

No. 25-30

IN THE
Supreme Court of the United States

MARVIN KEITH STITT,
Petitioner,
v.
CITY OF TULSA, OKLAHOMA,
Respondent.

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

BRIEF IN OPPOSITION

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**COUNTERSTATEMENT OF
QUESTION PRESENTED**

Whether the City of Tulsa may exercise jurisdiction concurrent with the Muscogee Nation over a Cherokee Indian for criminal conduct occurring within Tulsa's corporate limits and the Muscogee Nation Reservation.

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STATEMENT OF THE CASE

On February 3, 2021, a Tulsa Police Department officer issued a speeding citation to Petitioner Marvin Keith Stitt, an enrolled citizen of the Cherokee Nation. The traffic violation and stop occurred within the corporate limits of the City of Tulsa and the Muscogee Nation Reservation. Pet. App. 3a-4a.

In municipal court, Petitioner challenged the City's jurisdiction in two separate motions to dismiss, arguing that the City has no criminal jurisdiction over Indians for conduct occurring on the Muscogee Nation Reservation. The court denied both motions and found that the City had jurisdiction in the matter based on the Curtis Act of 1898. Pet. App. 71a; 72a-86a. The Act provides that "all inhabitants" of cities and towns incorporated in the Indian territory, "without regard to race, shall be subject to all laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protection therein." 30 Stat. 495, 499 § 14.

Following a non-jury trial, Petitioner was convicted and assessed a \$250.00 fine. Petitioner appealed his conviction to the Oklahoma Court of Criminal Appeals ("OCCA"), the highest court in the State of Oklahoma for review of criminal cases. Pet. App. 4a.

On January 6, 2023, Tulsa police again cited Petitioner for speeding. Petitioner's second citation was not a subject of the OCCA appeal and the City has since dismissed the charge in municipal court and referred it to the Muscogee Nation for prosecution. See note 3, *infra*.

While Petitioner's appeal of the February 3, 2021, citation to the OCCA was pending, the Tenth Circuit Court of Appeals held in another case that the Curtis

Act's directive, providing that "all inhabitants" shall be subject to city ordinances, was merely transitory and that Indians, themselves empowered to incorporate cities and vote in municipal elections, were once again immune to municipal laws after Oklahoma statehood. *Hooper v. City of Tulsa*, 71 F.4th 1270, 1285 (10th Cir. 2023).

Although briefing was complete in Petitioner's appeal to the OCCA, the City requested supplemental briefing of *Hooper*, as allowed by OCCA rules. Pet. App. 5a. The OCCA granted supplemental briefing and also ordered briefing of the issue of concurrent state and tribal jurisdiction under *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022) and *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). Pet. App. 5a.¹

In the decision challenged here, the OCCA applied its prior opinion in *City of Tulsa v. O'Brien*, 2024 OK CR 31 in which the court recognized that, "[u]nder the Supreme Court's precedent, 'a State's jurisdiction in Indian country may be 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.'" Pet. App. 17a. Consistent with *O'Brien*, the OCCA found that "the balance of interests under *Bracker* does not preempt the exercise of state (and thus municipal) jurisdiction" and that the City's exercise of concurrent jurisdiction over a non-member Indian in this case did

¹ Petitioner asserts that "application of *Bracker* to criminal jurisdiction is unprecedented," Pet. 24-25, but this Court applied "the *Bracker* balancing test" in the context of Indian Country criminal jurisdiction only three years ago in *Castro-Huerta*. 597 U.S. at 649.

not infringe on tribal self-government. Pet. App. 6a; 17a-30a.

The City did not argue below, and the OCCA did not hold, that the Muscogee Nation does not have jurisdiction, or that the State and its political subdivisions have *exclusive* jurisdiction, but rather that the Muscogee Nation and the City have concurrent jurisdiction. See *O'Brien*, Pet. App. 28a (“Further, the city of Tulsa’s jurisdiction would be concurrent only and would not displace, or diminish, the tribe’s prosecutorial authority to try Indians for violations of local tribal law.”).

On November 5, 2024, citizens of the City of Tulsa elected a new Mayor, who had campaigned on a platform of governing cooperatively with tribes and ending protracted litigation over Indian Country jurisdiction. Mayor Monroe Nichols was sworn into office on December 2, 2024.²

Pursuant to the City’s cooperative approach, the City dismissed Petitioner’s second, January 6, 2023, speeding charge in municipal court and referred it to Muscogee Nation for prosecution. The Muscogee Nation filed the case in its district court on April 25, 2025. As of the date of this filing, the district court’s website shows the case is pending. *Muscogee Nation v. Stitt*, TR-2025-0739 (N.D. Okla.).³

² See Braden Harper, *Tulsa Elects New Mayor with Potential for Positive Tribal Relationships*, MVSKOKE MEDIA (Dec. 16, 2024), <https://www.mvskokemedia.com/tulsa-elects-new-mayor-with-potential-for-positive-tribal-relationships/> (“One of Nichol’s campaign promises is ending adversarial lawsuits between the city and tribal governments.”).

³ Muscogee (Creek) Nation District Court, Public Access Portal, FullCourt Enterprise®, <https://records.creekdistrictcourt.com/fullcourtweb/courtCase.do?CourtCaseId=86295&PartyId=69287>.

