

No.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ASHLEY PARNELL,

PETITIONER,

v.

TAMIKA WHITE,

RESPONDENT.

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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PETITION FOR WRIT OF CERTIORARI

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February 24, 2025

## **QUESTION PRESENTED**

Whether a jurisdictional challenge to an Oklahoma state criminal conviction can be raised at any time in a proceeding under 28 U.S.C. § 2254 notwithstanding the one-year statute of limitations of the Antiterrorism and Effective Death Penalty Act, 28 U.S.C. § 2244(d), because those state criminal proceedings were *ultra vires* for lack of jurisdiction and therefore void *ab initio*?

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## **PETITION FOR WRIT OF CERTIORARI**

Petitioner Ashley Parnell respectfully petitions for a writ of certiorari to review the Order Denying Certificate of Appealability entered by the United States Court of Appeals for the Tenth Circuit entered on September 16, 2024.

### **OPINIONS BELOW**

The unpublished Tenth Circuit decision in *Parnell v. White*, 2024 U.S. App. LEXIS 23406, 2024 WL 4198643 (10th Cir. Sept. 16, 2024) is Attachment A in the Appendix (slip opinion version). The district court's Opinion and Order, *Parnell v. White*, 2023 U.S. Dist. LEXIS 146941, 2023 WL 5407398 (N.D. Okla. Aug. 22, 2023), is Attachment B in the Appendix (slip opinion version). The Tenth Circuit's Order denying the petition for rehearing en banc (Nov. 1, 2024) is Attachment C in the Appendix.

### **JURISDICTION**

The United States District Court for the Northern District of Oklahoma had jurisdiction under 28 U.S.C. § 2254. The Tenth Circuit had jurisdiction pursuant to 28 U.S.C. §§ 1291 and 2253(a). It issued an Order Denying Certificate of Appealability and dismissed the case on September 16, 2024. The Tenth Circuit granted Parnell's timely motion for extension of time to file a petition for rehearing, extending the deadline to October 21, 2024. Parnell filed her Petition for rehearing En Banc in the Tenth Circuit on October 21, 2024. The Tenth Circuit denied rehearing on November 1, 2024. On January 1, 2025, Parnell filed an application for an extension of time to file this petition for writ of certiorari (24A704), which Justice Gorsuch granted on January 17, 2025, extending the petition deadline to March 1, 2025. This court has jurisdiction under 28 U.S.C. § 1254(1).

## **PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS**

The pertinent constitutional and statutory provisions are

1. The Due Process Clause of the Fourteenth Amendment to the United States Constitution: "nor shall any State deprive any person of life, liberty, or property, without due process of law."
2. The Major Crimes Act, 18 U.S.C. § 1153:
  - (a) 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.
  - (b) Any offense referred to in subsection (a) of this section that is not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished in accordance with the laws of the State in which such offense was committed as are in force at the time of such offense.
3. The statute of limitations in the Antiterrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C. § 2244(d)(1)(C):
  - (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of ...
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review . . . .

## **STATEMENT OF THE CASE**

### **Oklahoma State Court Proceedings**

In 2009, a jury convicted Parnell of first-degree murder in Oklahoma state court for the death of the toddler son of her boyfriend. In August 2010, on direct appeal, the Oklahoma Court of Criminal Appeals ("OCCA") affirmed Parnell's conviction. In 2016, Parnell filed two pro se

motions for postconviction review in state district court, which denied relief in August 2016.

In 2017, following the Tenth Circuit’s decision in *Murphy v. Royal*, 866 F.3d 1164 (10<sup>th</sup> Cir. 2017), *as amended by* 875 F.3d 896, *aff’d sub nom. Sharp v. Murphy*, 591 U.S. 977 (2020) (per curiam), Parnell filed in state court a pro se Application for Post-Conviction Relief, challenging the state court’s jurisdiction over her case on the grounds that the offense occurred within Indian Country and therefore, under the Major Crimes Act (18 U.S.C. § 1153), the state had no jurisdiction to prosecute Parnell, an enrolled Quapaw tribal member. *Id.*<sup>1</sup> In May 2018, the state district court found the application premature because of the then-pending petition for writ of certiorari in *Murphy* and therefore denied it.

