IN THE DISTRICT COURT OF OTTAWA COUNTY
STATE OF OKLAHOMA

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| STATE OF OKLAHOMA,<br>Plaintiff, | ) | |
| vs. | ) | Case Nos. CF-2018-298<br>CF-2020-129 |
| WINSTON WHITECROW BRESTER,<br>Defendant. | ) | CF-2020-177<br>CF-2020-178 |

**STATE'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS FOR LACK OF JURISDICTION**

**COMES NOW** the State of Oklahoma, by and through Kenny Wright, District Attorney for Ottawa County, and in response to Defendant's motion, the State alleges and states as follows:

1. Defendant was charged on July 14, 2020, in Ottawa County District Court case number CF-2018-298 with violating the rules and conditions of his ten (10) year suspended sentence for attempting to elude AFCF x 3.
2. Defendant was charged on June 24, 2020, in Ottawa County District Court case number CF-2020-129 with burglary in the first degree and robbery in the first degree both AFCF x 4.
3. Defendant was charged on August 14, 2020, in Ottawa County District Court case number CF-2020-177 with being a prisoner placing body fluid on a government employee AFCF x 4.
4. Defendant was charged on August 14, 2020, in Ottawa County District Court case number CF-2020-178 with assault and battery on a police officer AFCF x 4.

5. September 28, 2020, Defendant filed his Motion to Dismiss for Lack of Jurisdiction. October 29, 2020, Defendant filed his Amended Motion to Dismiss for Lack of Jurisdiction alleging that the crimes occurred within the traditional boundaries of the Ottawa Tribe of Oklahoma and that he is a citizen of the Seneca-Cayuga Nation and possesses some degree of Indian blood.
6. The State alleges that in CF-2018-298 the alleged crime began and was completed within the historical boundaries of the Ottawa Tribe of Oklahoma and continued into an area contained within the historical boundaries of the Cherokee Nation. The State predicates its claim of subject matter jurisdiction on the crime being completed within the Ottawa Tribe's boundaries and will not address the status of the Cherokee Nation Reservation in this case. The alleged crime in CF-2020-129 occurred within the historical boundaries of the Peoria Tribe of Indians of Oklahoma. The alleged crimes in CF-2020-177 and CF-2020-178 occurred within the historical boundaries of the Ottawa Tribe of Oklahoma.

In order for the State to have been deprived of the jurisdiction to prosecute the defendant, the defendant must establish through properly admitted evidence, and the court must find:

1. The crime alleged is a crime enumerated in the major crimes act, 18 U.S.C. § 1153 or the General Crimes Act, § 1152.
2. The defendant is "Indian" as that term is defined for major crimes act jurisdiction; and,
3. The crime took place in "Indian Country" as that is defined by law.

*McGirt v. Oklahoma*, 591 U.S. ___ (2020).

**I. Was the Crime Alleged a Major Crime Under the Act**

18 U.S.C. §§ 1152,1153 confers exclusive federal jurisdiction over certain major crimes. Some of Defendant's charges in these cases are major crimes and some are not. The State believes this point is not in controversy.

**II. Is the defendant an Indian, as That Term is Defined and Used, Under the Act**

In order for the defendant to prevail in defeating the State's jurisdiction the defendant must present evidence that the defendant is an Indian under the Act. Because there is no statutory definition of Indian, we look to federal law interpreting that term under the act.

Under the Act an Indian is a person who meets the following two part test:

1. Has some degree of Indian blood; and,
2. Is an individual recognized by the federal government or a federally recognized tribe as an Indian.

Enrollment may not be necessary, but the defendant must have an Indian ancestor. *United States v. Prentiss*, 133 F. 3d 1137 (10th Cir. 2001); *See Also*, *Goforth v. State*, 1982 OK CR 48, ¶ 6, *United States v. Diaz*, 679F.3d 1183, 1187 (10th Cir. 2012).

A defendant must show they are Indian under the act in order to avail themselves of the act's jurisdiction. A defendant's bald assertion should be given no persuasive weight absent the production of evidence sufficient to satisfy the requirement of *Prentiss*.

