No. 21-_____

IN THE

# Supreme Court of the United States

DELILA PACHECO,

*Petitioner*,

v.

THE STATE OF OKLAHOMA ET AL.,

*Respondents*.

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

## PETITION FOR A WRIT OF CERTIORARI


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## QUESTION PRESENTED

Whether *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), applies retroactively to convictions that were final when *McGirt* was announced.

## PARTIES TO THE PROCEEDINGS

Petitioner is Delila Pacheco.

Respondent is the State of Oklahoma, by and through John M. O'Connor, Attorney General of Oklahoma, and Ashley L. Willis, Assistant Attorney General of Oklahoma.

## RELATED PROCEEDINGS

*State of Oklahoma v. Delila Pacheco*, No. PC-2020-635 (Okla. Crim. App.)

*State of Oklahoma v. Delila Pacheco*, No. PC-2018-129 (Okla. Crim App.)

*State of Oklahoma v. Delila Pacheco*, No. CF-2013-535 (Cherokee Cnty., Okla. Dist. Ct.)

*United States v. Delila Pacheco*, No. 6:16-cv-450-RAW-KEW (E.D. Okla.)

## TABLE OF CONTENTS

**TABLE OF CONTENTS**
**(continued)**

**Page**

## TABLE OF AUTHORITIES

**Page(s)**

### Cases

**TABLE OF AUTHORITIES**
**(continued)**

**Page(s)**



**Statutes**



**Other Authorities**

## PETITION FOR A WRIT OF CERTIORARI

Petitioner Delila Pacheco respectfully petitions for a writ of certiorari to review the judgment of the Oklahoma Court of Criminal Appeals in this case.

## OPINIONS BELOW

The opinion of the Oklahoma Court of Criminal Appeals affirming the denial of post-conviction relief is unpublished but available at Pet. App. 1a-3a. The trial court's findings of facts and conclusions of law are unpublished but available at Pet. App. 4a-5a. The trial court's original order denying post-conviction relief is unpublished but available at Pet. App. 6a-7a.

## JURISDICTION

The Oklahoma Court of Criminal Appeals affirmed the denial of post-conviction relief on September 21, 2021. Pet. App. 1a-3a. This petition is being filed within 90 days of that reversal. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

## RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Indian Commerce Clause, the Supremacy Clause, the Due Process Clause, and the relevant provisions of Title 18 of the U.S. Code and Title 22 of the Oklahoma Statutes are set forth in the appendix. Pet. App. 8a-10a.

## INTRODUCTION

In *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), this Court held that the federal government must be held to its word. Because the United States promised to reserve certain lands for tribes in the nineteenth century and never rescinded those promises, those lands remain reserved to the tribes today. In

particular, these lands remain "Indian country" within the meaning of the Major Crimes Act (MCA), which divests States of jurisdiction to prosecute "[a]ny Indian" who committed an offense enumerated in Section 1153(a) of Title 18 of the U.S. Code while in "Indian country." 18 U.S.C. § 1153(a). Only the federal government or a tribe may prosecute such crimes.

Oklahoma has, however, prosecuted many Indians for such offenses. Among them is petitioner, Delila Pacheco, a registered member of the United Keetoowah Band of Cherokee Indians. In 2013, Oklahoma indicted her for a crime that all agree occurred on the Cherokee Nation Reservation. The Cherokee Reservation continues to exist today and is "Indian country" within the meaning of the MCA. *See Spears v. State*, 485 P.3d 873, 877 (Okla. Crim. App. 2021), *pet. for cert. filed*, No. 21-323 (U.S. Aug. 28 2021). As confirmed by the holding in *McGirt*, Oklahoma therefore never had jurisdiction to prosecute petitioner for an enumerated major crime committed in Indian Country; that authority belongs exclusively to the United States and the Tribe.

Relying on *McGirt*, petitioner applied for post-conviction relief. The trial court denied her request on the grounds that her alleged crimes occurred on the Cherokee Reservation, whereas the crime in *McGirt* occurred on the Creek Reservation. Petitioner appealed to the Oklahoma Court of Criminal Appeals, which twice remanded the case to the trial court. The first time, it ordered the trial court to hold an evidentiary hearing on whether petitioner was Native American and whether her crimes occurred in Indian country; the second time, the appellate court ordered

the trial court to rule on the merits of her claims for relief.

