

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

REPLY TO BRIEF IN OPPOSITION

Brett A. Chapman

Counsel of Record

BRETT A. CHAPMAN

ATTORNEY AT LAW PLLC

401 South Boston Avenue, Suite 500

Mid-Continent Tower, Fifth Floor

Tulsa, Oklahoma 74103-4023

(918) 928-2119

bac@brettachapman.com

Counsel for Marvin Keith Stitt

TABLE OF CONTENTS

Table of Contents	i
Table of Authorities	ii
Introduction	1
Reasons for Granting the Petition	2
I. Respondent Confirms Rather Than Undermines Certiorari.....	2
A. Respondent's Own Admissions Prove the Case for Certiorari.....	2
B. Constitutional Structure Precludes State Political Subdivision Override.....	4
C. Recent Tenth Circuit Decision Confirms Constitutional Crisis.....	6
D. Adequate Adversarial Posture Exists Despite Agreement.....	6
Conclusion	7

TABLE OF AUTHORITIES

Cases

<i>City of Tulsa, Okla. v. Hooper</i> , 143 S. Ct. 2556 (2023).....	2
<i>Glossip v. Oklahoma</i> , 145 S. Ct. 612 (2025).....	7
<i>Hooper v. City of Tulsa</i> , 71 F.4th 1270 (10th Cir. 2023).....	2
<i>Lambert v. State</i> , 1999 OK CR 17	4
<i>McGirt v. Oklahoma</i> , 591 U.S. 894 (2020).....	1, 5
<i>Oklahoma v. Castro-Huerta</i> , 579 U.S. 629 (2022).....	2
<i>Reynolds v. Sims</i> , 377 U.S. 533 (1964).....	6
<i>Rodriguez de Quijas v. Shearson/Am. Exp., Inc.</i> , 490 U.S. 477 (1989).....	5
<i>Sailors v. Bd. of Ed. of Kent Cnty.</i> , 387 U.S. 105 (1967).....	6
<i>Standard Computing Scale Co. v. Farrell</i> , 240 U.S. 571 (1919).....	6
<i>State v. Blevins</i> , 1992 OK CR 4.....	5
<i>United States v. Hopson</i> , No. 23-5056, --- F.4th ---, 2025 WL 2200975 (10th Cir. July 30, 2025)	6

Statutes and Treaties

Okla. Stat. tit. 22, § 1070	4
-----------------------------------	---

Miscellaneous

Braden Harper, <i>Marvin Stitt, Brother of Governor Kevin Stitt, Loses Appeal Over \$250 Speeding Ticket</i> , Mvskoke Media (Mar. 24, 2025), https://perma.cc/K62A-JCAX	1
---	---

<i>Muscogee Nation v. Stitt</i> , No. TR-2024-853 (Muscogee (Creek) Nation Dist. Ct. filed May 17, 2024), https://records.creekdistrictcourt.com/fullcourtweb/mvc/courtCase/74030?r=pzW	3
---	---

Reply in Support of Emergency Application for Stay of Mandate, <i>City of Tulsa, Okla. v. Hooper</i> , 143 S. Ct. 2556 (2023) (No. 23A73), 2023 WL 5434299	3
--	---

Tristan Loveless, <i>Keith Stitt Petitions SCOTUS to Review Oklahoma Criminal Court's Indian Jurisdiction Ruling</i> , NonDoc (July 9, 2025), https://perma.cc/5FKP-4E87	3
---	---

INTRODUCTION

This case represents the culmination of petitioner's years-long opposition to unauthorized post-*McGirt* state jurisdiction over Indians in Indian country, a struggle that has seen the federal government and the Five Civilized Tribes align with petitioner. *See* Brief in Opposition at 5-6 (acknowledging support of petitioner by "the Muscogee Nation and several other tribes" and citing media coverage of the United States' support of petitioner below).¹

The question of whether states may exercise criminal jurisdiction to prosecute Indians for conduct in Indian country absent a valid, express grant of congressional authority is of overriding practical importance in the wake of *McGirt* and warrants review. Under these unprecedented circumstances, this Court's intervention is required as action from Congress is not a realistic possibility. As a practical matter, only this Court can remedy the extraordinary problems created by the court below. And the only realistic time to do so is now. The Court should grant the petition and set this case for oral argument in the current Term.