**III. Did the Crime Take Place in Indian Country as Defined by Relevant Law?**

Indian country is defined in 18 U.S.C. § 1151:

(a) All land within the limits of an Indian reservation under U.S. jurisdiction including potential lands and rights of way running through…

Defendant asserts that the crime, which occurred in Ottawa County, occurred in "Indian Country" as defined by the Statute. The defendant must offer ***evidence*** of this fact. It is improper

for the Court to grant relief merely on defendant's assertions without some proof. Specifically, Defendant assets the crime occurred within the borders of the traditional reservation of the Cherokee Nation. The question then becomes, was that reservation disestablished by Congress, applying the *McGirt* analysis.

On August 24, 2020 the Oklahoma Court of Criminal Appeals (hereafter OCCA) issued an Order Remanding for Evidentiary Hearing in *Perales v. State*, F-18-383. In that case, defendant Perales asserts that she is a citizen of a federally recognized Indian tribe. She further argues that the location in Delaware County where she committed the crime alleged is within the boundaries of the Cherokee Nation. Therefore, she concluded, as an Indian, in Indian country, the State of Oklahoma had no jurisdiction to prosecute her and that authority lied with the Federal Government.

The OCCA found that, pursuant to *McGirt v. Oklahoma*, supra, Perales' claim raised two issues:

1. The defendant's Indian status; and,
2. Whether the crime occurred in Indian country.

The OCCA determined that these two issues required fact finding and remanded the case to the District Court of Delaware County for an evidentiary hearing. The Court stated that upon the *Appellant's* presentation of *prima facie* evidence as to her legal status as Indian **and** the location of the crime being in Indian Country the burden *then* shifts to the State of Oklahoma to prove they have jurisdiction. *Perales v. State*, F-18-383, Order Remanding for Evidentiary Hearing, 08/24/20.

Specifically regarding the question whether the Cherokee Nation territory is Indian Country, the Court of Criminal Appeals directed the District court to follow the analysis set out in *McGirt* and make a determination, based upon evidence, as to:

1. Whether congress established a reservation for the Cherokee Nation; and,
2. Whether congress specifically erased these boundaries and disestablished the reservation.

In Order to make this determination, the OCCA said, "[T]he District Court should consider any evidence the parties provide, including but not limited to treaties, statutes, maps and/or testimony." The District Court should then transmit the record of the evidentiary hearing. *Perales Order Remanding for Evidentiary Hearing*, p.4.

**IV. Disestablishment of the Ottawa Tribe of Oklahoma Reservation**

Defendant alleges that the alleged crimes occurred within the historical boundaries of the Ottawa Tribe of Oklahoma. The State holds this position with exception for CF-2020-129 which occurred within the historical boundaries of the Peoria Tribe of Indians of Oklahoma. *See infra.*

At the turn of the nineteenth century, the Ottawa Tribe "resided on land in [present-day Ohio] reserved to them in the Treaty of Greenville, [Treaty of August 3, 1795, 7 Stat. 51], but through a series of subsequent treaties… ceded that land to the United States." *Ottawa Tribe of Oklahoma v. Logan*, 577 F.3d 634, 637 (6th Cir. 2009) (citing *Williams v. City of Chicago*, 242 U.S. 434, 436—37 (1917)). The United States desire for these subsequent treaties, and land, was spurred by the "familiar forces" of westward expansion and the need to make way for white settlers. *Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584, 590 (1977). To this end, rather than entering into treaties with Indian tribes wherein the tribes reserved to themselves a portion of their aboriginal land, the federal government adopted a policy of removing Indians to the west of

the Mississippi River after the enactment of the Indian Removal Act in 1830. See, e.g., *Menominee Tribe of Indians v. United States*, 391 U.S. 404, 411 n. 12 (1968).

Soon thereafter "Ottawa chiefs signed the Treaty of 1831 [Treaty of August 30, 1831, 7 Stat. 359] relinquishing all land previously held in Ohio" and in exchange "were granted a land reservation in [present-day] Kansas." *Ottawa Tribe of Oklahoma v. Ohio Dep't of Nat. Res.*, 541 F. Supp. 2d 971, 973—74 (N.D. Ohio 2008), affd, sub nom. *Ottawa Tribe of Oklahoma v. Logan*, 577 F.3d 634 (6th Cir. 2009). The United States promised the Ottawas this land "to them and their heirs for ever, as long as they shall exist as a nation, and remain upon the same," and the land will "never be within the bounds of any State or territory" and they will be free from "all interruption or disturbance from any other tribe or nation of Indians and from any other person or persons whatsoever." Arts. 3, 9, 7 Stat. 359. The United States promised to "defray the expense of the removal" and "supply them with a sufficiency of good and wholesome provisions to support them for one year after their arrival at their new residence." *Id.* at Art. 4. Tragically, "[d]uring the seven hundred mile journey to Kansas, nearly half of the roughly three-hundred Ottawas died from hunger and disease." *Ottawa Tribe*, 541 F. Supp. 2d at 974.

