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ORIGINAL

IN THE

Supreme Court, U.S.  
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SUPREME COURT OF THE UNITED STATES

DANIEL DEL BRUMIT, PETITIONER PRO SE

Vs.

WARDEN DAVID ROGERS,

EX REL. STATE OF OKLAHOMA, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

COURT OF APPEALS FOR THE TENTH CIRCUIT

**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

In 2020, this Court decided *McGirt*, and as a consequence, the Oklahoma Court of Criminal Appeals (OCCA hereafter) “recognized that several other Indian reservations in Oklahoma had likewise never been properly disestablished.” *See McGirt v. Oklahoma 591 U.S. 894 (2020) Okla. v. Castro Huerta 597 U.S. 629, 634 (2022) citing Matloff v. Wallace 497 P.3d 686 (OCCA, 2021)* In the instant case, the OCCA wrongfully employed a State retroactive bar against the immunities of a Choctaw descendant based on *McGirt* being a new procedural rule. In effect, in order to deny an Indian’s 14 Amendment immunities in the course of post-conviction proceedings, the OCCA usurped Congress to reestablished the effective date of the Choctaw Treaty from 1830 to 2021.

Since the OCCA decided *Matloff’s* retroactive bar, nearly four (4) years of challenges to the State common law have come to nothing. On habeas review, the Federal Courts have unjustly neglected Oklahoma Indian Treaty obligations and statuses. In Mr. Brumit’s case, the U.S. Western District Court of Oklahoma (WDOK hereafter) liberally construed his attack on the State retroactive bar as an attack on his conviction and sentence; and they failed to harmonize the AEDPA with the terms of the Treaty of Dancing Rabbit Creek Art. 4 (hereafter only Choctaw treaty). *28 U.S.C.A. § 2254, Treaty of Dancing Rabbit Creek, Sept. 27, 1830, Art. IV, 7 Stat. 333-334* Additionally, without explanation, the Tenth Circuit opined that the Choctaw Treaty was barred after one year; thereby, in effect, they

have ruled that an Indian can lose immunities without unequivocal expression from the Tribe or Congress.

This question is NOT a collateral attack on Mr. Brumit's conviction and sentence. Pursuant the 6<sup>th</sup> and 14<sup>th</sup> Amendments and the AEDPA, it is Mr. Brumit's right to redress the Constitutionality of a State post-conviction proceeding and those procedures involved. U.S. Const. Amend 6, 14 28 U.S.C.A. § 2254 (e)(1) In this question, Mr. Brumit is seeking to understand the hierarchy of Constitutional law, State post-conviction rulings, Federal AEDPA review, and the obligations and immunities granted in Article 4 the Choctaw Treaty. It is a question of reliance and comity versus preemption and harmonization of law.

The Petitioner's second question is based on the reliance of State rulings to the benefit of the inmate in AEDPA proceedings. The Oklahoma Courts affixed *McGirt* to Mr. Brumit when they applied a State retroactive bar centered on *McGirt*. The Petitioner argued what was good for *McGirt* is now good for Mr. Brumit. In *McGirt* this Court recognized that Oklahoma had knowingly and intelligently waived its procedural defenses in order that the reservation question might be resolved. The Western District said Mr. Brumit was not similarly situated to *McGirt* because (1) the State did not consider Mr. Brumit's case when they decided *McGirt* (2) the issue decided in *McGirt* was not identical to Mr. Brumit's case. Brumit v. Rogers 2024WL4165118 (U.S.W.D. of OK, 2024) Even if that were true, 28 U.S.C.A. § 2254(e)(1) dictates the reliance of State Court findings on habeas review. Therefore, if the State courts assumed Mr. Brumit to be similarly situated, the federal courts

must presume the State ruling correct. Addressing this issue, the Tenth Circuit ruled the Oklahoma Courts had not ruled Mr. Brumit “similarly situated” to McGirt. *Brumit v Rogers 2025WL415482 (10<sup>th</sup> Cir. Feb. 2025)* The Petitioner filed a Motion for Rehearing with the Court, with evidence to the contrary, explaining that Oklahoma’s retroactive bar could not attach except that the State courts assumed Mr. Brumit to be similarly situated to McGirt. The Tenth Circuit denied said Motion.

