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

MUSCOGEE (CREEK) NATION, a federally recognized Indian Tribe, ***Plaintiff***, **v.** **(1) CITY OF TULSA; (2) G.T. BYNUM, in his official capacity as Mayor of City of Tulsa; WENDELL FRANKLIN, in his official capacity as Chief of Police, Tulsa Police Department; and (4) JACK BLAIR, in his official capacity as City Attorney for City of Tulsa,** ***Defendants***.	**Case No. 23-cv-00490-SH** **Judge: Hon. John D. Russell**

MOTION OF DAMARIO SOLOMON-SIMMONS AND THE MUSCOGEE CREEK INDIAN FREEDMEN BAND TO INTERVENE AND BRIEF IN SUPPORT

COMES NOW Damario Solomon-Simmons and the Muscogee Creek Indian Freedmen Band through counsel and pursuant to Rule LCvR7-1 (b) of Local Rules, hereby move this Court to grant the Motion to Intervene for the reasons set forth in the Memorandum in Support filed herewith.

TABLE OF CONTENTS

Page No.

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

Mr. Solomon-Simmons and the Muscogee Creek Indian Freedmen Band ("MCIFB") seek to intervene in this Action due to their personal stake in the outcome and the Muscogee (Creek) Nation's ("MCN") refusal to extend the relief it seeks to the descendants of Creek Freedmen (collectively as "Creek Freedmen"). Just like the MCN, Mr. Solomon-Simmons and the MCIFB claim that the Defendant City of Tulsa ("Tulsa") violates federal law, *see McGirt v. Oklahoma*, 591 U.S. 894, 899 (2020); 18 U.S.C. § 1151(a), when they exercise criminal jurisdiction over Indians on Indian land. The problem is that the MCN's official position is that Mr. Solomon-Simmons and other similarly situated Creek Freedmen are not Creek Indian for the purposes of federal law despite plain language to the contrary in the MCN Creek Treaty of 1866, Art. 2, June 14, 1866, 14 Stat. 785, 1866 WL 18777 (hereinafter the "Treaty of 1866"), Act of April 26, 1906 (34 Stat. 137), Pub. L. No. 90-504, 82 Stat. 855 (Sept. 21, 1968), and U.S. Supreme Court precedent. Thus, the declaratory and injunctive relief sought by the MCN, *see* Pl.'s Compl. ¶¶ A-B, needs to be pursued in equal force for those who are Indian under federal law but not acknowledged as such by the MCN. This Court should grant Mr. Solomon-Simmons and the MCIFB's motion to intervene to ensure that the MCN and Tulsa do not perpetrate further injustices against the Creek Freedmen community.

BACKGROUND

Tulsa's Unlawful Exercise of Criminal Jurisdiction.

The dispute between the existing parties concerns the Defendant Tulsa's policy and practice of exercising criminal jurisdiction for traffic offenses over all persons in Tulsa regardless of whether the alleged offense occurs on Indian land, like the Creek Reservation, or whether the

person has Indian status.[1] The Defendant Tulsa has cross-deputization agreements with the MCN, but rather than refer all criminal cases to the MCN that involve Creek Indians on MCN Land, the Defendant refuses to refer traffic offenses. *See* Pl.'s Mot. for Prelim. Inj. & Opening Br. in Supp. 3. To defend this policy and practice, the Defendant Tulsa has cited Section 14 of the Curtis Act, 30 Stat. 495 (1898) ("Curtis Act"), which granted cities and towns jurisdiction over offenses committed by any inhabitant regardless of race. *See Hooper v. City of Tulsa*, 71 F.4th 1270, 1272-74 (10th Cir. 2023). However, the Supreme Court made clear in 2020 that neither Oklahoma nor its municipalities have a "right to prosecute Indians for crimes committed in a portion of Northeastern Oklahoma that includes most of the city of Tulsa." *McGirt*, 591 U.S. at 899, 934. The Tenth Circuit confirmed this principle in *Hooper*, which held that "Section 14 of the Curtis Act no longer applied to Tulsa upon statehood," so it cannot be used to justify the Defendant Tulsa's exercise of criminal jurisdiction over Indians on Indian land. 71 F.4th at 1286-87.