While petitioner's appeal from the second remand was pending, the Oklahoma Court of Criminal Appeals issued its decision in *Ex. rel. Matloff v. Wallace*, 497 P.3d 686 (Okla. Crim. App. 2021), which held that *McGirt* is a "new procedural rule" that does not apply retroactively to final convictions. Pet. App. 2a. On the basis of *Matloff*, the court held that because petitioner's "conviction in this matter was final before the July 9, 2020 decision in *McGirt*," *McGirt*'s holding did not apply. *Id.* It therefore affirmed the trial court's denial of post-conviction relief. *Id.*

As the pending petition in *Parish v. Oklahoma*, No. 21-467 (filed Sept. 27, 2021) explains, the Oklahoma court's decision in *Matloff*—and thus the decision below here—is wrong. *McGirt* announced a substantive rule with constitutional force, not a procedural rule. It thus applies retroactively on collateral review as a matter of federal law. *McGirt* "place[s] certain criminal laws and punishments altogether beyond the State's power to impose," *Montgomery v. Louisiana*, 577 U.S. 190, 201 (2016), and "alters . . . the class of persons that the law punishes," *Schriro v. Summerlin*, 542 U.S. 348, 353 (2004). Because *McGirt* announced a substantive rule enforced by the Supremacy Clause, federal law requires its retroactive application in state-court proceedings. *Montgomery*, 577 U.S. at 205.

This Court's review and correction of the erroneous decision below is warranted. Because the same retroactivity issue is presented in the previously

filed petition in *Parish*, which should be granted to correct the same errors as occurred in this case, the petition here should be held pending the disposition of *Parish* and then disposed of accordingly.

## STATEMENT

### A. Federal Regulation Of Indian Country Crimes

For nearly two centuries, this Court has recognized that "[t]he whole intercourse between the United States and [Indian tribes], is, by our [C]onstitution and laws, vested in the [G]overnment of the United States." *Worcester v. Georgia*, 31 U.S. 515, 561 (1832). In the earliest years of our nation, Congress withheld the exercise of its exclusive power to prosecute at least some crimes involving Indians on tribal lands. For example, under a 1796 law, Congress provided that "offenses committed by Indians . . . against each other were left to be dealt with by each tribe for itself, according to its local customs." *Ex parte Crow Dog*, 109 U.S. 556, 571-72 (1883). *Crow Dog* set aside a federal conviction of an Indian in a territorial court, based on its conclusion that, despite an agreement with the Sioux tribe to allow federal prosecutions for murder, the treaty had not repealed Congress's exemption of crimes by Indians against each other. Accordingly, the Court held, the federal territorial court "was without jurisdiction to find or try the indictment against the prisoner," such that "the conviction and sentence are void, and that his imprisonment is illegal." *Id*. at 572.

In part in reaction to *Crow Dog*, *see United States v. Kagama*, 118 U.S. 375, 382-83 (1886), Congress enacted the MCA. *See* Act of Mar. 3, 1885, ch. 341, 23 Stat. 362, codified at 18 U.S.C. § 1153. The MCA

gives the federal government exclusive jurisdiction to prosecute certain felonies committed by Indians in "Indian country." 18 U.S.C. § 1153(a); *United States v. John*, 437 U.S. 634, 651 (1978).[1] Accordingly, absent an Act of Congress providing otherwise, States lack jurisdiction to prosecute "offenses covered by the Indian Major Crimes Act." *Negonsott v. Samuels*, 507 U.S. 99, 102-03 (1993); *see McClanahan v. State Tax Comm'n of Ariz.*, 411 U.S. 164, 168 (1973) (similar).

### B. The Federal Government's Promise To The Cherokee Nation

Members of the Cherokee Nation once lived in present-day Georgia, South Carolina, North Carolina, Tennessee, and Alabama. When their land "proved ideal for growing cotton" and gold was discovered in Georgia, federal and local governments "pushed" to "eradicate" the Cherokees so their lands would be "free" for "state and federal use."[2] In 1830, President Andrew Jackson "declared the removal of the Cherokee tribes" a "national objective."[3]

Faced with that reality, the Cherokee Nation signed the Treaty of New Echota in 1835. *Id.* That treaty "ceded, relinquished, and conveyed" all lands east of the Mississippi to the federal government.

