

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

(1) MUSCOGEE (CREEK) NATION,
a federally recognized Indian tribe,

Plaintiff,

v.

(1) MATTHEW J. BALLARD, in his
official capacity as District Attorney for
the Twelfth Prosecutorial District of
Oklahoma,

Defendant.

Case No. 25-cv-00050-JFJ

COMPLAINT

Plaintiff the Muscogee (Creek) Nation (“Nation”), a federally recognized tribal government, by and through counsel, states as follows:

INTRODUCTION

1. In *McGirt v. Oklahoma*, 591 U.S. 894 (2020), the United States Supreme Court affirmed that in a series of treaties between the 1830s and the 1860s, Congress established a federally protected reservation for the Nation. *Id.* at 899–902. It further affirmed that Congress has never disestablished the Creek Reservation and that, accordingly, the Reservation today remains Indian country under 18 U.S.C. § 1151(a). *Id.* at 902–13.

2. Within Indian country (which includes federal Indian reservations), criminal jurisdiction over Indians is shared between the federal government and tribal governments, exclusive of state jurisdiction. “The policy of leaving Indians free from state jurisdiction and control is deeply rooted in this Nation’s history.” *Id.* at 928 (citation omitted). Accordingly, neither states nor their political subdivisions may exercise criminal jurisdiction over Indians within Indian country absent “a clear expression of the intention of Congress” to authorize such jurisdiction. *Id.* at 929 (citation omitted); *see also, e.g., Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 790 F.3d 1000, 1004 (10th Cir. 2015) (“[U]nless Congress provides an exception to the rule[,] ... states possess ‘no authority’ to prosecute Indians for offenses in Indian country.” (quoting *Cheyenne-Arapaho Tribes of Okla. v. Oklahoma*, 618 F.2d 665, 668 (10th Cir. 1980))).

3. In *McGirt*, the Supreme Court confirmed that “Oklahoma cannot come close to satisfying this standard,” because Congress has never granted it jurisdiction to prosecute Indians for conduct arising in Indian country. 591 U.S. at 929.

4. That holding applies equally to the State’s county governments, because the only criminal powers that counties possess necessarily derive from Oklahoma. *See Large v. Fremont Cnty.*, 670 F.3d 1133, 1146 (10th Cir. 2012) (“[C]ounties are created by the State as convenient agencies for exercising such of the governmental powers *of the state* as may be entrusted to them.” (quotation marks and citation omitted)); *Herndon v. Anderson*, 25 P.2d 326, 329 (Okla. 1933) (a county “has no inherent powers but derives [its] powers solely from the state.”).

5. Because Oklahoma’s Twelfth Prosecutorial District lies entirely within Indian country (partially within the Creek Reservation and partially within the Cherokee Reservation), *McGirt* put the District Attorney on clear notice that the counties that he represents lack criminal jurisdiction over Indians within their borders and that prosecuting Indians under color of such jurisdiction absent the assent of Congress violates federal law.

6. Nevertheless, the District Attorney claims, despite a wealth of controlling precedent to the contrary, that the State of Oklahoma enjoys criminal jurisdiction over Indians within all Oklahoma Indian country based on the reasoning of *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022), a case addressing state jurisdiction over non-Indians in which the Court expressly and repeatedly disclaimed any intent to address the question of state jurisdiction over Indians. On this basis, the District Attorney has been prosecuting Indians for conduct arising within Indian country.

7. Because part of the Twelfth Prosecutorial District lies within the Creek Reservation, the District Attorney’s claim to jurisdiction to prosecute Indians for conduct arising within the Nation’s borders threatens to irreparably harm the Nation’s sovereignty and rights of self-government.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1362. The Nation maintains a government-to-government relationship with the United States and has a governing body duly recognized by the United States Department of the Interior. The Nation asserts claims arising under the principles of federal Indian law governing federal, tribal, and state authority within Indian country.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because a substantial part of the actions or omissions giving rise to the claims occurred in this District, a substantial part of the property that is the subject of this action is situated in this District, and the District Attorney principally discharges his official duties in this District.

PLAINTIFF

10. Plaintiff the Muscogee (Creek) Nation is a federally recognized Indian tribal government whose governing body is recognized by the Secretary of the Interior. *See* Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 89 Fed. Reg. 99,899-01, 99,901 (Dec. 11, 2024). The Nation exercises sovereign powers of self-governance and jurisdiction over the Creek Reservation, which was guaranteed to the Nation and defined by Congress in the Treaty with the Creeks, 7 Stat. 366 (1832); Treaty with the Creeks, 7 Stat. 417 (1833); Treaty with the Creeks and Seminole, 11 Stat. 699 (1856); and Treaty with the Creeks, 14 Stat. 785 (1866). *See McGirt*, 591 U.S. at 899–902.

