

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

CHANDLER KYLE NED,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), should be overruled.

LIST OF PROCEEDINGS

Oklahoma Court of Criminal Appeals

No. C-2020-789

Chandler Kyle Ned, Appellant v.
The State of Oklahoma, Appellee

Date of Final Opinion: August 5, 2021



Oklahoma District Court (Johnston County)

Nos. CF-2020-23, CM-2020-45

The State of Oklahoma, Plaintiff v.
Chandler Kyle Ned, Defendant

Date of Judgment and Sentence: April 30, 2020

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PROCEEDINGS	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION.....	2
STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION	6
CONCLUSION.....	8

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

Opinion of the Court of Criminal Appeals,
State of Oklahoma (August 5, 2021) 1a

District Court of Johnston County, State of
Oklahoma, Order Accepting Stipulations
(June 11, 2021)..... 10a

Order of the Court of Criminal Appeals, State of
Oklahoma, Remanding for Evidentiary Hearing
(April 23, 2021) 12a

Supplemental Brief of Respondent State of
Oklahoma After Remand (July 2, 2021) 17a

State of Oklahoma Brief Preserving
Challenge to McGirt (June 7, 2021) 28a

TABLE OF AUTHORITIES

Page

CASES

<i>McGirt v. Oklahoma</i> , 140 S.Ct. 2452 (2020)	passim
<i>Oklahoma v. Castro-Huerta</i> , No. 21-429, (Okla. Crim. App. Sept. 21, 2021).....	3, 6, 7, 8

STATUTES

18 U.S.C. § 1151.....	2
18 U.S.C. § 1153(a)	2
28 U.S.C. § 1257(a)	2

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated August 5, 2021, is included in the Appendix at App.1a-9a. The order of the Oklahoma Court of Criminal Appeals, dated April 23, 2021, remanding the case for an evidentiary hearing is included below at App.12a-16a. The Order of the District Court in and for Johnston County, State of Oklahoma, dated June 11, 2021, is included below at App.10a-11a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on August 5, 2021. App.1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).



STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1151 (in relevant part) Indian country defined

[T]he term ‘Indian country’, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

18 U.S.C. § 1153(a) Offenses committed within Indian country

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, a felony assault under section 113, an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and

penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.



STATEMENT OF THE CASE

Thousands of state criminal prosecutions have been called into question by this Court's decision in *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020). Like the pending petition in *Oklahoma v. Castro-Huerta*, No. 21-429, this case presents the question whether *McGirt* should be overruled. For the same reasons given in the *Castro-Huerta* petition, review is warranted to examine that question. The petition for a writ of certiorari in this case should be held pending consideration of the *Castro-Huerta* petition or, in the alternative, granted.

1. In the state district court, respondent Chandler Kyle Ned entered guilty pleas to second-degree burglary and drug possession. O.R. I 1-4, 1-31; O.R. II 1-2, 21-32. He admitted that, on February 22, 2020, he broke into a home in Mannsville, Oklahoma, with the intent to assault and batter its occupant and that he possessed methamphetamine and marijuana. O.R. I 24. As part of his plea agreement, respondent was required to participate in drug court. O.R. I 19, 23, 27; O.R. II 20, 24, 28. Within weeks, however, respondent violated multiple rules of drug court. O.R. I 36-37.

The State moved to terminate respondent from drug court, and he stipulated to the State's termination motion. O.R. I 56-57; O.R. II 51-52. However, prior to sentencing upon respondent's termination, he moved to withdraw his guilty pleas. O.R. I 58, 97. The district

court denied the motion and sentenced respondent to a total of five years imprisonment. O.R. I 75; O.R. II 53. Respondent appealed, claiming the State lacked prosecutorial authority in his case pursuant to *McGirt*.

