

In the Supreme Court of the United States



STATE OF OKLAHOMA,

Petitioner,

v.

ERIK SHERNEY WILLIAMS,

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 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. At the time the petition was filed, a petition filed by the State presenting those same two questions (in addition to a third) 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 one or both of the questions 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 questions presented. On September 17, the State filed a petition in *Oklahoma v. Castro-Huerta*, No. 21-429, which presents the two relevant questions 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 November 5, 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 *Oklahoma v. Mize*, No. 21-274. See Opp.3-10. 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, also responding to arguments in the petition in *Castro-Huerta*. See Creek Br.3-28.

4. The brief in opposition in *Castro-Huerta* was filed on November 15. Additional amicus briefs have been filed in that case. In addition, the 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.*

* Respondent argues that the State “waived” its argument on the first question presented during the proceedings below. Opp.5 n.5. But in the decision below, the Oklahoma Court of Criminal Appeals expressly noted that “[t]he State raised the issue of concurrent jurisdiction below.” Pet.App.3a. And the court squarely addressed and “reject[ed] the State’s same argument regarding concurrent jurisdiction” for the reasons it rejected the argument in *Bosse*. Pet.App.4a. 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,

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