oklahoma has declared and enacted their ***CRITIAL RACE THEORY***[5] in all criminal proceedings as a principle element of prosecution[6]. Since this Court's ruling of Castro, the State of Oklahoma has now *mandated that race is the most essential and/or critical*

[5] The United States of America abolished slavery though the enactment of the XII Amendment on January 31, 1865. Yet, tribal members are being enslaved to the State of Oklahoma by mandating race the most critical element in criminal proceedings. Further, the State of Oklahoma is attempting to determine the date a Tribal Member "finally" received their Tribal Registration and C.D.I.B. versus the reality that that person was and is an Indian since the date of the conception and birth. According to Oklahoma a person obtain(s) all their Constitutional rights from the moment of conception, (prior to even a heartbeat), unless your native.

[6] A direct violation of the 14th Amendment's "***equal protection of the law***"

element in all criminal proceedings. In doing this, Oklahoma has destroyed over a century of justice reform and the abolishment of racism within the United States and our judicial system.

The, [several], State(s) of the Union utilized "***Dobbs, State Health Officer of the Mississippi Department of Health, et al., Petitioners vs. Jackson Women's Health Organization, et al." (No. 10-1392)*** to overturn case precedent[7] of this Honorable Court and that is the exact strategy Mr. Melson wishes to utilize in the overturning of ***Oklahoma vs. Castro-Huerta***" No. 21-429 (*April 27, 2022*) and enriching this Court's ruling of McGirt by creating a retroactive constitutional order that empowers the Tribal Nations with full and exclusive jurisdiction within its own territory, only to be concurrent with the United States of America.

The, [several], States argued that Congress never enacted any Statutory and/or Constitutional provisions enshrining abortions as a protected right of women. In the same aspect Mr. Melson alleged that Congress has never disestablished the Cherokee Reservation nor did Congress ever enact any Statutory and/or Constitutional provision granting Oklahoma "***concurrent jurisdiction***".

As seen within the Oklahoma Court of Criminal Appeals, the state has known that it lacks jurisdiction yet refuses to adhere to State and Federal Law(s). "***State vs. Littlechief***" Okl.Cr. 573 P.2d 263 (1978) and "***C.M.G. vs. State***" 594 P.2d 798 (Okl. Crim. 1979) *possess the same language*:

"Title 18 U.S.C. s 1152 (1970), provides that "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." Title 25 U.S.C. s 1321, P (a), (1970), passed in 1968, grants to the States consent to assume, with the consent of the Indians involved, jurisdiction to prosecute crimes committed in Indian Country, and 25 U.S.C. s 1323 (1970), gives the consent of the United States to states to amend their constitutions or existing statutes to remove any legal impediments to the state assuming that jurisdiction. To date, the State of Oklahoma had made no attempt to repeal ***Article I, § 3 of the Constitution of the State of Oklahoma****, which prohibits state jurisdiction over Indian country, so the federal government still has exclusive jurisdiction over Indian country located within Oklahoma boundaries."*

This Honorable Court has held:

*"*24 The few occasions on which Congress has even arguably authorized the application of state criminal law on tribal reservations still do not come anywhere near granting Oklahoma the power it*

[7] "Roe vs. Wade" 410 U.S. 113 (1973)

seeks. In the late 1800's, this Court in ***McBratney*** *and* ***Draper*** *held that feral statutes admitting certain States to the Union effectively meant decisions were, they took care to safeguard the rule that a State's admission to the Union* ***does not convey with it the power to punish "crimes committed by or against Indians."*** *McBratney, 104 U.S., at 624; Draper, 164 U.S., at 247. Indeed, soon after Oklahoma with authority to try crimes "not committed by or against Indians," on tribal lands. Ramsey, 271 U.S., at 469; see also n. 5, supra;* ***Donnelly v. United States,*** *228 U.S. 243, 271 (1913);* ***Williams v. Lee,*** *358 U.S., at 220; Cohen 506-509. The decision whether and when this arrangement should "cease" rest[ed] with Congress alone."* ***Ramsey,*** *271 U.S. at 469.* [8]

This is even more so, evident as ***Supreme Court Justice Neil Gorsuch*** is quoted as stating:

"In 1906, ***Congress sought to deliver on its treaty promises*** *when it adopted the Oklahoma Enabling Act. That law paved the way for the new State's admission to the Union. But in doing so, Congress took care to require Oklahoma to agree and declare that it would forever disclaim all right and title in or to ... all lands lying within [the State's] limits owned or held by any Indian, tribe, or nation.* ***34 Stat. 270.*** *Instead of granting the State some new power to prosecute crimes by or against tribal members, Congress insisted that tribal lands shall be and remain subject to the Jurisdiction, disposal, and control of the United States. Ibid. Oklahoma complied with Congress's instructions by adopting both of these commitments* ***verbatim in its Constitution. Article I § 3."***

"Under the laws Congress has ordained Oklahoma may acquire jurisdiction over crimes by or against tribal members ***only with tribal consent.*** *But to date, the Cherokee have misguidedly shown no interest in state jurisdiction. Thanks to their misjudgment, they have rendered themselves* ***"second-class citizens."***"[9]

OPINIONS BELOW

About McGirt – CMG – Hogner
As observed within this Honorable Court's ruling of "***McGrit v. Oklahoma***", [(No. 18-9526); 140 S.Ct. 2452 (2022)]:

