

No.

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**In the Supreme Court of the United States**

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MARVIN KEITH STITT,

PETITIONER,

v.

CITY OF TULSA, OKLAHOMA,

RESPONDENT.

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

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**PETITION FOR WRIT OF CERTIORARI**

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**QUESTION PRESENTED**

Whether a state may exercise criminal jurisdiction over an Indian for conduct in Indian country absent a valid congressional grant of authority.

### **PARTIES TO THE PROCEEDING**

The petitioner, Marvin Keith Stitt, holds a grant of citizenship conferred under the laws of the Cherokee Nation, a federally recognized tribe, making him an American Indian person for the purposes of federal law. *United States v. Diaz*, 679 F.3d 1183, 1187 (10th Cir. 2012) (quoting *United States v. Prentiss*, 273 F.3d 1277, 1279 (10th Cir. 2001); see also *United States ex rel. Standing Bear v. Crook*, 25 F. Cas. 695 (C.C.D. Neb. 1879) (No. 14,891).

The respondent, the City of Tulsa, is a municipal political subdivision under the laws of Oklahoma. See *Missouri v. Lewis*, 101 U.S. 22, 30 (1880) (explaining “[e]ach State has the right to make political subdivisions of its territory for municipal purposes, and to regulate their local government”).

### **RELATED PROCEEDINGS**

1. *City of Tulsa v. Stitt*, No. 7569655 (Tulsa. Mun. Crim. Ct. filed Feb. 3, 2021)
  - a. *Stitt v. McCune*, No. 120,627 (Okla. filed Aug. 12, 2022) (refusing original superintending control jurisdiction and transferring case to Court of Criminal Appeals as petition for extraordinary relief).
  - b. *Stitt v. McCune*, No. PR-2022-722 (Okla. Crim. App. docketed Aug. 22, 2022) (denying relief).
2. *Stitt v. City of Tulsa*, No. M-2022-984 (Okla. Crim. App. filed Nov. 7, 2022) (affirming conviction).

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### OPINIONS BELOW

The Oklahoma Court of Criminal Appeals' correction order (App., *infra*, 1a-2a) and the summary opinion (App., *infra*, 3a-7a) below are both published, the former at 2025 OK CR 6 and the latter at 2025 OK CR 5. A previous order declining extraordinary relief (App., *infra*, 68a-69a) is unpublished, as is the Oklahoma Supreme Court's order giving rise thereto refusing the extension of superintending control jurisdiction (App., *infra*, 66a-67a). The trial court's order denying the petitioner's second motion to dismiss (App., *infra*, 70a-71a) is unpublished but is reported at 2022 WL 22907971. The trial court's memorandum opinion and order denying the petitioner's first motion to dismiss (App., *infra*, 72a-86a) is likewise unpublished.

### JURISDICTION

The Court of Criminal Appeals entered judgment on March 6, 2025, followed by an order denying rehearing on April 7, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) as the decision on direct appeal below is a "[f]inal judgment . . . rendered by the highest court of a State in which a decision could be had."

Additionally, since the decision below "'fairly appears to rest primarily on federal law or to be interwoven with federal law' and lacks any 'plain statement' that it was relying on a state-law ground," this Court has "jurisdiction to consider the federal-law question presented." *McGirt v. Oklahoma*, 591 U.S. 894, 933 n.15 (2020) (citing *Michigan v. Long*, 463 U.S. 1032, 1040-41, 1044 (1983)).

## STATUTORY PROVISIONS INVOLVED

Provisions of the Constitution, treaties, Titles 18 and 25 of the United States Code, Acts of Congress contained in the United States Statutes at Large, and the Oklahoma Statutes are reproduced in the appendix.

## INTRODUCTION

Five years ago, this Court handed down one of the most courageous and transformational rulings in the entire history of this institution, elevating righteousness over perpetuating injustice in *McGirt v. Oklahoma*. 591 U.S. 894 (2020). In the face of dire warnings about chaos and disruption of the established order, this Court chose fidelity to the rule of law over convenience, declaring that a century of unlawful state jurisdiction over Indian country would not be permitted to continue simply because it had been “performed long enough and with sufficient vigor.” *Id.* at 937-38.

The Court held in *McGirt* that lands reserved by Congress for an Indian tribe in the Indian Territory back in the nineteenth century remain Indian country for criminal jurisdiction purposes. Explaining that “[s]tate courts generally have no jurisdiction to try Indians for conduct committed in ‘Indian country’” absent congressional authorization, the Court overturned the long since final Oklahoma state convictions of Jimcy McGirt, a member of the Seminole Nation, for his deplorable conduct within the bounds of the neighboring Muscogee (Creek) Nation *Id.* at 898.

Justice Gorsuch, writing for the Court, relentlessly affirmed the rule of law throughout the landmark opinion, using its simple principle to clear a path toward justice over Oklahoma’s cries. In the peroration, “Oklahoma warn[ed] of the potential consequences that will follow a

ruling against it, such as unsettling an untold number of convictions and frustrating the State's ability to prosecute crimes in the future." *Id.* at 896. prompting Justice Gorsuch to emphasize how "Oklahoma and its tribes have proven time and again that they can work successfully together as partners, and Congress remains free to supplement its statutory directions about the lands in question at any time." *Id.*

The case now before the Court reveals that Oklahoma never intended to accept the restoration of proper jurisdiction. Instead, Oklahoma and its political subdivisions launched a systematic campaign of legal warfare designed to achieve through judicial erosion what it could not accomplish directly: effectively overruling this Court's landmark decision in practice.

Oklahoma's dire "warnings" of a post-*McGirt* world proved prophetic, but not as predictions of inevitable administrative chaos. Rather, they were explicit promises of deliberate institutional defiance. This case represents the culmination of Oklahoma's dismantlement of *McGirt* through a calculated two-stage strategy that followed precisely the exact sequence Justice Gorsuch had preserved in the *McGirt* opinion: first neutralizing the "unsettling" of past convictions through judge-made rules in early retroactivity challenges, then systematically "frustrating" future tribal prosecutions through judge-made doctrines of jurisdictional authority, until Oklahoma successfully reclaimed virtually all the criminal authority over Indians in Indian country that *McGirt* had declared fundamentally unlawful.