Relatedly, on November 15, 2023, the Muscogee Nation sought declaratory and injunctive relief in federal court to foreclose the City's assertion of jurisdiction over Indian defendants on the reservation. *Muscogee Creek Nation v. City of Tulsa*, No. 23-CV-00490 (N.D. Okla.). Consistent with Mayor Nichols' commitment to end protracted litigation, the parties executed a settlement agreement on June 25, 2025, and filed it with a Joint Motion to Enter Order Approving the Parties' Joint Settlement Agreement and Dismissing the Litigation. *Muscogee Creek Nation*, No. 23-CV-00490 (N.D. Okla. June 25, 2025), Doc. No. 149. The agreement formalizes the City's policy of implementing a cooperative, inter-governmental approach to public safety on the reservation and provides that the City will defer to the jurisdiction of the Muscogee Nation over Indian defendants.

While the City and the Muscogee Nation have resolved their jurisdictional dispute, several cases are pending to determine whether the State of Oklahoma and its subdivisions may exercise concurrent jurisdiction over Indians within the reservation boundaries of Muscogee Nation or other Indian tribes. See *United States v. Ballard*, 24-CV-0626 (N.D. Okla.); *United States v. Iski*, 24-CV-0493 (E.D. Okla.); *Muscogee (Creek) Nation v. Tulsa County*, 25-CV-00075 (N.D. Okla.); *Muscogee (Creek) Nation v. City of Henryetta*, 25-CV-00227 (E.D. Okla.).

**REASON TO DENY THE PETITION
FOR WRIT OF CERTIORARI**

The City of Tulsa and the Muscogee Nation have entered into a cooperative agreement and the City is no longer in a position adversarial to the Muscogee Nation’s exercise of sovereign authority to prosecute Indian defendants, including the Petitioner.

The ultimate issue in the case below was not the disposition of a speeding ticket; it was the broader question of jurisdiction over Indian defendants for conduct occurring on the reservation. OCCA Br. Pet. (“The State of Oklahoma lacks subject matter jurisdiction to commence a criminal prosecution for any offenses defined as a crime by state law allegedly committed by an American Indian while within the jurisdiction of the Muskogee Nation....”). This broader jurisdictional argument was advanced as well by the Muscogee Nation and several other tribes, as *amici curiae*. OCCA Br. of *Amici Curiae* Muscogee (Creek) Nation and Seminole Nation of Oklahoma.

In *McGirt v. Oklahoma*, 591 U.S. 894, 937 (2020), this Court observed “the spirit of good faith, comity and cooperative sovereignty” motivating “hundreds of intergovernmental agreements” between the State of Oklahoma and its local governments and Indian tribes. In that spirit, the City has agreed, broadly speaking, to the relief requested, by agreeing to defer to the jurisdiction of the Muscogee Nation in cases involving Indian defendants, including the Petitioner’s January 6, 2023, citation.

As Petitioner notes, in the case on which the OCCA based its opinion in this matter, the City dismissed charges in municipal court against defendant Nicholas

O'Brien, who is being prosecuted by the Muscogee Nation. Pet. 12. The City also dismissed Petitioner's 2023 citation in municipal court and referred it to the Muscogee Nation for prosecution. Yet, rather than applying for post-conviction relief in municipal court based on the terms of the settlement agreement (see 22 Okla. Stat. § 1080 (OSCN 2025)), Petitioner has sought this Court's review of the broader jurisdictional question, over which the City and the Muscogee Nation have agreed to stop fighting.

The question presented by this case is important, but the City of Tulsa is no longer in a position adversarial to the Muscogee Nation's exercise of sovereign authority to prosecute Indian defendants, including the Petitioner.⁴ The settlement agreement between the City and the Muscogee Nation, and the cooperative, inter-governmental relationship on which it depends, temper the City's inclination to assert the "vigorous adversary argument" that is an "essential component of wise adjudication." 13 Charles Wright and Aurthur Miller, *Federal Practice and Procedure* § 3530 (3d ed.).

This Court has repeatedly stressed the indispensability of an "antagonistic assertion of rights." *Chicago & G.T. Ry. Co. v. Wellman*, 143 U.S. 339, 345 (1892). Another case, with a different set of parties, would

⁴ Petitioner's adversarial position in this case has also been questioned. See Tristan Loveless, *Oklahoma Lacks Jurisdiction' in Keith Stitt Speeding Ticket Case, U.S. Attorneys Say*, NONDOC MEDIA, <https://nondoc.com/2024/04/04/oklahoma-lacks-jurisdiction-in-keith-stitt-speeding-ticket-case-u-s-attorneys-say/> (Apr. 4, 2024) ("The governor scoffed at speculation that he and his brother have coordinated the unusual court case to prove a point about the July 2020 *McGirt v. Oklahoma* U.S. Supreme Court decision....").

more likely have “sufficient adversary interest to stimulate the parties to a full presentation of the facts and arguments.” Wright & Miller at § 3530.

Ultimately, “[c]ourts should act only when forced by the need to protect interests that cannot be worked out absent judicial decision.” Wright & Miller at § 3530. As the allocation of jurisdiction between the City and the Muscogee Nation has been worked out, the City is not inclined to undermine its cooperative working relationship by continuing to fight over whether the Muscogee Nation’s acknowledged jurisdiction over Indian defendants is exclusive of or concurrent with municipal jurisdiction.

Respectfully, the City asks that the Court exercise its discretion to deny the Petition, in deference to “the spirit of good faith, comity and cooperative sovereignty” demonstrated by the settlement agreement between the City of Tulsa and the Muscogee Nation.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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