Mr. Brumit is now seeking declaratory and injunctive relief in relation to these two matters. He is desiring the Court to recognize and overturn the State’s retroactive bar as a usurpation of Congress. He is desiring the Court to verify that the obligations within Treaty of Dancing Rabbit Creek, Art. 4 have merit in State and Federal collateral appeals. He desires that the Court acknowledge the flaw in the AEDPA when a State Court order can contradict federal law to the benefit of the inmate.

The Questions presented are:

1. Related solely to the procedural obligations of Federal and Oklahoma courts within post-conviction proceedings, and for each sovereign, did Congress make it possible for a finalized Oklahoma conviction and sentence to render the obligations of the government(s) and Indian statuses of the Treaty of Dancing Rabbit Creek Art. 4 void or abrogated?

2. So that res judicata may be applicable and render AEDPA moot in the instant case, when applying the AEDPA's presumption of State judgement correctness, is it proper and reasonably debatable for Federal Courts to assume that Oklahoma's retroactivity bar of all McGirt type claims were only applied to those inmates whose confinement and post-conviction claims were similar or mirrored those in the McGirt ruling.

#### **PARTIES TO THE PROCEEDING**

All of the Parties in the United States Court of Appeals for the Tenth Circuit are listed in the caption.

#### **STATEMENT OF RELATED CASES**

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**PETITION FOR A WRIT OF CERTIORARI**

Daniel Del Brumit, inmate #553078, Choctaw Nation of Oklahoma, Membership #CN145512, respectfully petitions for a WRIT OF CERTIORARI to review the judgment of the United States Court of Appeals for the Tenth Circuit.

**OPINIONS BELOW**

The opinion of the Court of Appeals for the 10<sup>th</sup> Circuit is unreported and can be found in **Appendix A** or West Law 2025WL415482

The denial of rehearing for the 10<sup>th</sup> Circuit is unreported and can be found in **Appendix B**

The opinion of the U.S. District Court for the Western District of Oklahoma is unreported and can be found in **Appendix C** or West Law 2024WL4165116

The opinion of the Oklahoma Court of Criminal Appeals is not reported and may be found in **Appendix D**.

The Denial of Post-Conviction of the Grady County District Court of Oklahoma is not reported and may be found in **Appendix E**.

Mr. Brumit's Conviction and Sentence of the Grady County District Court of Oklahoma is not reported and the excerpt may be found in **Appendix F**.

## **JURISDICTION**

The Tenth Circuit entered judgment on Feb. 6, 2025. The Court denied Petitioner's rehearing and Motion for Clarification on Feb. 28, 2025. Petitioner received denial of rehearing in the prison mailbox on Mar. 3, 2025. This Court has jurisdiction under 28 U.S.C.A. § 1254 and the Treaty of Dancing Rabbit Creek, Sept. 27, 1830, Art IV, Stat. 333-334.

## **CONSTITUTIONAL PROVISIONS, TREATY, AND STATUTES INVOLVED**

**The Commerce Clause of the United States Constitution, Art. 1 § 8 cl.3** provides: "The Congress shall have the Power...to regulate Commerce with foreign Nations, and among the several States, and with the Indian tribes.

**The Supremacy Clause of the United States Constitution Art. 6, cl 2** provides: "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.

**The Due Process Clause of the United States' Constitution, Amendment V** provides: No person shall be ... deprived of life, liberty, or property without due process of law...

**The Privilege and Immunities Clause of the United States Constitution, Amendment XIV** provides: No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law.

**The Oklahoma Enabling Act §1** provides: "Provided, that nothing contained in said [Oklahoma] Constitution shall be construed to limit, or impair the rights of persons or property pertaining to the Indians of said Territories (so long as such rights shall remain unextinguished) or to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property or other rights by treaties, agreement, law or otherwise, which would have been competent to make if this Act had never been passed.

**The Treaty of Dancing Rabbit Creek, Sept. 27, 1830, Art. IV, 7 Stat. 333-334** provides: The Government and the people of the United States are hereby obliged to secure to the said Nation of Red People the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass law for the government of the Nation of Red People and their descendants; ...but the U.S. shall forever secure said Nation from, and against, all laws.