Upon arriving in Kansas, the Ottawa Tribe transitioned from hunting and fishing to farming. *Id.* at 974. But even this uneasy transition would not last. Nor would the promises contained in the Treaty of 1831, for the forces of westward expansion never waned and land containing the Ottawa reservation was being eyed for a new State of the Union, the State of Kansas. *See In re Kansas Indians*, 72 U.S. 737, 753—54 (1866). By the 1860s, the federal government began moving from a removal policy to that of allotment and assimilation. *See DeCoteau v. Dist. Cty. Court for Tenth Judicial Dist.*, 420 U.S. 425, 432 (1975). And the Ottawas found themselves in the direct line of this policy shift as well. In 1862, while the

country was in the throes of the Civil War, the Ottawa Tribe entered into a treaty with the United States in which their reservation would be divided into 80-acre tracts to be allotted to members of the Tribe with the remainder to be sold to white settlers. The proceeds of the sale would go to tribal members. Treaty of June 24, 1862, 12 Stat. 1237 (1862 Treaty).

"In this treaty there is no express repeal of the agreement that the lands should not become a part of the state, but the whole tenor of the treaty is to that effect." *McCullagh v. Allen*, 10 Kan. 150, 155 (Kan. Sup. Ct. 1872). After five years, the United States would transfer the land patent to the Indian allottee, the Indian would become a citizen of the United States, and their "relations with the United States as an Indian tribe [would] be dissolved and terminated." Art. 1, Treaty of June 24, 1862, 12 Stat. 1237 (1862 Treaty).

The first article of the treaty of 1862 summed up the attitude of the time: the federal government proclaimed that the Ottawas could make this transition because they "h[ad] become sufficiently advanced in civilization." *Id.* But as the five-year mark approached, the federal government felt that while "portions of [Ottawas] desire to dissolve their tribal relations, and become citizens" other "portions should be enabled to remove to other lands in the Indian country south of [Kansas]." Act of February 23, 1867, 15 Stat. 513 (1867 Treaty).

The United States bought a small piece of the Shawnee reservation in the Indian Territory, and paid for it "from the funds in the hands of the Government arising from the sale of the Ottawa trust-lands [in Kansas]," as provided in Article 9 of the 1862 Treaty. The remainder of the tribal fund was to be divided among each tribal member. *Id.* at Art. 16. The provision of the 1862 Treaty whereby the Ottawas would become citizens was extended for two years, although an individual member could elect to become a citizen and "be disconnected with the tribe" before then. *Id.* at Art. 17. But those making that election would have to take their portion

of the tribal fund at that time and would not be eligible for the final divvying up of tribal assets under federal supervision. *Id.*

It seemed the process of dissolving the federal relationship with the Ottawa tribe which began in the State of Kansas by the 1862 Treaty continued in the Indian Territory by the terms of the 1867 Treaty, albeit extended for two years to July 16, 1869. The 1867 Treaty contained none of the promises found in earlier treaties, such as perpetual right to the land, freedom from disturbance, the right to occupancy, and recognition of tribal sovereignty. *Cf.* Art. Ill, 1831 Treaty, 7 Stat. 360. Quite the opposite. The treaty only promised that tribal members were to become U.S. citizens and that land would be purchased for them. 1867 Treaty, 15 Stat. 513. On the surface, the Act "simply extend[ed] to July 16, 1869, the time for terminating the tribal existence and transforming all the members thereof into individual citizens of the United States and the state in which they reside." *Wiggan v. Connolly*, 163 U.S. 56, 61 (1896). But it was widely understood that this Act would create a new reservation. And this Court found that its purpose was for certain members of the Ottawa Tribe who declined to become U.S. citizens to move to the Indian Territory to continue their tribal relations on this reservation. *Id.*

