

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

SAMANTHA ANN PERALES,

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. F-2018-383

Samantha Ann Perales, Appellant v.

The State of Oklahoma, Appellee

Date of Final Opinion: August 12, 2021



Oklahoma District Court (Delaware County)

No. CF-2015-355

The State of Oklahoma, Plaintiff v.

Samantha Ann Perales, Defendant

Date of Judgment and Sentence: April 6, 2018

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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated August 12, 2021, is included in the Appendix at App.1a-21a. The order of the Oklahoma Court of Criminal Appeals, dated August 24, 2020, remanding the case for an evidentiary hearing is included below at App.24a-28a. The Findings and Facts and Conclusion of Law of the District Court in and for Delaware County, State of Oklahoma, dated November 3, 2020, is included below at App.22a-23a. The order of the Oklahoma Court of Criminal Appeals, dated September 10, 2021, denying the State of Oklahoma's motion to stay the mandate pending certiorari review,

is included below at App.29a-31a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on August 12, 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. § 1152 (in relevant part) Law governing (Indian country)

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.

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 in *Castro-Huerta* should be granted, and this petition should be held pending a decision there. In the alternative, the petition in this case should be granted.

1. On the afternoon of April 12, 2015, thirty-six-year-old Amberly Bradley was driving along an Oklahoma road with seven passengers, including three small children. Tr. I 122-23; Tr. II 85-86, 127, 159-60.* In a matter of seconds, their trip reached a devastating conclusion when respondent Samantha Ann Perales, driving under the influence of methamphetamine, crossed center-line and smashed into their vehicle head-on at fifty-five miles per hour. Tr. I 127, 170-71; Tr. II 28-29, 43, 87, 109, 111. Amberly was dead within moments—she used her last breaths to look back at the children as they, crying hysterically, were pulled from the backseat by a Good Samaritan who witnessed the accident. Tr. I 128-29; Tr. II 129. Multiple of Amberly's passengers, including a four-year-old, were critically injured and transported to the hospital by

* All fact citations are to the transcript of respondent's trial (Tr.), which is available below. See Sup. Ct. R. 12.7.

helicopter or ambulance. Tr. I 159-60; Tr. II 85-86, 97. Meanwhile, respondent survived the accident, as did a syringe full of methamphetamine in her center console. Tr. I 161, 170-71; Tr. II 28-29. At the time she killed Amberly, respondent was driving without a valid driver's license. Tr. II 86-87.

A jury convicted respondent of first-degree manslaughter, possession of methamphetamine, unlawful possession of drug paraphernalia, and driving without a valid driver's license. Respondent was sentenced to life imprisonment, ten years imprisonment, one year imprisonment, and thirty days in jail, respectively.

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. App.24a. The district court accepted the parties' stipulations and found that respondent is a member of the federally recognized Osage Nation with 1/8 Indian blood quantum and the crimes occurred within the boundaries of the Cherokee Nation reservation. App.23a.

The Court of Criminal Appeals reversed the convictions based on earlier cases in which it determined it was bound by *McGirt* to conclude that the Cherokee Nation has a reservation that has never been disestablished. App.6a (citing *Spears v. State*, 485 P.3d 873, 877 (Okla. Crim. App. 2021); *Hogner v. State*, 2021 OK CR 4, ¶ 18, ___ P.3d ___). The Court of Criminal Appeals acknowledged the state prosecutor's statements, from the evidentiary hearing record, that "years of jurisprudence had been undone [by *McGirt*]," "the *McGirt* decision does not serve justice," and "Perales [will] potentially escape[] justice" because the federal statute of limitations for manslaughter lapsed in April

2020, prior to this Court’s decision in *McGirt*.¹ App.5a; *see also* 18 U.S.C. § 3282.

Three judges wrote separate opinions. Judge Hudson concurred in the result 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.17a-18a.

Judge Lumpkin also concurred in the result. App. 19a-21a. 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.19a.

Finally, Judge Rowland dissented. App.9a-16a. He concluded that “[t]he Major Crimes Act (MCA) . . . does not preempt the State of Oklahoma’s criminal jurisdiction when there is no prosecutable federal crime due to the expiration of the federal statute of limitations.” App.9a. Among other reasons for dissenting, Judge Rowland concluded that the majority’s application of *McGirt* “[e]ft violent crime victims in Indian Country without recourse to justice” and did so despite a lack of “discernable advancement or protection of tribal sovereignty.” App.13a.

¹ To the State’s knowledge, the federal government has not attempted prosecution of respondent. Moreover, even assuming she is prosecuted by the Cherokee Nation, the tribe cannot impose a sentence anywhere remotely close to the life sentence she received in state court. *See* 25 U.S.C. § 1302(a)(7)(B)-(D).



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. In the alternative, 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 victims of the terrible crimes 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.



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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NOVEMBER 5, 2021