

**ORIGINAL**

FILED  
IN COURT OF CRIMINAL APPEALS  
STATE OF OKLAHOMA

OCT - 9 2023

JOHN D. HADDEN  
CLERK

IN THE COURT OF CRIMINAL APPEALS  
FOR THE STATE OF OKLAHOMA



THE STATE OF OKLAHOMA,	)	Ottawa County District Court
	)	No. CF-2022-215
<i>Appellant,</i>	)	
	)	Oklahoma Court of Criminal Appeals
-vs.-	)	<del>No. S-2022-409</del>
	)	S-2023-409
STEVEN LEON FULLER,	)	
	)	
<i>Appellee.</i>	)	
	)	

**WYANDOTTE NATION'S MOTION  
FOR LEAVE TO FILE AMICUS BRIEF**

Pursuant to Oklahoma Court of Criminal Appeals Rule 3.4(F), the Wyandotte Nation (Nation) moves this Court for leave to file an amicus brief in the above-captioned case with respect to the continued existence of the Nation's reservation, located in and around Wyandotte, Oklahoma (Wyandotte Reservation). The Nation intends to provide both factual and legal briefing in its amicus brief to assist this Court in determining the status of the Wyandotte Reservation. The Nation has notified Counsel for the Appellant, and the Oklahoma Attorney General's Office and the District Attorney for Ottawa County, each on behalf of the Appellee, of its intent to file this Motion. Counsel for the Appellant and the Oklahoma Attorney General's Office have informed the Nation that they do not oppose the Nation's Motion.

In support of this Motion, the Nation states the following:

1. The Nation possesses the inherent sovereignty belonging to Tribal Nations as self-governing political entities predating the United States, which the United States has recognized.<sup>1</sup>

2. The Nation engages in a government-to-government relationship with the United States in accordance with its federal recognition as a Tribal Nation,<sup>2</sup> and the Nation and its citizens are owed a trust responsibility by the United States.<sup>3</sup> Despite a brief period in which the United States enacted legislation through which it considered terminating the Nation's federal recognition,<sup>4</sup> the Nation's federal recognition was "never actually terminated."<sup>5</sup> The statute authorizing termination was later repealed,<sup>6</sup> confirming the

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<sup>1</sup> See, e.g., *United States v. Cooley*, 141 S. Ct. 1638, 1642 (2021).

<sup>2</sup> Indian Entities Recognized by and Eligible To Receive Services from the United States Bureau of Indian Affairs, 88 Fed. Reg. 2112, 2115 (Jan. 12, 2023) (including Wyandotte Nation in list). In 1937, the Nation under the federal government's federal Indian reorganization policy utilized the Oklahoma Indian Welfare Act to formally organized its government and solidify its government-to-government relationship with the United States. The Act of June 26, 1936, more commonly referred to as the Oklahoma Indian Welfare Act, is now codified at 25 U.S.C. §§ 5201–5210.

<sup>3</sup> See, e.g., *Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1934 (2022); *Morton v. Mancari*, 417 U.S. 535, 552 (1974).

<sup>4</sup> Pub. L. No. 84-887, 70 Stat. 893 (1956).

<sup>5</sup> *Sac & Fox Nation of Mo. v. Norton*, 240 F.3d 1250, 1255 (10th Cir. 2001); see also H.R. Rep. No. 95-1019, 1978 WL 8749, at \*3, \*6 (1978).

<sup>6</sup> Pub. L. No. 95-281, § 1(b)(1), 92 Stat. 246, 246 (1978).

Nation's continued federal recognition,<sup>7</sup> "remov[ing] the statutory threat of termination,"<sup>8</sup> and making clear that the Nation possessed all rights it had before the termination statute was enacted.<sup>9</sup>

3. The Nation has a long history of migration, removal, and survival, with a treaty history extending from the early 1800s to 1867 and tracing a path of removal farther and farther from its homelands. The Treaty of 1867 created today's Wyandotte Reservation,<sup>10</sup> and it is the most recent treaty through which the United States set aside a reservation for the Nation. This promise of a permanent homeland in modern-day Oklahoma, however, followed on a long line of federal treaties through which the United States promised to create a homeland for the Nation in order to secure the Nation's agreement to cede the lands it held at the time to the United States—as the Nation relocated through Michigan, Ohio, Kansas, and eventually Oklahoma.<sup>11</sup>

