

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

TED ROOSEVELT YARGEE,

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-2019-392

Ted Roosevelt Yargee, Appellant v.

The State of Oklahoma, Appellee

Date of Final Opinion: June 10, 2021



Oklahoma District Court (Tulsa County)

No. CF-2018-4926

The State of Oklahoma, Plaintiff v.

Ted Roosevelt Yargee, Defendant

Date of Judgment and Sentence: May 17, 2019

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 (June 10, 2021)..... 1a

District Court of Tulsa County, State of
Oklahoma, Findings of Fact and Conclusions of
Law (March 12, 2021)..... 11a

 Agreed Stipulation
 (February 19, 2021)..... 16a

Court of Criminal Appeals, State of Oklahoma,
Order Remanding for Evidentiary Hearing
(January 22, 2021)..... 20a

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. § 1152.....	2
18 U.S.C. § 1153(a)	3
28 U.S.C. § 1257(a)	2

JUDICIAL RULES

Sup. Ct. R. 12.7	4
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OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated June 10, 2021, is included in the Appendix at App.1a-10a. The order of the Oklahoma Court of Criminal Appeals, dated January 22, 2021, remanding the case for an evidentiary hearing is included below at App.20a-24a. The Findings and Facts and Conclusion of Law of the District Court in and for Tulsa County, State of Oklahoma, dated March 11, 2021, is included below at App.11a-19a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on June 10, 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 October 20, 2018, respondent Ted Roosevelt Yargee, having decided his girlfriend, Mary Leroy, had “disrespected” him, unleashed a terrifying attack

against her on a Tulsa street. Tr. II 127, 135-36, 154-55, 161.* As Mary was out running errands in her car, respondent approached her in his own vehicle and rammed her car multiple times. Tr. II 135-38, 152-53, 155-56, 165-66. At one point Mary pulled into a gas station, but respondent followed her and parked his car so close to Mary's that she could not open her door. Tr. II 135-36. Mary drove away and dialed 911, but respondent continued to pursue and ram her. Tr. II 135-36. In the 911 recording, Mary told the operator multiple times, "He's gonna kill me," while respondent screamed, "I'll kill you, bitch!" State's Exhibit 1. The attack was ended only when Tulsa police officers pulled respondent over. Tr. II 155-56, 177.

This October 2018 incident was only the latest in a long history of lawlessness by respondent. In all, respondent had seven prior felony convictions. O.R. 10-11. As to Mary in particular, in April of 2018, respondent put Mary in the hospital with a broken kneecap, which he accomplished with a metal pipe. Tr. II 129. During that same encounter, he bit her on the cheek and attempted to hit her in the head with the pipe. Tr. II 131. In August of 2018, angry over her alleged communication with an ex-boyfriend, respondent savagely beat, slapped, and attempted to strangle Mary, leaving her with two black eyes and a knot on her forehead. Tr. II 133-34.

For the October 2018 attack, a jury convicted respondent of assault and battery with a dangerous weapon, after two or more prior felony convictions,

* All fact citations are to the original record (O.R.), the transcript of respondent's trial (Tr.), and the State's trial exhibits (State's Exhibit), which are available below. *See* Sup. Ct. R. 12.7.

and threatening an act of violence. Respondent was sentenced to sixty years imprisonment and six months 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.20a. The district court accepted the parties' stipulations and found that respondent is a member of the federally recognized Muscogee (Creek) Nation with 9/32 Indian blood quantum and the crimes occurred within the boundaries of the Muscogee (Creek) Nation reservation. App.12a-14a. The court found, "Under *McGirt*, this court has no choice but to conclude it is without jurisdiction over Mr. Yargee." App.15a.

The Court of Criminal Appeals reversed the convictions, holding that the district court's findings and conclusions were supported by the record and that the case was controlled by *McGirt*. App.4a-5a.

Two judges wrote separate opinions. 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.

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.10a.¹

¹ Although respondent has pleaded guilty in federal court to the same conduct at issue here and is awaiting sentencing, his sentence will be far less than the sixty years he received in state



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

court. Respondent pleaded to three crimes, each of which carries a maximum sentence of only ten years, and he and the government entered a plea agreement recommending "a sentence at the top of the guidelines of 84-105 months" (7-8.75 years). Plea Agreement, *United States v. Yargee*, Crim. No. 21-313 (N.D. Okla. Aug. 27, 2021) (Dkt. 22).

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 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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