By 1890, the Ottawas in the Indian Territory numbered 137 in all, living on allotments in the 23 square-mile area—about one-half of one percent of the Indian Territory. Census Bureau, *Report on Indian Taxed and Indians Not Taxed in the United States*, 249 (1890) (1890 Census Report). By contrast, the Five Tribes—the Cherokee, Creek, Choctaw, Chickasaw, and Seminole—collectively occupied over 40,000 square miles. The land of the Ottawas, along with the Eastern Shawnee, Modoc, Peoria, Quapaw, Seneca-Cayuga, and Wyandotte, were considered the only "reservations in Indian territory proper situated northeast of the Cherokee nation" and overseen by the Quapaw agency of the Bureau of Indian Affairs. *Id.* at 245. The transition to

farming was not easy, but according to federal officials "[the Ottawas] are doing much better as farmers" since taking their allotments under the General Allotment Act. *Id.* at 249. Yet more change was in store for this small tribe.

For two decades, proposals to convert the Indian Territory into a state had been floated in Congress. By the 1890s, these proposals looked to become a reality through the merger of the Indian Territory and the Oklahoma Territory. To prepare, Congress thought it wise to dissolve the reservations and tribal lands created by treaty. An 1890 census report described how this was done:

> Indian reservations existing by virtue of treaty stipulations are usually abolished or reduced in the manner following: an agreement is entered into between the Indians and agents or commissioners appointed by the Secretary of the Interior, with or without authority of Congress, for that purpose; such agreement is submitted to Congress for acceptance and ratification, and provides for the relinquishment, for valuable considerations, of a part or the whole of the lands claimed by the Indians either under treaty stipulations or otherwise.

1890 Census Report at 90. The vast majority of the land in the Indian Territory was owned in fee simple by the Five Tribes. In 1893, Congress appointed a commission, led by Senator Henry Dawes, to "enter into negotiations with the [Five Tribes] for the purpose of the extinguishment of the national or tribal title to any lands within that Territory now held by any and all of such nations or tribes," whether by cession, allotment, or some other method, "to enable the ultimate creation of a State or States of the Union which shall embrace the lands within said India[n] Territory." Act of Mar. 3, 1893, § 16, 27 Stat. 645; *see also Jefferson v. Fink*, 247 U.S. 288, 291 (1918); *Woodward v. de Graffenried*, 238 U.S. 284, 295 (1915); *Stephens v. Cherokee Nation*, 174 U.S. 445, 446 (1899). The Five Tribes were initially resistant to allotment. But a series of acts, including the Curtis Act, Act of June 28, 1898, 30 Stat. 495, which abolished all tribal courts in the Indian Territory and provided that "the laws of the various tribes or nations of Indian shall not be enforce at law or in equity by the courts of the United

States in the Indian Territory," pressured the Five Tribes into accepting allotment agreements. Ottawa allotment, on the other hand, was already underway. *See* Act of March 3, 1891, 26 Stat. 989; *see also* 1890 Census Report at 249 (reporting that the Ottawas live on allotments).

So too was the process of unifying all people regardless of race in the Indian Territory under the same system of laws and privileges. In 1897, Congress vested the United States courts in the Indian Territory with "exclusive jurisdiction" to try "all civil causes in law and equity" and all "criminal causes" for the punishment of offenses by "any person" in the Indian Territory. Act of June 7, 1897 (Indian Department Appropriations Act), 30 Stat. 83. And Congress made the laws of the United States and Arkansas in force in the Indian Territory applicable to "all persons therein, *irrespective of race*." Id. (emphasis added).

Oklahoma's Enabling Act later extended the laws of the Oklahoma Territory over the Indian Territory, in place of the laws of Arkansas, until the new state legislature provided otherwise. §§ 2, 13, 21, 34 Stat. 268-269, 275, 277-278; *see Jefferson v. Fink*, 247 U.S. 288, 294 (1908). The next year, Congress amended the Enabling Act to ensure that "[a]ll [non-federal] criminal cases pending in the United States courts in the Indian Territory" would be "prosecuted to a final determination in the State courts of Oklahoma." § 3, 34 Stat. 1287. The new state courts of Oklahoma were deemed the "successors" to the federal court in the Oklahoma and Indian Territories. §§ 16, 17, 20, 34 Stat. 276-277, as amended by Act of Mar. 4, 1907, § 3, 34 Stat. 1286-1288. Local—as opposed to federal—cases that were pending in federal court were transferred to the new state courts of Oklahoma. Until then, cases arising out of the Quapaw agency, including cases involving the Ottawa, were tried in the district court of Kansas. 1890 Census Report at 245. In reality, unlike most of the Indian Territory, "[c]rime [was] almost unknown on the [Ottawa] reservation" and the few disputes that arose "the agent settles." *Id.* at