The first stage involved using retroactivity as an excuse to reinvent *McGirt* as a mere judge-made procedural rule that cannot implicate Oklahoma's subject matter

jurisdiction using extraordinary proceedings in the Court of Criminal Appeals in *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, 497 P.3d 686, *cert. denied sub nom. Parish v. Oklahoma*, 142 S. Ct. 757 (2022), and flooding this Court with dozens of certiorari petitions desperately seeking the overrule of *McGirt*. This phase culminated in *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), a limited decision carving out concurrent state jurisdiction over non-Indians in Indian country, fueling Oklahoma's campaign of incrementally eroding *McGirt*'s jurisdictional framework to succeed where direct challenges had failed.

The second stage, now reaching completion through this case, has delivered a blow to *McGirt*'s central promise through the unchecked transformation of *Castro-Huerta* into something that it is not. By unilaterally imposing concurrent state jurisdiction over Indians themselves for violations of state law, Oklahoma has achieved something that seemed impossible just five years ago: *McGirt* now applies only to the most narrow categories of Major Crimes Act federal prosecutions and tribal prosecutions of a limited number Indians, while concurrent jurisdiction funnels most Indians back into state court, to the great injury of tribes who have invested heavily in their criminal justice systems and public safety programs. The practical result is that *McGirt*'s affirmation of the general rule that state courts lack jurisdiction to prosecute Indians in Indian country has been reduced to a hollow shell as Oklahoma largely reassumes the very authority *McGirt* declared it lacked. This systematic defiance of a precedent of this Court through incremental expansion of unprecedented exceptions created in a state court of last resort presents a fundamental challenge to the rule of law that demands this Court's immediate intervention.

## STATEMENT OF THE CASE

### A. Factual Background

On February 3, 2021, a Tulsa police officer was patrolling U.S. Highway 75 South at a location that has been Indian country for well over 150 years, as determined by this Court just six months earlier in *McGirt*. At this time and place, the officer spotted a green sports utility vehicle bearing a Cherokee Nation license plate which appeared to be traveling at 78 MPH in a 50 MPH zone and conducted a routine traffic stop. (App, *infra*, 3a-4a).

Petitioner, the driver and sole occupant, immediately presented both a valid Oklahoma driver's license and Cherokee Nation citizenship card, aware of the recent *McGirt* ruling.<sup>1</sup> The police officer ignored the valid tribal identification, refusing to even examine it, before scanning the license and issuing a citation summoning the petitioner to the state municipal criminal court in Tulsa rather than to the appropriate tribal forum, the Muscogee (Creek) Nation District Court. (Trial Tr. 46:1-49:14).

### B. Procedural Background

This Court closed *McGirt* by declaring that in “reaching our conclusion about what the law demands of us today, we do not pretend to foretell the future and we proceed well aware of the potential for cost and conflict around jurisdictional boundaries.” *Id.* at 936.

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<sup>1</sup> Petitioner also made a remark in jest, trading on the public rhetoric of state leaders associating *McGirt* with a “get out of prison free card,” applying it to minor traffic tickets. *See e.g.*, Amelia Mugavero, *SCOTUS Requests Review of Tulsa Murder Case, Potential Expansion of McGirt*, KOTV (Oct. 1, 2020), <https://perma.cc/949U-5HRH>. The police officer testified at trial that he did not take the petitioner to mean anything by the remark. (Trial Tr. 47:12-13).

The conflict began immediately. In *McGirt*'s wake, individual Indians accused of state crimes within Indian country, began challenging the jurisdiction of Oklahoma courts to exercise jurisdiction over criminal prosecutions against Indians in Indian country. This case is the culmination of four related cases litigated in the municipal criminal court in Oklahoma's largest city affected by *McGirt*.

### **1. Creation of the Curtis Act precedent in *City of Tulsa v. Shaffer***

On August 10, 2020, the same day this Court issued its mandate in *McGirt*, a Cherokee Nation citizen named Samantha Shaffer moved to dismiss a misdemeanor prosecution brought against her by Tulsa in state municipal criminal court for alleged criminal conduct within the Muscogee Reservation. See *City of Tulsa v. Shaffer*, No. 6108204 (Tulsa Mun. Crim. Ct. filed Aug. 10, 2020), 2020 WL 13992044.

One month later, in a separate civil case in state district court brought by several Indians seeking recovery of pre-*McGirt* court fines imposed in illegal prosecutions, Tulsa first raised the claim that Congress had granted ongoing authority to Oklahoma municipalities incorporated under the federal laws in force prior to statehood in the Indian Territory under Section 14 of the Act of June 28, 1898, ch. 517, 30 Stat. 495, 499-500, known as the Curtis Act.<sup>2</sup>

Four weeks later, Tulsa made that claim in Shaffer's criminal case, claiming that under the Curtis Act, the Court of Criminal Appeals lacked jurisdiction to hear appeals by

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<sup>2</sup> The Oklahoma Supreme Court later affirmed the lower court's dismissal on grounds other than Section 14, offering no opinion on the claim. *Nicholson v. Stitt*, 2022 OK 35, ¶ 25, n.6, 508 P.3d 442.

Indian defendants from state municipal court rulings and that Indians had to appeal to federal court.

On February 2, 2021, the day before the petitioner was ticketed, the trial court fully adopted the Curtis Act claim for the first time, issuing a state court order finding Section 14 granting Tulsa ongoing criminal jurisdiction over all persons and that “[u]nder *McGirt* . . . Oklahoma would not have jurisdiction to hear an appeal of a Native American who allegedly committed a municipal offense in Indian Country.” (App., *infra*, 99a); *Shaffer*, 2021 WL 12271580. Shaffer did not appeal.

