

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

SHAWN LEE MCDANIEL,

Respondent.

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

REPLY BRIEF FOR THE PETITIONER

JOHN M. O'CONNOR

ATTORNEY GENERAL

MITHUN MANSINGHANI

SOLICITOR GENERAL

COUNSEL OF RECORD

CAROLINE HUNT

JENNIFER CRABB

ASSISTANT ATTORNEYS GENERAL

BRYAN CLEVELAND

ASSISTANT SOLICITOR 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

In the Supreme Court of the United States


STATE OF OKLAHOMA,

Petitioner,

v.

SHAWN LEE MCDANIEL,

Respondent.

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

REPLY BRIEF FOR THE PETITIONER

1. The petition in this case presents two questions of overriding importance to the State of Oklahoma: first, whether a State has authority to prosecute non-Indians who commit crimes against Indians in Indian country; and second, whether *McGirt v. Oklahoma*, 140 S.Ct. 2452 (2020), should be overruled. These questions are identical to 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 November 24, respondent filed his brief in opposition (“Opp.”), which fully sets forth his arguments against review on both questions presented and references the brief in opposition filed by counsel in *Castro-*

Huerta. See Opp.4-12. The brief in opposition in this case responds primarily to the arguments made in the petition in *Castro-Huerta*. In addition, the Cherokee Nation filed an amicus brief in support of respondent here, setting forth additional arguments against review of the question whether *McGirt* should be overruled, also responding to arguments in the petition in *Castro-Huerta*. See Cherokee Br.3-21.

3. The brief in opposition in *Castro-Huerta* was filed on November 15. Additional amicus briefs in support of the respondent have been filed in that case, including from the Muscogee (Creek) Nation, Chickasaw Nation, Choctaw Nation, and Cherokee Nation. To ensure an orderly presentation of the arguments to the Court, the State is setting forth its full responses to the brief in opposition and the amicus brief of the Cherokee Nation in this case, as well as the additional briefs filed in other cases, in the reply brief in *Castro-Huerta* filed today. The State respectfully requests that the Court refer to that brief when considering the petition here.*

* Respondent argues that the State “waived” its argument on the first question presented during the proceedings below. Opp.6 n.4. But in the decision below, the Oklahoma Court of Criminal Appeals expressly noted that the State argued “that Oklahoma has concurrent jurisdiction.” Pet.App.5a. And the court squarely addressed and “rejected the State’s same argument regarding concurrent jurisdiction” for the reasons it rejected the argument in *Bosse*. Pet.App.5a. As this Court has explained, “[t]here can be no question as to the proper presentation of a federal claim when the highest state court passes on it.” *Raley v. Ohio*, 360 U.S. 423, 436-437 (1959); see *Orr v. Orr*, 440 U.S. 268, 274-275 (1979).

* * * * *

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,

JOHN M. O'CONNOR

ATTORNEY GENERAL

MITHUN MANSINGHANI

SOLICITOR GENERAL

COUNSEL OF RECORD

CAROLINE HUNT

JENNIFER CRABB

ASSISTANT ATTORNEYS GENERAL

BRYAN CLEVELAND

ASSISTANT SOLICITOR 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

DECEMBER 8, 2021