

No. 20-1485

IN THE
Supreme Court of the United States

JOELLEN MARY CROSSETT,

Petitioner,

v.

EMMET COUNTY, MI; PETER A. WALLIN,
SHERIFF, CODY WHEAT, SHERIFF DEPUTY;
FULLER COWELL, SHERIFF DEPUTY; WADE
LEIST, SHERIFF DEPUTY/DETECTIVE; JAMES
R. LINDERMAN, PROSECUTOR; STUART
FENTON, ASSISTANT PROSECUTOR; MICHAEL H.
SCHUITEMA, ASSISTANT PROSECUTOR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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May 14, 2021

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**COUNTERSTATEMENT OF
QUESTIONS PRESENTED**

1. Should the petition be denied on the ground that the Petitioner seeks review of a question that she neither pleaded as an actual claim, nor substantively argued, in the courts below?

2. Should the petition be denied on the ground that the Petitioner is neither a proper party, nor a competent advocate, with regard to the question for which she seeks review?

PARTIES TO THE PROCEEDINGS

Petitioner (who was plaintiff below) is JoEllen Mary Crossett.

Respondents (who were defendants below) are Emmett County, MI; Emmet County Sheriff Peter A. Wallin; Emmet County Deputy Sheriffs Cody Wheat, Fuller Cowell and Wade Leist; Emmett County Prosecutor James R. Linderman; and Assistant Emmet County Prosecutors Stuart Fenton and Michael H. Schuitema.

CORPORATE DISCLOSURE

None of the Respondents is a publicly owned corporation or a subsidiary or affiliate of such.

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OPINIONS BELOW

The appendix filed by Petitioner Crossett contains the Report and Recommendation by the magistrate judge and the Opinion and Order of the district court judge from the United States District Court for the Western District of Michigan. (**Petitioner's Appendix, 24a – 47a and 11a – 20a**). The Petitioner's appendix also includes the order of the United States Court of Appeals for the Sixth Circuit that affirmed summary judgment in favor of the Respondents (**Petitioner's Appendix, 1a – 10a**), together with the order of the Sixth Circuit denying *en banc* review (**Petitioner's Appendix, 21a**).

STATEMENT REGARDING JURISDICTION

The order of the United States Court of Appeals for the Sixth Circuit was issued November 12, 2020. A petition by Crossett seeking rehearing *en banc* was denied January 15, 2021.

Taking advantage of this Court's COVID 19 order of November 13, 2020, Petitioner Crossett filed her petition with this Court on April 22, 2021 (within the current 150 day filing period). Therefore, Petitioner Crossett has timely invoked the jurisdiction of this Court under 28 U.S.C. §1254.

STATEMENT OF THE CASE

During the pendency of Petitioner Crossett's appeal to the United States Court of Appeals for the Sixth Circuit, this Court issued its opinion in *McGirt v. Oklahoma*, ___ U.S. ___, 140 S. Ct. 2452 (2020). In her *reply* brief to the

Sixth Circuit, Petitioner Crossett tried to re-cast her case in terms of her supposed rights in Michigan akin to those afforded to Native Americans on tribal reservation lands in Oklahoma under *McGirt*. The Sixth Circuit rejected this attempt, observing that:

Crossett argues for the first time in her reply brief that Michigan officials lacked jurisdiction to arrest and prosecute her because she is an Indian on Indian lands. But we will not consider arguments that are first raised in a reply brief because the defendant did not have a chance to respond.

(Petitioner’s Appendix, 10a).

Indeed, the Respondents *never* had the occasion to respond to such a contention, because Crossett neither pleaded it as an actual claim for relief in her Complaint, nor argued it substantively in any submission to the lower courts prior to her reply brief on appeal.

To be sure, Crossett referenced in her 40-page, 267 paragraph Complaint that she is “a member of the Mackinac Bands of Chippewa and Ottawa of Cross Village” who “possesses a Descendancy Card from Little Traverse Bay Bands of Emmet County.” In deposition, Crossett asserted that all of Michigan is a “reservation” and that only tribal or federal authorities have jurisdiction to arrest or prosecute any Native American.

As pointed out by the Report and Recommendation of the magistrate judge, however, Crossett’s Complaint asserted twenty-four claims based upon various theories of free speech, retaliation, unlawful arrest and

imprisonment, excessive force and deliberate indifference. **(Petitioner’s Appendix, 25a)**. At no point did she present or substantively argue in any brief (prior to her appellate reply) that the Respondents could not arrest and prosecute her due to Native American status or presence on any “Indian land.”

Although mentioning Native American status, Crossett’s briefs in the district court, as well as her principal brief on appeal, simply contested the defenses argued by the Respondents - - i.e., that the Respondent prosecutors had absolute immunity and that none of the named Defendants had violated any of Crossett’s constitutional or state-law rights. The analysis is fully set forth in the order of the Sixth Circuit. **(Petitioner’s Appendix, 1a - - 20a)**.

Notably, Crossett offered no specific evidence of membership in a tribe. Irrelevant to any argument she actually made, she did submit two certificates “of degree of Indian blood” from the Bureau of Indian Affairs - - notably blacking out the indication of the percentage of Indian blood. Both certificates expressly stated that they only verified Indian “descent” and did not verify or entitle Crossett to actual tribal membership. **(See R. 34-6, Pg ID 601, 614)**.

