

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

EMMITT G. SAM,

Respondent.

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

REPLY BRIEF OF PETITIONER

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As explained in the reply brief in *Oklahoma v. Wadkins*, No. 21-1193, who counts as an “Indian” under federal criminal law is a consequential open question subject to fractured lower court answers and in need of clarity from this Court.

Respondent here commits one additional error, asserting that Oklahoma’s proposed tests would not reach him. Opp.8-9. But Oklahoma only expressed that there might be an exception for “young minors,” No. 21-1193, Pet.24, like the two-year-old victim who lacked capacity in *United States v. Keys*, 103 F.3d 758, 760 (9th Cir. 1996). The exception should be limited to only those who are so young that their guardians may not have had sufficient time to seek enrollment on their behalf or, in tribes where minors are allowed to enroll themselves, so young that they would lack the

capacity to do so. But minors who have the capacity to commit crimes also have the capacity to seek enrollment.

The Court should either grant the petition in *Wadkins* and hold this petition, or in the alternative, grant this petition.

Respectfully submitted,

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