

No. 25-382

In the Supreme Court of the United States

ALICIA STROBLE, PETITIONER

v.

OKLAHOMA TAX COMMISSION

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF OKLAHOMA*

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the State of Oklahoma can tax the income of a member of the Muscogee (Creek) Nation who works on tribal trust land but lives on unrestricted, non-trust, private fee land within the historical Creek territory recognized as a reservation in *McGirt v. Oklahoma*, 591 U.S. 894 (2020).

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OPINIONS BELOW

The opinion of the Oklahoma Supreme Court (Pet. App. 1a-126a) is not yet published but is available at 2025 WL 1805918. The final order of the Oklahoma Tax Commission (Pet. App. 127a-152a) is unreported.

JURISDICTION

The judgment of the Oklahoma Supreme Court was entered on July 1, 2025. The petition for a writ of certiorari was filed on September 29, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

STATEMENT

1. Under the Tenth Amendment to the United States Constitution, each State generally retains “jurisdiction over all of its territory” as “a matter of state sovereignty.” *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 636 (2022). That includes the “well-established” authority to tax “all the income of its residents” and the income of nonresidents who earn income within the State. *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 462-463 & n.11 (1995) (emphasis omitted).

Exercising that authority, the State of Oklahoma has long imposed a non-discriminatory income tax on “the Oklahoma taxable income of every resident or nonresident,” subject to limited exceptions. Okla. Stat. tit. 68, § 2355(A). That tax plays the important role of funding the “general governmental functions of state government.” *Id.* § 2352. And under the Uniformity of Taxes Clause of the Oklahoma Constitution, the tax is designed to be borne proportionately by those who benefit from state services. See Okla. Const. Art. X, § 5(B); see also *Oklahoma Automobile Dealers Association v. State ex rel. Oklahoma Tax Commission*, 401 P.3d 1152, 1160-1161 (Okla. 2017).

Respondent Oklahoma Tax Commission has promulgated a regulation providing a tax exemption for enrolled members of a federally recognized Indian tribe when they live and earn income from sources within “Indian country” under the tribe’s jurisdiction. Okla. Admin. Code § 710:50-15-2(b)(1). The regulation supplies its own definition of “Indian country,” and it specifies that income is not exempt when the tribal member “resides in Oklahoma, but not within ‘Indian [c]ountry,’” regardless of where the income is earned. *Id.* § 710:50-15-2(a)(1), (c)(2).

2. In *McGirt v. Oklahoma*, 591 U.S. 894 (2020), this Court held that the historical territory of the Muscogee (Creek) Nation—one of the Five Tribes of Oklahoma—

constitutes “Indian country” for the purposes of the federal Major Crimes Act. See *id.* at 897-898. That law grants the federal government exclusive authority to prosecute enumerated crimes committed by Indians “within the Indian country.” 18 U.S.C. 1153(a). Under *McGirt*’s interpretation of the phrase “Indian country,” the federal government’s authority over the enumerated crimes extends to the historical territory of the Muscogee (Creek) Nation, which covers a substantial portion of Oklahoma. See 591 U.S. at 898.

In *Castro-Huerta*, this Court reaffirmed that Indian country within Oklahoma nevertheless remains “part of the State.” 597 U.S. at 636. The Court explained that a State may generally exercise jurisdiction in Indian country unless such authority is preempted “(i) by federal law under ordinary principles of federal preemption, or (ii) when the exercise of state jurisdiction would unlawfully infringe on tribal self-government” under the balancing test set forth in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). *Castro-Huerta*, 597 U.S. at 638. Applying that framework, the Court held that, even in the criminal context addressed by *McGirt*, the State of Oklahoma remained free to prosecute crimes committed against Indians in Indian country as long as the defendant is a non-Indian. See *id.* at 656.

3. Petitioner is an enrolled member of the Muscogee (Creek) Nation. During the relevant period, she was employed by the tribe, and her office was located on land held in trust by the federal government for the tribe’s benefit. She lived on unrestricted, non-trust, private fee land, which was acquired from a non-tribal grantor but which fell within the boundaries of the land originally conveyed to the Tribe by the 1886 treaty between the federal government and the Creek Nation (and thus classified as Indian country by this Court’s decision in *McGirt*). Pet.