249. All the same, at the incoming of statehood, through the Enabling Act, the laws of the state of Oklahoma were substituted. See SAMUEL THOMAS BLEDSOE, INDIAN LAND LAWS: BEING A TREATISE ON INDIAN LAND TITLES IN OKLAHOMA, 291 (1913) (Indian Land Law) (noting the substitution of Oklahoma state law for that of Kansas regarding the law of descent).

Statehood unified the various tribes both together and with the people of the Oklahoma Territory under state law. "Allotments to members of the various Indian tribes in Oklahoma had been substantially completed at the time of the approval of the [Enabling Act], and consequently at the time of the admission of Oklahoma to statehood." *Id.* at 37. The county occupying the very northeast corner of the State was named Ottawa County, for the Ottawa Tribe. In 1909, all restrictions on the sale of the allotments of the Ottawa and other tribes in the Quapaw agency were removed, except for a forty acre homestead, and all remaining tribal lands were put up for sale. §§ 1, 2, Act of March 3, 1909, 35 Stat. 751. The Ottawa had become citizens of the United States and of the state of Oklahoma.

In 1934, the Wheeler-Howard Act, or Indian Reorganization Act (IRA), Act of June 18, 1934, 48 Stat. 984, was passed ending the process of allotment on Indian lands in the United States. The allotment policy for many tribal members led to deplorable living conditions, fractionated land holdings, and huge land loss with little or nothing to show for it. *See The Indian Problem: Resolution of the Committee of One Hundred Appointed by the Secretary of the Interior*, H. R. Doc. No. 149 (1924); THE INSTITUTE FOR GOV'T RESEARCH, STUDIES IN ADMINISTRATION, THE PROBLEM OF INDIAN ADMINISTRATION, Feb. 21, 1928 (Lewis Meriam ed., 1928. Johns Hopkins Press). The "overriding purpose" of the IRA was to "establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically." *Morton v. Mancari*, 417 U.S. 535, 542 (1974). The IRA stopped

allotment and allowed for the acquisition of tribal trust land, the organization of tribal corporate charters, and the adoption of tribal constitutions. 48 Stat. 986-87. By its terms, however, the IRA did not apply to the Five Tribes or the tribes of the Quapaw agency. § 13, 48 Stat. 986-87. Rather, the Ottawa Tribe re-organized with a corporate charter and adopted its Constitution under the Oklahoma Indian Welfare Act, which had similar provisions as the IRA specifically suited for Oklahoma tribes. Act of June 26, 1936, 49 Stat. 1967. This condition persisted for some years.

The Ottawa Tribe however would soon be part of another federal policy shift— one of terminating federal supervision over tribes. See House Concurrent Resolution 108, August 1, 1953 (declaring termination of federal supervision over Indian tribes to be official Congressional policy). Under this policy, many smaller tribes were subject to withdrawal of federal recognition, liquidation of tribal assets, including the land base, and transferal of jurisdiction over Indians to the states. In 1956, Congress ended the trust relationship between the federal government and the Ottawa Tribe, cutting off Indian-related services to their members and ending federal recognition of the tribe. Act of Aug. 3, 1956, 70 Stat. 963.

The Ottawa Tribe's status as a federally recognized tribe was terminated. Congress declared that "[a]ll statutes of the United States which affect Indians because of their status as Indians shall no longer be applicable to the members of the [Ottawa Tribe]. § 8, 70 Stat. 964. The Ottawas' corporate charter under the Oklahoma Indian Welfare Act was revoked. § 9(a), 70 Stat. 965. The few remaining restrictions on Ottawa allotments or trust land were removed. Members of the tribe received unrestricted title to the land and all money held by the federal government was to be disbursed to tribal members within three years. § 2, 70 Stat. 963. Following protracted litigation in the Indian Court of Claims, provisions for the final payments were not finalized until

1967. Act of Aug. 11, 1967, 81 Stat. 166. Without recognition from the federal government, Ottawa leaders along with leaders from neighboring tribes formerly comprising the Quapaw agency formed a nonprofit corporation, chartered under Oklahoma law, for the health and welfare of their people. *See Report on Conveying Certain Land of the United States to the Intertribal Council, Inc., Miami, Oklahoma*, accompanying S. 2888, Senate Report no. 93-1118 (1974).