## **2. Elevation of the manufactured precedent through *City of Tulsa v. Hooper***

On April 5, 2021, in an order indistinguishable from *Shaffer*, the trial court denied state post-conviction relief to a Choctaw Nation named Justin Hooper who was challenging a pre-*McGirt* citation. (R. 74-88). Hooper’s counsel then “appealed” to the wrong court in conformity with the trial court’s order that Oklahoma’s judiciary lacked subject matter jurisdiction to review his orders finding against Indians. *See Hooper v. City of Tulsa*, No. 21-CV-165 (N.D. Okla. filed Apr. 9, 2021).

## **3. Prosecution of Petitioner**

On December 22, 2021, exactly thirty days prior to this Court’s grant of certiorari in *Castro-Huerta*, the petitioner filed his first motion to dismiss raising claims independent of those made by Hooper, arguing that Section 14 provided interim remedies that did not survive statehood by operation of Oklahoma Enabling Act, Pub. L. No. 59-234, § 13, 34 Stat. 267 and the state court of last resort was the only appellate forum. (R. 16, 31-32).



On April 13, 2022, the district court found that Section 14 had never been repealed and that Tulsa had the ability to exercise jurisdiction to prosecute all persons under the Curtis Act, including Indians. *Hooper*, No. 21-CV-165 (N.D. Okla. Apr. 13, 2022) (mem.), 2022 WL 1105674. The trial court denied petitioner's motion the next week, citing the district court's decision upholding its prior rulings on Indian country jurisdiction. (App., *infra*, 72a-86a) (quoting *Hooper*, 2022 WL 1105674, at \*5).

Petitioner filed a second motion one month later, which the trial court denied without explanation, citing “*See Hooper*” (App., *infra*, 71a) before granting Tulsa's request to enhance petitioner's charge from simple fine-only speeding charge to an aggravated speeding charge carrying potential jail time. (R. 477-479).

Two weeks later, on June 29, 2022, this Court decided *Castro-Huerta*. One week after the mandate issued, the petitioner sought relief from the Oklahoma Supreme Court through its exclusive supervisory-control jurisdiction over inferior courts under the state constitution. (R. 482–509). The state supreme court disclaimed such jurisdiction and transferred the matter to the Court of Criminal Appeals as a petition for extraordinary relief in prohibition, where it was denied on procedural grounds. (App., *infra*, 68a–69a).

On October 20, 2022, the trial court found petitioner guilty of aggravated speeding and imposed a \$250 fine. The petitioner appealed to the Court of Criminal Appeals. (App., *infra*, 4a).

**4. Abandonment of the Curtis Act and forum shopping concurrent jurisdiction in this case and *City of Tulsa v. O'Brien***

Two weeks before petitioner's trial, undersigned counsel filed a *McGirt* motion in a fourth case against an Osage Nation citizen, Nicholas O'Brien. On January 11, 2023, the trial court denied the motion, citing *Hooper*. O'Brien's subsequent petition for extraordinary relief was denied by the Court of Criminal Appeals without reaching the merits.

Then, on June 28, 2023, the Tenth Circuit invalidated the entirety of Tulsa's Section 14 claim. *Hooper*, 71 F.4th 1270 (10th Cir. 2023). O'Brien filed a second motion that day, which the trial court set for hearing on July 26, 2023. Meanwhile, in *Hooper*, Tulsa sought a stay of the Tenth Circuit mandate and sought emergency relief from this Court. *City of Tulsa, Okla. v. Hooper*, No. 23A73 (U.S. filed Jul. 24, 2023).

On August 4, 2023, this Court denied the application. *Hooper*, 143 S. Ct. 2556. Justice Kavanaugh, joined by Justice Alito, appended a statement recognizing the issue presented herein "raises an important question," *Id.*, and remarking how "the Court of Appeals [had] declined for now to reach an additional argument raised by the State of Oklahoma . . . that the City may exercise jurisdiction under the reasoning in *Oklahoma v. Castro-Huerta*," *Id.* at 2557, opining "[o]n remand in the District Court, the City may presumably raise that argument." *Id.* (App., *infra*, 62a-63a).

Instead, Tulsa abandoned the *Hooper* case entirely and redirected Oklahoma's concurrent jurisdiction argument to the Court of Criminal Appeals, first raising it in O'Brien's case one week after this Court denied the stay. On August 17, 2023, the trial court granted O'Brien's motion to

dismiss, providing Tulsa with a detailed appealable order to raise the concurrent jurisdiction claim. (App., *infra*, 11a); *see also O'Brien*, 2022 WL 11758936.

The next day, Tulsa urged leave to file a supplemental brief on *Hooper's* impact on petitioner's case as "new authority on issues previously raised," *viz.*, Section 14.

*a. Raising the federal question*

The federal question as to whether a state may exercise criminal jurisdiction over an Indian for conduct in Indian country absent a valid congressional grant of authority was raised on September 19, 2023. On that date, the Court of Criminal Appeals granted Tulsa's request followed by an order containing an added *sua sponte* directive that the parties "address the impact of *Castro-Huerta* on the possible preemption of municipal jurisdiction in this case, and whether under [*White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980)] the City of Tulsa has concurrent jurisdiction." (App., *infra*, 59a–61a).

On October 19, 2023, in response to the supplemental briefing order, petitioner contended that Oklahoma lacks authority to prosecute a tribal citizen for conduct committed within Indian country absent a clear grant of congressional authorization.

1. Petitioner contended that *Castro-Huerta* "in no way supports the claim that [Tulsa] has concurrent jurisdiction" because "the opinion disclaims having any implications involving state jurisdiction over Indians within Indian country." (Supp. Br. 12) (citing *Castro-Huerta*, 597 U.S. at 650, n.6). "Due to this basic fact, *Castro-Huerta* has no place in this case because [petitioner] is a Cherokee citizen. . . did nothing to change the established precedents

and foundational principles of law upon which they are based.” *Id.*

2. Petitioner argued that *Castro-Huerta’s* citation to *Bracker* does not establish a balancing test for state jurisdiction and that “[w]hen the conduct of an Indian in Indian country is at issue, the opposite presumption applies – specifically, that states lack jurisdiction absent an express congressional grant.” (Supp. Br. 13) (citing *Bracker*, 448 U.S. at 144).