1. *Congress established a reservation for Creek Nation;*
2. *Government allotment agreement with Creek Nation did not terminate Creek Reservation;*
3. *Congress's intrusions on Creek Nation's promised right of self-governance did not disestablish Creek Reservation;*
4. *Historical practices, demographics, and other extra textual evidence were insufficient to prove disestablishment of Creek Reservation;*
5. *Creek Nation originally holding fee title to land did not make land "dependent Indian community," rather than reservation;*
6. *Eastern Oklahoma is not exempt from the MCA; and*
7. *Potential for transformative effects was insufficient justification to disestablish Creek Reservation.*

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[8] "***United States vs. Ramsey***", 271 U.S. 467, 46 5 S.Ct. 559, 70 L. Ed. 1039 (1926)
[9] "***Oklahoma vs. Castro-Huerta***" No. 21-429 (April 27, 2022) – *Dissenting Opinion*

As this Honorable Court has answered the questions of the Creek Nation, however has ***never*** addressed these questions about the ***Cherokee Nation***. The State's contumacy[10] of this Honorable Court's Order(s) is quite apparent as the State of Oklahoma is still thrusting its jurisdiction over Indian(s) within Indian Country. All this in despite of the Oklahoma Constitutional mandate, limitation of jurisdiction within Indian Country.

The Oklahoma Court of Criminal Appeals rendered its ruling of "***Hogner v. State***" (2021) Ok. Cr. 500 P.3d. 629:

"Regarding whether the crime occurred in Indian Country, the ORDER states that the State of Oklahoma and Defendant/Appellant stipulated that the crime occurred within the historical boundaries of the ***Cherokee Nation****. The State takes no position as to the facts underlying the existence, now or historically, of the alleged* ***Cherokee Nation Reservation****. In determining whether Congress established a reservation for the Cherokee Nation, the District Court stated that it considered the following:*

1. The Cherokee Nation is a federally recognized Indian tribe. 84 C.F.R. § 1200 (2019).

2. The current boundaries of the Cherokee Nation encompass lands in a fourteen county area within the borders of the State of Oklahoma, including all of Adair, Cherokee, Craig, Nowata, Sequoyah, and Washington Counties, and portions of Delaware, Mayes, McIntosh, Muscogee, Ottawa, Rogers, Tulsa and Wagoner Counties as indicated in Combined Hearing...

3. The Cherokee Nation's treaties are to be considered on their own terms, in determining reservation status. ***McGirt v. Oklahoma*** *– U.S. --, 140 S.Ct. at 2461.*

4. In McGirt the United States Supreme Court noted that Creek treaties promised a "prominent home" that would be "forever set apart" and assured a right to self-government on lands

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[10] **THIS IS OBSERVED** through the countless press conferences held by Attorney General John O'Conner, [***who lost the elections*** due to his mishandling of INDIAN COUNTRY] and Governor Kevin Stitt who is quoted "***I was not going to be the Governor who lost half of Oklahoma to the Indians!***" and "***I will not allow half of Oklahoma to be federalized!***" Through the Oklahoma election, Indian Country has been the primary topic next to schools.

that would lie outside both the legal jurisdiction and geographic boundaries of any state. McGirt 140 S.Ct. at 2461-62. As such, the Supreme Court found that "Under any definition, this was a [Creek] ***reservation.*** *" McGirt, 140 S.Ct. at 2461.*

5. The Cherokee Treaties were negotiated and finalized during the same period of time as the Creek treaties, contained similar provisions that promised a permanent home that would be forever set apart, and assured a right to self-government on lands that lie outside both the legal jurisdiction and geographic boundaries of any state.

6. The 1833 Cherokee treaty "solemnly pledged' a "guarantee" of seven million acres to the Cherokee on new lands in the West "forever". Treaty with the Western Cherokee Preamble, Feb. 14 1833, 7 Stat. 414.

7. The 1833 Cherokee treaty used precise geographic terms to describe the boundaries of the new Cherokee lands, and provided that a patent would issue as soon as reasonably practical. Art. 1, 7 Stat. 414.

8. The 1835 Cherokee treaty was ratified two years later "with a view to re-unite their people in one body and to secure to them a permanent home for themselves and their posterity". In what became known as Indian Territory, "without the territorial limits of the state sovereignties," and "where they could establish and enjoy a government of their choice, and perpetuate such a state of society as might be consonant with their views, habits and conditions." ***Treaty with the Cherokee,*** *Dec. 29, 1835, 7 Stat. 478 and* ***Holden v. Jay,*** *84 U.S. (17 Wall.) 211, 237-38, 21 L.Ed. 523 (1872).*

9. Like the Creek treaty promises, the United States' treaty promises to Cherokee Nation "weren't made gratuitously." ***McGirt,*** *140 S.Ct. at 2460. Under the 1835 treaty; Cherokee Nation "cede[d], relinquish[ed], and convey[ed]" all its aboriginal lands east of the Mississippi River to the United States. Art. 1, 7 Stat. 478. In return the United States agreed to convey to Cherokee Nation, by fee patent, seven million acres in Indian Territory within the same boundaries as described in the 1833 treaty, plus "a perpetual outlet west." Art. 2, 7 Stat. 478.*