11. The Nation, through its Attorney General, Lighthorse police, tribal court system, and comprehensive criminal code, provides for criminal law enforcement “over all Indians alleged to have committed in Muscogee (Creek) Nation Indian Country a criminal offense enumerated and defined by any law or statute of the Muscogee (Creek) Nation insofar as not

prohibited by federal law.” MCN Code tit. 27, § 1-102(C).¹ To ensure coordinated law enforcement and public safety, the Nation has incorporated into its criminal code “any criminal offense prescribed by” other governments within the Nation’s Reservation boundaries, including Rogers and Mayes Counties. NCA 22-048 (codified at MCN Code tit. 14, § 2-114(B)).² Likewise, the Nation revised its traffic code in 2020 to mirror Oklahoma’s traffic code (both of which include criminal provisions). NCA 20-087 (codified at MCN Code. tit. 14, ch. 3).³

DEFENDANT

12. Defendant Matthew J. Ballard is the District Attorney for Oklahoma’s Twelfth Prosecutorial District (which encompasses Rogers, Mayes, and Craig Counties) and is sued in his official capacity. A portion of the Twelfth Prosecutorial District lies within the Nation’s Reservation boundaries.

STANDING

13. Because part of Rogers and Mayes Counties, which are within the Twelfth Prosecutorial District, are within the Creek Reservation, the District Attorney’s claim to legal entitlement to prosecute Indians for conduct within its borders poses a substantial risk of direct injury to the Nation’s sovereignty and the authority of its own criminal justice system, including the authority of its Attorney General, Lighthorse police, and courts to prosecute under the Nation’s own laws criminal offenses committed by Indians throughout its Reservation. *See Ute Indian Tribe*, 790 F.3d at 1005–06 (stating that there is “just no room to debate” that state and county prosecution of an Indian within a tribe’s Indian country absent the assent of Congress is an “infringement on tribal sovereignty” and an “irreparable injury” to the tribe); *cf. Castro-*

¹ <https://bit.ly/42tVlry>.

² <https://bit.ly/40NwUtn>.

³ <https://bit.ly/3PTjhTd>.

Huerta, 597 U.S. at 650 (“the exercise of state jurisdiction here would not infringe on tribal self-government” because it “does not involve the exercise of state power over any Indian”).

14. The District Attorney has demonstrated by his ongoing prosecutions of Indians that, absent judicial intervention, he will persist with his unlawful prosecutions.

15. This Court can redress the real and direct threat to the Nation and its right to self-government by issuing a declaratory judgment that the counties represented by the District Attorney lack criminal jurisdiction over Indians within the Creek Reservation absent the assent of Congress, and by enjoining him from prosecuting Indians for conduct arising within the Creek Reservation under color of such jurisdiction.

THE SUPREME COURT’S DECISION IN *McGIRT* v. *OKLAHOMA*

16. In *McGirt*, the United States Supreme Court affirmed that in treaties entered between 1832 and 1866, Congress established and defined a federally protected Indian reservation for the Nation. 591 U.S. at 899–902. The Court further affirmed that, since 1866, Congress has never disestablished the Creek Reservation and that it remains Indian country today under 18 U.S.C. § 1151(a). *Id.* at 902–13.

17. *McGirt*’s holding that the Creek Reservation is Indian country confirms that the settled jurisdictional rules that allocate state, tribal, and federal criminal jurisdiction within Indian country apply within the Creek Reservation. Among those rules is that “within Indian country, generally only the federal government or an Indian tribe may prosecute Indians for criminal offenses,” and that “unless Congress provides an exception to the rule[,] ... states possess no authority to prosecute Indians for offenses in Indian country.” *Ute Indian Tribe*, 790 F.3d at 1003 (Gorsuch, J.) (quotation marks omitted). *McGirt* concluded that “Oklahoma cannot

come close to” showing that Congress has ever authorized it to exercise criminal jurisdiction over Indians within reservation boundaries. 591 U.S. at 929.

18. Because the counties that the District Attorney represents possess only those powers derived from the State of Oklahoma, the rule reiterated in *McGirt* and *Ute Indian Tribe* applies to them as it does to Oklahoma. *See Ute Indian Tribe*, 790 F.3d at 1006 (rule against state criminal jurisdiction over Indians in Indian country applies to “a state and its subdivisions”).