**The Indian Civil Rights Act of 1968, 25 U.S.C.A. § 1321** provides: The consent of the U.S. is hereby given to any State not having jurisdiction over criminal offenses committed by ...an Indian...[jurisdiction] with the consent of the Indian tribe.

**The Reliance Clause of 28 U.S.C.A. § 2254(e)(1)** provides: "...a determination of factual issue made by a State Court shall be presumed correct. The applicant shall

have the burden of rebutting the presumption of correctness by clear and convincing evidence.”

### CONCISE STATEMENT OF THE CASE

In 2007, in the Oklahoma Grady County District Court, Mr. Brumit was convicted and sentenced to 40 years in prison and 20 years of State supervision. Grady County is located within the present day Choctaw/ Chickasaw reservation(s). Mr. Brumit is a descendant of the Choctaw Nation of Oklahoma, Membership #CN145512. Okla. v. Brumit CF-2006-115 (Grady County District Court, OK 2007) The Questions presented today are not about Mr. Brumit’s conviction and sentence, but about post-conviction and Indian law.

In State Court, in Feb. 2021, Mr. Brumit collaterally attacked his conviction and sentence based on the immunities and preemptions provided in the Choctaw treaty Art. 4, the Major Crimes Act 18 U.S.C.A. § 1153, and Okla. Const. Art. 1 § 3. Brumit v. State CF-2006-115 (Grady County District Court, OK 2021) When the People did not respond, the Petitioner moved for Summary Judgment. However, during an Indian Country Jurisdiction Docket, the Petitioner’s case was set in abeyance until this Court decided Bosse v. Okla. 142 S.Ct. 1136 (2022) . Seeing that the trial judge intended to invoke Oklahoma law in violation of the terms of the Choctaw Treaty, the Petitioner sent the trial judge a Traverse (Traverse unanswered) where the Petitioner argued that, even though the AEDPA demanded Mr. Brumit exhaust State remedies, the AEDPA did not abrogate the Choctaw Treaty as to nullify Mr. Brumit’s sovereign

immune Indian status and/or the State trial judges obligation to secure it. Traverse, Appendix G The trial judge willfully abridged the 14<sup>th</sup> Amendment immunities of Mr. Brumit and the Supremacy Clause of the United States with the application of a State created retroactivity bar. U.S. Const. Amend. XIV, Art. 6 cl. 2 See Okla. Enabling Act §1 The Petitioner appealed to the OCCA. Without explanation to how the State Courts were not preempted, the OCCA confirmed the trial judge's ruling. Brumit v. State PC-2021-1303 (OCCA 2021)

In regards to Mr. Brumit's immunities in State Court post-conviction proceedings, the Petitioner solicited the U.S. Western District Court of Oklahoma to grant Mr. Brumit declaratory relief. Brumit v. Rogers case no. CIV-23-155 SLP (U.S.W.D. of OK, 2024) The Western District denied declaratory relief because the Court liberally construed Mr. Brumit's attack to be against his conviction and sentence, barred by AEDPA, rather than a collateral attack on State law employed during a post-conviction proceeding.

During these proceedings, the Western District created a sua sponte Court to decide whether Mr. Brumit was barred by the AEDPA. The Petitioner has argued that the AEDPA did not abrogate the Choctaw Treaty's obligations upon the Federal Court to secure Mr. Brumit's immunity from State law, and that sua sponte created a conflict of interest. The Petitioner also argued that if the AEDPA abrogated the Choctaw Treaty, the Law dictates that the Court should harmonize the conflicting elements of both Acts of Congress so that the Choctaw Treaty doesn't prove to be vain or nugatory. The Western District abused its discretion by not applying those

obligations and statuses of the Choctaw Treaty and ergo denied due process to Mr. Brumit. *U.S. Const. Amend. V*

The Petitioner appealed to the Tenth Circuit. *Brumit v. Rogers* case no. 24-6202 (10thCir. 2025) Without explanation as to how the AEDPA abrogated the Choctaw Treaty, the Tenth Circuit ruled that Mr. Brumit forfeited the Court's obligation granted in the Choctaw Treaty and his immunities by not presenting them within one year; or in other words, comity rules in all prospective criminal proceedings, even when a State Court usurps Congress, an Indian treaty and all Indian status is preempted and void by State law upon the finalized ruling of a State Court.