In October 2020, following this Court’s decisions in *McGirt v. Oklahoma*, 591 U.S. 894 (2020), and *Sharp* (which summarily affirmed *Murphy* based on *McGirt*), Parnell filed an Application for Post Conviction Relief in state court, arguing that under *McGirt*, Oklahoma had no jurisdiction. In September 2021, though agreeing Parnell was a Quapaw tribal member and that the offense occurred within Indian Country, the state court denied the application, concluding *McGirt* did not apply retroactively to void a conviction that was “final” at the time *McGirt* was decided. The state district court relied on *State ex rel Matloff v. Wallace*, 497 P.3d 686 (Okla. Crim. App. 2021), where the OCCA declined to apply *McGirt* retroactively in a state post-conviction proceeding. *See Wallace*, 497 P.3d at 688. Parnell then appealed to the OCCA, but the OCCA declined jurisdiction in December 2021 and dismissed the appeal, finding Parnell filed her petition 9 days after the 60-day deadline, even though Parnell had filed her petition in

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<sup>1</sup> In *State v. Lawhorn*, 499 P.3d 777, 777-79 (Okla. Crim. App. 2021), the OCCA concluded no evidence showed Congress erased or disestablished the boundaries of the Quapaw Reservation, and therefore it remained in existence and is Indian Country.

the state district court before that deadline.

### **Federal Court Proceedings**

In May 2022, Parnell filed her 28 U.S.C. § 2254 petition, asserting two grounds for relief:

(1) *McGirt* applies retroactively and therefore the Oklahoma state courts lacked jurisdiction over the case; and (2) newly discovered evidence demonstrated that the child’s death was not caused by inflicted trauma such that no reasonable jurors would have convicted Parnell.

The district court dismissed the habeas petition as barred by the one-year statute of limitations in the AEDPA, 28 U.S.C. § 2244(d), and, alternatively, for failure to exhaust available state remedies (though the court didn’t address the futility of exhausting). The district court relied on a recent panel decision of the Tenth Circuit, *Pacheco v. El Habti*, 48 F.4<sup>th</sup> 1179 (10<sup>th</sup> Cir. 2022), *modified at* 62 F.4<sup>th</sup> 1233 (10<sup>th</sup> Cir. 2023), *cert. denied*, 143 S. Ct. 2672 (2023).<sup>2</sup> *Pacheco* had held that *McGirt* did not announce a new constitutional right for purposes of § 2244(d)(1)(C), and that due process claims alleging an absence of jurisdiction by the convicting court are subject to the AEDPA’s one-year statute of limitations. The district court therefore concluded the deadline had expired in November 2011 and that Parnell could not benefit from statutory tolling because her first postconviction application was brought in 2016 and the Indian Country jurisdiction claim was first raised in 2017 (following the Tenth Circuit decision in *Murphy*). The district court held equitable tolling was not warranted and also rejected Parnell’s actual innocence claim. The court dismissed Parnell’s petition and denied a certificate of appealability.

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<sup>2</sup> The merits decision in *Pacheco* is at 48 F.4<sup>th</sup> 1179. The panel in *Pacheco* subsequently denied rehearing but *sua sponte* issued a revised opinion and withdrew the original panel decision. En banc review was also denied. *See* 62 F.4<sup>th</sup> 1233, 1237. The slip opinion issued upon the denial of rehearing contains both the order denying rehearing and the modified panel decision.

On appeal in the Tenth Circuit, Parnell argued that the untimeliness of her petition should be excused because (1) jurisdictional challenges may be raised at any time notwithstanding the AEDPA statute of limitations, and (2) new evidence demonstrates her actual innocence. On the first issue, Parnell conceded that the Tenth Circuit's *Pacheco* decision foreclosed that argument for review by a panel of the Tenth Circuit, but she raised the argument to preserve it for en banc review or review by this Court. *See Appendix, Attachment A (slip op.) at 3; United States v. White*, 782 F.3d 1118, 1123 n.2 (10<sup>th</sup> Cir. 2015) (one panel of the Tenth Circuit cannot overrule the judgment of another panel absent an intervening decision from the Supreme Court). The panel therefore could not and did not address the jurisdictional argument. *See* slip op. at 3. The panel rejected Parnell's actual innocence argument on its merits, denied a certificate of appealability, and dismissed the petition. *See* slip op. at 3-7.

Parnell petitioned for rehearing en banc, arguing *Pacheco* was wrongly decided and therefore the Tenth Circuit should review en banc. Parnell argued *Pacheco* should be rejected on due process grounds because a court without jurisdiction over a defendant trying that defendant and ordering her imprisonment for life violates due process. Due process requires that the AEDPA statute of limitations yield to constitutional protections. But the Tenth Circuit denied rehearing. *See Appendix, Attachment C (order denying rehearing)*. Petitioner now petitions this Court for a writ of certiorari.