**THE DISTRICT ATTORNEY’S CONTINUED CLAIM TO CRIMINAL JURISDICTION
OVER INDIANS FOR CONDUCT WITHIN INDIAN COUNTRY AFTER *McGIRT***

19. The entirety of the land area of Oklahoma’s Twelfth Prosecutorial District lies within the interior boundaries of the Creek and Cherokee Reservations and accordingly constitutes Indian country under federal law. *See* 18 U.S.C. § 1151(a).

20. Since the Supreme Court’s decision in *McGirt*, the District Attorney has continued to exercise criminal jurisdiction over Indians for conduct occurring within its borders on land that is Indian country under federal law. The Nation is aware of three cases in which he has done so since 2023.

21. The District Attorney brought each of the three prosecutions in the district court of Rogers County, Oklahoma. The cases are styled *Oklahoma v. Bull*, No. CF-2023-226 (filed June 29, 2023)⁴; *Oklahoma v. Williams*, No. CF-2023-311 (filed Sept. 15, 2023)⁵; and *Oklahoma v. Ashley*, No. CF-2024-421 (filed Oct. 2, 2024).⁶

22. In each case, the Indian defendant challenged the prosecution based on the long-

⁴ <https://bit.ly/40tDnrX>.

⁵ <https://bit.ly/4joAxx4>.

⁶ <https://bit.ly/3Eaixqd>.

settled law reaffirmed in *McGirt* that states and their political subdivisions lack criminal jurisdiction over Indians in Indian country absent the assent of Congress.

23. In each case, the District Attorney has nevertheless maintained that the prosecution is lawful based on the Supreme Court's decision in *Castro-Huerta*, which holds that states have inherent criminal jurisdiction over non-Indians in Indian country unless that jurisdiction is preempted by federal law or precluded by application of the balancing test set forth in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980).

24. The District Attorney has taken the position that his prosecution of Indians is permitted under *Castro-Huerta* (and its application of *Bracker* balancing) despite the Supreme Court's repeated statements that the decision "express[es] no view on state jurisdiction over a criminal case of that kind" and does "not take a position on that question," 597 U.S. at 650 n.6, 655 n.9.

25. Because *Castro-Huerta* states repeatedly that the decision carries no implications for questions of state jurisdiction over Indians and expressly confines its analysis to the issue of state jurisdiction over non-Indians, it does not alter longstanding Supreme Court and Tenth Circuit precedents prohibiting state criminal prosecution of Indians for conduct within Indian country absent the assent of Congress. Those precedents remain binding.

26. The District Attorney accordingly lacks all authority to depart from the jurisdictional framework reaffirmed in *McGirt* and *Ute Indian Tribe* and to instead apply the *Bracker* balancing test under the purported authority of *Castro-Huerta* as a basis for prosecuting Indians for conduct within its borders. Doing so is a flagrant violation of controlling federal law, and the District Attorney's continued claim to such jurisdiction over territory including lands

within the Creek Reservation poses a real and substantial risk of harm to the Nation's sovereignty.

COUNT 1

27. The Nation restates, realleges, and incorporates by reference all preceding paragraphs and allegations.

28. The Creek Reservation is Indian country under 18 U.S.C. § 1151(a).

29. Within its Reservation, the Creek Nation and the United States possess criminal jurisdiction over Indians exclusive of the State of Oklahoma and its political subdivisions, which are prohibited under federal law from asserting any such jurisdiction absent the assent of Congress. Congress has not authorized such jurisdiction here.

30. A portion of the Twelfth Prosecutorial District is located within the Nation's Reservation.

31. The District Attorney continues to assert criminal jurisdiction over Indians for conduct occurring within Indian country despite the lack of congressional authorization. The District Attorney's actions directly contravene federal law.

32. The District Attorney has demonstrated his intention to continue asserting criminal jurisdiction over Indians for conduct within Indian country absent judicial intervention.

PRAYER FOR RELIEF

WHEREFORE, the Nation respectfully requests that this Court:

A. Enter a declaratory judgment pursuant to 28 U.S.C. § 2201 in favor of the Nation that counties within the Twelfth Prosecutorial District lack criminal jurisdiction over Indians for conduct occurring within the Creek Reservation and that the District Attorney's assertion of that jurisdiction would violate federal law.

B. Preliminarily and permanently enjoin the District Attorney from asserting criminal jurisdiction over any Indian for conduct arising within the Creek Reservation absent the express assent of Congress.

C. Award the Nation its reasonable attorney fees and costs.

D. Award the Nation such other relief as the Court deems just and appropriate.

Dated: January 29, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 29, 2025, this document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by placing a true and correct copy in the United States mail, postage prepaid, to their address of record.

/s/ Riyaz A. Kanji
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