3. Petitioner contended that established precedent categorically bars state prosecution of Indians in Indian Country absent express congressional authorization, citing *McGirt*, 591 U.S. at 898 (highlighting “[s]tate courts generally have no jurisdiction to try Indians for conduct committed in Indian country”) and *United States v. Antelope*, 430 U.S. 641, 642 n.1 (1977) (stressing tribes have “exclusive jurisdiction to punish Indians for crimes committed on Indian land” absent congressional authority). (Supp. Br. at 13-14).

4. Petitioner added that *Castro-Huerta* did not disturb settled law or overrule the decisions of this Court and that the request for briefing on this issue was dictum, citing this Court’s ruling in *Bosse v. Oklahoma*, 580 U.S. 1, 2-3 (2016) (per curiam) for the proposition that only this Court can overrule its past precedent.

5. Petitioner stated “state criminal jurisdiction over American Indian defendants for state crimes within Indian country is per se foreclosed [and] there exists no authorization by Congress to depart from this foreclosure.” (Supp. Br. 14). He objected to the introduction of this belated jurisdictional theory on the grounds Tulsa waived any concurrent jurisdiction argument by failing to raise it despite ample opportunity, instead pursuing the contradictory

claim that Tulsa enjoyed prosecutorial authority over Indians in Indian country that Oklahoma did not. *Id.*

### C. Summary of Decision

#### 1. *O'Brien* opinion

On November 5, 2024, one year after the federal question was raised below, Tulsa voters made a change in municipal leadership by electing Monroe Nichols, who ran on a platform of departing from the policies of his predecessor and seeking reconciliation with the tribes.

On December 5, 2024, the week of Tulsa's mayoral inauguration, the Court of Criminal Appeals issued its decision establishing concurrent jurisdiction in *O'Brien*. 2024 OK CR 31, (App., *infra*, 9a-31a). Subsequently, the Justice Department filed suit against two Oklahoma prosecutors for unlawful prosecutions of Indians in Indian country.<sup>3</sup> "The Department of Justice has not backed off the lawsuits under the Trump administration."<sup>4</sup>

On February 5, 2025, rehearing was denied in *O'Brien*. Days later, the trial court "dismissed the case . . . at the request of the city. In his dismissal order, the judge wrote prosecutors said they were acting pursuant to the 'Policy of the City's Administration.'"<sup>5</sup>

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<sup>3</sup> See *United States v. Ballard*, No. 24-CV-626 (N.D. Okla. filed Dec. 23, 2024) and *United States v. Iski*, No. CIV-24-493 (E.D. Okla. filed Dec. 23, 2024); see also *Muscogee (Creek) Nation v. Tulsa Cnty.*, No. 25-CV-75 (N.D. Okla. filed Feb. 13, 2025).

<sup>4</sup> Dale Denwalt, *Lawmakers Send \$100,000 to Defend State Prosecutors Against Tribal Sovereignty Lawsuit*, *The Oklahoman* (May 25, 2025), <https://perma.cc/T9UU-NVML>.

<sup>5</sup> Nolan Clay, *Gov. Stitt's Brother Loses Appeal of \$250 Speeding Ticket in McGirt-Related Case*, *The Oklahoman* (Mar. 6, 2025), <https://perma.cc/VV5E-7HR9>.

## 2. Petitioner's opinion

Thirty days later, the Court of Criminal Appeals affirmed petitioner's conviction in a 4-1 decision, holding "Oklahoma has concurrent criminal jurisdiction in Indian country over non-member Indian defendants accused of committing non-major crimes," finding "that the balance of interests under *Bracker* does not preempt the exercise of state (and thus municipal) jurisdiction" in a short summary opinion. (App., *infra*, 5a).

As a preliminary matter, citations to the record will be to the *O'Brien* opinion in the appendix, as if set forth in this case verbatim, based upon the finding below that petitioner's supplemental brief "maintain[ed] *Castro-Huerta* did 'not impact this case in any way'" and that "*O'Brien* also addressed and denied virtually the same *Castro-Huerta* arguments made by [petitioner] in this case." (App., *infra*, 5a).

The court below then addressed the federal question, finding state criminal jurisdiction in Indian country is not preempted under two theories: first, that federal law does not expressly prohibit state jurisdiction; and second, state prosecutions of non-member Indians do not unlawfully infringe tribal self-government under the balancing test set forth in *Bracker*. (App., *infra*, 15a-16a).

The court below reasoned that *Castro-Huerta* established a default rule of state criminal jurisdiction in Indian Country absent federal preemption, applying this principle beyond *Castro-Huerta's* express limitation to non-Indian defendants. The court concluded that the General Crimes Act, Public Law 280, the Indian Civil Rights Act, and the Oklahoma Enabling Act do not expressly preempt state jurisdiction over Indians in Indian country. (App., *infra*, 15a-27a) (citing *Castro-Huerta*, 597 U.S. at 653).

Rejecting petitioner’s argument that states categorically lack jurisdiction over Indians in Indian country, the court below distinguished controlling precedent such as *McGirt* as establishing only a “general rule, not a per se rule.” (App., *infra*, 26a). The court further held that modern Indian law doctrine has moved “away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption.” *Id.* at ¶28 (quoting *Rice v. Rehner*, 463 U.S. 713, 718 (1983)).

Applying *Bracker* to criminal jurisdiction, the court below found that state prosecution of a “non-member Indian” for conduct outside the Major Crimes Act would not infringe tribal self-government, would serve federal public safety interests, and would serve to advance state sovereignty “ensuring criminal justice for *all citizens*. . .” (App., *infra*, 29a) (emphasis added).