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<sup>7</sup> *Id.* § 2(c) ("The validity of the organization of the [Wyandotte Nation] under Section 3 of the Act of June 26, 1936 (49 Statute 1967; 25 U.S.C. 503), and the continued application of said Act to such tribe and its members is hereby confirmed."); H.R. Rep. No. 95-1019, 1978 WL 8749, at \*4 (1978); *Wyandotte Tribe of Okla. v. Muskogee Area Dir., Bureau of Indian Affs.*, 28 IBIA 247, 255 (1995).

<sup>8</sup> 123 Cong. Rec. 36,733, 36,811 (1977).

<sup>9</sup> Pub. L. No. 95-281, § 1(c), 92 Stat. 246, 246 (1978); *Sac & Fox*, 240 F.3d at 1255.

<sup>10</sup> The United States established the Wyandotte Reservation from land ceded by the Senecas in other provisions of the Treaty of 1867. Treaty with the Seneca, Mixed Seneca and Shawnee, Quapaw, etc., art. 13–15, Feb. 23, 1867, 15 Stat. 513 [hereinafter Treaty of 1867]; *see also id.* art. 1 (describing land ceded by Senecas). The United States described the transactions as follows: "The United States will set apart for the Wyandottes for their future home the land ceded by the Senecas in the first article hereof, and described in said article, to be owned by the said Wyandottes in common . . ." *Id.* art. 13.

<sup>11</sup> *See Sac & Fox*, 240 F.3d at 1253–55.

4. Today, the Nation occupies and exercises its inherent sovereignty over the Wyandotte Reservation in Northeast Oklahoma. The Nation's seat of government is located within Ottawa County, Oklahoma. The Nation operates a strong government and provides robust services to its people and on its lands.<sup>12</sup>

5. The situs of the alleged criminal activity in the underlying case occurred within the boundaries of the Wyandotte Reservation.<sup>13</sup> The Nation does not here, and will not in its amicus brief, express any opinion about the alleged activity and reserves all rights to investigate and, if appropriate, charge and prosecute the crime in its courts and, if further appropriate, refer the case to the U.S. Attorney's Office.

6. The Appellee, who is the Defendant in the underlying case, has alleged that the State of Oklahoma lacks jurisdiction to charge him with the underlying crime because he is an Indian and his alleged crimes were committed in "Indian Country" as defined in the Major Crimes Act.<sup>14</sup>

7. The State of Oklahoma as Appellant asserts "[f]or preservation purposes" that the Wyandotte Reservation does not exist, claiming termination of the Nation's federal supervision disestablished the Wyandotte Reservation and later restoration of federal supervision did not recreate the Wyandotte Reservation.<sup>15</sup>

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<sup>12</sup> See Wyandotte Nation, [wyandotte-nation.org](http://wyandotte-nation.org) (last visited October 4, 2023).

<sup>13</sup> See State's Pet. in Error at 3.

<sup>14</sup> Def.'s Mot. to Dismiss for Lack of Jurisdiction at 2 (Nov. 28, 2022) (citing 18 U.S.C. § 1151).

<sup>15</sup> State's Appl. for Accelerated Docket at 2.

8. According to the U.S. Supreme Court in *McGirt v. Oklahoma*, only Congress possesses the authority to diminish or disestablish a reservation, and its intention to do so must be explicitly expressed—including for reservations within Oklahoma.<sup>16</sup> Indeed, this Court has already determined, including in *State v. Brester*, that other Tribal Nations with reservation boundaries that were also defined in the Treaty of 1867 and that were also covered by the same statute confirming the Nation's federal recognition have reservations that continue to exist today.<sup>17</sup> The State of Oklahoma as Appellant acknowledges these cases and urges this Court to apply them to the Wyandotte Reservation.<sup>18</sup>

9. The Nation has an interest in preserving the status of the Wyandotte Reservation and in clarifying the governance and enforcement of criminal law within its boundaries.

