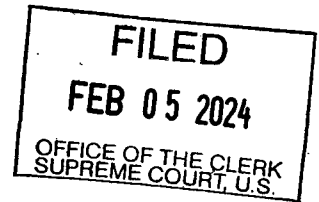


No. 23 - 6926



IN THE
SUPREME COURT OF THE UNITED STATES

PIDY T. TIGER — PETITIONER
(Your Name)

vs.

SAM CLINE — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals For The Tenth Circuit
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

PIDY T. TIGER

(Your Name)

P.O. BOX 311

(Address)

El Dorado KS 67042

(City, State, Zip Code)

(Phone Number)

QUESTION(S) PRESENTED

1. Can the Kansas Act 18 U.S.C. 3243 be read to abrogate the Creek Nation Treaty of 1856?
2. Does Oklahoma v. McGirt, 2020 represent clearly established federal law applicable to all States of the Union?

LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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OTHER

IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix D to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
☒ is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 1-23-2024.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 9-9-2022.
A copy of that decision appears at Appendix D.

☐ A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A _____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution Article I Commerce Clause

Constitution Article II Treaty power

Constitution Article I section 10 impairing contracts

Kansas Act 18 U.S.C. 3243

• Creek Nation Treaty of 1856

STATEMENT OF THE CASE

In 2020 the honorable Supreme Court of the United States decided the case of Oklahoma v. McGirt. The petitioner was serving a life sentence for rape at the time in the state of Kansas. McGirt declared that states were no longer free to ignore express treaty promises and the petitioner challenged the state of Kansas having jurisdiction over him based on the express promise in the Creek Nation treaty of 1856 (the same treaty considered in McGirt to have not been ratified or abrogated) which stated that no state or territory shall ever pass laws for the government of the Creek Nation of Indians, see Article 4 of 1856 Creek Treaty. The state did not challenge the Treaty right but asserted that it could exercise jurisdiction pursuant to the Kansas Act which gave jurisdiction to Kansas to prosecute Indians on reservations. The petitioner argued that the Kansas Act did not abrogate the treaty right at issue based on *Minn. v. Mille Lacs*, 526 U.S. The court did not consider the treaty or the issue of the conflict between the Kansas Act and the treaty concluding that the Kansas Act gave Kansas jurisdiction over the petitioner and implicitly deemed the treaty to have no force or effect of law. This petition follows not only to determine if the Kansas Act can in fact be construed to abrogate a treaty which it does not mention but also to settle a conflict between the circuits.

REASONS FOR GRANTING THE PETITION

This case comes before the court as an unwanted and rejected birth-child first recognized in *Oklahoma v, McGirt*, 2020. Unwanted as a reminder of the force and brutality through which it was conceived and rejected as an heir to its equal share of sovereignty in common with its sister-states. As Justice Gorsuch observed in his opening line in *McGirt*, 'On the far end of the Trail of tears was a promise'. and while *McGirt* rightfully vindicated that promise with regard to the Creek Nation's land. The court is now being called upon to vindicate that promise with regard to the Creek Nation's people. The plaintiff in this case Pidy Tiger, an enrolled member of the Creek Nation and direct descendant of Creek Nation Chief Moty Tiger asserted a right secured by treaty that no state shall pass laws for members of the Creek Nation see Article 4 of Creek Treaty of 1856. With no analysis of the scope of that right or determination that congress had abrogated that right the lower courts arbitrarily concluded that The Kansas Act gave the state jurisdiction over the petitioner and somehow magically superceded the treaty. As if by prophesy or cynical logic this honorable court predicted and admonished this precise practice in *McGirt*, when it observed that legislators may seek to pass laws that tip toe the edge of disestablishment in the hope that willful judges will give the final push. This honorable court observed that no matter how many other promises the federal government has broken if congress wishes to break another it must say so. In the instant case the tenth circuit concluded that the petitioner did not present any clearly established federal law to demonstrate that the holding in *McGirt* also applies to Kansas, however the seventh circuit in *Oneida Nation v. Vill of Hobart*, 968 concluded that *McGirt* 'put the judiciary on notice that judges were no longer free to disregard indian treaty rights based on common practice or inconvenience'. petitioner prays the court will settle this split between the circuits and define the scope of the holding in *McGirt*.

The petitioner argues there are four reasons why the Kansas act cannot be construed to abrogate the Creek treaty, first under traditional rules of construction defined by *Mille Lacs*, 526 U.S. the Kansas Act does not mention the treaty or does the history indicate that congress considered the effect the proposed act would have on tribes with a treaty prohibiting state jurisdiction. furthermore according to *TWA v. Franklin Mint Corp*, 466 U.S. 'legislative silence is not sufficient to abrogate a treaty. second, Congress' article I power does not supplant the president's article II power as the honorable Justice Barrett observed in *Haaland v. Brackeen*, 2023 'Article I gives congress a series of enumerated powers, not a series of blank checks'. those powers necessarily include all those necessary to deal 'with' the tribe not 'in' the tribe when the president has promised otherwise. the instant case involves two enrolled members of the tribe and is therefore an intra tribal matter which per treaty is reserved to the exclusive jurisdiction of the tribe. and the constitution prohibits the passing of laws which would impair contracts see Article I section 10. Third, the Kansas Act is limited in scope to reservations in kansas and crimes by or against indians not by and against indians. This honorable court has concluded in *Michigan v. Bay Mills*, 572 U.S. that whatever anomalies may arise from the acts of congress it is up to them and not the courts to correct. therefore by its plain language the kansas act cannot apply to the facts of the petitioner's case when the lower courts have determined that south wichita is not indian country. fourth, a general statute does not apply to Indians if its application would be in derogation of the Indians treaty rights. It is well established that treaties are part of the supreme law of the land which states are bound to observe, *Missouri v. Holland*, 252 U.S. so the application of a general statute such as the Kansas Act in derogation of a treaty right would be in direct conflict with this honorable courts holdin in *Federal Power Commission v. Tuscarora indian nation*, 362 U.S.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Lady Liger

Date: February 5th, 2024