The court below also found “the entirety of Tulsa’s Curtis Act arguments are without merit.” (App., *infra*, 30a-33a).

Judge Lewis dissented, arguing the majority decision “reads *Castro-Huerta*, et al., to authorize [state] infringement of perhaps the most central principle of tribal sovereignty.” (App., *infra*, 56a-59a) (Lewis, J., dissenting).

## **REASONS FOR GRANTING THE PETITION**

### **I. The Court Should Grant Certiorari to Resolve Whether States May Exercise Criminal Jurisdiction Over Indians in Indian Country Absent a Valid Grant of Congressional Authorization**

#### **A. The Decision Below Conflicts with Principles of Established Federal Indian Law**

##### **1. Precedent establishes the general rule against jurisdiction absent congressional authorization**

A foundational principle of federal Indian law is that states lack criminal jurisdiction over Indians in Indian country absent express congressional authorization. This rule derives from several constitutional foundations that combine to create an impermeable barrier to the type of unauthorized state prosecution at issue below.

First, the Constitution grants Congress “plenary and exclusive” responsibility over Indian affairs. *Haaland v. Brackeen*, 599 U.S. 255, 272-73 (2023) (compiling authorities). “Our cases leave little doubt that Congress’s power in this field is muscular, superseding both tribal and state authority.” *Id.* at 273 (citation omitted); *see also United States v. McGowan*, 302 U.S. 535, 538 (1938) (providing that “Congress alone has the right to determine the manner in which this country’s guardianship over the Indians shall be carried out”).

Second, tribes retain their sovereignty and powers of self-government “not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status,” *United States v. Wheeler*, 435 U.S. 313, 323 (1978), including “the sovereign power to punish tribal offenders.” *Id.* at 312, 323.



The constitutional principles establish that “[s]tate courts generally have no jurisdiction to try Indians for conduct committed in ‘Indian country’” except as expressly authorized by Congress. *McGirt*, 591 U.S. at 898; *see also e.g., Hagen v. Utah*, 510 U.S. 399, 401–02, 408 (1994) (finding that “Congress has not granted criminal jurisdiction to . . . Utah to try crimes committed by Indians in Indian country” and only if the locus of the crime “is not in Indian country” did Utah “properly exercise[] criminal jurisdiction over petitioner, an Indian”) (quotation marks omitted);

The federal policy of leaving Indians free from the imposition of state authority and control is “deeply rooted in the Nation’s history.” *Rice v. Olson*, 324 U.S. 786, 789 (1945) (citing *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 557 (1832)). “[T]his Court has long ‘require[d] a clear expression of the intention of Congress before the state or federal government may try Indians for conduct on their lands.” *McGirt*, 591 U.S. at 929 (citing *Ex parte Kan-gi-shun-ca*, 109 U.S. at 572).

These principles combine to create a “presumption of preemption” of state jurisdiction over Indians for on-reservation activities. *Rice v. Rehner*, 463 U.S. 713, 726 (1983). Under this framework, “[s]tate laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply.” *Bryan v. Itasca Cnty., Minn.*, 426 U.S. 373, 376 n.2 (1976).

The decision below abandons this foundational framework by presuming state jurisdiction rather than requiring congressional authorization. Instead of demanding that Oklahoma demonstrate the required “clear expression of the intention of Congress” as stated in *McGirt*, the court presumed state authority existed. This inversion

contradicts two centuries of federal Indian law and violates the constitutional principle that states lack inherent authority over Indians in Indian country. Without express congressional authorization, which Oklahoma cannot provide, the state lacks any valid basis for the criminal jurisdiction.

## **2. Federal law preempts state criminal jurisdiction over Indians in Indian country**

Congress has enacted a comprehensive statutory scheme governing criminal jurisdiction in Indian country that leaves no room for the unauthorized state prosecution of Indians. This federal framework demonstrates that Congress has not granted states the authority Oklahoma claims and has instead reserved criminal jurisdiction over Indians to federal and tribal governments.

The General Crimes Act, 18 U.S.C. § 1152, establishes federal jurisdiction over crimes by or against Indians in Indian country, with carefully defined exceptions. The Act's structure demonstrates congressional intent to occupy the field of criminal law in Indian country, and as this Court recognized in *McGirt*, "Oklahoma cannot come close to satisfying" the Act's jurisdictional framework. 591 U.S. at 929. Notably, § 1152 does not "extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe," *Id.*, thereby preserving exclusive tribal jurisdiction reserved by treaty over crimes committed by Indians. *Id.*

The Major Crimes Act, 18 U.S.C. § 1153, extended federal jurisdiction over certain crimes committed by Indians in Indian country. Congress passed the Act based on an understanding that only tribes had jurisdiction to punish such crimes. *See Ex parte Kan-gi-shun-ca*, 109 U.S. 556, 557

(1883); *United States v. Kagama*, 118 U.S. 375 (1886). Together, these Acts create a comprehensive federal framework that allocates criminal jurisdiction between federal courts and tribal governments based on the nature of the offense and the parties involved.

Public Law 280 provides the exclusive mechanism by which states may acquire criminal jurisdiction over Indians in Indian country. Section 1162 of Title 18 establishes the sole procedure to acquire jurisdiction. Oklahoma is not a Public Law 280 state and has never obtained congressional authorization to prosecute Indians, which mandates tribal consent and amendment of Article I, Section 3 of the Oklahoma Constitution. *See e.g., Okla. Tax. Comm'n v. Sac & Fox Nation*, 508 U.S. 114 (1993). The existence of this specific procedure for granting state jurisdiction demonstrates that states lack inherent authority to prosecute Indians and that Congress has not provided any alternative grant of such authority. If Congress intended states to possess the jurisdiction Oklahoma claims, Public Law 280 would be superfluous.