App. 3a, 132a, 137a-138a, 141a; see Treaty with the Creek Nation, 14 Stat. 786 (June 14, 1866).

The present dispute arose when petitioner claimed an exemption from state income tax for tax years 2017, 2018, and 2019. She asserted that she could meet the requirements for an exemption under Section 710:50-15-2(b)(1) of the Oklahoma Administrative Code because she was an enrolled tribal member who lived and worked in Indian country. The Tax Commission's Audit Services Division denied the exemption, and petitioner filed a protest. An administrative law judge held a hearing on the protest and recommended that it be granted. Pet. App. 3a-4a, 129a-131a, 133a-134a.

The Commission vacated the administrative law judge's recommendation. Pet. App. 127a-150a. The Commission acknowledged that petitioner met two of the three regulatory requirements for a tax exemption, because she was an enrolled member of the Creek Nation who earned income from sources within Indian country. *Id.* at 139a. But petitioner failed to satisfy the third requirement because she did not live within "Indian country"—defined by the regulation as "formal and informal reservations, dependent Indian communities, and Indian allotments"—during the relevant tax years. *Id.* at 140a (citation omitted). Petitioner's residence, the Commission explained, did not qualify as Indian country under the Commission's regulatory definition because it was located on unrestricted, non-trust, private fee land. *Id.* at 141a. The Commission declined to extend *McGirt*'s definition of Indian country to the taxation context; instead, it reasoned, this Court's more recent decision in *Castro-Huerta* confirmed that Oklahoma was "entitled to exercise authority over the whole of its territory" unless "otherwise preempted." *Id.* at 142a-143a, 145a-146a.

4. The Oklahoma Supreme Court affirmed by a 6-3 vote. Pet. App. 1a-10a.

In a per curiam opinion joined by six justices, the Oklahoma Supreme Court agreed with the Commission that petitioner did not qualify for the tax exemption under state law because she lived on unrestricted, non-trust, private fee land. Pet. App. 8a. The court then declined petitioner's request to extend *McGirt* to the civil and regulatory context, reasoning that this Court had "expressly limited *McGirt* to the narrow issue of criminal jurisdiction under the Major Crimes Act." *Id.* at 9a.

Chief Justice Rowe, Vice-Chief Justice Kuehn, and Justices Kane, Winchester, and Darby wrote separate concurring opinions. Justice Kane, joined by Justice Jett, reasoned that the court was "bound to analyze Oklahoma's jurisdiction" under the preemption framework set forth in *Castro-Huerta*. Pet. App. 12a. He concluded, first, that Oklahoma's authority to tax had "not been preempted under ordinary principles of federal preemption," and second, that it did not "unlawfully infringe" on the Creek Nation's "right to tribal self-government" under the *Bracker* balancing test. *Id.* at 22a, 33a. In the alternative, he concluded that petitioner's claims were barred by the equitable doctrines of laches, acquiescence, and impossibility. *Id.* at 40a-43a.

Justice Winchester elaborated on the practical consequences of extending *McGirt* to the civil and regulatory context. Pet. App. 65a-70a. He explained that doing so "would allow those members of the [Creek] Nation (and others similarly situated) who live on unrestricted fee land to be exempt from taxation," which would "encumber[] the State and local governments" and "hav[e] a detrimental effect on landowners neighboring the tribal property." *Id.* at 68a-69a (citation and footnote omitted). Among other things, such a ruling would "undermine the

State’s ability to fund schools, roads, and other programs,” which the State of Oklahoma had a responsibility to provide to “*all* residents in eastern Oklahoma—tribal and non-tribal members” alike. *Id.* at 66a, 68a.