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[1] The MCA originally used the term "reservation," but in 1948 Congress replaced the term "reservation" with the broader term "Indian country," which was "used in most of the other special statutes referring to Indians[.]" *See John*, 437 U.S. at 634, 647 n.16, 649 (citing 18 U.S.C. § 1153).

[2] Cherokee Indians relocation papers, Georgia Historical Society, http://ghs.galileo.usg.edu/ghs/view?docId=ead/MS%200927-ead.xml;query=;brand=default (last accessed Nov. 9, 2021).

[3] *Id.*

*Hogner v. State*, -- P.3d --, 2021 WL 958412, at *3 (Okla. Crim. App. Mar. 11, 2021) (quotation and alterations omitted). In exchange, the United States conveyed "new lands in Indian territory" where the Cherokee "could establish and enjoy a government of their choice" separate from "the state sovereignties." *Id.* (quotation omitted). The United States promised that none of the new lands "would be included within the territorial limits or jurisdiction of any State" and secured to the Cherokees "the right by their national councils to make and carry into effect" any laws they deemed "necessary." *Id.* (quotation omitted). In other words, the federal government "promised a permanent home that would be forever set apart" by assuring "a right to self-government on lands that would lie outside both the legal jurisdiction and geographic boundaries of any state." *Spears*, 485 P.3d at 876.

The Cherokees were one of multiple Indian Tribes—later known as the Five Civilized Tribes—to be relocated to the western territories. The relocation was brutal. The tribes suffered from floods, blizzards, disease, and starvation, prompting one Chief to say that the removal was a "trail of tears and death."[4]

In the ensuing years, the federal government and the Cherokees signed several treaties that modified the geographical boundaries of the western land under Cherokee control. *Hogner*, 2021 WL 958412, at *3-4. But each treaty affirmed that the land remained

[4] Len Green, *Trail of Tears from Mississippi Walked by our Choctaw Ancestors* (Nov. 1978), https://web.archive.org/web/20080604005108/http://www.tc.umn.edu/~mboucher/mikebouchweb/choctaw/trtears.htm.

part of the Cherokee Reservation: "nothing in any of [the subsequent treaties] showed a congressional intent to erase the boundaries of the reservation and terminate its existence." *Spears*, 485 P.3d at 876-77.

Oklahoma did not become a State until nearly 80 years after the Cherokee had established their home there. In 1907, Oklahoma joined the United States after meeting the conditions of the federal Oklahoma Enabling Act. *See* Act of June 16, 1906, ch. 3335, 34 Stat. 267. Under that Act, those living in Oklahoma "forever disclaim[ed] all right and title in or to any unappropriated public lands lying within the boundaries" of land "owned or held by any Indian, tribe, or nation." 34 Stat. 267, 269. Only the federal government could extinguish that title, and unless it did so, those lands "shall be and remain subject to the jurisdiction, disposal, and control of the United States." *Id.* Because the provision "prohibit[ing] state jurisdiction over Indian Country" has never been altered, "the [F]ederal [G]overnment still has exclusive jurisdiction over Indian [C]ountry." *C.M.G. v. State*, 594 P.2d 798, 799 (Okla. Crim. App. 1979).

Other provisions of the Oklahoma Enabling Act underscore the exclusive jurisdiction of the United States over Indian lands. Section 16 required any then-pending cases "arising under the Constitution, laws, or treaties of the United States," 34 Stat. 267, 276—which would include cases arising under the MCA—to be transferred to *federal* court.[5] Section 1

[5] In 1907, Congress amended the Oklahoma Enabling Act to confirm that the transfer to federal court was required for "[p]rosecutions for all crimes and offenses . . . pending . . . upon . . . admission" to statehood "which, had they been committed within a State, would have been cognizable in the Federal

prohibited Oklahoma from limiting federal authority "to make any law or regulation respecting such Indians, their lands, property, or other rights," *id.* at 267—which this Court has interpreted to preserve "established [federal] laws and regulations" concerning Indians, *Ex parte Webb*, 225 U.S. 663, 682-83 (1912). And Section 21 confirmed that federal laws, such as the MCA, that are "not locally inapplicable shall have the same force and effect . . . as elsewhere." 34 Stat. at 278.