The Indian Civil Rights Act confirms that Indian status, not tribal membership, determines criminal jurisdiction. Congress responded to *Duro v. Reina*, 495 U.S. 676 (1990), by explicitly recognizing tribal criminal jurisdiction over “all Indians,” 25 U.S.C. § 1301(2), including non-members. This demonstrates congressional intent that Indian status determines criminal jurisdiction across Indian country. Congress deliberately used the broad term “all Indians” rather than limiting tribal authority to members only, establishing a unified approach to Indian identity for jurisdictional purposes. Through both Public Law 280 (§ 1162) and the tribal consent provision of the Indian Civil Rights Act (§ 1321(a)(1)), Congress made clear that other states may assume jurisdiction over crimes committed by

Indians in Indian country, but only with explicit congressional authorization and tribal consent.

These constitutional principles are reflected in the comprehensive statutory framework Congress has created. The Constitution grants Congress exclusive authority over “Commerce . . . with the Indian Tribes,” U.S. Const. art. I, § 8, cl. 3, extending to individual Indians as members of the broader Indian political community. This constitutional structure requires that Indian status, not tribal membership, determines jurisdictional authority, creating a binary system that recognizes only Indians and non-Indians for jurisdictional purposes.

The comprehensive nature of these federal statutes leaves no gap for unauthorized state jurisdiction. Federal preemption in this context is not merely implied but express and comprehensive. The assertion that these statutes do not preempt state jurisdiction contradicts their plain language, this Court’s interpretation, and the fundamental principle that Congress has occupied the field of Indian country criminal law.

### **3. The decision violates the constitutional principles of tribal sovereignty**

The decision below fundamentally misunderstands the constitutional structure governing Indian country. The Constitution grants Congress “plenary and exclusive” responsibility over Indian affairs, *Brackeen*, 599 U.S. at 272, meaning the states cannot retain residual sovereignty under the Tenth Amendment to prosecute Indians in Indian country. If congressional power in this realm is truly exclusive, there is no space for independent state authority, yet that is precisely what the decision below authorizes.

The assertion below that states retain inherent authority to prosecute Indians in Indian country directly contradicts this constitutional structure. The court cannot simultaneously acknowledge that Congress has “exclusive” authority over Indian affairs while claiming that states possess residual Tenth Amendment powers to exercise criminal jurisdiction over Indians. These positions are logically and constitutionally incompatible.

In *McClanahan*, this Court explained that when Congress exercises its exclusive authority over Indian affairs, state power is necessarily displaced: “The trend has been away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal preemption.” 411 U.S. at 172. The exclusive nature of federal authority means there is no room for states to claim concurrent jurisdiction based on general sovereignty principles.

The reliance below on the equal footing doctrine misses this crucial constitutional point. While states generally enter the Union on equal terms, the Constitution’s specific grant of authority over Indian affairs to Congress necessarily limits state power in this realm. As this Court explained in *McClanahan*, the doctrine of Indian sovereignty is not “a platonic notion” but reflects “applicable treaties and statutes which define the limits of state power.” 411 U.S. at 172. The equal footing doctrine cannot grant states authority that the Constitution reserves exclusively to Congress.

#### **B. The Decision Below Misapplied *Castro-Huerta* and Invented an Unprecedented Framework**

The decision below needlessly created an issue of fundamental legal significance by impermissibly abrogating a decision of this Court (*McGirt*). The court below

transformed *Castro-Huerta's* narrow holding about non-Indian defendants into a sweeping authorization for state prosecution of Indians, precisely the opposite of what that decision contemplated.

**1. *Castro-Huerta* was limited to non-Indian defendants and the court below improperly expanded it beyond its scope**

The decision below transforms *Castro-Huerta* into a valid congressional grant of authority that Oklahoma cannot otherwise demonstrate but does so by misapplying the decision far beyond its scope and inventing unprecedented legal frameworks. *Castro-Huerta* addressed only non-Indian defendants and explicitly disclaimed application to state prosecution of Indians, yet the court below seized upon the decision's general language about state sovereignty to manufacture authority over Indian defendants that *Castro-Huerta* explicitly declined to address.

*Castro-Huerta* addressed a single, narrow question: "whether the State has concurrent jurisdiction with the Federal Government to prosecute crimes committed by non-Indians against Indians in Indian country." 597 U.S., at 652. In that case, this Court held that the General Crimes Act, in conjunction with other laws, does not prevent Oklahoma's exercise of criminal jurisdiction over non-Indian defendants who commit crimes in Indian country involving Indian victims. *Id.* at 639-640. The decision's scope was deliberately and expressly limited to this narrow circumstance.

*Castro-Huerta* explicitly disclaimed application to Indian defendants through multiple express reservations. *See, e.g., Id.* at 639 n. 2 (declaring State prosecutorial authority over Indians is "not before us"); *Id.* at 650 n. 6 (expressing "no view on state jurisdiction" over crime

committed by an Indian against a non-Indian in Indian country); *see also* *Id.* at 693 (Gorsuch, J., dissenting) (“Most significantly, the Court leaves undisturbed the ancient rule that States cannot prosecute crimes by Native Americans on tribal lands without clear congressional authorization – for that would touch the heart of ‘tribal self-government.’”). These disclaimers were not casual observations but deliberate jurisdictional limitations that preserved the fundamental distinction between state authority over Indians versus non-Indians in Indian country.

The reasoning below rests on a fundamental logical error: it treats *Castro-Huerta*’s silence on Indian defendants as authorization to prosecute them, when the decision’s express disclaimers demonstrate the opposite. This misapplication violates *Castro-Huerta*’s own warning that “the Court’s dicta, even if repeated, does not constitute precedent.” *Id.* at 645. The court below violated this principle by extracting broad dicta about state sovereignty and treating it as binding precedent on questions the Court expressly reserved.