## **REASONS FOR GRANTING THE PETITION**

The Court has yet to squarely address the recurring question whether a state court conviction in a state that under the Major Crimes Act lacks jurisdiction over criminal offenses by an Indian committed in Indian country violates due process as a judgment void *ab initio*. The effect of the Tenth Circuit's decision in this case and in its *Pacheco* decision is to allow state court convictions to stand undisturbed even though the state court lacks jurisdiction over such

criminal cases under *McGirt*. Here, Ashley Parnell is serving a life sentence imposed by an Oklahoma state court that under *McGirt* did not have jurisdiction to try her. This case presents an ideal vehicle to answer the question whether application of the AEDPA statute of limitations to Parnell’s case (and the many like hers) violates due process. This question is a fundamentally important question of federal law that has not been but should be settled by this Court.

**I. The jurisdictional issue continues to come up repeatedly in Oklahoma federal district courts and will continue to arise in future cases.**

The issue of whether the one-year limitation in § 2244(d)(1)(C) bars a *McGirt*-based § 2254 challenge to an Oklahoma state criminal conviction is one that occurs frequently in the Oklahoma federal district courts, even after the Tenth Circuit decided *Pacheco* in September 2022. *See, e.g., Scarbrough v. Buss*, 2023 U.S. Dist. LEXIS 99031 (E.D. Okla, June 7, 2023); *Shirley v. Harpe*, 2023 U.S. Dist. LEXIS 43260 (W.D. Okla. Jan. 5, 2023); *Del Brumit v. Pettigrew*, 2023 U.S. Dist. LEXIS 241157 (W.D. Okla. Mar. 8, 2023); *Williamson v. Nunn*, 2022 U.S. Dist. LEXIS 233071 (W.D. Okla. Dec. 29, 2022); *Pitts v. Nunn*, 2022 U.S. Dist. LEXIS 216596 (W.D. Okla. Dec. 1, 2022); *Butler v. Nunn*, 2022 U.S. Dist. LEXIS 207617 (N.D. Okla. Nov. 16, 2022); *Rackley v. Whitten*, 2022 U.S. Dist. LEXIS 206009 (W.D. Okla. Nov. 14, 2022); *Scott v. Pettigrew*, 2022 U.S. Dist. LEXIS 201277 (W.D. Okla. Nov. 4, 2022); *Cox v. Clayton*, 2022 U.S. Dist. LEXIS 249431 (W.D. Okla. Oct. 28, 2022); *Owens v. Whitten*, 637 F. Supp. 3d 1245 (N.D. Okla. 2022); *Jones v. Crow*, 636 F. Supp. 3d 1349 (E.D. Okla. 2022); *Burns v. Oklahoma*, 2022 U.S. Dist. LEXIS 235054 (W.D. Okla. Oct. 24, 2022); *McDade v. Pettigrew*, 2022 U.S. Dist. LEXIS 216467 (W.D. Okla. Oct. 24, 2022); *Allen v. Crow*, 2022 U.S. Dist. LEXIS 187871 (N.D. Okla. Oct. 14, 2022); *Urive v. Crow*, 635 F. Supp. 3d 1204 (E.D. Okla. 2022); *Sweet v. Hamilton*, 634 F. Supp. 3d 1048 (N.D. Okla. 2022); *Barker v. Habti*, 2022 U.S. Dist. LEXIS 185418 (W.D. Okla. 2022).

Because the Oklahoma federal courts have been overwhelmed with post-*McGirt* cases, this Court should address the due process issue as it will help alleviate the glut of these cases by providing a definitive answer to the question *Pacheco* failed to address. And since the Tenth Circuit has declined to grant en banc review in any *Pacheco* cases, including Parnell’s, the question whether due process overrides § 2244(d)(1)(C)’s purported one-year bar on claims such as Parnell’s remains open and will continue to be raised in numerous Oklahoma habeas cases. This Court can resolve the issue fully and finally and give the clear answer that is needed and currently lacking. Therefore, the Court should grant review here.

**II. *Pacheco* ignored the due process problem of barring *McGirt*-jurisdictional challenges under the AEDPA’s one-year statute of limitations. This Court should address the due process issue *Pacheco* ignored.**

In *Pacheco*, the Tenth Circuit panel recognized that if Pacheco “were tried today for the murder of A.H., she would be tried in federal court under the Major Crimes Act.” 48 F.3d at 1185, slip op. at 6. But the court held that *McGirt* did not announce a new constitutional right 48 F.4th at 1191, slip op. at 18-19.