### REASON FOR GRANTING THE WRIT

#### Question One

In all State and Federal proceeding, unless unequivocally expressed by Congress or the Tribe, an Oklahoma conviction and sentence does not void the obligations or sovereign immunity endowed by an Indian Treaty. All duties and Indian status are secured in all proceedings by the United States Supremacy Clause, The Due Process Clause, and Privilege and Immunities Clause of the United States Constitution. *U.S. Const. Art. 6 cl. 2; U.S. Const. Amend. 5, 14; Treaty of Dancing Rabbit Creek Art. IV* Exclusive of State conviction, the Petitioner is soliciting certiorari to determine if Oklahoma Courts and Federal courts had jurisdiction to neglect the Governments' obligation to secure Mr. Brumit's Indian status of sovereign immunity in the course of post-conviction proceedings and habeas review.

This Petition for Certiorari is the ideal vehicle for this Court to determine the collateral standing and reliance for State post-conviction rulings, the AEDPA, and an Indian treaty. The AEDPA and Choctaw Treaty are not greater than the U.S. Constitution. The AEDPA and the Choctaw Treaty are the supreme Law of the Land. It is not wrong for Mr. Brumit to expect the Courts to abide by both on habeas review.

At issue, is a conflict of interests and reliance. The AEDPA demands exhaustion of State remedies and grants reliance to State rulings. The AEDPA puts the burden of disproving the State ruling on the inmate. However, the Choctaw Treaty grants reliance on the Government securing a Choctaw descendants sovereign immunity from and against State law. The Government disregarded the Treaty in 2007, at the time of Mr. Brumit's direct appeal, and is unrepresented in his collateral appeal.

Until now, the Courts have ruled an Indian's immunity is a status, not an affirmative defense, that cannot be forfeited or waived unless unequivocally expressed by Congress or the Tribe. Following the AEDPA, effectively the federal courts have determined, pursuant the AEDPA, an Indian's status is res judicata upon a finalized Oklahoma conviction. Current federal Indian law has dictated that an Indian treaty can be abrogated by a future Act of Congress, but such intent must be clear. Also, when Treaties and Acts of Congress conflict, ambiguities must be resolved for the benefit and liberty of the Indian. The Courts have never had the plenary power to strip an Indian's status guaranteed by Congress. If the Choctaw Treaty has [not] been abrogated, this Court should grant certiorari to decide such. If abrogated, this Court should grant certiorari to clarify if it is absolute or how the two conflicting Acts

of Congress and current federal Indian policies shall harmonize in each State and Federal collateral proceedings.

The Petitioner claims and will prove to this Court:

1. Congress dictated that Oklahoma would be preempted by the supremacy of the Choctaw Treaty when adjudicating Indians in Indian country . *U.S. Const. Art. 6 cl 2* *The Oklahoma Enabling Act §1* “A self-executing treaty binds the States pursuant the Supremacy Clause, and that States therefore must recognize the force of the treaty in the course of adjudicating the rights of litigants.” *Sanchez Llamas v. Oregon* 548 U.S. 331, 346 (2006) “Tribal immunity is a matter of federal law and is not subject to the diminution by the States.” *Kiowa Tribe of Okla. v. Manufacturing Tech. Inc.* 523 U.S. 751,756 (1998) “Although a court will not undertake to construe a treaty in a manner inconsistent with a subsequent federal statute, no hesitancy obtains if the asserted clash is with state law.” *Baker v. Carr* 369 U.S. 186, 212 (1962)
2. Congress has never abrogated the Choctaw Treaty to remove an Indian’s status of immunity to grant Oklahoma jurisdiction, in the course of post-conviction, over Indians in Indian country, nor has Oklahoma taken the affirmative steps necessary to obtain consent from the Tribes. *25 U.S.C.A. § 1321* *See Murphy v. Royal* 875 F.3d 896, 936 (i.) (10<sup>th</sup> Cir. 2017); *U.S. v. Sands* 68 F.2d 1058, 1062 (10<sup>th</sup> Cir. 1992)
3. The Petitioner claims there is no reliance of State rulings that usurp Congress and violate the privileges and immunities protected by The Commerce Clause of the United States Constitution, Art. 1 § 8 cl.3 and the 14<sup>th</sup> Amendment. *U.S. Const. Art.*