10. *The 1835 Cherokee treaty described the United States' conveyance to the Cherokee Nation of the new lands in Indian territory as a cession; required Cherokee removal to the new lands; covenanted that none of the new lands would be "included within the territorial limits or jurisdiction of any State or Territory" without tribal consent; and secured "to the Cherokee nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government... within their own country," so as long as they were consistent with the Constitution and laws enacted by Congress regulating trade with Indians. Art. 1, 5, 8, 19, 7 Stat. 478.*

11. *On December 31, 1838, President Van Buren executed a fee patent to the Cherokee Nation for the new lands in Indian Territory.* **Cherokee Nation v. Hitchcock**, *187 U.S. 294, 297, 23 S.Ct. 115, 47 L.Ed. 183 (1902). The title was held by the Cherokee Nation "for the common use and equal benefit of all the members."* **Cherokee Nation v. Hitchcock**, *187 U.S. at 307, 23 S.Ct. 115; see also* **Cherokee Nation v. JourneyCake**, *155U.S. 196, 207, 15 S.Ct. 55, 39 L.Ed. 120 (1894). Fee title is not inherently incompatible with reservation status, and establishment of a reservation does not require a "particular for of words." McGirt, 140 S.Ct. at 2475, citing* **Maxey v. Wright**, *54 S.W. 807, 810 (Indian Ter. 1900) and* **Minnesota v. Hitchcock**, *185 U.S. 373, 390, 22 S.Ct. 650, 46 L.Ed. 954 (1902).*

12. *The 1846 Cherokee treaty required federal issuance of a deed to the Cherokee Nation for lands it occupied, including the "purchased" 800,000-acre tract in Kansas (known as the Neutral Lands) and the "outlet west." Treaty with the Cherokee, Aug. 6, 1846, art. 1, 9 Stat. 871.*

13. *The 1866 Cherokee treaty resulted in Cherokee cessions of lands in Kansas and the Cherokee Outlet and required the United States, at its own expense, to cause the Cherokee boundaries to be marked "by permanent and conspicuous monuments by two commissioners one of whom be designated by the Cherokee Nation council." Treaty with the Cherokee, July 19, 1866, art. 21m 14, Stat. 799.*

14. *The 1866 Cherokee treaty "re-affirmed and declared to be in full force" all previous treaty provisions "not inconsistent with the provisions of the 1866 treaty and provided that nothing in*

the 1866 treaty "shall be constructed as an acknowledgment by the United States or as relinquishment by Cherokee Nation of any claims or demands under the guarantees of former treaties," except as expressly provided in the 1866 treaty. Art. 31, 14 Stat. 799.

15. Under McGirt the "most authoritative evidence of [a tribe's] relationship to the land....lies in the treaties and statutes that promised the land to the Tribe in the first place." McGirt, 140 S.Ct. at 2475-76.

*The District Court found that "as result of the treaty provisions referenced above and related federal statues ... **Congress did establish** a **Cherokee Reservation** as required under the analysis set out in **McGirt v. Oklahoma**."*

1. The current boundaries, are the boundaries established of the Cherokee Reservation by the 1833 and 1835 Cherokee treaties, diminished only by two express cessions.

2. The 1866 Cherokee treaty authorized settlement of other tries in a portion of the Nation's land west of its current western boundary (within the area known as the Cherokee Outlet) and required payment for those lands, stating that the Cherokee Nation would "retain the right of possession of and the jurisdiction over all said country... until thus sold and occupied, after which their jurisdiction and right of possession to terminate forever as to each of said districts thus sod and occupied." Art. 16, 14 Stat. 799.

3. The Cherokee Outlet cession was finalized by an 1891 agreement and ratified by Congress in 1893 (1891 Agreement). Act of Mar. 3, 1893, Ch.209, § 10, 27, Stat. 612, 640-43.

*4. The 1891 Agreement provided that the Cherokee nation "shall cede and relinquish all its title, claim and interest of every kind and character in and to that part of the Indian Territory" encompassing a strip of land bounded by Kansas on the North and the Creek Nation on the South, and located between the ninety-sixth degree west longitude and the one hundredth degree west longitude (i.e., the **Cherokee Outlet**). See United States v. Cherokee Nation, 202 U.S. 101, 105-106, 26 S.Ct. 588 50 L.Ed. 949 (1906).*

5. Cherokee Nation did not cede or restore any other portion of the Cherokee Reservation to the public domain in the 1891 agreement.

6. The original 1839 Cherokee Constitution established boundaries as described in the 1833 treaty, and the Constitution as amended in 1866 recognized those same boundaries, "subject to such modification as may made necessary" by the 1866 treaty. 1839 Cherokee Constitution, Art, 1, § 1, reprinted in Volume 1 of West's Cherokee Nation Code Annotated.

7. Cherokee Nation's most recent Constitution, a 1999 provision of its 1975 Constitution was ratified by Cherokee citizens in 2003 and provides: The boundaries of the Cherokee Nation territory shall be those described by the patens of 1893 and 1846 diminished only by the Treaty of the July 19, 1866 and the act of Mar. 3, 1893. 1999 Cherokee Constitution. Art. 2.