The extension of *Castro-Huerta*’s narrow holding to authorize prosecution of Indian defendants, precisely what *Castro-Huerta* declined to address, fails to provide the express congressional authorization that federal Indian law demands. Instead, it creates novel doctrinal categories that fragment the constitutional structure governing Indian country. *Castro-Huerta* did not upend established precedent or alter the principle that states lack criminal jurisdiction over Indians in Indian country absent congressional authorization. This Court did not decide the question of jurisdiction over Indians because it was not presented, leaving untouched the established precedent precluding state jurisdiction over crimes committed by Indians except as authorized by Congress.

The decision below represents precisely the kind of unauthorized judicial expansion that *Castro-Huerta* warned against, taking language from one context and applying it to fundamentally different circumstances without proper analysis. Contrary to the opinion below, *Castro-Huerta* did not change the baseline allocation of jurisdiction in Indian country, and the transformation of limited dicta into sweeping jurisdictional authority directly contradicts the decision's express limitations and this Court's warning against such overexpansion.

## **2. The unprecedented “non-member Indian” distinction fragments established law**

The creation below of a “non-member Indian” category represents a dramatic judicial invention that has no basis in federal law and directly contradicts the comprehensive statutory framework Congress has established. This unprecedented distinction fragments the binary legal structure that has governed Indian country jurisdiction for over two centuries.

Federal law recognizes only two categories for jurisdictional purposes: Indians and non-Indians. *See Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978). This binary distinction reflects the fundamental architecture of federal Indian law, where Indian status, not tribal membership, determines jurisdictional authority. No decision of this Court has ever recognized subcategories within the Indian classification for jurisdictional purposes.

The “non-member Indian” category finds no support in *Castro-Huerta* or any other federal precedent. *Castro-Huerta* addressed non-Indians exclusively, an entirely different legal category, and contains no discussion of jurisdictional distinctions among Indians because the defendant was not Indian at all. The decision's analysis of state



authority over non-Indians provides no foundation for creating novel subcategories among Indians.

The approach below creates precisely the jurisdictional chaos that the uniform federal framework was designed to prevent. By making criminal jurisdiction depend on the intersection of Indian status and tribal membership, the decision creates a patchwork of overlapping authorities that defies the clarity Congress has established. An Indian person traveling through Indian country would face different jurisdictional rules depending on their relationship to each specific tribe whose territory they enter, and that is a result that contradicts the unified approach Congress has mandated.

### **3. The application of *Bracker* to criminal jurisdiction is unprecedented**

The use of *Bracker* balancing below in the criminal context represents another unprecedented expansion that fundamentally mischaracterizes the nature of criminal authority and tribal sovereignty. *Bracker* was designed exclusively for civil regulatory disputes involving questions like state taxation of tribal businesses. Extending this framework to criminal jurisdiction, which involves the sovereign power to deprive individuals of liberty, treats constitutional imperatives as mere policy preferences subject to judicial rebalancing.

Criminal jurisdiction is categorically different from civil regulation and demands clear, predictable legal rules rather than case-by-case balancing. Criminal prosecution represents one of the most fundamental attributes of sovereignty, requiring certainty for law enforcement and due process for defendants. The *Bracker* framework's interest-balancing approach is fundamentally incompatible with

the binary nature of criminal jurisdiction, where authority either exists or it does not.

The balancing approach undermines the comprehensive congressional scheme. Through the Major Crimes Act, General Crimes Act, and Public Law 280, Congress has made deliberate judgments about criminal authority allocation. Judicial balancing tests that can override these statutory frameworks usurp Congress's exclusive constitutional role in Indian affairs and substitute judicial policy preferences for legislative determinations.

Most fundamentally, *Bracker* balancing reduces tribal sovereignty from a constitutional baseline to a mere factor weighable against state administrative convenience or public safety concerns. This fundamentally mischaracterizes tribal sovereignty, which is not a judicial policy preference but a constitutional imperative that can only be altered by Congress. The approach below allows state courts to systematically erode constitutional protections through case-by-case nullification of federal authority.

**C. The Question Presented Has Exceptional National Importance**

**1. The decision affects the fundamental constitutional relationship between federal government and tribes**

This case strikes at the constitutional foundation of federal Indian law. The Constitution grants Congress exclusive authority over Indian affairs, and for over two centuries, this Court has recognized that states lack jurisdiction over Indians in Indian country absent express congressional authorization. The decision below upends this fundamental arrangement by allowing a single state court

to manufacture jurisdiction through creative interpretation of federal precedent.

The stakes extend far beyond Oklahoma. The decision creates a roadmap for systematic erosion of the federal-tribal relationship nationwide. If state courts can avoid federal preemption by creating novel subcategories of Indians and applying civil law balancing tests to criminal jurisdiction, the entire constitutional structure governing Indian country becomes vulnerable to piecemeal judicial dismantlement.

## **2. Litigation explosion demonstrates the issue's urgency and universal recognition**

The urgency and national significance of the jurisdictional issue presented are already well recognized across the highest levels of government. Notably, two Justices of this Court have already acknowledged the issue's enduring importance as detailed, *see supra* p. 10. (App., *infra*, 62a-63a). In that same vein, the federal government has taken extraordinary steps in response to the ruling of the court below as in the form of the lawsuits against the state prosecutors, *see supra* p. 13.

Even the parties on opposing sides of this issue now agree that Supreme Court review appears inevitable. In a joint settlement filed just one week before the filing of this petition, Tulsa and the Muscogee Nation expressly acknowledged that “cases are pending which, if appealed to the United States Supreme Court, may resolve or reconcile the conflicting opinions of federal and state courts.” Joint Settlement Agreement Between Plaintiff Muscogee (Creek) Nation and City of Tulsa at 4, *Muscogee (Creek) Nation v. City of Tulsa*, No. 23-CV-490 (N.D. Okla. June 24, 2025), ECF No. 149-1 (citing the instant case).

The practical stakes are equally substantial. Nine federally recognized reservations in eastern Oklahoma alone span vast areas, encompassing multiple counties and hundreds of cities. The decision below exposes over 400,000 tribal citizens to state prosecution in Indian country, a jurisdiction where Congress has never authorized such authority. The constitutional question is not academic. It affects the daily lives of Indian people moving through overlapping jurisdictions in modern Indian country.