1 § 8 cl.3, U.S. Const. Amend XIV To deny State habeas and Indian statuses, the OCCA did not have the authority of Congress to shift the effective date of the Choctaw Treaty from 1830 to present day post-McGirt. See Matloff v. Wallace, 497 P.3d 686, ¶3 (OCCA, 2021)

4. No Oklahoma law dictates, nor can it, that a conviction can penalize and divest a Choctaw descendant of his Indian Status or those rights within. U.S. Const., Art. 1 § 8 cl.3 Status is defined as: as “the sum total of a person’s legal rights, duties, liabilities, and other relations, or any particular group of them separately considered.” Black’s Law Dictionary 12<sup>th</sup> Ed. 2024 Indian statuses are plenary to Congress and its Indian treaties and not the Courts. U.S. Const., Art. 1 § 8 cl.3

5. Substantively, except where Congress has dictated otherwise, Mr. Brumit is immune from ALL State law and jurisdiction opposed to the Choctaw Treaty during all State proceedings and common law. The State’s retroactive bar against Mr. Brumit’s collateral attack is a violation of the Privilege and Immunity Clause of U.S. U.S. Const. Amend XIV. U.S. Const. Amend XIV The Choctaw’s sovereign immunity from State law includes the State’s retroactive bar. “State law must yield when it is inconsistent with or impairs the policy or provisions of a treaty.” U.S. v. Pink 315 U.S. 203,230 (1942); and, “It is well recognized that State law, as used in preemption analysis, includes not only the positive enactments of a state, but also common law rules” Cleveland v. Piper Aircraft corp. 985 F.2d 1438, 1441 (10<sup>th</sup> Cir. 1991)

6. The AEDPA dictates that an inmate within State custody must exhaust State remedies before appealing a habeas claim in Federal Court; But the AEDPA did not abrogate the Choctaw treaty so as to grant Oklahoma Court's jurisdiction over those sovereignly immune Indians during post-conviction proceedings. 28 U.S.C. § 2254 (3)(c) That is a leap beyond the standard review of whether an Indian treaty has been abrogated.

7. The standard review of whether an Indian treaty has been abrogated is clear evidence of Congressional intent. See Herrera v. Wyoming 139 S.Ct. 1686, 1688 (2019) The AEDPA never addressed how a State would execute their laws in the process of post-conviction; therefore, the State is still bound by the supremacy of the Choctaw Treaty. U.S. Const. Art. 6 cl. 2, Okla. Enabling Act § 1

8. Oklahoma jurisdiction is founded on Oklahoma law which is barred by the Choctaw Treaty. Treaty of Dancing Rabbit Creek Art. IV Where there is no authority...there is no power to present any affirmative defense, except those defenses that align with the terms of the Choctaw Treaty. A preempted jurisdiction is a dead jurisdiction. "Preventing the States from exercising their sovereign power in a manner that interferes with federal Indian policy is precisely what the Constitution was intended to do." Bracken v. Haaland 994 F.3d 249, 309 (5<sup>th</sup> Cir. 2021) citing Worcester *supra*

9. Whereas the AEDPA did not abrogate the Choctaw treaty to grant jurisdiction to Oklahoma Courts, it may or may not have partially abrogated the Treaty on federal

habeas review. The AEDPA is an Act of Congress subsequent to the Choctaw Treaty. The standard rule is that a future Act of Congress may abrogate a preceding Treaty.

Lone Wolf v. Hitchcock 187 U.S. 553 (1903)

10. Since the AEDPA has no counterpart in 25 U.S.C. et al. or the exclusivity clause of 18 U.S.C. 1153, when creating the AEDPA, it is not likely that Congress considered the possibility that in 2007 the State and Federal Governments would disregard their duties dictated by the clear terms of the Choctaw Treaty by not interfering and allowing Oklahoma to illegally convict Mr. Brumit. “A treaty is considered binding from the date of its signature.” Haver v. Yaker 76 U.S. 32 (1869)