Lewis, Judge, and Concurring in results: stated the following:

*¶3 **McGirt** was also clear that if the reservation was not disestablished by the U.S. Congress, Oklahoma has no right to prosecute Indians for crimes committed within the historical boundaries of the Indian reservation. **McGirt**, 140 S.Ct. at 2460. Therefore, because the Cherokee Nation Reservation was not disestablished, the State of Oklahoma **has no authority** to prosecute Indian for crimes committed within the boundaries of the Cherokee Nation Reservation as was the case here, nor does Oklahoma have jurisdiction over any person who commits a crime against an Indian within the boundaries of the Cherokee Nation Reservation. The federal government has exclusive jurisdiction over those cases. 18 U.S.C. § 1153(a).*

*¶4 A lack of subject matter jurisdiction leaves a court without authority to adjudicate a matter. This court has held that subject matter jurisdiction cannot be conferred by consent, nor can it be waived, and it may be raised at any time. **Armstrong v. State**, 1926 OK CR 259, 35 Okla. Crim. 116, 248 P. 877; **Cravatt v. State**, 1992 OK CR 6, ¶7, 825 P. 2d 277, 280; **Magnan v. State**, 2009 OK CR 16, ¶¶ 9 & 12, 207 P. 3d 397, 402 (holding that jurisdiction over major crimes in Indian Country is exclusively federal).*

FAILURE TO DISESTABLISH THE CHEROKEE RESERVATION

"To determine whether a tribe continues to hold a reservation, there is only one place we may look: the Acts of Congress." **McGirt**, 140 S.Ct. at 2462. No particular words or verbiage are required, but there must be a clear expression of congressional intent to terminate the reservation.

History shows that Congress knows how to withdraw a reservation when it can muster the will. Sometimes, legislation has proved an "explicit reference to cession" or an "unconditional

commitment ... to compensate the Indian tribe for its opened land." Ibid. Other times, Congress has directed that tribal lands shall be "restored to the public domain. "**Hagen v. Utah**, 510 U.S. 399, 412 114 S.Ct. 958, 127 L.Ed.2d 252 (1994). Likewise, Congress might speak of a reservation as being "'discontinued," "abolished," or "vacated." **Mattz v. Arnett**, 412 U.S. 481, 504, n. 22, 93 S.Ct. 2245, 37 L.Ed.2d (1973). Disestablishment has "never required any particular form of words," Hagen, 510 U.S. at 411, 114 S.Ct. 958. But it does require that Congress clearly express its intent to do so, "commonly with an explicit reference to cession or other language evidencing the present and total surrender of all tribal interest." **Nebraska v. Parker**, 577 U.S. 481 488, 136 S.Ct. 1072, 1079, 194L.Ed.2d 152 (2016).

THE MAJOR CRIMES ACT

Title 18 Section 1153 of the United States Code, known as the Major Crimes Act, grants exclusive federal jurisdiction to prosecute certain enumerated offenses committed by Indians within Indian country. It reads in relevant part as follows:

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

Cherokee Nation's Treaties

"The United States court to be created in the Indian Territory; and until such court is created therein, the United States district court, the nearest to the Cherokee Nation, shall have exclusive original jurisdiction of all causes, civil and criminal, where an inhabitant of the district hereinbefore described shall be a party, and where an inhabitant outside of said district, in the Cherokee Nation, shall be the other party, as plaintiff or defendant in a civil case, or shall be defendant or prosecutor in a criminal case, and all process issued in said district by any officer of the Cherokee Nation, to be executed on an inhabitant residing outside of said district, and all process issued by any officer of the

Cherokee Nation outside of said district, to be executed on an inhabitant residing in said district, shall be to all intents and purposes null and void, unless indorsed by the district judge for the district where such process is to be served, and said person, so arrested, shall be held in custody by the officer so arresting him, until he shall be delivered over to the United States Marshal, or consent to be tried by the Cherokee court: Provided, That any or all the provisions of this treaty, which make any distinction in rights and remedies between the citizens of any district and the citizens of the rest of the nation, shall abrogated whenever the President shall have ascertained, by an election duly ordered by him, that a majority of the voters of such district desire them to be abrogated, and he shall have declared such abrogation: And provided further, That no law or regulation, to be hereafter enacted within said Cherokee nation or any district thereof, prescribing a penalty for its violation, shall take effect or be enforced until after ninety days from the date of its promulgation, either by publication in one or more newspapers of general circulation in said Cherokee Nation, or by posting up copies thereof in the Cherokee and English languages in each district where the same is to take effect, at the usual place of handing district courts." [11]

"The Cherokees also agree that a court or courts may be established by the United States in said Territory, with such jurisdiction and organized in such manner as may be prescribed by law: Provided, That the judicial tribunals of the nation shall be allowed to retain exclusive jurisdiction in all civil and criminal cases arising within their country in which members of the nation, by nativity or adoption, shall be the only Nation, except as otherwise provided in this treaty.

The United States guarantee to the people of the Cherokee Nation the quiet and peaceable possession of their country and protection against domestic feuds and insurrections, and against hostilities of other tribes. They shall also be protected against interruptions or intrusion from all unauthorized citizens of the United States agree that the party or parties commencing the same shall, so far as practicable, make reparation for the damages done." [12]

"Re-affirmed and declared to be in full force" all previous treaty provisions "not inconsistent with the provisions of" the 1866 treaty and provided that nothing in the 1866 treaty "shall be constructed as an acknowledgement by the United States or as relinquishment by Cherokee Nation of any claims or demands under the guarantees of former treaties," except as expressly provided in the 1866 treaty. [13]

United States Constitution[14]

The "***jurisdiction***" to prosecute ANY person within the borders of the United States is constitutionally described by our Congress in **Article III § 2 ¶ 3**:

"The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crime shall have been committed; but when NOT committed within any State, the trial shall be at such place or places as the Congress may by law have directed."