2. After this Court issued its decision in *McGirt*, the Court of Criminal Appeals remanded the case to the district court for an evidentiary hearing. On remand, the State argued that *McGirt* was wrongly decided and that the Indian country claim was without merit as a result. App.28a-32a. But, while expressly “preserv[ing] a later challenge to *McGirt*[],” the State stipulated to the facts underlying respondent’s Indian country claim in the interest of judicial economy. App.30a. The district court accepted the parties’ stipulations and found that respondent is a member of the federally recognized Choctaw Nation with 33/128 Indian blood quantum and the crimes occurred within the historical boundaries of the Chickasaw Nation. App.10a-11a.

After the district court issued its order, the case returned to the Oklahoma Court of Criminal Appeals. There again, the State argued *McGirt* was wrongly decided but recognized that the state courts were bound by it. App.17a-27a,. The Court of Criminal Appeals reversed the convictions, holding that “*McGirt* governs this case and requires us to find the District Court of Johnston County did not have jurisdiction to prosecute Ned.” App.3a. The Court of Criminal Appeals acknowledged that the State had preserved its position, both in the district court and on appeal, that *McGirt* was “in error and that the crimes in this case were not committed in Indian Country.” App.3a, n.2.

Two judges wrote separate opinions. Judge Hudson specially concurred based on *stare decisis* but reiterated

his “previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress.” App.6a.

Judge Lumpkin concurred in the result. App.7a-9a. He expressed his view that the Court’s opinion in *McGirt* “contravened * * * the history leading to the disestablishment of the Indian reservations in Oklahoma,” but concluded that he was bound to follow it. App.7a-9a.



REASONS FOR GRANTING THE PETITION

In the decision below, the Oklahoma Court of Criminal Appeals applied *McGirt* to free yet another criminal from state custody, exacerbating the crisis in the criminal-justice system in Oklahoma. As the State of Oklahoma explains in its petition in *Castro-Huerta*, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. *See* Pet. at 17-29, *Oklahoma v. Castro-Huerta*, No. 21-429. This case presents yet another opportunity to end the damage caused by *McGirt*. If the petition in *Castro-Huerta* is granted, this petition should be held pending a decision in *Castro-Huerta* and then disposed of as is appropriate, or this petition should be granted.

As explained more fully in *Castro-Huerta*, *McGirt* was wrongly decided, and the Court's review is urgently needed because no recent decision has had a more immediate and disruptive effect on life in an American State. *McGirt* contravened longstanding precedent on the disestablishment of Indian reservations. 140 S.Ct. at 2485 (Roberts, C.J., dissenting). It did so by wrongly reasoning that historical materials showing the original public meaning of statutes may be considered in the disestablishment inquiry "only" to "clear up" statutory ambiguity. *See id.* at 2467-2468, 2469-2470 (majority opinion). But consideration of history is necessary precisely because it is unclear whether Congress's alienation of Indian lands at the turn of the century changed the Indian country status of the land. *See id.* at 2488 (Roberts, C.J., dissenting). Under the correct framework prescribed by this Court's

precedent, it is clear that Congress disestablished the Creek territory in Oklahoma, as well as the territories of the four other Oklahoma tribes. And with that conclusion, it is clear the decision below is incorrect and warrants reversal.

Overruling *McGirt* and restoring the state jurisdiction it stripped is important not only for this case and the victim of the crime at issue. As the Chief Justice correctly predicted, the “burdens” of the *McGirt* decision on the State of Oklahoma have been “extraordinary.” 140 S.Ct. at 2500. The challenges from that seismic shift in jurisdiction have rippled through every aspect of life in Oklahoma. Most immediately, *McGirt* has jeopardized the State’s jurisdiction over thousands of criminal cases—this case being just one of them.

The question presented in this case is materially identical to the second question presented in *Castro-Huerta*. For the compelling reasons explained in the petition in *Castro-Huerta*, review on this question is warranted. Accordingly, the Court should either hold the petition pending the resolution of the second question presented in *Castro-Huerta* or grant review in this case.



CONCLUSION

The petition for a writ of certiorari in *Castro-Huerta* should be granted, and the petition in this case should be held pending a decision there and then disposed of as is appropriate. In the alternative, this petition should be granted.

Respectfully submitted,

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OCTOBER 29, 2021