11. However, if the AEDPA did abrogate the Choctaw treaty, the abrogation must not be taken lightly, and where possible, the Court must make every effort to harmonize the later Act and the Treaty so that the Treaty does not prove to be vain or nugatory. See U.S. v. Payne 264 U.S. 446, 448 (1924) And in the event of ambiguity, the Courts should favor the liberty of the Indian. See McGirt v. Okla. 591 U.S. 894, 917 (2020), Choctaw Nation v. Okla. 397 U.S. 620, 631 (1970), Elk v. U.S. 87 Fed. Cl 70, 79 (U.S.F.C., 2009)

12. By not melding the two Acts of Congress, the Courts have stolen an element of Mr. Brumit’s Due Process, and, even if remaining in ODOC custody, may affect Mr. Brumit’s liberty interests. U. S. Const., Amendment V i.e., ODOC and the Pardon and Parole Board will be excluded from the Choctaw Treaty’s obligations; Mr. Brumit will pay State taxes; See Okla. Tax Comm’n v. Chickasaw Nation 132 L.Ed.2d 400

(1995) Tribal programs, tribal membership, and governance over Mr. Brumit will be moot.

13. The Tenth Circuit ruled that Mr. Brumit had not presented the Choctaw Treaty in a timely manner. This is incorrect in many ways:

(a) the terms of the Choctaw Treaty are clear: it was and is the Government(s) and the people's job to ensure Mr. Brumit's defense against State law; not Mr. Brumit's!

(b) as a third party beneficiary and Indian ward, Mr. Brumit is not Congress or a Tribe and cannot discharge the Government of its Treaty duties; 25 U.S.C.A. § 1321

(c) the Indian status granted in the Choctaw Treaty cannot be waived unless it is unequivocally expressed by Congress or the Tribe; "It is settled that a waiver of sovereign immunity cannot be implied but must be unequivocally expressed." Santa Clara Pueblo v. Martinez 436 U.S. 49, 58 (1978)

(d) the 10<sup>th</sup> Circuit's own precedence acknowledges that Indian status is not an affirmative defense. See U.S. v. Prentiss 256 F.3d 971, 976 (10<sup>th</sup> Cir., 2001) En Banc; and

(e) If an Indian can waive Indian status, the Major Crimes Act is rendered powerless; and

(f) since Matloff v. Wallace had not been decided until 2021, Mr. Brumit should not be expected to have presented his defense of Treaty immunity against the State's

nonretroactive doctrine at the time of conviction in 2007. *Matloff v. Wallace*, 497 P.3d 686 (OCCA, 2021)

### Question 2

Novel, this may be the first time the erroneous fact findings of a State Court might act to the benefit of the inmate. Craftily Oklahoma courts have shifted any blame of criminals being released onto the Federal courts. Congress has dictated the reliance of State Court rulings and that it is the inmate's job to contest it, and not the Federal courts to contradict it. In the instant case, so that the Federal Courts must rule on the merits of the case, regardless of Oklahoma courts usurpation of Congress or frivolous findings that *McGirt* is a new procedural rule of law, if the State findings are presumed correct, and Mr. Brumit does not protest, the AEDPA is moot by res judicata doctrine because, in order to attach a retroactive bar, the State Courts have attached Mr. Brumit's case to *McGirt* and, by virtue, Mr. Brumit is assumed similarly situated to *McGirt*. This Court should grant certiorari to either address and correct Oklahoma's usurpation or allow Mr. Brumit to have his case ruled on the merits in federal court absent AEDPA guidelines. This case is an ideal vehicle to judge the reliance of erroneous State Court post-conviction rulings that usurp Congress and may benefit the inmate on habeas review.

The Petitioner will prove to this Court:

1. In *Matloff v. Wallace*, the OCCA established a retroactive bar centered on *McGirt* being a new procedural rule of law that did not apply retroactively to any finalized

case claiming Oklahoma lacked subject matter jurisdiction under the *MCA* to try a Native American defendant for crimes committed in an Indian reservation. *See Matloff v. Wallace*, 497 P.3d 686, WN #3 (OCCA, 2021)

2. In response, the Trial Court illegally assumed jurisdiction and ruled Mr. Brumit's case to be similarly situated to *McGirt* and applied the State's retroactive bar. It does not matter that the Oklahoma Court did not use the phrase "similarly situated." The Trial Court assumed Mr. Brumit's case involved an Indian reservation, like *McGirt* that it involved a question of subject matter jurisdiction, like *McGirt*; that it involved the exclusivity clause of the Major Crimes Act, like *McGirt*; and, Mr. Brumit's State conviction was finalized after AEDPA, like *McGirt*. The Trial Court could not have applied the retroactive bar otherwise.