Among the other justices in the majority, Chief Justice Rowe concluded that petitioner qualified for the tax exemption under state law and that petitioner’s claims were not barred by equitable principles, but he voted to affirm on the ground that *McGirt* did not apply retroactively. Pet. App. 53a-59a. Vice-Chief Justice Kuehn explained in her opinion that *McGirt* was concerned with the scope of criminal jurisdiction in Indian country and did not extend to the civil tax context. *Id.* at 60a-64a. And Justice Darby wrote separately to explain why he believed that the remaining land of the Creek Nation was not Indian country for tax purposes. *Id.* at 71a-73a.

Justice Combs, joined by Justices Edmondson and Gurich, dissented. Pet. App. 74a-126a. Applying the “broad definition” of Indian country from 18 U.S.C. 1151, he concluded that petitioner was entitled to a tax exemption because federal law preempted the State from taxing tribal members who lived and worked in Indian country absent express congressional authorization. *Id.* at 85a-97a. In the alternative, Justice Combs reasoned that petitioner was entitled to the tax exemption under state law because the Commission “intended to adopt the definition of ‘Indian country’ found in both [precedent from the United States Supreme Court] and the Major Crimes Act.” *Id.* at 104a. Finally, Justice Combs concluded that the other Justices’ reliance on equitable doctrines was misplaced, because the Creek Nation was not a party to the case and the case in his view did not involve the types of “disruptive remedies” discussed in the cases adopting those doctrines. *Id.* at 117a-118a.

ARGUMENT

The question whether Oklahoma has the authority to tax the income of a member of the Muscogee (Creek) Nation who works on tribal trust land but lives on unrestricted, non-trust, private fee land within the boundaries of the historical Creek territory is an important one, but it does not warrant this Court’s review. The Oklahoma Supreme Court correctly answered that question in the affirmative; the decision below does not implicate any conflict in lower-court authority; and there is otherwise no need for this Court’s intervention. The petition for a writ of certiorari should be denied.

1. The Oklahoma Supreme Court properly rejected petitioner’s claims on the merits. Federal law does not preempt Oklahoma’s authority to tax the income of a member of the Creek Nation who lives on unrestricted, non-trust, private fee land, and petitioner’s claims are also barred by equitable principles that this Court has applied to newfound assertions of tribal authority. Nothing in this Court’s decision in *McGirt v. Oklahoma*, 591 U.S. 894 (2020), compels a different result.

a. Under this Court’s precedents, a State may exercise jurisdiction over its entire territory unless such jurisdiction is preempted by federal law or unlawfully interferes with tribal self-government. See *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 638 (2022). Petitioner does not identify any federal statute or treaty that preempts the State’s exercise of its taxing authority here, nor does she show that it would impermissibly infringe on tribal self-government. Instead, petitioner argues for a “categorical” rule (Pet. 13) under which Oklahoma may not exercise its taxing authority unless expressly authorized by federal law. But such a rule would conflict with this Court’s holding in *Castro-Huerta*, as well as its precedents addressing the State’s authority with respect to the Five Tribes of

Oklahoma, and it is not supported by any of petitioner's authorities.

i. In *Castro-Huerta*, this Court reaffirmed that “the Constitution allows a State to exercise jurisdiction in Indian country” because “Indian country is part of the State.” 597 U.S. at 636. As “a matter of state sovereignty,” a State has “jurisdiction over all of its territory” unless that jurisdiction is preempted. *Id.* at 636, 638. Specifically, the Court explained that preemption occurs only in two circumstances: (1) when it arises “by federal law under ordinary principles of federal preemption” or (2) “when the exercise of state jurisdiction would unlawfully infringe on tribal self-government” under the balancing test set forth in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). *Castro-Huerta*, 597 U.S. at 638.