¹ The Muscogee Nation recently reaffirmed its support of petitioner through its press secretary, who serves as strategic communicator for the Nation's office of the principal chief: "MCN Press Secretary Jason Salsman echoed [petitioner's counsel's] statement, affirming this case will continue to be supported by the Nation in its fight for sovereignty post *McGirt*." Braden Harper, *Marvin Stitt, Brother of Governor Kevin Stitt, Loses Appeal Over \$250 Speeding Ticket*, Mvskoke Media (Mar. 24, 2025), <https://perma.cc/K62A-JCAX>.

REASONS FOR GRANTING THE PETITION

I. Respondent Confirms Rather Than Undermines Certiorari

A. Respondent's Own Admissions Prove the Case for Certiorari

Respondent's brief in opposition strongly confirms the need for certiorari. First, respondent freely recognizes the broad scope and wide-ranging effect of the question presented by 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.*" Brief in Opposition at 5 (emphasis added). Second, respondent concedes the cert-worthiness inherent in that broader question of jurisdiction by acknowledging "[t]he question presented by this case is important[.]" *Id.* at 6.

Respondent's counsel duly acknowledged that, "[w]hile Petitioner's appeal . . . to the OCCA was pending, the Tenth Circuit Court of Appeals . . . held in [*Hooper v. City of Tulsa*, 71 F.4th 1270 (10th Cir. 2023)] that the Curtis Act's directive . . . was merely transitory and that Indians . . . were once again immune to [state] laws." Brief in Opposition at 1-2. Notably, respondent's counsel remained silent on Tulsa's failed attempt to obtain a stay from this Court in *City of Tulsa, Okla. v. Hooper*, 143 S. Ct. 2556 (2023), likely because in that matter, respondent's counsel affirmatively stated to this Court that the question of post-*McGirt* Indian country jurisdiction was of massive importance, specifically contending therein "that this Court will likely grant the City's request for certiorari review" on the question now presented herein: "Under *Castro-Huerta*, the City asserts that there is concurrent jurisdiction over nonmember Indians, such as Mr. Hooper, who commit

crimes within the reservation, because there is no federal preemption of such jurisdiction.” Reply in Support of Emergency Application for Stay of Mandate at 8, *City of Tulsa, Okla. v. Hooper*, 143 S. Ct. 2556 (2023) (No. 23A73), 2023 WL 5434299, at *8.²

Finally, Tulsa again unwittingly bolsters the case for certiorari by bringing up petitioner’s Indian country citations subsequent to the one underlying this case in 2021. Brief in Opposition at 1-2. Prior to the unprecedented decisions below, and while Tulsa was still engaged in its now-former political policy of prosecuting Indians in Indian country, “Stitt, meanwhile, received a separate ticket for ‘improper lane use’ in February 2024 from the City of Glenpool . . . ultimately dismissed by the city and transferred to the Muscogee Nation. The tribe’s court records indicate Keith Stitt paid that ticket in July 2024.” Tristan Loveless, *Keith Stitt Petitions SCOTUS to Review Oklahoma Criminal Court’s Indian Jurisdiction Ruling*, NonDoc (July 9, 2025), <https://perma.cc/5FKP-4E87>; *Muscogee Nation v. Stitt*, No. TR-2024-853 (Muscogee (Creek) Nation Dist. Ct. filed May 17, 2024), <https://records.creekdistrictcourt.com/fullcourtweb/mvc/courtCase/74030?r=pzW>. This demonstrates the constitutional chaos created by the decision below: state municipal political subdivisions that previously recognized tribal jurisdiction over Indians are now legally compelled to assert authority they know they lack. The mandate below transforms what ought to be a crystal clear federal jurisdictional

² Respondent even underscored this issue: “Again, the City claims concurrent jurisdiction with the Tribes, and Respondent [Hooper] is a nonmember Indian who committed a crime within the Muskogee [*sic*] Creek Nation reservation boundaries. Prosecution of Mr. Hooper by the City of Tulsa does not infringe on the Tribe’s sovereignty.” 2023 WL 5434299, at *10.

understanding into a constitutional crisis that only this Court can resolve.

B. Constitutional Structure Precludes State Political Subdivision Override

Respondent’s claim that “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,” Brief in Opposition at 5, fundamentally misunderstands both constitutional structure and state law. Put simply, the statement makes no sense because respondent can do nothing but defend the judgment below as a matter of law. Thus, there is little question as to the existence of adequate adversarial posture: by not joining in the petition, the respondent opposes vacating petitioner’s conviction.