### **3. No other institution can halt systematic judicial nullification**

The question presented carries exceptional national importance because no institution other than this Court can prevent the systematic judicial nullification of federal Indian law currently underway in Oklahoma. The Oklahoma Court of Criminal Appeals, as the state's highest criminal court, has issued a final and binding ruling adopting a theory of concurrent jurisdiction that directly conflicts with federal precedent. The Oklahoma Supreme Court lacks authority to intervene, as it has no appellate jurisdiction over the Court of Criminal Appeals. While it has recognized the continuing force of *McGirt* in civil cases, it cannot override the criminal rulings at issue here.

Nor can political or administrative processes supply a remedy. The same political forces that produced this jurisdictional crisis are unlikely to permit meaningful legislative correction. More fundamentally, the issue presented is not one of policy discretion but of constitutional command. The question of whether a state may prosecute Indians in Indian country without congressional authorization implicates foundational principles of federal supremacy, preemption, and the federal government's exclusive

relationship with tribes. These are issues only the judiciary can resolve.

Permitting the decision below to stand would invite further fragmentation of federal Indian law by state courts acting under color of federal precedent. If a state's highest court can recast limited federal holdings to disregard the constitutional limits on state authority in Indian Country, then the protections established by this Court are vulnerable to misinterpretation by lower courts. Only this Court can restore constitutional order and reaffirm that federal Indian law remains a matter of federal supremacy, not state reinterpretation.

**D. This Case Is the Ideal Vehicle for Resolving the Question Presented**

This case provides the Court with the optimal vehicle to address the fundamental question presented. The petition presents clean, undisputed facts that squarely raise the question without procedural complications or factual ambiguities.

**1. Clean facts present pure question of law**

The jurisdictional issue was outcome-determinative below. Had the court below correctly recognized that Oklahoma lacked authority to prosecute petitioner for conduct occurring within the boundaries of the Muscogee Reservation, the conviction would have been reversed. The federal question thus directly controlled the outcome.

The facts are straightforward and present the archetypal scenario the newly announced "non-member Indian" rule below is intended to govern. Petitioner was cited for speeding while traveling through another tribe's reservation. There is no dispute about petitioner's status, the location within the Muscogee Reservation, or the trial court's

assertion of criminal jurisdiction. The case cleanly presents the controlling legal question: whether a state may exercise criminal jurisdiction over an Indian for conduct in Indian country absent a valid congressional grant of authority, regardless of tribal affiliation. Any ruling from this Court will thus directly resolve the novel legal question the decision below created.

## **2. The federal question was prominently raised**

The federal constitutional question at the heart of this case was not only preserved at every stage but ultimately became the focal point of the litigation. Although the parties herein briefed a different jurisdictional theory which had dominated the case for years, the court below raised the question of concurrent jurisdiction under *Castro-Huerta*, signaling its intent to reach the broader federal issue. The constitutional stakes were emphasized by broad participation, with multiple tribes and the United States all submitting amicus briefs below.

The decision now stands as binding precedent from Oklahoma's highest court with statewide effect on all prosecutions involving Indians in Indian country. The reasoning, firmly grounded in an expansive reading of *Castro-Huerta*, will carry persuasive weight in other jurisdictions. Without immediate intervention, this decision will have widespread impact, upending long-settled principles of federal Indian law.

## **3. This case exemplifies how this issue arises in practice**

This case represents exactly how jurisdictional questions manifest in contemporary practice. A routine traffic stop involving an Indian traveling through another tribe's

reservation presents the representative fact pattern that will recur countless times absent this Court's intervention. The facts are neither exotic nor legally complex, ensuring that any ruling will provide clear guidance for the thousands of similar cases that will inevitably arise.

More broadly, this case reflects the realities of modern Indian country. Unlike in the historical era, tribal lands today often encompass densely populated and urbanized areas, such as Tulsa, where numerous tribal jurisdictions overlap and where Indian persons regularly cross reservation boundaries in the ordinary course of life. This case arose in that modern context which is wholly dissimilar from the more isolated reservation settings of the historical era. The jurisdictional rule adopted below will therefore govern an inestimable number of routine encounters between Indians and state authorities.

The timing of this case serves to further underscore its significance. The case originated one day after the trial court's *Shaffer* order first attempted to restore pre-*McGirt* universal state criminal jurisdiction over all persons, including Indians, revealing how quickly and aggressively state and local authorities moved to circumvent *McGirt*. Over the ensuing four years, this case has captured the evolution of Oklahoma's shifting theories, beginning with the meritless Curtis Act claim to the current assertion of concurrent jurisdiction under *Castro-Huerta*. This procedural history offers the Court a uniquely comprehensive and well-developed record illustrating how state actors have responded to, and attempted to limit, the implications of this Court's precedent.

#### **4. No problems impede review and immediate resolution is critical**

The petition arises from a final judgment of Oklahoma's highest court and falls squarely within this Court's jurisdiction under § 1257(a). The case is free of mootness or standing concerns. The trial court judgment remains stayed pending appeal, petitioner suffered concrete injury through prosecution in a court lacking jurisdiction, and the legal consequences persist.

The urgent need for resolution is pressing and undeniable. The decision below has triggered federal litigation across multiple district courts confronting the same jurisdictional questions, risking conflicting interpretations and undermining uniformity in constitutional matters. Additional Indians face constitutionally infirm state prosecutions daily. The ruling threatens the constitutional relationship between tribes and their citizens by allowing unauthorized state intrusion.

This petition unites clean facts, a dispositive federal question, and compelling need for uniform constitutional resolution. No other case presents the federal question with comparable clarity and complete procedural development. This matter presents the ideal vehicle for addressing one of the most consequential questions in federal Indian law history, and the Court's intervention is urgently needed.

#### **CONCLUSION**

For the foregoing reasons, the Court should grant the petition.



Respectfully submitted,

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