Over eighty years ago, this Court applied similar preemption principles to uphold Oklahoma's taxation of members of the Five Tribes. In *Oklahoma Tax Commission v. United States*, 319 U.S. 598 (1943), the Court considered whether Oklahoma could tax cash, securities, personal property, and certain lands held by the estates of two enrolled members of the Seminole Nation and one enrolled member of the Creek Nation. See *id.* at 600 (opinion of Black, J.); *id.* at 614 n.1 (Murphy, J., dissenting in part). Justice Black's opinion surveyed the Court's previous decisions “dealing generally with the problem of Indian tax exemptions,” but he found that the “underlying principles on which these decisions [were] based do not fit the situation of the Oklahoma Indians.” *Id.* at 602-603. Although the Five Tribes had “remnants of the form of tribal sovereignty,” their members had “no effective tribal autonomy.” *Id.* at 603. In addition, they held their lands “in fee, not in trust,” and they were “actually citizens of

the State with little to distinguish them from all other citizens.” *Ibid.* For example, Oklahoma “supplie[d] for [the tribal members] and their children schools, roads, courts, police protection and all the other benefits of an ordered society.” *Id.* at 609.

Accordingly, the Court concluded that, if Congress had intended to prevent Oklahoma from “levying a general non-discriminatory estate tax applying alike to all its citizens,” it needed to say so “in plain words”; preemption could not “rest on dubious inferences.” *Oklahoma Tax Commission v. United States*, 319 U.S. at 607 (opinion of Black, J.). In so doing, the Court rejected the notion that the State of Oklahoma was required to “make an affirmative showing of a grant by Congress of the withdrawal of the immunity of Indian property from state taxation” in order to impose the tax in question. *Id.* at 613 (Murphy, J., dissenting in part). The Court held that the cash, securities, personal property, and certain lands in the estates were “not exempted by any existing legislation from state estate taxation,” while the lands exempt from direct taxation were also exempted from estate taxation “by virtue of [that] explicit congressional command.” *Id.* at 610-611; see *id.* at 612 (Douglas, J., concurring in the result).

Petitioner does not identify any such congressional command here. Indeed, the only relevant statute she cites (*e.g.*, Pet. 16) is 18 U.S.C. 1151, which simply defines “Indian country” for purposes of federal criminal law and says nothing about a State’s taxing jurisdiction. See *Castro-Huerta*, 597 U.S. at 636. Nor has petitioner ever identified, either here or in the proceedings below, the language of any treaty between the United States and the Creek Nation that would preclude Oklahoma’s imposition of income tax on her. Under “ordinary principles of federal preemption,” therefore, the State’s authority to tax

petitioner's income remains intact. *Castro-Huerta*, 597 U.S. at 638.

To date, petitioner has not argued that Oklahoma's income tax is preempted under the *Bracker* balancing test. Regardless, any such argument would fail, given the State's "strong sovereign interest" in collecting tax revenue from those who reside on private fee lands over which the State has long exercised sovereign control. *Castro-Huerta*, 597 U.S. at 651. Oklahoma uses the proceeds of income taxes to fund "schools, roads, and other programs" for "tribal and non-tribal members" alike. Pet. App. 66a, 68a (Winchester, J., concurring). And the State has an overwhelming interest in providing those "vital functions of modern government" to its citizens. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, 535 (2012) (opinion of Roberts, C.J.); see *Mayor of New York v. Miln*, 36 U.S. (11 Pet.) 102, 139 (1837).

What is more, any infringement on tribal sovereignty would not outweigh the State's interests, and the State's imposition of a non-discriminatory income tax would not harm any federal interests by "supplant[ing] federal authority." *Castro-Huerta*, 597 U.S. at 651; see Pet. App. 22a-33a (Kane, J., concurring). In short, federal law does not preempt Oklahoma's authority to tax the income of a member of the Creek Nation who lives on unrestricted, non-trust, private fee land.

ii. Rather than showing that any federal statute or treaty preempts Oklahoma's taxation authority, petitioner argues that the State may not tax her income unless Congress expressly *authorizes* such a tax. See Pet. 12-18. But that is exactly backwards, at least as applied to the Five Tribes of Oklahoma (if not more generally). Petitioner's proposed rule finds no support in any of her cited authorities.

Petitioner traces (Pet. 13-14) her proposed rule to two of this Court’s decisions from the mid-nineteenth century. See *In re New York Indians*, 72 U.S. (5 Wall.) 761 (1867); *In re Kansas Indians*, 72 U.S. (5 Wall.) 737 (1867). But the Court considered both those decisions in *Oklahoma Tax Commission v. United States*, and Justice Black explained that their “underlying principles” “do not fit the situation of the Oklahoma Indians.” 319 U.S. at 602-603.