Then federal policy swung in the opposite direction. In the 1970s, Congress restored the federal relationships between tribes severed in the 1950s, including the Ottawa Tribe of Oklahoma. Act of May 15, 1978, 92 Stat. 246. While the federal government now again recognized the Ottawa people as Indians, nothing established or re-created a reservation for them.

Indeed, even by the time of termination, the Ottawa Tribe had no recognized land base. A 1976 federal report is telling. It noted that when the federal-tribal relationship with the Menominee Tribe of Nebraska was terminated 3,270 tribal members were affected as well as 233,881 acres of Indian lands. And for the Klamath Tribe of Oregon 2,133 tribal members and 862,662 acres of Indian lands were affected. But for the Ottawa Tribe of Oklahoma, while 630 members were affected, zero acres of Indian lands were affected. *See* J. Hunt, *Final Report to the American Indian Policy Review Commission, Report on Terminated and Non-federally Recognized Indians*, 1640 (1976). This fits with how the land has been treated since statehood by courts, the state, the federal government, and the tribe itself. And restoring to tribal members land that had been absolutely unrestricted and therefore changing hands for two decades may not have been practical.

Silence on the question of land status is in sharp contrast to other tribes who had their status re-affirmed around the same time. For example, the acts restoring recognition to the Little Traverse Band of Odawa Indians and the Little River Band of Ottawa Indians specifically provided for lands to be acquired for the respective tribes and that the lands would be part of the tribes' reservations. *See Hayes Township, Michigan v. Midwest Regional Director*, 36 IBIA 303 (2001). There is no such provision for the Ottawa Tribe of Oklahoma. Nevertheless, the Ottawa Tribe of Oklahoma has been operating a casino, convenience store, and tribal headquarters on isolated parcels of land held in trust for it by the United States, which are pursuant to special provisions allowing for trust land on former reservations within Oklahoma. *See*, e.g., 25 U.S.C.A. § 2719(a).

In addition, even if the Ottawa reservation was not disestablished, it was at the very least reduced. Before statehood, parts of the Ottawa reservation, along with parts of the connecting Peoria reservation, were opened for allotment of land to non-Indians. *See, e.g.*, Act of March 3, 1891, 26 Stat. 989 (providing for allotments to a Kansas-based corporation); *See also Opening of Indian Reservations to Actual and Bona Fide Homestead Settlers*, H.R. Report No. 1017 (1894) (reporting that 12,714.80 acres of the Ottawa reservation were allotted to the 157 Indians; 557.95 acres were authorized to be sold by act of March 3, 1891. The residue, 1,587.25 acres, unallotted). These provisions, usually in the form of surplus land acts, often effected reservation reduction. *See, e.g., Rosebud Sioux Tribe v. Kneip*, 430 U.S. 584 (1977); *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998); *Hagen v. Utah*, 510 U.S. 399 (1994). There is nothing on the record to indicate whether Petitioner's crime occurred within one of the non-Indian allotments—which would raise another set of issues that could not be answered here—or within the other parts of the historical Ottawa reservation.

The area is not a reservation today because it could not have remained intact when the tribe was terminated in the 1950s. The loss of federal recognition *in toto* would have necessarily meant the land lost its reservation status. In addition, the disbursement of tribal funds resulting from the sale of tribal lands to individual members, as opposed to the tribe, strongly suggests disestablishment. See, e.g., *Solem v. Bartlett*, 465 U.S. 463, 473-474 (1984). Here, the final proceeds of the sale of Ottawa tribal lands, among other funds, were distributed to individual tribal members, thereby eliminating any continuing tribal function, including tribal interest in the land. §§ 1-2, 81 Stat. 166.