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[11] Cherokee Treaty of 1866 Article 7

[12] Cherokee Treaty of 1866 Article 13

[13] Cherokee Treaty of 1866 Article 31

[14] This section would justify this Honorable Court in rendering a "***retroactive constitutional law***" pertaining to jurisdiction within Indian Country

Article II Clause 2 [*Supreme Law of Land*]; - *United States Constitution*

"This Constitution, and the Laws of 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".*

Article IV § Clause 2 [*Public Lands*]; - *United States Constitution*

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be construed as to Prejudice any Claims of the United States, or any particular State".

In review of the United States Constitution, the State of Oklahoma shall not make or enforce any law that obstruct(s) a Citizen's rights nor shall the Honorable Court are bound by:

Article VI ¶ 2 - *United States Constitution*

"The Constitution, and the Law of the united State 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 of Laws of any State to the Contrary notwithstanding."

The rule of lenity thus "*places the weight of inertia upon the party that can best induce Congress to speak more clearly,*" which forces "*the government to seek any clarifying changes to the law rather than impose the costs of ambiguity on presumptively free person.*" Wooden, 142 S.Ct. at 1083 (Gorsuch, J., concurring). And that keeps the power of punishment firmly "in the legislative, not in the judicial department." *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820).

The rule of lenity, requires that Congress speak clearly to expand sate jurisdiction over crimes involving Indians in Indian country. Oklahoma is hardly powerless to request congressional action to expanded authority to Congress. Thus, even if judicial reluctance to "enlarge" Oklahoma's criminal jurisdiction in the present context "carries its cost," the solution is that "the legislature's cumbersome processes will have to be reengaged." Wooden, 142 S.Ct. at 1083 (Gorsuch, J., concurring). That is as it should be in a democracy, where the boundaries of criminal punishment should be clearly delineated by law, not judicial interpretation.

The reality of the facts at hand is that Congress has spoken loudly by not limiting and/or disestablishing the jurisdiction of tribal within Oklahoma. This court must look at Congressional intent and that intent is within the writings of Congress's when it clearly disestablished and/or limited Indian Country boarder(s) and/or jurisdiction of the several tribes that have been limited and/or disestablished. Now looking at the mootness of Congress, their intent is clearly established by their refusal to draft legislation to disestablish the tribes within Oklahoma. Thus, the Honorable Courts must adhere to this standard and should never enact a ruling granting Oklahoma concurrent jurisdiction and/or limiting the Tribal Nation(s) jurisdiction when Congress has never expressly enacted legislation.

QUESTIONS PROPOSED

1. *"Mr. Melson respectfully ask"*: Did Congress ever disestablish the ***Cherokee Nation*** and/or ***Reservation*** as a sovereign nation, [*within the State of Oklahoma*]? If so what was the exact statute and/or act did Congress enact?

Mr. Melson poses this question, although the answer is very obvious to even the laymen. Mr. Melson does wish to remind the Honorable Court that Congress spoke in volumes to the validity of the Cherokee Nation's Sovereignty when Congress granted Cherokee the sole jurisdiction over any and all highways, by-ways, turnpike(s), paved and unpaved public accessible roadways and all transit within Cherokee Nation and deliberately excluded and barred Oklahoma's concurrent jurisdiction. This was done post the ruling of McGirt through a legislative act. It's ironic that Oklahoma media negates this information from its news reports.

Further it is ironic that the Oklahoma Court of Criminal Appeal already held:

To determine whether a tribe continues to hold a reservation, there is only one place we may look: the Acts of Congress." McGirt, 140 S.Ct. at 2462. No particular words or verbiage are required, but there must be a clear expression of congressional intent to terminate the reservation.

*History shows that Congress knows how to withdraw a reservation when it can muster the will. Sometimes, legislation has proved an "explicit reference to cession" or an "unconditional commitment ... to compensate the Indian tribe for its opened land." Ibid. Other times, Congress has directed that tribal lands shall be "restored to the public domain. "**Hagen v. Utah**, 510 U.S. 399, 412 114 S.Ct. 958, 127 L.Ed.2d 252 (1994). Likewise, Congress might speak of a reservation as being "'discontinued," "abolished," or "vacated." **Mattz v. Arnett**, 412 U.S. 481, 504, n. 22, 93 S.Ct. 2245, 37 L.Ed.2d (1973).*

*Disestablishment has "never required any particular form of words," Hagen, 510 U.S. at 411, 114 S.Ct. 958. But it does require that Congress clearly express its intent to do so, "commonly with an explicit reference to cession or other language evidencing the present and total surrender of all tribal interest." **Nebraska v. Parker**, 577 U.S. 481 488, 136 S.Ct. 1072, 1079, 194L.Ed.2d 152 (2016).* [15]

2. *"Mr. Melson respectfully ask"*: When the *[F]ramers* of the ***Oklahoma State Constitution,*** created and enacted ***Article I, § 3***, [*Unappropriated public lands - - Indian Lands - - Jurisdiction of United States*], did they "***forever***" disclaim and/or waive jurisdiction within Indian Country? [16]