Although federal law unequivocally established exclusive federal jurisdiction to prosecute tribal members for crimes committed in Indian country, many States nevertheless asserted civil and criminal jurisdiction in those lands. *See* App. 7a, U.S. Amicus Br., *Sharp v. Murphy*, No. 17-1107 (filed July 30, 2018). As the U.S. Department of Interior explained in a 1963 memorandum, this practice was widespread even though "no Federal statutes of relinquishment and transfer" authorized these States to prosecute Indians who committed crimes in Indian country. *Id.* 7a-8a. Rather, perhaps because of the absence or ineffectiveness of tribal courts, "many States joined Oklahoma in prosecuting Indians without proper jurisdiction." *McGirt*, 140 S. Ct. at 2478. Yet "[o]nly the federal government, not the State, may prosecute Indians for major crimes committed in Indian country." *Id.*

### C. This Court's Decision In *McGirt*

In *McGirt*, this Court held that Oklahoma's "longstanding practice of asserting jurisdiction over Native Americans" for crimes covered by the MCA

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courts." Act of Mar. 4, 1907, ch. 2911, § 1, 34 Stat. 1286, 1287.

was unlawful. 140 S. Ct. at 2470-71. Oklahoma had prosecuted and convicted McGirt, an enrolled member of the Seminole Nation of Oklahoma, for three sexual offenses, all of which were committed on the Creek Reservation. *Id.* at 2459. McGirt argued in post-conviction proceedings that the State lacked jurisdiction to prosecute him and that any new trial must take place in federal court. *Id.* Oklahoma disputed that the Creek Reservation remained "Indian country" within the meaning of the MCA, contending instead that land given to the Creeks in an 1866 treaty and federal statute became property of Oklahoma in the intervening years. *Id.* at 2460.

The Court rejected Oklahoma's position. The Court explained that "Congress established a reservation for the Creeks[**]** [i]n a series of treaties." *Id.* at 2460-62; *see id.* at 2472-76. No "Acts of Congress," the Court concluded, had rescinded that reservation. *Id.* at 2462-68. And courts and "States have no authority to reduce federal reservations." *Id.* at 2462. Nor, the Court reasoned, can "historical practices and demographics . . . around the time of and long after the enactment of all the relevant legislation . . . prove disestablishment." *Id.* at 2468. Finally, the Court rejected the State's argument that the MCA was inapplicable to Oklahoma or some subsection of it. *Id.* at 2476-78. Instead, the Court reaffirmed, "Congress allowed only the federal government, not the States, to try tribal members for major crimes." *Id.* at 2480.

The Court acknowledged that its holding might affect "perhaps as much as half [Oklahoma's] land and roughly 1.8 million of its residents." *Id.* at 2479. But it declined to allow fears about the fallout,

including the possibility that "'[t]housands' of Native Americans" might "challenge the jurisdictional basis of their state-court convictions," to stand in the way of the Court's holding. *Id.* The Court raised the possibility that "well-known state and federal limitations on postconviction review in criminal proceedings" might impose "significant procedural obstacles" to relief. *Id.*; *see also id.* at 2479 n.15 (noting state rule that claims not raised on direct appeal are waived on collateral attack); *but see id.* at 2501 n.9 (Roberts, C.J., dissenting) ("[U]nder Oklahoma law, it appears that there may be little bar to state habeas relief because 'issues of subject matter jurisdiction are never waived and can therefore be raised on a collateral appeal.'" (quoting *Murphy v. Royal*, 875 F.3d 896, 907 n.5 (10th Cir. 2017), *aff'd sub nom. Sharp v. Murphy*, 140 S. Ct. 2412 (2020))). But the Court did not embrace any such defenses, instead concluding that "the magnitude of a legal wrong is no reason to perpetuate it." *Id.* at 2480. "[D]ire warnings are just that, and not a license for us to disregard the law." *Id.* at 2481.

**D. The Current Controversy**

1. On December 10, 2013, Oklahoma charged petitioner with one count of first-degree murder, *see* Okla. Stat. tit. 21, § 701.7, in Cherokee County District Court. On December 4, 2014, a jury found her guilty and sentenced her to life with the possibility of parole in an Oklahoma prison. *See generally Oklahoma v. Pacheco*, Dkt. CF-2013-00535 (Cherokee Cnty. Dist. Ct., Okla.). The Oklahoma Court of Criminal Appeals summarily affirmed her conviction and sentence on direct appeal. Petitioner's conviction and sentence became final on April 15, 2016. *See id.*

2. On August 8, 2017, the Tenth Circuit issued its decision in *Murphy v. Royal*, 866 F.3d 1164, *amended and superseded on other grounds by Murphy v. Royal*, 875 F.3d 896 (10th Cir. 2017) (en banc). Like *McGirt*, *Murphy* held that Congress had not disestablished the Creek Reservation, and Oklahoma therefore lacked jurisdiction to prosecute an Indian for an alleged enumerated crime that occurred there. *Id.* at 1233.