The same is true of the “first modern decision” invoked by petitioner (Pet. 14): *McClanahan v. State Tax Commission*, 411 U.S. 164 (1973). There, the Court held that the State of Arizona could not tax the income of a member of the Navajo Nation who lived and worked on the reservation, because such a tax “interfered with matters which the relevant treaty and statutes [left] to the exclusive province of the Federal Government and the Indians themselves.” *Id.* at 165-166. But in reaching that conclusion under the treaties and statutes applicable to the Navajo Nation, the Court twice invoked the decision in *Oklahoma Tax Commission v. United States* in order to clarify what the case before it “d[id] not involve.” *McClanahan*, 411 U.S. at 167.

As the Court explained, it was not “dealing with Indians who have left or never inhabited reservations set aside for their exclusive use or who do not possess the usual accoutrements of tribal self-government.” *McClanahan*, 411 U.S. 167-168 (citing, *inter alia*, *Oklahoma Tax Commission v. United States*, *supra*). And the Court emphasized that it had not “rigidly applied” doctrines related to tribal sovereignty “in cases where Indians have left the reservation and become assimilated into the general community.” *Id.* at 171 (again citing *Oklahoma Tax Commission v. United States*, *supra*); see *United States v. Mason*, 412 U.S. 391, 396 n.7 (1973). The Court thus never addressed whether Arizona could have taxed the income of

a tribal member who lived on private fee land, presumably because the Navajo Nation owned the vast majority of land at issue. See *Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 657 n.11 (2001).

Nor do any of petitioner’s other cases (Pet. 13-18) consider Oklahoma’s authority to tax the income of tribal members who live on unrestricted, non-trust, private fee land. Petitioner cites three decisions from this Court involving Oklahoma’s taxing authority. But in two, the Court considered the State’s authority to tax where the relevant land was held in trust by the federal government (and for other tribes with distinct histories). See *Oklahoma Tax Commission v. Sac & Fox Nation*, 508 U.S. 114, 117-122, 124-125 (1993); *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505, 507, 511 (1991). And in the third, the Court considered Oklahoma’s authority to tax the activities of a tribe itself that occurred on trust land. See *Oklahoma Tax Commission v. Chickasaw Nation*, 515 U.S. 450, 453, 461 (1995).

b. As several members of the Oklahoma Supreme Court recognized in their opinions below, petitioner’s claimed tax immunity is also barred by the equitable principles articulated in *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005). See Pet. App. 33a-43a (Kane, J., concurring); *id.* at 62a (Kuehn, V.C.J., concurring specially); *id.* at 68a-69a & n.6 (Winchester, J., concurring). As this Court explained in *Sherrill*, “[w]hen a party belatedly asserts a right to present and future sovereign control over territory, longstanding observances and settled expectations are prime considerations.” 544 U.S. at 218 (footnote omitted). The Court emphasized the length of time during which the State’s governance of the land in question “remained undisturbed”; the “justifiable expectations” of the people living in the area; and “the present-

day and future disruption” that the requested relief “would engender.” *Id.* at 215 & n.9.

Each of those considerations weighs heavily against petitioner’s claims here. Before *McGirt*, the settled understanding for generations was that Oklahoma had authority to tax and otherwise regulate tribal members on unrestricted, non-trust, private fee land. See *Castro-Huerta*, 597 U.S. at 647; Pet. App. 38a (Kane, J., concurring). That longstanding exercise of jurisdiction created enormous reliance interests, given that the State’s exercise of civil jurisdiction touches on almost every aspect of its citizens’ lives. See *McGirt*, 591 U.S. at 938 (Roberts, C.J., dissenting). Tribal members in eastern Oklahoma have long paid taxes to the State, received services from the State, and otherwise relied on the State’s regulatory control and governance. See, e.g., *Oklahoma Tax Commission v. United States*, 319 U.S. at 608-609. The ouster of state authority over the lands in question would thus have serious “disruptive practical consequences” for the State of Oklahoma and its citizens. *Sherrill*, 544 U.S. at 219. At a minimum, a state tax exemption for petitioner and similarly situated tribal members would potentially require Oklahoma to pay over \$200 million in tax refunds, and it would deprive the State of tens of millions of dollars in future tax revenue annually. See Okla. S. Ct. R.O.A. 188. Petitioner may not now attempt to “rekindl[e] embers of sovereignty that long ago grew cold.” *Sherrill*, 544 U.S. at 214.