This question has already been answered by the Honorable Justice Neil Gorsuch:

*"In 1906, **Congress sought to deliver on its treaty promises** when it adopted the Oklahoma Enabling Act. That law paved the way for the new State's admission to the Union. But in doing so, Congress took care to require Oklahoma to agree and declare that it would forever disclaim all right and title in or to ... all lands lying within [the State's] limits owned or held by any Indian, tribe, or nation. **34 Stat. 270.** Instead of granting the State some new power to prosecute crimes by or against tribal members, Congress insisted that tribal lands shall be and remain subject to the Jurisdiction, disposal, and control of the United States. Ibid. Oklahoma complied with Congress's instructions by adopting both of these commitments **verbatim in its Constitution. Article I § 3."*** [17]

3. *"Mr. Melson respectfully ask"*: Although Mr. Melson is Native, is [R]ace a critical element in criminal proceeding(s) within United States or will this destroy a ***century of justice reform*** and the abolishment of racism within our Jurisprudence?

This answer is difficult for any person to address, more so for a politician. Thankfully neither of us are politicians. Observed within this Petitioner's transcripts and records within the courts of Oklahoma, the State has made the race the most influential element to any criminal proceeding.

The trial judge, (Terry McBride[18]), called Mr. Melson a **half-breed** numerous times in open court. Mr. Melson was racially discriminated against by the Judge himself from the day Mr. Melson attempted to obtain an evidentiary hearing to prove the State lacked the subject requisite jurisdiction.

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[15] "***Spears v. State***" F-2019-330 (April 1, 2021) – attached as exhibit

[16] *As Congress took care to require Oklahoma to agree and declare that it would forever disclaim all right and title in or to ... all lands lying within [the State's] limits owned or held by any Indian, tribe, or nation. **34 Stat. 270.*** → ***Quoting the Honorable Neil Gorsuch***

[17] "***Oklahoma vs. Castro-Huerta***" No. 21-429 (April 27, 2022) – *Dissenting Opinion*: The Majority of this ruling violated the cannons of separation of powers by legislating from the bench. There is not one single Congressional Statute that provides Oklahoma "***CONCURRENT JURISDICTION***". This ruling will be collaterally attacked until SCOTUS corrects their error.

[18] Without making factless allegations against a Judge for self-preservation it has long been known to be a common fact that this Judge was and is an active member of the Blue Knights, (KKK). This was well known by the deputies and bailiffs who served in his

Then appearing within the Order of this Honorable Court[19]:

"Start with the assertion that allowing state prosecutions in cases like ours will 'help' Indians. The old paternalist overtones are hard to ignore. Yes, under the laws Congress has ordained Oklahoma may acquire jurisdiction over crimes by or against tribal members only with tribal consent. But to date, the Cherokee have misguidedly shown no interest in state jurisdiction. Thanks to their misjudgment, they have rendered themselves 'second-class' citizens".

4. *"Mr. Melson respectfully ask"*: What Congressional Law/Statute grants Oklahoma "***concurrent jurisdiction***" within Indian Country, *found within the State of Oklahoma*[20]?

REASONS FOR GRANTING THE GREAT WRIT

The Petitioner's statement(s) of this case coincide with the following proceeding(s):

Mr. Melson argue(s) that his ***due process of law*** was violated by the State of Oklahoma and its official(s) from the moment he was arrested, through arraignment, providing of a public defender, pre-trial, plea of NO-CONTENDER and his sentencing phase.

1. ARREST: The Prior Creek, Oklahoma police department arrested Mr. Melson on or about the 21st Day of September, 2016. Upon arrest Mr. Melson was in possession of his Tribal, {Cherokee}, Registration Card and his C.D.I.B. These card(s) were provided to the arresting officer(s) and the County Jail. Mr. Melson was told by the arresting officer(s) and jail staff that they did not care if he was Indian or not. The police violated the Petitioner's Fourteenth (14) Amendment as to *"Due Process of Law"* when the police refused to notify the Cherokee Marshal Service and the Cherokee Attorney General's Office that Mr. Melson was arrested pending charge(s). Further the police were required by law to contact the Federal Bureau of Investigations, (F.B.I.), regarding the arrest of an Indian within Indian Country. The charge(s) claimed by the State of Oklahoma were consistent with the Major Crimes Act and thus, the police had zero jurisdiction in

courtroom and the real fact that no person of color ever served in his courtroom. This information was so well know that the District Attorney also held a file on this Judge.

[19] "***Oklahoma vs. Castro-Huerta***" No. 21-429 (*April 27, 2022*).