Pacheco had argued that *McGirt* was a constitutional ruling “as a criminal prosecution in the courts of a state must be in a court of competent jurisdiction in order to accord with due process in the constitutional sense.” *Pacheco*, 48 P.4<sup>th</sup> at 1191 (internal quotation marks omitted). The Tenth Circuit rejected that argument, noting

although Ms. Pacheco tries to characterize *McGirt* as a decision about due process, the phrase “due process” never appears in the opinion. Moreover, the opinion observed that “Congress remains free to supplement its statutory directions about the lands in question at any time.” [140 S. Ct.] at 2481-82. That observation alone contravenes any notion that *McGirt* announced a new constitutional right—Congress cannot eliminate a constitutional right through ordinary legislation.

*Pacheco*, 48 F.4<sup>th</sup> at 1191. But the Tenth Circuit missed the point of Pacheco’s due process

argument. Of course, Congress, through legislation, can establish or disestablish Indian reservations. Conversely, it cannot eliminate a constitutional right through legislation. No one disputes that. *McGirt* established that Congress had not disestablished the Creek reservation in Oklahoma:

The federal government promised the Creek a reservation in perpetuity. Over time, Congress has diminished that reservation. It has sometimes restricted and other times expanded the Tribe’s authority. But Congress has never withdrawn the promised reservation. As a result, many of the arguments before us today follow a sadly familiar pattern. Yes, promises were made, but the price of keeping them has become too great, so now we should just cast a blind eye. We reject that thinking. If Congress wishes to withdraw its promises, it must say so. *Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right.*

*McGirt*, 591 U.S. at 937-938 (emphasis added). The Court therefore reversed *McGirt*’s conviction, which the OCCA had upheld. But *Pacheco* failed to analyze the due process implications of *McGirt* for state criminal conviction obtained where the state lacked jurisdiction—at all times—over the defendant. Fundamental due process principles do not allow such *ultra vires* state prosecutions, which *Pacheco* failed to address.

*McGirt* made clear that Oklahoma does not have jurisdiction over Indians for major crimes committed in Indian Country: “Oklahoma doesn’t claim to have complied with the requirements to assume jurisdiction voluntarily over Creek lands. Nor has Congress ever passed a law conferring jurisdiction on Oklahoma. As a result, the [Major Crimes Act] applies to Oklahoma according to its usual terms: Only the federal government, not the State, may prosecute Indians for major crimes committed in Indian country.” 591 U.S. at 932.

*McGirt* established that Oklahoma could not pursue criminal prosecutions such as *McGirt*’s because it lacked the jurisdiction to do so. Contrary to *Pacheco*, implicit in *McGirt* is

the corollary that Oklahoma prosecuting an Indian for a crime in Indian country would violate due process—because a court without jurisdiction over a person violates that person’s due process rights under the Fourteenth Amendment. A court acting outside its jurisdiction is lawless, and its “unlawful acts” are never enough to amend the law to grant it power it does not possess. *See McGirt*, 591 U.S. at 938. If due process means anything, it is that a court must have jurisdiction to proceed against a criminal defendant, especially where, as here, the court seeks to—and did in fact—imprison the defendant for life. Judgments entered by a court that lacks jurisdiction to enter them are, and have long been, void *ab initio*. *See Griffith v. Frazier*, 12 U.S. (8 Cranch) 9, 27-28 (1814) (voiding administration granted by a court having no jurisdiction in the particular case as “absolutely void”)

*Pacheco* incorrectly rejected the due process claim made there, without thorough analysis. And because the Tenth Circuit has declined to revisit *Pacheco*, despite the issue coming up continually in Oklahoma federal district courts, *see supra*, at 6, this Court should exercise its certiorari jurisdiction to weigh in on this important, continually arising issue.

Moreover, because the *McGirt* jurisdictional issue is unique to Oklahoma, the issue will continue to arise only in the Tenth Circuit, leaving case law underdeveloped in other circuits, and having cases in the Tenth Circuit decided pro forma under *Pacheco*, with the due process issue being left unaddressed. Yet, tribal members convicted in Oklahoma state court for crimes occurring in Indian country will continue to collaterally challenge those convictions for lack of jurisdiction under *McGirt*. This Court should weigh in to address the unaddressed due process issue. That issue is one of fundamental due process principles—the state of Oklahoma’s power, or more accurately, its lack of power, to try tribal members for crimes occurring in Indian country, and the consequences for the state and defendants for the state’s *ultra vires* exercise of

criminal jurisdiction it does not possess and *has never possessed*.