Restored federal recognition of the Ottawa tribal members as Indians did not create a reservation. Nothing in the act even mentions their land base. Indeed, under the policy of tribal recognition of the 1970s, the federal government found that there was no Ottawa land base to restore. Hunt Report at 1640. In other words, the area was not a reservation at the time of tribal termination. At the same time, the federal government found hundreds of thousands of acres affected by the termination of other tribes; and it sought to restore tribal lands back to those tribes. *Id.*; *see also Hayes Township, Michigan v. Midwest Regional Director*, 36 IBIA 303 (2001). But there is no such land acquisition or restoration provision for the Ottawa Tribe of Oklahoma. Therefore, Congress has disestablished the Ottawa Tribe's reservation.

**V. Disestablishment of the Peoria Tribe of Indians of Oklahoma Reservation**

The alleged crimes in CF-2020-129 occurred within the historical boundaries of the Peoria Tribe of Indians of Oklahoma.

The Peoria Tribe of Indians in Oklahoma was granted a reservation in Oklahoma in the Act of February 23, 1867. 15 Stat. 513.

The Peoria Tribe's reservation was disestablished by the Act of August 2, 1956, 70 Stat. 937. The Act of August 2, 1956, "provide[s] for the termination of Federal supervision over the affairs of the Peoria Tribe of Indians located in northeastern Oklahoma and the individual members thereof, and for a termination of Federal services furnished to such Indians because of their status as Indians." *Id.* at section 1. The Act removed all restrictions on the sale or encumbrance of trust or restricted land owned by tribal members three years after the date of the Act. *Id.* at section 2. Section 3 states,

> The Federal trust relationship to the affairs of the Peoria Tribe and its members shall terminate three years after the date of this Act, and thereafter individual members of the tribe shall not be entitled to any of the services performed by the United States for Indians because of their status as Indians, all statutes of the United States which affect Indians because of their status as Indians...shall no longer be applicable to the members of the tribe, and the laws of thes everal States shall apply to the tribe and its members in the same manner as they apply to other citizens or persons within their jurisdiction. *Id.* at section 3.

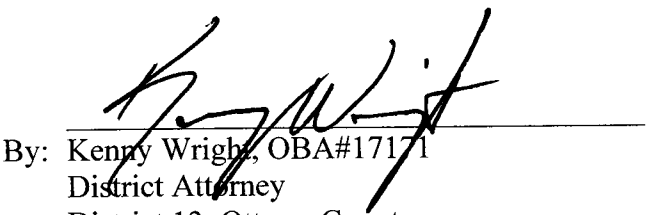
Section 4 revokes the corporate charter issued pursuant to the Act of June 26, 1936, effective when all claims of the tribe that were pending before the Indian Claims Commission or the Court of Claims are finally adjudicated. *Id.* at Section 4.

The Peoria Tribe regained Federal recognition in 1978. Act of May 15, 1978, 92 Stat. 246. The Act of May 15, 1978 repealed the Act of August 2, 1956, and reinstated all rights and privileges of the tribe and its members which may have been lost or diminished by the 1956 Act. While the federal government recognized the Peoria people as Indians again, Congress did not established or re-create a reservation for them. Silence on the question of land status is in sharp contrast to other tribes who had their status re-affirmed around the same time. For example, the acts restoring recognition to the Little Traverse Band of Odawa Indians and the Little River Band of Ottawa Indians (not the tribe in Ottawa County, Oklahoma) specifically provided for lands to be acquired for the respective tribes and that the lands would be part of the tribes' reservations.

*See Hayes Township, Michigan v. Midwest Regional Director*, 36 IBIA 303 (2001). There is no such provision for the Wyandotte Tribe of Oklahoma. The Wyandotte Nation has been operating casino businesses, convenience stores, and tribal headquarters on parcels of land held in trust for it by the United States, which are pursuant to special provisions allowing for trust land on former reservations within Oklahoma. *See, e.g.*, 25 U.S.C.A. § 2719(a). Therefore, Congress has disestablished the Peoria Tribe's Reservation.

**WHEREFORE**, premises considered, the State of Oklahoma respectfully prays that Defendant's motion be denied.

KENNY WRIGHT
DISTRICT ATTORNEY



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**CERTIFICATE DELIVERY**

On this 2nd day of November, 2020, I do hereby certify that a true and correct copy of the above and foregoing document was delivered via U.S. mail to the following:

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