[20] This question arises from this Honorable Court's ruling of "***Oklahoma vs. Castro-Huerta***" No. 21-429 (*April 27, 2022*).

investigate, arrest and/or detain Mr. Melson without notification of the F.B.I. Further, each of the officer(s) were acting without jurisdiction in this matter as the *Oklahoma Constitution, Article I, § 3* barred their jurisdiction within Indian Country. The State Constitution further bars all State and/or County police officer(s) from being "***Cross-Deputized***" without explicit Congressional approval. In short the Police never followed the proper procedures and ignored all jurisdictional issue(s) that deprived Mr. Melson of any and all *"**Due Process of Law**". (Should this Honorable Court decline Certiorari the lack of "**Due Process of Law**" will only be acerbated by the State and its officials who have such a racist outlook upon all Indian(s).)*

2. ARRAIGNMENT: During the arraignment phase of the proceeding(s) Mr. Melson advised the Judge that he is an Indian and advised the Court that it lacks all jurisdiction to proceed. The Court advised Mr. Melson that the Court will never recognize Indian Country Jurisdiction and that his claims were baseless and meritless. The County Judge violated the Petitioner's *"**Due Process of Law**"* by not instantly holding an evidentiary hearing to determine the Indian Status of Mr. Melson. This procedure was clearly established law:

> *"**U.S. v Prentiss**" 273 F. 3d. 1277, 1280 (10th Cir. 2001) - - **TWO PRONG TEST** for determining whether a person is an 'INDIAN' for the purpose of establishing subject matter jurisdiction over crimes committed in Indian Country, [18 U.S.C. § 1151]. "**Gothorth v. State**" (1982) OK CR 48, 644, P.2d. 114, 116 **[TWO – PRONG TEST]***
>
> *The court established a Two-Prong Test to determine '**jurisdiction**':*
>
> 1. ***The Accused has 'some' Indian blood***
> 2. ***The accused is recognized as an Indian by a Tribe and/or Federal Government***

This ***IMPERATIVE PRECEDENT*** mandates these procedures and were enshrined in 1982 to protect the *"**Due Process of Law**"* of all person(s) within the boundaries of Oklahoma. The Arraignment Court deliberately molested the Mr. Melson's *"**Due Process of Law**"* **by** refusing him an immediate Evidentiary Hearing. (*Should this Honorable Court decline Certiorari the lack of*

"Due Process of Law" will only be acerbated by the State and its officials who have such a racist outlook upon all Indian(s).)

3. PROVIDING OF PUBLIC DEFENDER: Pursuant to W*ainwright*[21] all criminal defendant(s) possess an absolute fundamental right to be appointed trail counsel within the competent knowledge and training of the allegation. That right is further extended to all Indian(s) through the Indian Civil Rights Act. Mr. Melson had an absolute right to be appointed counsel by Cherokee Nation, [*who held the jurisdiction of the case*], as a public defender appointed by Cherokee Nation possess the knowledge of the jurisdictional parameters of Mr. Melson's case. The Oklahoma Indigent Defense System and/or the County Public Defender's Office lacked jurisdiction to adequately represent Mr. Melson in any proceeding arising within Indian Country, more so when that public defender is not licensed to practice law within Indian Country. The State of Oklahoma violated Mr. Melson's ***"Due Process of Law"*** by thrusting a master[22] upon him that lacked any knowledge of the laws within Cherokee Nation. The Counsel thrusted upon Mr. Melson as his Master lacked any and all knowledge of:

- *Cherokee Nation's Law(s)*
- *Cherokee Nation's Constitution*
- *Peace Treaties between Cherokee Nation and the United States of America*
- *The Major Crimes Act*
- *Jurisdiction of Cherokee Nation*
- *Oklahoma State Constitution Article I, § 3*
- *Public Law 83-280*

The Petitioner was stripped of his right to Counsel when the State Judge(s) refused to recognize Indian Jurisdiction and refused to permit him to have the aid of competent counsel from Cherokee Nation. (*Should this Honorable Court decline Certiorari the lack of "Due Process of*

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[21] ***"Gideon v. Wainwright"*** *372 U.S. 335 (1963)*

[22] ***"Faretta v. California"*** *422 U.S. 806 (1975) "In such a case, counsel is not an* ****2534*** *assistant, but a master, and the right to make a defense is stripped of the personal character upon with the Amendment insists."*

Law" will only be acerbated by the State and its officials who have such a racist outlook upon all Indian(s).)

4. **PRE-TRIAL**: Pre-Trial reaffirms Mr. Melson's claims within the above number 3 claim. The O.I.D.S. public defender lacks all intellect and procedural requirement(s) within Cherokee Nation and this incompetence reveals itself as Mr. Melson's counsel failed to file an ***"interlocutory appeal"*** to the Oklahoma Court of Criminal Appeals requesting the case in its entirety be dismissed with prejudice for lacking of jurisdiction pursuant to the ***IMPERATIVE PRECEDENT(s)*** of:

   a. "***C.M.G. v. State***", 594 P.2d 798 (Okl. Crim. 1979) *See Attached*
   b. ***"State v. LittleChief"***, 573 P.2d 263 (1978 OK Cr. 2) *See Attached*

   > *"To date, the State of Oklahoma had made no attempt to repeal Article I, § 3, of the Constitution of the State of Oklahoma, which prohibits state jurisdiction over Indian Country, so the federal government still has exclusive jurisdiction over Indian Country within Oklahoma boundaries. See "State v. LittleChief" OKL. Cr. 573 P.2d263 (1978)."*

The Oklahoma Court of Criminal Appeals established these imperative precedents regarding Oklahoma's waiver of jurisdiction within Indian Country. Had Mr. Melson been provided adequate counsel within his pre-trial phase, Mr. Melson could have been tried in a Court of Competent Jurisdiction ***where he could have prevailed upon his innocent claims***. Trial Counsel attempted to raise the jurisdictional issues and attempted to obtain an evidentiary hearing, however the District Judge refused to even hear those argument(s). This is where Counsel's lack of knowledge and education exposed itself as counsel could have simply filed an interlocutory appeal to the Oklahoma Court of Criminal Appeals and that appeal would have had merit and would have changed the outcome of the entire proceeding(s). Having incompetent Counsel is a clear violation of the 6th Amendment right and ties into a malicious violation of Mr. Melson's ***"Due Process of Law"***.

