NO. 21-251

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

WILLIAM CLAYTON BROWN,

Respondent.

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

REPLY BRIEF FOR THE PETITIONER

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NOVEMBER 4, 2021 *COUNSEL FOR PETITIONER*

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1. The petition in this case presents a question of overriding importance to the State of Oklahoma: whether *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), should be overruled. At the time the petition was filed, a petition filed by the State presenting that same question (in addition to two others) was pending in *Oklahoma v. Bosse*, No. 21-186. The petition in this case expressly incorporated the arguments for granting certiorari in *Bosse* and requested that the Court hold this case pending resolution of the petition there. *See* Pet.3, 6-8. The State subsequently filed a number of petitions presenting the question presented here, and similarly requested that those petitions be held pending a decision in *Bosse*.

2. On August 31, 2021, the Oklahoma Court of Criminal Appeals *sua sponte* vacated the judgment in *Bosse*. *See* 2021 OK CR 23. The parties subsequently agreed to dismiss the petition in that case.

On September 14, counsel for the State informed counsel for respondent here of the State's intent to file a petition in another case which would again fully set forth the reasons for granting review on the question presented. On September 17, the State filed a petition in *Oklahoma v. Castro-Huerta*, No. 21-429, which presents the relevant question from *Bosse* and again fully sets forth the arguments in favor of review. In that petition, the State requested that the Court hold all previously filed petitions, as well as similar forthcoming petitions, pending a decision in *Castro-Huerta*. *See* Pet.4-5 n.1.

On September 22, the State submitted a letter to this Court requesting that, when considering the petition here, the Court refer to the State's arguments in *Castro-Huerta* in lieu of referring to the dismissed petition in *Bosse*. The State further requested that the Court either grant the petition here or hold the petition pending its decision in *Castro-Huerta*. *See* Letter from Mithun Mansinghani to Scott S. Harris (Sept. 22, 2021). The State submitted similar letters in every other similar case pending before the Court.

3. On October 22, respondent filed his brief in opposition ("Opp."), which sets forth his arguments against review on the question presented and references the brief in opposition filed by counsel in *Oklahoma v. Mize*, No. 21-274. *See* Opp.3-7. Counsel of record on those briefs is also counsel of record for the respondent in *Castro-Huerta*, and the brief in opposition in this case responds primarily to the arguments made in the petition in *Castro-Huerta*. In addition, the

Muscogee (Creek) Nation filed an amicus brief in support of respondent here, setting forth additional arguments against review of the question whether *McGirt* should be overruled, responding to arguments in the petition in *Castro-Huerta*. *See* Creek Br.3-28.

4. The brief in opposition in *Castro-Huerta* is currently due on November 22. Additional amicus briefs have been filed in that case. In addition, the Muscogee (Creek) Nation, Chickasaw Nation, Choctaw Nation, and Cherokee Nation have filed amicus briefs in other similar cases. *See*, *e.g.*, *Mize*, *supra*; *Oklahoma v. Beck*, No. 21-373; *Oklahoma v. Sizemore*, No. 21-326; *Oklahoma v. Spears*, No. 21-323. To ensure an orderly presentation of the arguments to the Court, the State plans to set forth its full responses to the brief in opposition and the amicus brief of the Creek Nation in this case, as well as the additional briefs filed in other cases, in the forthcoming reply brief in *Castro-Huerta*. The State respectfully requests that the Court refer to that forthcoming brief when considering the petition here.

* * * * *

The petition for a writ of certiorari in *Oklahoma v. Castro-Huerta*, No. 21-429, should be granted, and the petition in this case should be held pending a decision there and then disposed of as appropriate. In the alternative, the petition for a writ of certiorari in this case should be granted.

Respectfully submitted,

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