The MCN filed suit against Tulsa and several of its officials on November 15, 2023 (the "Action"), asserting that any exercise of criminal jurisdiction by Tulsa over Indians on Creek land violates federal law. *See* Pl.'s Compl. ¶¶ 46-50. According to the MCN's Complaint, "*McGirt* . . . affirmed that in treaties entered between 1832 and 1866, Congress established and defined a federally protected Indian reservation for the Nation" that "remains Indian country today under 18 U.S.C. § 1151(a)." Pl.'s Compl. ¶ 22. The MCN now seeks declaratory and injunctive relief to "enjoin Tulsa from exercising criminal jurisdiction over Indians for conduct occurring within the Creek Reservation absent express authorization from Congress." Pl.'s Compl. ¶¶ A-B.

[1] *See* Pl.'s Mot. for Prelim. Inj. & Opening Br. in Supp. 4-5 (quoting Gavin Pendergraff, *Supreme Court Denies* Hooper v. Tulsa *Hearing Request*, KTUL News (updated Aug. 4, 2023), available at https://ktul.com/news/local/supreme-court-issues-stay-on-hooper-v-tulsa (quoting statement of Tulsa).

As the Action progressed, Tulsa continued to enforce and adjudicate traffic offenses committed on MCN land by Creek Indians, including a traffic citation against Mr. Solomon-Simmons on December 20, 2024. An officer of the Tulsa Police Department issued the speeding ticket near 300 Martin Luther King Jr. Blvd, Tulsa, OK 74103, which is located on the Creek Reservation. Mr. Solomon-Simmons lives in Tulsa less than 2 miles from the MCN Reservation and his office[2] is located within the MCN Reservation, so he drives in and through the MCN Reservation on a daily basis given his profession as an active civil rights attorney and advocate for Tulsans and the Creek Freedmen community. His advocacy activities span decades, including but not limited to his service as the founder of Justice for Greenwood and his active involvement in the Justice for Black Creeks Coalition and the MCIFB. Mr. Solomon-Simmons and the MCIFB now file this Motion to Intervene to pursue the same claims and relief as the MCN in this Action and to ensure the rights of Creek Freedmen are recognized and protected as well.

The MCN's Long History and Current Policy of Excluding Creek Freedmen.

Mr. Solomon-Simmons' intervention is necessary in this Action because the MCN unlawfully maintains that he and other similarly situated Creek Freedmen are neither Indian nor citizens of the MCN. Despite these false claims, Indian status and citizenship for Creek Freedmen is inextricably intertwined with the MCN 's sovereignty as a federally recognized Tribe.

Article II of the Treaty of 1866 states that "Creeks of African descent" and their descendants, "shall have and enjoy all the rights and privileges of native citizens . . . and the laws of the said nation shall be equally binding upon and give equal protection to all such persons, and all others, of whatsoever race or color, who may be adopted as citizens or members of said tribe." The MCN had engaged in chattel slavery of Africans and Black Creeks as a product of colonial

[2] Mr. Solomon-Simmons' law office is located at 601 S. Boulder, 600, Tulsa, Oklahoma 74119.

influence, which continued even after the MCN was forcibly removed to Oklahoma pursuant to the Indian Removal Act of 1830. After the Civil War, the federal government entered new treaties with the MCN and the other tribes making up the "Five Civilized Tribes," which led to the execution of the foundational Treaty of 1866[3] and its provisions abolishing slavery, guaranteeing that all Creeks of African descent shall enjoy all rights and privileges and have equal protection under the law.[4] Report of D.N. Cooley, *Southern Superintendence* 296, 298 (Oct. 30, 1865).

Congress then passed the Dawes Act of 1887 to force the transfer of land from the "Five Civilized Tribes" to tribal citizens, which Congress followed with the Curtis Act to create the

[3] A wealthy and well-known Creek of African descent who became a Chief with MCN, Cow Tom a/k/a Cow Mikko, was one of five MCN citizens who negotiated and signed the Treaty of 1866 on behalf of MCN. In addition, in May of 1868, Cow Mikko traveled by train to Washington D.C. to testify before the U.S. Senate's Committee on Indian Affairs to ensure that Creek Freedmen received their per capita dividends promised in the Treaty of 1866. His testimony secured the payments to Creek Freedmen. Cow Tom is the paternal great-great-great-grandfather of Mr. Solomon-Simmons.

