

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

MATTHEW STEVEN JANSON,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

JOHN M. O'CONNOR

ATTORNEY GENERAL

MITHUN MANSINGHANI

SOLICITOR GENERAL

COUNSEL OF RECORD

CAROLINE HUNT

JENNIFER CRABB

ASSISTANT ATTORNEYS GENERAL

BRYAN CLEVELAND

RANDALL YATES

ASSISTANT SOLICITORS GENERAL

OFFICE OF THE OKLAHOMA

ATTORNEY GENERAL

313 N.E. TWENTY-FIRST STREET

OKLAHOMA CITY, OK 73105

(405) 522-4392

MITHUN.MANSINGHANI@OAG.OK.GOV

QUESTION PRESENTED

Whether *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), should be overruled.

LIST OF PROCEEDINGS

Oklahoma Court of Criminal Appeals

No. C-2017-1027

Matthew Steven Janson, Petitioner v.
The State of Oklahoma, Respondent

Date of Final Opinion: April 1, 2021

Oklahoma District Court (Tulsa County)

No. CF-2016-5428

State of Oklahoma, Plaintiff v.
Matthew Steven Janson, Defendant

Date of Judgment and Sentence: August 8, 2017

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
LIST OF PROCEEDINGS.....	ii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
JURISDICTION.....	2
STATUTORY PROVISIONS INVOLVED.....	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION.....	5
CONCLUSION.....	7

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

Opinion of the Court of Criminal Appeals,
State of Oklahoma (April 1, 2021) 1a

District Court of Tulsa County,
State of Oklahoma, Findings of Fact
and Conclusions of Law (November 12, 2020)..... 12a

 Stipulations
 (October 5, 2020) 18a

Court of Criminal Appeals, State of Oklahoma,
Order Remanding for Evidentiary Hearing
(August 21, 2020) 20a

TABLE OF AUTHORITIES

Page

CASES

<i>Bosse v. State</i> , 484 P.3d 286 (Okla. Crim. App. 2021)	4
<i>Hogner v. State</i> , 2021 OK CR 4, ___ P.3d ___	4
<i>McGirt v. Oklahoma</i> , 140 S. Ct. 2452 (2020)	passim
<i>Oklahoma v. Bosse</i> , Petition for Writ of Certiorari, No. 21-186 (U.S.)	passim

STATUTES

18 U.S.C. § 1151	2
18 U.S.C. § 1152	2
28 U.S.C. § 1257(a)	2

JUDICIAL RULES

Sup. Ct. R. 12.7	3
------------------------	---

In the Supreme Court of the United States

STATE OF OKLAHOMA,

Petitioner,

v.

MATTHEW STEVEN JANSON,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals, dated April 1, 2021, is included in the Appendix at App.1a-11a. The order of the Oklahoma Court of Criminal Appeals, dated August 21, 2020, remanding the case for an evidentiary hearing is included below at App.20a-24a. The Findings of Fact and Conclusions of Law of the District Court in and for Tulsa County, State of Oklahoma, dated November 12, 2020, is included below at App.12a-19a. These opinions and orders were not designated for publication.



JURISDICTION

The judgment of the Oklahoma Court of Criminal Appeals was entered on April 1, 2021. App.1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).



STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 1151 (in relevant part) **Indian country defined**

[T]he term ‘Indian country’, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation.

18 U.S.C. § 1152 (in relevant part) **Law governing (Indian country)**

Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to the Indian country.



STATEMENT OF THE CASE

Thousands of state criminal prosecutions have been called into question by this Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). Like the pending petition in *Oklahoma v. Bosse*, No. 21-186, this case presents the question whether *McGirt* should be overruled. As the petition in *Bosse* explains, review is warranted here to examine that question. The petition for a writ of certiorari in this case should either be granted or, if the petition in *Bosse* is granted, held pending a decision in *Bosse* and then disposed of as is appropriate.

1. A Tulsa police detective investigating online child pornography received multiple files from respondent. O.R. 21.* A subsequent search warrant uncovered at least 228 images of child pornography on respondent's computer. O.R. 21. Respondent told the detective he prefers videos of eight or nine-year-old girls playing with themselves. O.R. 21.

Respondent pled guilty to one count of aggravated possession of child pornography and one count of distribution of child pornography. O.R. 53-67. He was sentenced to ten years imprisonment, with five years suspended, for each count. O.R. 61-67.

