

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

DAKOTA SHAY FOX,

Respondent.

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

REPLY BRIEF FOR THE 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. This question is identical to one of the questions raised in *Oklahoma v. Castro-Huerta*, No. 21-429. The petition in this case expressly incorporated the arguments for granting certiorari in *Castro-Huerta* and requested that the Court hold this case pending resolution of the petition there.

2. On October 29, 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 Choctaw 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 Choctaw Br.4-20.

3. 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 Choctaw 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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