In 2017, petitioner filed an application for post-conviction relief relying on *Murphy*. Application for Post-Conviction Relief, *Oklahoma v. Pacheco*, Dkt. CF-2013-00535 (Cherokee Cnty. Dist. Ct., Okla. Sept. 18, 2017). She argued that "Oklahoma was without jurisdiction to charge, try, convict, and sentence" because she "is an Indian" and the alleged crime "occurred on Indian Land." *Id.* (citing *Murphy*, 866 F.3d 1164).

The State did not challenge petitioner's status as an Indian or contest that the alleged crime occurred in Indian country. Instead, it argued that the court should dismiss petitioner's application for post-conviction relief because *Murphy* had been stayed pending the filing of a petition for certiorari in this Court. State's Response to Application for Post-Conviction Relief, *Oklahoma v. Pacheco*, Dkt. CF-2013-00535 (Cherokee Cnty. Dist. Ct., Okla. Nov. 30, 2017). Alternatively, the State argued that *Murphy*'s holding was "specific to the Creek Reservation," so it did not affect petitioner. *Id.*

In a two-sentence order, the trial court denied petitioner's application. Order Overruling Application for Post-Conviction Relief, *Oklahoma v.*

*Pacheco*, Dkt. CF-2013-00535 (Cherokee Cnty. Dist. Ct., Okla. Dec. 22, 2017). It said that it "considered" both parties' arguments and found the State's response "persuasive." *Id.* The Oklahoma Court of Appeals affirmed. Order Affirming Denial of Application for Post-Conviction Relief, *Oklahoma v. Pacheco*, Dkt. CF-2018-129 (Okla. Ct. Crim. App. June 15, 2018).

This Court then affirmed the Tenth Circuit's decision in *Murphy* "for the reasons stated in *McGirt*." *Murphy*, 140 S. Ct. at 2412.

3. In 2020, petitioner filed a new application for post-conviction relief. Application for Post-Conviction Relief, *Oklahoma v. Pacheco*, Dkt. CF-2013-00535 (Cherokee Cnty. Dist. Ct., Okla. July 20, 2020). She argued, among other things, under *McGirt* and *Murphy*, Oklahoma lacked power to "charge, try and convict" her for the alleged crime. *Id.* She therefore argued that her conviction and sentence were "invalid." *Id.*

The trial court denied her application for post-conviction relief. Order, *Oklahoma v. Pacheco*, Dkt. CF-2013-00535 (Cherokee Cnty. Dist. Ct., Okla. Aug. 20, 2020). In its view, *McGirt* "only addressed crimes" committed in the "Creek Nation Reservation." *Id.* The court noted that the Oklahoma Court of Appeals was considering whether the same rule applied to the Cherokee Nation in another case. *Id.* (citing *Hogner v. State*, No. F-18-138 (Craig Cnty.)).

Petitioner appealed again. *Oklahoma v. Pacheco*, PC-2020-635 (Okla. Ct. Crim. App. Sept. 18, 2020). This time, the Oklahoma Court of Criminal Appeals instructed the district court to hold an evidentiary

hearing to determine Petitioner's "Indian status" and "whether the crime occurred in Indian Country." Order Remanding for Evidentiary Hearing, *Oklahoma v. Pacheco*, PC-2020-635 (Okla. Ct. Crim. App. Oct. 14, 2020).

4. On December 10, 2020, the trial court held an evidentiary hearing. The parties stipulated that petitioner was a "member of the United Keetoowah Band of Cherokee Indians," that the Band was "an Indian Tribal entity recognized by the federal government," and that the alleged crime occurred "within the historical boundaries of the Cherokee Nation." Supplemental Brief of Appellee, *Oklahoma v. Pacheco*, PC-2020-635 (Okla. Ct. Crim. App. Jan. 4, 2021). The district court made findings of facts to the same effect and concluded that the alleged crime occurred "within the boundaries of a recognized Indian Reservation as outlined in *McGirt*." Pet. App. 4a-5a. But it did not rule on whether these new factual findings entitled petitioner to relief from her conviction. *Id.*

The Oklahoma Court of Criminal Appeals remanded again. It ordered the court to address petitioner's claim that "the State lacked jurisdiction to charge, try and convict her" because the alleged crime "occurred on the Cherokee Reservation" and she was "an Indian." Order, *Oklahoma v. Pacheco*, PC-2020-635 (Okla. Ct. Crim. App. Jan. 15, 2021).