It is undisputed that were the underlying offense to have occurred today, Oklahoma could not exercise jurisdiction over Parnell and could not bring the charges for which Parnell stands imprisoned for life. The question is whether an *ultra vires* exercise of jurisdiction predating *McGirt*—which, under *McGirt*, the prosecution here absolutely was—can be allowed to stand. This is not an issue of mere statutory interpretation of the AEDPA, as *Pacheco* treated it. Rather, it is an issue of fundamental fairness under the Due Process Clause, where a defendant stands convicted and imprisoned for life by a state that never had the power to try her.

Under *McGirt*, Oklahoma state courts not only lack jurisdiction over such cases but they *have never had jurisdiction over such cases*, including Parnell’s. Though “new constitutional rules of criminal procedure will not be applicable to those cases which have become final before the new rules are announced,” *Teague v. Lane*, 489 U.S. 288, 310 (1989), there are two types of new rules that may be applied retroactively: (1) new substantive rules, which generally apply retroactively; *Schrivo v. Summerlin*, 542 U.S. 348, 351-52 (2004); and (2) new “watershed rules of criminal procedure” implicating the fundamental fairness and accuracy of the criminal proceeding. *Saffle v. Parks*, 494 U.S. 484, 495 (1990). Here, both exceptions apply.

Under *Schrivo*, a rule is substantive if it involves a determination that places certain conduct or *persons covered by the statute beyond the state’s power to punish*. 542 U.S. at 352. “Such rules apply retroactively because they necessarily carry a significant risk that a defendant stands convicted of an act that the law does not make criminal or faces a punishment that the law cannot impose upon him.” *Id.* (internal quotation marks omitted). In fact, such rules are not subject to a retroactivity bar at all. *Id.* at 352 n.4. Thus, anything that impacts a court’s “constitutional or statutory authority to adjudicate a case” must necessarily be categorized as

substantive.

Before *McGirt*, this Court considered whether *Johnson v. United States*, 576 U.S. 591 (2015)—declaring the residual clause of the federal Armed Career Criminal Act void for vagueness—was a substantive rule that applied retroactively. *See Welch v. United States*, 578 U.S. 120 (2016). The Court concluded that *Johnson* articulated a substantive rule and therefore applied retroactively: “By striking down the residual clause as void for vagueness, *Johnson* changed the substantive reach of the Armed Career Criminal Act, altering ‘the range of conduct or the class of persons that the [Act] punishes.’” 578 U.S. at 129, quoting *Schrivo*, 542 U.S. at 353 (emphasis added). The Court emphasized that *Johnson* was *not* a procedural decision: “*Johnson* had nothing to do with the range of permissible methods a court might use to determine whether a defendant should be sentenced under the Armed Career Criminal Act.” 578 U.S. at 130.

Applying *Welch*’s rationale here, *McGirt*’s recognition that the tribal boundaries of the Muscogee (Creek) Nation were never disestablished altered the “range of conduct or the class of persons” that could be prosecuted in state court. The rule is therefore substantive and as a new substantive rule should apply retroactively. *See Welch, supra; Schrivo, supra*. Not applying the new substantive rule retroactively will leave many like Parnell imprisoned for convictions that are void *ab initio*. Therefore, this Court should grant review.

In addition, *McGirt* is a “watershed rule of criminal procedure” because it implicates the fundamental fairness and accuracy of criminal proceedings. *See Saffle*, 494 U.S. at 495. Those like Parnell—tribal members charged with crimes occurring in Indian Country—are not subject to criminal prosecution by the states absent express Congressional authorization. It is fundamentally unfair to conclude that even though Oklahoma possesses no jurisdiction to

prosecute—and under *McGirt* never possessed jurisdiction to prosecute—a conviction in a state court that never had proper jurisdiction over the defendant can nonetheless stand. Therefore, *McGirt* must apply retroactively. *Pacheco* wrongly concluded otherwise. Yet, *Pacheco* stands as binding precedent applied continually in habeas cases in Oklahoma’s federal courts. *See supra*, at 6 (listing post-*Pacheco* district court cases).