[4] The Treaty of 1866 was necessary because on July l0, 1861, the MCN entered a Treaty with the Confederate States of America transferring their allegiance from the United States of America to the Confederate States of America. Subsequent to aligning their interests with the Confederacy, the many citizens of MCN fought alongside the Confederacy in the effort to preserve African slavery in the MCN and the slaveholding States that formed the Confederacy. At the conclusion of the Civil War, the United States federal government accepted the southern secessionist States' return to the Union upon their ratification of the Fourteenth Amendment to the United States Constitution. The birthright citizenship clause of the Fourteenth Amendment granted U.S. citizenship to all freed slaves and all free black people residing in the States by affording citizenship in the State where the person resides. Likewise, the privileges and immunities clause and the equal protection clause of that same Amendment extended the rights already enjoyed by white citizens to the new African American citizens. Because tribes are not States under our Constitution, the Reconstruction Amendments had no effect on the slaveholding tribes due to their distinct status as domestic dependent nations within the United States. Because the Reconstruction Amendments did not apply to the tribes, the federal government offered each slaveholding tribe the opportunity to enter into a treaty with the federal government confirming peaceful relations between the tribe and the federal government and offering the tribe the protection of the federal government in the post-Civil War Era. The federal government had several stipulations that had to be contained in the treaty which paralleled the provisions of the Reconstruction Amendments (13th, 14th, and 15th) made applicable to the States.

"Creek Nation Creek Roll" for Creek citizens with Creek blood and the "Creek Nation Freedmen Roll" that purportedly encompassed only those citizens who were formerly enslaved and devoid of Creek blood. *See* Felix S. Cohen, *Handbook of Federal Indian Law* 431 (1982). In practice, the Creek Nation Freedmen Roll included many Black Creeks, like Mr. Solomon-Simmons' direct ancestors, regardless of whether they or their ancestors were enslaved or how much "Creek blood" they actually had. *See* Kent Carter, *The Dawes Commission and the Allotment of the Five Civilized Tribes* 1893-1914 (1999).

At no point has the United States Congress abrogated the Treaty of 1866, and the MCN has not claimed that the Treaty of 1866 was abrogated by Congress. Rather, the MCN correctly cites the Treaty of 1866 as a core document to its sovereignty. *See* Pl.'s Compl. ¶ 22; *see also McGirt*, 591 U.S. at 912 (finding that the Treaty of 1866 is still binding). Nevertheless, the MCN maintains that Creek Freedmen are not citizens and possess none of the rights the Treaty of 1866 guaranteed to them as Indians.

This is personal for Mr. Solomon-Simmons because he is a Creek Indian "by blood" as a direct lineal descendant of several "by-blood" Creek Indians, including "by-blood" Creek Indian Moses Perryman.[5] His father and paternal grandmother also received payments pursuant to the Indian Claims Commission's Docket No. 21, which classified them as Indians. *See* Pub. L. No. 90-504, 82 Stat. 855 (Sept. 21, 1968). Thus, Mr. Solomon-Simmons is a Creek Indian for purposes of federal law and entitled to the same protections as any other MCN citizen, which the MCN refuses to pursue in this Action. However, his MCN citizenship is not recognized by MCN and

[5] One of six sons of the prominent MCN citizen and Tribal Town chief Benjamin Perryman (Steek-cha-ko-me-co).

Tulsa because his great-great-great grandmother Lucy Perryman,[6] great-great grandparents, Jacob Simmons, Sr.,[7] Rose Simmons,[8] and Hagar Barnett,[9] and great-grandfather John Simmons,[10] were discriminatorily enrolled on the Creek Freedmen Dawes Roll despite being "Creek by Blood."