Even in her petition, Crossett’s basis for claiming that she raised the question of Native American rights in the district court is her request at a court conference that any issue of her “being an Indian on Indian land . . . be separated out, not settled,” because she did not want any decision in her case “to jeopardize” a case by the Little Traverse Bay Bands itself against the State of Michigan. **(Petitioner’s Appendix, 23a)**. In light of the actual claims

as presented by Crossett's Complaint, together with her submissions to the court, the magistrate judge stated:

I don't know what the relevance of that is to this particular case. I mean I'm sure it's relevant to you in terms of your life, but I'm not sure what the relevance is to this particular case.

(Petitioner's Appendix, 23a).

And, of course, Crossett herself was asking that any such question *not* be addressed, in order that the tribe's case would deal with the matter.

Indeed, the Little Traverse Bay Band of Odawa Indians has a case against the State of Michigan - - in which the district court determined that the tribe does not have reservation land. *Little Traverse Bay Band of Odawa Indians v. Whitmer*, 398 F. Supp. 3d 201 (W.D. Mich. 2019). An appeal of that case is currently pending before the United States Court of Appeals for the Sixth Circuit.

ARGUMENT FOR DENYING THE PETITION

I. THIS COURT SHOULD DENY CROSSETT'S PETITION, BECAUSE SHE SEEKS REVIEW OF A QUESTION NEVER SUBSTANTIVELY ARGUED BY CROSSETT IN THE DISTRICT COURT.

This Court is "a court of review, not first view," so this Court generally "will not decide questions not raised or litigated in the lower courts." *Byrd v. United States*,

___ U.S. ___, 138 S. Ct. 1518, 1526-7 (2018), *City of Springfield, Massachusetts v. Kibbe*, 480 U.S. 257, 259 (1987). A party cannot, by their submissions to this Court, reformulate their case so as to lead this Court “to address a question neither pressed nor passed upon below.” *Timbs v. Indiana*, ___ U.S. ___, 139 S. Ct. 682, 690 (2019).

In the district court, Petitioner Crossett neither presented as a claim in her Complaint, nor substantively argued, the questions of whether she was a Native American on “Indian land” when arrested or the scope of the Respondents’ law enforcement jurisdiction in such context. Indeed, she expressly asked the magistrate judge *not* to address such issue, lest it jeopardize the pending case of the Little Traverse Bay Band of Odawa Indians. (**Petitioner’s Appendix, 23a**).

As the appellant to the Sixth Circuit, it was the obligation of Crossett to argue any issue that she believed to be relevant and properly preserved. Her principal brief made no argument regarding the supposed issue of law enforcement jurisdiction over Native Americans on “Indian land.” Rather, it was only upon learning of this Court’s decision in *McGirt v. Oklahoma*, ___ U.S. ___, 140 S. Ct. 2452 (2020), that Crossett sought in her appellate reply brief to completely recast her case in that light.

The Sixth Circuit properly declined to address this new and unpreserved question. (**Petitioner’s Appendix, 10a**). This Court should reject Crossett’s petition as well.

II. THIS COURT SHOULD DENY CROSSETT'S PETITION, BECAUSE SHE IS NOT A PROPER PARTY OR ADVOCATE REGARDING TRIBAL RIGHTS OF THE LITTLE TRAVERSE BAY BAND OF ODAWA INDIANS, WHICH ARE BEING LITIGATED BY PROPER PARTIES AND COMPETENT COUNSEL IN ANOTHER CASE.

It is axiomatic that this Court has limited resources and must confine its discretionary review to those cases in which important questions of law will be competently presented and argued. This Court's own rules recognize that a petition "will be granted only for compelling reasons." Rule 10.

As a *pro se* litigant, Petitioner Crossett is ill-equipped to argue the status of Native American lands or the scope of law enforcement jurisdiction over them. With regard to the lands of the Little Traverse Bay Band of Odawa Indians, issues of land status are already being addressed at the behest of the tribe through competent counsel in the tribe's own case - - currently pending on appeal in the United States Court of Appeals for the Sixth Circuit. If that matter is to come before this Court, it should come through the vehicle of that case, or another action similarly litigated by experienced counsel retained by the tribe. It is not appropriate for review by this Court at the belated initiative of a *pro se* litigant like Petitioner Crossett.

Indeed, the tribe would doubtless be aghast at the notion of Crossett presuming to litigate the tribe's interests. One of the arrests of which Crossett complains was at the request of tribal authorities, who asked that Emmet County arrest and prosecute Crossett for communicating malicious messages to the tribal chairperson. (**Petitioner's Appendix, 2a**).

**III. THIS COURT SHOULD DENY CROSSETT'S
PETITION, BECAUSE THE SIXTH CIRCUIT
CORRECTLY DECIDED THE ISSUES ACTUALLY
PRESENTED AND ARGUED BY CROSSETT IN
THE COURTS BELOW.**

The Opinion of the United States Court of Appeals for the Sixth Circuit adequately describes and analyzes the issues actually presented and argued by Crossett below. The Report and Recommendation of the magistrate judge and the Opinion and Order of the district court judge do so as well. This Court can read these opinions. Reiteration by the Respondents is unnecessary. Petitioner Crossett has no valid argument against the decisions below.

CONCLUSION.

Petitioner Crossett seeks to bait review by this Court of a question she neither argued below nor has competence to represent in this Court. Her petition should be denied.

Respectfully submitted,

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