Parnell is currently serving a life sentence for a conviction issued by a court that lacked jurisdiction over her. Her conviction was never valid and remains invalid today. *See Murphy*, 866 F.3d at 1233 (petitioner’s state conviction and death sentence were invalid because Oklahoma lacked jurisdiction). It is a bedrock legal principle that, without jurisdiction, a court lacks authority over the parties and its rulings are invalid. Subject matter jurisdiction can be raised at any time and cannot be waived. *Ashcroft v. Iqbal*, 556 U.S. 662, 671 (2009) (“Subject-matter jurisdiction cannot be forfeited or waived and should be considered when fairly in doubt”). To the extent the Oklahoma state courts concluded otherwise, that conclusion was an unreasonable application of clearly established federal law.

It cannot be disputed that Oklahoma lacks the power to try and to punish a defendant for a violation of the laws of another state or an offense that occurred exclusively in that other state. Similarly, it lacks the power to try, convict, and imprison Parnell for conduct over which the federal government has exclusive jurisdiction. No comity is owed to a state court that lacked jurisdiction from the outset of a case.

The distinction between Parnell’s claim and a run-of-the-mill claim of a due process violation is readily apparent. In most due process cases, the claimed violation is clear and the state courts can address the issue. But this case involves a complete lack of due process because Parnell was tried by a court that never had jurisdiction over the offense or her. Nor did the

OCCA have jurisdiction over appellate review of that *ultra vires* prosecution. No lack of due diligence by Parnell can excuse or justify the egregious due process violation that occurs when a court without jurisdiction over a case proceeds to try the case and impose a life sentence. *Pacheco* thus erred in concluding *McGirt* jurisdictional claims are subject to the one-year limitation in the AEDPA. The panel in *Pacheco* said that when “Congress enacted the limitations period in AEDPA, it discerned no reason to provide a blanket exception for jurisdictional claims.” 48 F.4<sup>th</sup> at 1190, slip op. at 17. But the issue is not simply an issue of statutory interpretation. Rather, it involves a fundamental issue of due process—a court without jurisdiction over a defendant trying that defendant and ordering her imprisonment for life. Due process requires that the AEDPA statute of limitations yield to constitutional protections here, and therefore this Court should grant review.

The ability to challenge a conviction coming from a court entirely lacking jurisdiction entirely is a bedrock of habeas corpus law. *See Edwards v. Vannoy*, 141 S. Ct. 1547, 1563 (2021) (Thomas, J., concurring) (“Congress expanded the writ in the Habeas Corpus Act of 1867. This Act extended the writ to prisoners in state custody but again provided only bare guidelines about the scope of the writ. At first, this Court continued to apply the common-law rule that *allowed a state petitioner to challenge only the jurisdiction of the court that had rendered the judgment under which he was in custody.*” (Emphasis added; internal citations and quotation marks omitted)); *id.* at 1567-68 (Gorsuch, J., concurring) (“Even then, however, this Court continued to interpret the habeas statute consistent with historical practice. If a prisoner was in custody pursuant to a final state court judgment, a federal court was powerless to revisit those proceedings *unless the state court had acted without jurisdiction.*” (Emphasis added)). To hold that the writ of habeas corpus can be gutted by a statutory limitation period would

essentially empower Congress to entirely abrogate the writ—something fundamentally at odds with the Constitutional basis for the writ. *See* U.S. Const. Art. 1, § 9, cl. 2 (“The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”). This Court should grant review to uphold the fundamental constitutional principle behind the writ and conclude as a matter of due process that no time bar can shield from review a judgment by a court lacking jurisdiction.

**III. Allowing Oklahoma state convictions of tribal members for crimes in Indian Country to stand, despite Oklahoma’s lack of jurisdiction, is an affront to Tribal Sovereignty and the Major Crimes Act, justifying this Court granting review.**

Finally, allowing the countless Oklahoma state convictions against Indians for crimes in Indian country to stand despite Oklahoma’s lack of jurisdiction over those crimes serves only to perpetuate a lack of respect for Tribal Sovereignty, and for Congress in its enactment of the Major Crimes Act. As *McGirt* noted, “Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word.” 591 U.S. at 897-898. Holding the government to its word and requiring due respect for Tribal Sovereignty and Congress’ actions dictates that the state of Oklahoma cannot lawfully prosecute Indians for crimes in Indian country absent Congress taking action to grant such authority. Yet, the Tenth Circuit allows such *ultra vires* convictions to stand, and Parnell is wrongfully imprisoned for life because of the Tenth Circuit’s flawed decision in *Pacheco*. This Court should grant review to undo the lack of respect to Tribal Sovereignty and the acts of Congress to protect that sovereignty. *See* 18 U.S.C. § 1153.

**CONCLUSION**

The Court should grant this petition.

Respectfully submitted,

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