1. State law compels compliance with the decision below

Respondent acknowledges that the court below is “the highest court in the State of Oklahoma for review of criminal cases,” Brief in Opposition at 1, but fails to inform this Court that state law mandates trial court compliance with that decision. Oklahoma law is unequivocal: “On a judgment of affirmance against the defendant, the original judgment must be carried into execution, as the appellate court may direct.” Okla. Stat. tit. 22, § 1070; *Lambert v. State*, 1999 OK CR 17, ¶ 16 (holding by the court below that “when we issue an opinion or order, the trial court is empowered to enforce that opinion or order, but . . . may not go beyond our mandate”).

This mandate was stated definitively by the court below in *State v. Blevins*, holding that “[a]s to issues pertaining to criminal law, holdings and rulings of this Court are

binding on all lower courts of this State. *This Court is the court of last resort in criminal cases.*” 1992 OK CR 4, ¶ 2 (emphasis in original). “The United States Supreme Court recently stated, ‘[i]f a precedent of [the United States Supreme Court] has direct application in a case, yet appears to rest on reasons rejected in some other line of decisions, the [lower court] should follow the case which directly controls, leaving to [the United States Supreme Court] the prerogative of overruling its own decisions.’” *Id.*, at ¶ 4 (quoting *Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 484 (1989)). “Likewise, the decisions of the Court of Criminal Appeals must be upheld by the lower state courts, until such time as this Court sees fit to overrule those decisions or the United States Supreme Court does so.” *Blevins*, 1992 OK CR 4, ¶ 4. Ultimately, proper adversarial posture exists as respondent is forced to comply with the rulings below. *Id.* ¶ 7 (“It is the order of this Court that the [inferior criminal] courts of this State must comply with the orders of this Court.”).³

2. Constitutional principles forbid circumvention of state constitutional violations

The constitutional infirmity runs deeper than state procedural rules. “Political subdivisions of States—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the State to assist in the

³ Nor is respondent’s suggested state postconviction relief proper, *see* Brief in Opposition at 6, for obvious reasons explained by this Court in *McGirt* itself, noting significant and well-known procedural obstacles to state postconviction review: “Oklahoma appears to apply a general rule that ‘issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review.’” 591 U.S., at 933 n.15.

carrying out of state governmental functions.” *Reynolds v. Sims*, 377 U.S. 533, 575 (1964). Constitutional restraints imposed on states cannot be circumvented by local bodies to whom the state delegates authority. *Sailors v. Bd. of Ed. of Kent Cnty.*, 387 U.S. 105, 108 n.5 (1967) (citing *Standard Computing Scale Co. v. Farrell*, 240 U.S. 571 (1919)).

When a state’s highest criminal court mandates that inferior courts exercise jurisdiction over Indians in Indian country absent congressional authorization, as is alleged herein, the constitutional violation persists regardless of subsequent local settlements. Respondent lacks the sovereign authority to cure what the court below has constitutionally broken.

C. Recent Tenth Circuit Decision Confirms Constitutional Crisis

Three weeks after this petition was filed, the Tenth Circuit held in *United States v. Hopson*, No. 23-5056, --- F.4th ---, 2025 WL 2200975 (10th Cir. July 30, 2025), that federal district courts lack subject matter jurisdiction to convict Indian defendants for certain offenses in Indian country prosecutions. If federal courts with express constitutional authority over Indian affairs lack jurisdiction over some Indian prosecutions, state courts’ assertion of broader concurrent jurisdiction is constitutionally untenable. This published decision demonstrates active, wide-ranging recognition of the issue’s fundamental importance.

D. Adequate Adversarial Posture Exists Despite Agreement

Respondent’s purported agreement with one sovereign tribe cannot cure a constitutional violation that affects the fundamental structure of federalism and tribal

sovereignty for the reasons detailed above. Additionally, petitioner respectfully submits to this Court that should there be any question as to adequate adversarial posture, petitioner moves for appointment of independent amicus curiae counsel to defend the judgment below, as this Court did in *Glossip v. Oklahoma*, 145 S. Ct. 612 (2025).

CONCLUSION

The Court should grant the petition and provide the guidance that five years of litigation chaos demonstrates is urgently needed.

Respectfully submitted,

Brett A. Chapman
Counsel of Record

BRETT A. CHAPMAN
ATTORNEY AT LAW PLLC
401 South Boston Avenue, Suite 500
Mid-Continent Tower, Fifth Floor
Tulsa, Oklahoma 74103-4023
(918) 928-2119
bac@brettachapman.com
Counsel for the Petitioner

AUGUST 22, 2025