c. Petitioner repeatedly argues (e.g., Pet. 19-20) that the decision below conflicts with this Court’s decision in *McGirt*. But there, the Court took pains to recognize that the “only question” before the Court concerned “the statutory definition of ‘Indian country’ as it applies in federal criminal law” under the Major Crimes Act. *McGirt*, 591

U.S. at 935. The Court also stressed that many legal doctrines—such as “procedural bars, res judicata, statutes of repose, and laches”—exist to “protect those who have reasonably labored under a mistaken understanding of the law,” and the Court left open their applicability in a future case. *Id.* at 936. Accordingly, neither the decision below nor the reasoning in the separate concurring opinions conflicts with *McGirt*.*

Should the Court grant review, it need not resolve the exact scope of *McGirt* in order to affirm the decision below. But to the extent any ambiguity remains about the scope of *McGirt*, the Court may wish to clarify that the decision is limited to “the narrow issues of criminal jurisdiction under the Major Crimes Act”—as the court below correctly recognized. Pet. App. 9a. In the alternative, although it is not necessary for the Court to do so in order to affirm the decision below, the Court may wish to revisit *McGirt* itself, both because it was incorrectly decided and because the predicted problems with the decision have been borne out in practice. See *McGirt*, 591 U.S. at 938-973 (Roberts, C.J., dissenting).

2. Petitioner also errs by arguing (Pet. 25-28) that the decision below creates a conflict in lower-court authority. As petitioner candidly acknowledges, the other decisions she cites have reached “different conclusions depending on their differing facts.” Pet. 26. None of those decisions

* Petitioner asserts that Oklahoma itself has “previously recognized” that *McGirt* limits the scope of the State’s taxing authority. Pet. 17-18. But none of the statements cited by petitioner supports that assertion, either because the statement did not arise in the tax context or because it did not represent the formal position of any state entity. See Okla. S. Ct. R.O.A. 450. If anything, petitioner’s claims here show that Oklahoma was correct to worry in *McGirt* that an adverse ruling could lead to challenges that “would decimate state and local budgets.” Resp. Br. at 44, *McGirt*, *supra* (No. 18-9526).

considered the question presented here: namely, whether the State of Oklahoma may tax the income of a member of the Creek tribe who lives on unrestricted, non-trust private fee land. And almost all of her cases predate this Court’s decision in *Castro-Huerta*, which clarified that ordinary preemption principles apply to the exercise of state authority in Indian country.

Indeed, petitioner cites (Pet. 25-26) only a single lower-court decision that postdates *Castro-Huerta*. See *Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin v. Evers*, 46 F.4th 552 (7th Cir. 2022). But in that “peculiar case,” the State conceded that the relevant treaty “promised” the tribes “immunity from state taxes,” and it argued only that the tribal members had surrendered the tax immunity by alienating the land in question to a non-Indian owner. *Id.* at 563-564, 568-569. In this case, by contrast, petitioner has not claimed immunity from Oklahoma’s income tax based on the language of any treaty or statute; instead, she relies solely on a purported categorical rule against state taxation in Indian country, and she fails to explain how such a rule can be reconciled with this Court’s reasoning in *Castro-Huerta*.