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<sup>16</sup> *McGirt v. Oklahoma*, 140 S. Ct. 2452, 2469 (2020) (citing *Solem v. Bartlett*, 465 U.S. 463, 470 (1984)).

<sup>17</sup> For example, the Quapaw Nation ceded a portion of its land in the Treaty of 1867, thus redefining its reservation boundaries, Treaty of 1867 art. 4, and the Oklahoma Court of Criminal Appeals has now applied U.S. Supreme Court reasoning from *McGirt v. Oklahoma* to recognize the reservation of the Quapaw Nation, *State v. Lawhorn*, 2021 OK CR 37, ¶ 3, 499 P.3d 777, 778 (referencing *McGirt*, 140 S. Ct. at 2452). Similarly, the Ottawa Tribe of Oklahoma obtained its reservation in the Treaty of 1867, art. 16, as did the Peoria Tribe of Indians of Oklahoma, *id.* art. 22, and the Oklahoma Court of Criminal Appeals has now applied the reasoning from *McGirt* to recognize their reservations, including by finding that any potential reservation diminishment that may have taken place as a result of their termination legislation was undone by the reaffirmation statute to which the Nation was also subject, *State v. Brester*, 2023 OK CR 10, ¶ 21, 531 P.3d 125, 134. Also, in addition to the positive lower court decisions in this case, there are a series of rulings announced by the District Court for Ottawa County that recognize the Wyandotte Reservation as still in existence by applying the reasoning in *McGirt*. See, e.g., *State v. Chafin*, No. CF-22-101 (Okla. Dist. Ct. Feb. 22, 2023); *State v. Holeman*, Nos. CF-19-263, CM-19-643 (Okla. Dist. Ct. Aug. 30, 2021); *State v. Bear*, No. CF-2011-204 (Okla. Dist. Ct. Apr. 19, 2021); *State v. Bardt*, Nos. CF-18-147, CF-18-270 (Okla. Dist. Ct. Apr. 19, 2021); *State v. Bettes*, No. CF-16-322 (Okla. Dist. Ct. Apr. 5, 2021); *State v. Evans*, Nos. CF-16-104, CF-16-216 (Okla. Dist. Ct. Apr. 5, 2021); *State v. Emerine*, No. CM-20-423 (Okla. Dist. Ct. Mar. 2, 2021).

<sup>18</sup> State's Appl. for Accelerated Docket at 2, 4.

10. The Nation is uniquely situated to speak to the circumstances surrounding the creation and continued existence of the Wyandotte Reservation and the extent of criminal jurisdiction thereon.

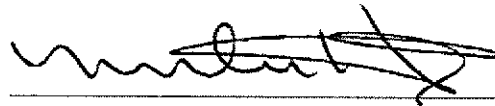
11. Neither existing party can provide the same historical perspective to the Court, and neither party shares the Nation's interests in protecting its inherent sovereign authority to exercise jurisdiction within the Wyandotte Reservation boundaries.

12. As was true with the motions of the Muscogee (Creek), Chickasaw, Cherokee, and Choctaw Nations to file an amicus brief in *McGirt*, and the other Tribal Nations that have filed amicus briefs in post-*McGirt* cases before this Court, the Wyandotte Nation wishes to protect its sovereign interests in the Wyandotte Reservation.

13. Granting this Motion will not prejudice any party. The Nation will adhere to any briefing schedule set forth by this Court.

WHEREFORE, given the Nation's unique expertise in the status of its own Wyandotte Reservation—an issue central to this case—the Nation respectfully asks this Court to grant this Motion for Leave to File Amicus Brief.

Respectfully Submitted,



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Dated: October 9th, 2023

## CERTIFICATE OF SERVICE

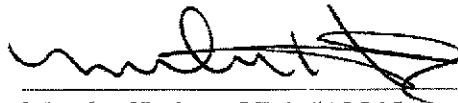
I hereby certify that a true and correct copy of the above and foregoing Motion for Leave to File Amicus Brief was mailed this 9th day of October, 2023, to each of the following via U.S. Mail:

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I further certify that a true and correct copy of the above and foregoing Motion for Leave to File Amicus Brief was mailed to the office of the court clerk of Ottawa County on the 9th day of October, 2023.



Marsha Harlan, OBA #18565