5. Before the trial court acted on the remanded issue, the Oklahoma Court of Criminal Appeals decided *Matloff v. Wallace*, 497 P.3d 686. *Matloff* held that an Oklahoma prisoner's entitlement to post-conviction relief under *McGirt* turned on Oklahoma's

retroactivity doctrine. That doctrine, the court stated, "draw[s] on, but" is "independent from, the Supreme Court's non-retroactivity doctrine in federal habeas corpus," as developed in *Teague v. Lane*, 489 U.S. 288 (1989), and its progeny. *Matloff*, 497 P.3d at 688-89. Under Oklahoma's retroactivity doctrine, the court stated, "new rules" of "criminal procedure" "generally do *not* apply retroactively to convictions that are final, with a few narrow exceptions." *Id.* at 689.

The *Matloff* court held that *McGirt* does "not apply retroactively to void a conviction that was final when *McGirt* was decided" because it "announced a rule of criminal *procedure*." *Id.* at 689, 691. In the Oklahoma court's view, "*McGirt* did not 'alter[] the range of conduct or the class of persons that the law punishes,'" as required to identify a substantive rule, but merely "decided *which sovereign* must prosecute major crimes committed by or against Indians within its boundaries." *Id.* at 691 (quoting *Schriro*, 542 U.S. at 353). Because it believed that "the extent of state and federal criminal jurisdiction affected 'only the *manner of determining* the defendant's culpability,'" the court held that *McGirt* announced a procedural rather than substantive rule. *Id.* (quoting *Schriro*, 542 U.S. at 353).[6]

6. On August 16, 2021, Oklahoma brought

[6] The Oklahoma court also rejected the argument that *McGirt's* rule applied retroactively because it was not "new." *Matloff*, 497 F.3d at 691-92. *McGirt*, the court opined, "imposed new and different obligations on the state and federal governments." *Id.* at 692. The court also thought that *McGirt* was new because "it was not dictated by, and indeed, arguably involved controversial innovations upon, Supreme Court precedent." *Id.*

*Matloff* to the Court of Criminal Appeals' attention in petitioner's appeal. The State argued that *Matloff* "rendered the questions addressed" at petitioner's evidentiary hearing "moot." Notice of Decision and Request to Affirm Denial of Post-Conviction Relief, *Oklahoma v. Pacheco*, PC-2020-635 (Okla. Ct. Crim. App. Aug. 16, 2021). It therefore asked the court to affirm the denial of post-conviction relief. *Id.*

The Oklahoma Court of Criminal Appeals did so. Pet. App. 1a-3a. It explained that, because *Matloff* deemed *McGirt* "a new procedural rule," *McGirt* "is not retroactive and does not void final state convictions." *Id.* (citing *Matloff*, 497 F.3d at 691-92, 694). It thus deemed petitioner's application for post-conviction relief "moot." *Id.*

**REASONS FOR GRANTING THE PETITION**

This case presents the question whether *McGirt* applies retroactively to convictions that were final when *McGirt* was announced. The answer to that question is yes. *McGirt* gave effect to a fundamental structural principle governing criminal jurisdiction over Indian-Country crimes: States have no authority to prosecute crimes covered by the Major Crimes Act. That holding reflects a substantive decision of constitutional law that applies retroactively in state post-conviction proceedings. *See Petition for Cert.* 17, 22-25, *Parish v. Oklahoma*, No 21-467.

On September 27, 2021, the petitioner in *Matloff*, Clifton Parish, filed a petition for a writ of certiorari seeking review of the same question presented here. *See Parish v. Oklahoma*, No 21-467. Because the question presented is pending before the Court, petitioner asks the Court to hold this petition for

disposition of the petition in *Parish*, and then dispose of this petition as appropriate in light of the decision in that case.

**CONCLUSION**

For the foregoing reasons, the petition for a writ of certiorari should be held pending this Court's decision in *Parish v. Oklahoma*, No. 21-467, and then disposed of as appropriate.

Respectfully submitted,

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