Petitioner also cites (Pet. 26-27) two lower-court decisions addressing Oklahoma’s taxation authority in Indian country. See *Muscogee (Creek) Nation v. Pruitt*, 669 F.3d 1159 (10th Cir. 2012); *Indian Country, U.S.A., Inc. v. Oklahoma ex rel. Oklahoma Tax Commission*, 829 F.2d 967 (10th Cir. 1987), cert. denied, 485 U.S. 902 (1988). But in one of those cases, the court upheld Oklahoma’s authority to tax the purchase of cigarettes and other tobacco products by non-Indians in Indian country, as well as related state laws that regulated the manufacturers of tobacco products. See *Pruitt*, 669 F.3d at 1174-1183. And in the other, the court considered Oklahoma’s authority to tax

activities on lands still held by the Creek Nation; it expressly declined to address the status of the unrestricted, non-trust, private fee lands at issue here. See *Indian Country, U.S.A.*, 829 F.2d 975-976 & nn.3, 4, 980 n.5; see also *Murphy v. Royal*, 875 F.3d 896, 937 (10th Cir. 2017), *aff'd*, 591 U.S. 977 (2020). As petitioner all but concedes (Pet. 25-26), there is no conflict in lower-court authority on the question presented here.

3. The Commission does not dispute that the question presented is very important for the State of Oklahoma. But contrary to petitioner’s suggestion (Pet. 28-31), that is not a sufficient reason to grant review.

Put simply, there is no need for the Court’s intervention here. As already explained, see pp. 7-14, the Oklahoma Supreme Court correctly held that Oklahoma retains the power to tax the income of tribal members who live on unrestricted, non-trust, private fee land. That decision is not binding on any other court outside Oklahoma. And it does not create any conflict with authority from other jurisdictions for the simple reason that tribal territory in Oklahoma is unique—as this Court’s precedents have long recognized. See pp. 14-16, *supra*.

By correctly holding that Oklahoma has the authority to tax the income of petitioner and similarly situated tribal members, the decision below has provided the State with a reasonable path forward in the wake of this Court’s decision in *McGirt*. Because there is “little to distinguish” tribal members such as petitioner “from all other citizens” in Oklahoma, *Oklahoma Tax Commission v. United States*, 319 U.S. at 602-603, exempting tribal members from state income tax would have a severely destabilizing effect. It would deprive the State of much needed revenue to provide the myriad services that Oklahoma provides to all of its citizens, regardless of their tribal membership.

That would put the State in the untenable position of either requiring nontribal citizens to subsidize those services or declining to provide those services to tribal citizens. Neither option is palatable.

Under the current state of the law, the Creek Nation and other similarly situated tribes have retained their reservations and the trappings of sovereignty that accompany that status. At the same time, the State retains authority to treat tribal members and other citizens equally for purposes of the law of taxation and other civil regulation. A grant of certiorari in this case would unsettle that balance and inject uncertainty into the governing legal regime in Oklahoma. There is no good justification for that outcome.

Petitioner attempts to minimize the potential loss of tax revenue at issue, calling the hundreds of millions of dollars at stake “a drop in the bucket for Oklahoma.” Pet. 29. But as one of the concurring opinions below explained, exempting petitioner and similarly situated tribal members from income tax “would greatly impact the essential services” provided by the State, especially in the area of public education. Pet. App. 67a-68a (Winchester, J., concurring).

Petitioner is also wrong that this case will necessarily have consequences “beyond Oklahoma.” Pet. 28-29. The question presented is specific to Oklahoma, which has long had a unique relationship with the tribes that reside within its borders. See pp. 10-12, *supra*. And as to Oklahoma, the decision below does not amount to the “nullification” of *McGirt*, as petitioner contends. Pet. 31. As already explained, see pp. 13-14, the court below correctly applied this Court’s precedents when it upheld the State’s sovereign authority to tax the income of members of the Creek Nation who live on unrestricted, non-trust, private

fee land within the boundaries of the reservation recognized in *McGirt*.

In sum, although the question presented in this case is undeniably important for the State of Oklahoma, there is no need for this Court to grant certiorari. The court below correctly resolved the question presented; that decision does not implicate any conflict in lower-court authority; and further review will create needless and harmful uncertainty for the State and its residents. The Court should decline petitioner's invitation to disturb the decision below.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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