Throughout the proceeding(s) the Oklahoma District Judge(s) continuously exposed their ***bias*** against Mr. Melson through verbally assaulting him. One the record, the sentencing District

Judge called Mr. Melson a ***"Half-Breed"*** multiple times among other names. The actions of the District Judge were classified by this Honorable Court as ***"fighting words"*** and his actions and words are not protected speech, even as a Judge. Trial Counsel never filed any kind of Motion to have the overly racist judge recuse himself nor would counsel protect the rights of Mr. Melson out of fear for retaliation of the District Judge. (*Should this Honorable Court decline Certiorari the lack of "**Due Process of Law**" will only be acerbated by the State and its officials who have such a racist outlook upon all Indian(s).)*

5. PLEA OF NO-CONTENDER: Through the constant assault and battery of the Trial Judge and the ignorance of his counsel Mr. Melson was physically and emotionally forced into signing a PLEA OF NO-CONTENDER. Trial Judge told Mr. Melson on the record that "if" he refused to sign the state's plea agreement, the Judge would ensure that Mr. Melson would be sentence to no less than 50 years in the Department of Corrections. Mr. Melson's lawyer told him, "*No matter what you do or say, you are going to prison. The only difference is how long you're going to serve in prison. If you refuse to sign this plea, then you will never see your family again".* In other words the trial counsel was paid by the State of Oklahoma to ensure Mr. Melson's jurisdictional claims were never heard by the court and/or the O.C.C.A.

* Mr. Melson demanded a Speedy Trial to prove his Actual-Factual Innocence of the allegation(s) alleged within the state's case. Once Mr. Melson asserted his Constutitonal to a speedy trial triggered the hatred and anger of the District Judge and accompanied with asserting that this District Judge lacked all jurisdiction to prosecute anyone within his court ensure that Mr. Melson would never receive a fair and impartial proceeding.

This is why Melson's only hope and prayer is that this Honorable Court grants Certiorari. Mr. Melson's ***"Due Process of Law"*** was molested by the District Judge who berated him with racist comments about his Indian Heritage and Ancestry. ***Never mind that Mr. Melson served 19 years in the United States Army and Medically Retired with Honorable Service. Mr. Melson is a***

Combat Veteran will verifiable deployments to Afghanistan and other Countries from 2001 until his Medial Retirement in 2013. All this overlooked and all the County District Judge could see was the race of the accused before him. Where is the *"Due Process of Law"* of law when the District Judge openly calls the accused a "*Half-Breed*"?

6. SENTENCING: Mr. Melson never had any protection of the *"Due Process of Law"* because of the bias actions of the County District Judge. The same judge who deliberately called Mr. Melson a "*half-breed*" also sentenced him to the Oklahoma Department of Corrections.

Mr. Melson prays this Honorable Court grants Certiorari of this case as no person within Oklahoma's boundaries will ever have their due process of law until this Court reverses the ruling of "Castro-Huerta" and mandate Oklahoma adhere to its very own waiver of its rights, found within its State Constitution Article I, § 3. When this Court rendered its ruling of "Castro-Huerta" the Court inadvertently subjected all person(s) within the State of Oklahoma to a significant amount of racism that must be overturned.

CONCLUSION

The primary focus of this entire argument is that Oklahoma and its Officials were mandated by Congress to waive their right(s) to all Indian Country and Unassigned Lands within the boundaries of Oklahoma, ***pursuant to Article I, §3.*** Congress gave Oklahoma their one and only opportunity to obtain jurisdiction and amend their Constitution through public Law 83-280, yet each year this was available for signature and enactment by the State, it continued to hold their waiver, [15 years of waivers].

There is not one single Congressional Law granting Oklahoma jurisdiction and/or concurrent jurisdiction. This Court must render its ruling consistent to the State's own constitutional waiver.

PRAYER FOR RELIEF

This Honorable Court's ORDER should be consistent with Congressional intent by proclaiming this ruling a ***RETROACTIVE CASE LAW regarding Oklahoma Constitution Article I, § 3.*** Further, vacating the judgment and sentence of Mr. Melson and a release from custody, instantaneously.

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares, (or certifies, or verifies, or states), under penalty of perjury that he is the Appellant in the above complaint action, that he has read the above complaint and that the information contained therein is true and correct. **28 U.S.C. § 1746** and **18 U.S.C. § 1621.**

Executed at the Oklahoma State Reformatory, on the 21 day of December, 2022.

Respectfully Submitted,

/S/ B. Melson

Brian Melson, [*OK – DOC #* 835327]

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the petition for writ of certiorari contains 8,990 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d). I declare under penalty of perjury that the foregoing is true and correct. **28 U.S.C. § 1746** and **18 U.S.C. § 1621.**

Executed at the Oklahoma State Reformatory, on the 21 day of December, 2022.

Respectfully Submitted,

/S/ B. Melson

Brian Melson, [*OK – DOC #* 835327]