Oklahoma's retroactive bar is based on "Decisions which recognize reservations of the Cherokee Choctaw and Chickasaw reservations shall not apply retroactively. *Oklahoma v. Wallace*, 2021 OK CR 21 discussing *McGirt v. Oklahoma*, 140 S.Ct. 2452"

"The Court finds that, although the defendant claims to be a member of a federally recognized tribe, and asserts that this crime was committed within the Chickasaw Reservation, this crime occurred before the *McGirt* decision. The Defendant is therefore not entitled to relief. *Brumit v. State* CF-2006-115 Order Denying Defendant's pro se Application for Post-Conviction Relief p. 2,3 (Grady County District Court, 2021) *no emphasis added*

3. The OCCA confirmed Mr. Brumit was similarly situated to *McGirt*.

“In *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, 497 P.3d 686, *cert. denied*, 142 S.Ct. 757 (2022), this Court determined that the United States Supreme Court decision in *McGirt*, because it is a new procedural rule, is not retroactive and does not void final state convictions. *See Matloff*, 2021 OK CR21, ¶¶ 27-28, 40, 497 P.3d at 691-692

The Conviction in this matter was final before the July 9, 2020 decision in *McGirt*, and the United States’ Supreme Court’s holding in *McGirt* does not apply.” Brumit v. State PC-2021-1303 Order Affirming Denial of Post-Conviction Relief p. 1 (OCCA, 2022) emphasis not added

4. In *McGirt*, this Court stated that the State of Oklahoma had waived all of its procedural defenses, including AEDPA, in order for the Supreme Court to decide the reservation question. *McGirt v. Okla.* 591 U.S. 894, 899 (2020)
5. If an inmate is deemed similarly situated, he may claim res judicata against all defenses, heard and unheard, from the controlling case.
6. In habeas review, 28 U.S.C.A. § 2254 (e)(1) dictates that a federal court will grant reliance to State Court findings and that it is the duty of the inmate, not federal courts, to refute State claims. 28 U.S.C.A. 2254 It doesn’t matter if the State based its ruling on horoscope, ancient alien theory, or usurps Congress and Supreme Court precedence, Congress has determined that uncontested State findings preempt federal law and good sense.
7. Since, in this defense, Mr. Brumit does not dispute Oklahoma’s ruling comparing him to *McGirt*, Mr. Brumit has a right to claim the AEDPA res judicata.

8. Absent an AEDPA defense, the Federal Courts must decide Brumit's case on the merits.

## **CONCLUSION**

His grace is sufficient for me and He has provided an eternal Treaty with immunities this Country cannot grant or cede. This Petition for Certiorari is not a collateral attack on Mr. Brumit's conviction and sentence, but the two questions are an attack to establish reliance, preemption, abrogation and/or harmonization of law in the course of post-conviction proceedings. The Oklahoma Courts fraudulent assumption of jurisdiction over Indians in collateral appeals and using the AEDPA to shield them is just one example of abuse. If the federal courts act with acquiescence, and any litigant cannot contest jurisdiction, Oklahoma Bad Actors will continue to usurp Congress and discount the Choctaw Treaty, and, when found out, they will simply create a law to evade liability and blame. As a question of law, the Petitioner is seeking Declaratory and Injunctive Relief in this matter. Mr. Brumit wants this Court to establish the Choctaw Treaties merit over and within post-conviction proceedings, but if not, Mr. Brumit wants this Court to overrule the lower federal Courts based on fraudulent State law that has worked to his benefit. This Court should grant this Petition for Certiorari to protect the interest of its Indian wards, federal supremacy over comity and narrow the acceptable practice and procedures of law.

**WHEREFORE,**

In the interest of justice, the rule of law, safeguarding the U.S.-Choctaw Treaty, insuring inmates can challenge State and Federal post-conviction procedures and jurisdiction without challenging their conviction and sentence, and to end prospective controversy, the Petitioner begs this Court to grant his Petition for Certiorari.

Signed, Daniel Del Brumit

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