2. After this Court issued its decision in *McGirt*, the Court of Criminal Appeals remanded the case to the trial court for an evidentiary hearing. On remand, the court accepted the parties' stipulations and found

* All fact citations are to the trial court's original record, which is available below. See Sup. Ct. R. 12.7.

that respondent has 3/128 Cherokee Blood and is an enrolled member of the Cherokee Nation. App.14a. The court further concluded that respondent is an Indian and his crimes occurred on the Creek reservation recognized by *McGirt*. App.16a.

The Court of Criminal Appeals reversed the convictions, adopting the trial court's conclusions and holding that the federal government had exclusive authority to prosecute respondent for the crimes at issue. App.5a.

Two judges wrote separate opinions. Judge Lumpkin concurred in the result. App.8a-10a. He expressed his view that the Court's opinion in *McGirt* "contravened * * * the history leading to the disestablishment of the Indian reservations in Oklahoma," but concluded that he was bound to follow it. App.8a.

Judge Lewis concurred in the result based on his previous concurrences in *Bosse* and *Hogner* in which he—in relevant part—explained that *McGirt* required reversal. App.11a; see *Hogner v. State*, 2021 OK CR 4, ¶¶ 1-5, ___ P.3d ___ (Lewis, J., concurring in results); *Bosse v. State*, 484 P.3d 286, 299 (Okla. Crim. App. 2021) (Lewis, J., specially concurring).

Judge Hudson, who authored the majority opinion, reiterated in a footnote his "previously expressed views on the significance of *McGirt*, its far-reaching impact on the criminal justice system in Oklahoma and the need for a practical solution by Congress." App.5a.



REASONS FOR GRANTING THE PETITION

In the decision below, the Oklahoma Court of Criminal Appeals applied *McGirt* to free yet another criminal from state custody, exacerbating the crisis in the criminal-justice system in Oklahoma. As the State of Oklahoma explains in its petition in *Bosse*, reconsideration of *McGirt* is the only realistic avenue for ending the ongoing chaos affecting every corner of daily life in Oklahoma. This case presents yet another opportunity to end the damage caused by *McGirt*. This petition should either be granted or, if the petition in *Bosse* is granted, held pending a decision in *Bosse* and then disposed of as is appropriate.

As explained more fully in *Bosse*, *McGirt* was wrongly decided, and the Court's review is urgently needed because no recent decision has had a more immediate and disruptive effect on life in an American State. *McGirt* contravened longstanding precedent on the disestablishment of Indian reservations. 140 S. Ct. at 2485 (Roberts, C.J., dissenting). It did so by wrongly reasoning that historical materials showing the original public meaning of statutes may be considered in the disestablishment inquiry "only" to "clear up" statutory ambiguity. *See id.* at 2467-2468, 2469-2470 (majority opinion). But consideration of history is necessary precisely because it is unclear whether Congress's alienation of Indian lands at the turn of the century changed the Indian country status of the land. *See id.* at 2488 (Roberts, C.J., dissenting). Under the correct framework prescribed by this Court's precedent, it is clear that Congress disestablished the Creek territory in Oklahoma, as well as the

territories of the four other Oklahoma tribes. And with that conclusion, it is clear the decision below is incorrect and warrants reversal.

Overruling *McGirt* and restoring the state jurisdiction it stripped is important not only for this case and the victims of the terrible crimes at issue. As the Chief Justice correctly predicted, the “burdens” of the *McGirt* decision on the State of Oklahoma have been “extraordinary.” 140 S. Ct. at 2500. The challenges from that seismic shift in jurisdiction have rippled through every aspect of life in Oklahoma. Most immediately, *McGirt* has jeopardized the State’s jurisdiction over thousands of criminal cases—this case being just one of them.

The question presented in this case is materially identical to the third question presented in *Bosse*. The Court should either grant review in this case or hold the petition pending the resolution of the third question presented in *Bosse*.



CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, if the petition in *Oklahoma v. Bosse*, No. 21-186, is granted, the petition in this case should be held pending a decision there and then disposed of as is appropriate.

Respectfully submitted,

JOHN M. O'CONNOR

ATTORNEY GENERAL

MITHUN MANSINGHANI

SOLICITOR GENERAL

COUNSEL OF RECORD

CAROLINE HUNT

JENNIFER CRABB

ASSISTANT ATTORNEYS GENERAL

BRYAN CLEVELAND

RANDALL YATES

ASSISTANT SOLICITORS GENERAL

OFFICE OF THE OKLAHOMA

ATTORNEY GENERAL

313 N.E. TWENTY-FIRST STREET

OKLAHOMA CITY, OK 73105

(405) 522-4392

MITHUN.MANSINGHANI@OAG.OK.GOV

COUNSEL FOR PETITIONER

AUGUST 27, 2021