ARGUMENT

I. Mr. Solomon-Simmons and The MCIFB Satisfy the Requirements for Intervention.

This Court should grant Mr. Solomon-Simmons and the MCIFB's motion to intervene given the nature of his interest in this Action and the claims they assert. On a timely motion, a nonparty may intervene in a pending action as of right or with the court's permission. Fed. R. Civ. P. 24. A proposed intervenor may move to intervene on each basis in the alternative. *See Coal. Of Ariz./N.M. Cntys. for Stable Econ. Growth v. Dep't of the Interior*, 100 F.3d 837, 839 (10th Cir. 1996). Courts in the Tenth Circuit take a "'liberal' approach to intervention and thus favor[] the granting of motions to intervene." *W. Energy All. v. Zinke*, 877 F.3d 1157, 1164 (10th Cir. 2017). This protects judicial economy by preventing the need for multiple suits that address the same or overlapping issues. *See Coalition*, 100 F.3d at 844. Here, Mr. Solomon-Simmons and the MCIFB satisfy the requirements of intervention as of right and make a sufficiently strong showing to warrant permissive intervention as well.

---

[6] Lucy Perryman was the biological daughter of Moses Perryman, and her Creek Freedmen Dawes Roll number is 4414.

[7] Jacob Simmons, Sr. was the biological grandson of Moses Perryman, and his Creek Freedmen Dawes Roll number is 1658.

[8] Rose Simmons was the biological grandchild of a "by blood" Creek Indian Betsy McNac who was from Tuskegee Town and of the Wind Clan. She was also the grandchild of Chief Cow Tom who was one of five individual Creeks to negotiate and sign the Treaty of 1866. Rose Simmons' Creek Freedmen Dawes Roll number is 1659.

[9] Hagar Barnett Creek Freedmen Dawes Roll number is 611.

[10] John Simmons was the biological great-grandson of Moses Perryman and Betsy McNac, and his Creek Freedmen Dawes Roll number is 1667.

A. Mr. Solomon-Simmons and the MCIFB Can Intervene as of Right.

This Court must grant a motion to intervene as of right if the proposed intervenor establishes: (1) timeliness, (2) an interest relating to the subject of the action that may be impaired, and (3) inadequate representation by the existing parties. *Kane County v. United States*, 928 F.3d 877, 889 (10th Cir. 2019); *see* Fed. R. Civ P. 24(a). Mr. Solomon-Simmons' motion meets each requirement.

1. Mr. Solomon-Simmons and the MCIFB's Motion Is Timely.

Courts consider timeliness in light of the relevant circumstances, "including the length of time since the applicant knew of his interest in the case, prejudice to the existing parties, prejudice to the applicant, and the existence of any unusual circumstances." *Utah Ass'n of Cntys. v. Clinton*, 255 F.3d 1246, 1250 (10th Cir. 2001) (quoting *Sanguine, Ltd. v. U.S. Dep't of Interior*, 736 F.2d 1416, 1418 (10th Cir. 1984)). A delay of a few months between when the proposed intervenor became aware of their interest in the case and their motion to intervene typically weighs in favor of finding timeliness. *Kane County*, 928 F.3d at 891. For example, the Tenth Circuit in *Kane County* found that a proposed intervenor was timely when they filed their motion only three months after the existing parties' joint motion to stay for ongoing settlement discussions. *Id.* On prejudice to the existing parties, this factor will weigh in favor of timeliness unless the movant's *delay* causes prejudice—not the mere fact of intervention. *Id.* (quoting *Oklahoma ex rel. Edmondson v. Tyson Foods, Inc.*, 619 F.3d 1223, 1236 (10th Cir. 2010)). On prejudice to the proposed intervenor, this factor also weighs in favor of timeliness if their interests in the action will be injured without the ability to participate, even if there are alternative forums that might be available. *See Zinke*, 877 F.3d at 1167.

In this case, Mr. Solomon-Simmons and the MCIFB timely filed a motion to intervene, and a denial would prejudice them and their interests far more than granting their motion would

minimally prejudice the existing parties. Just like in *Kane County*, the delay here is no more than roughly three months from the date Mr. Solomon-Simmons was issued a traffic ticket by the Defendant Tulsa's police department while driving on Creek land. This is what made him aware of his potential interest in this Action, which he subsequently explored before filing this motion. Also similar to *Kane County*, this Action is currently stayed until May 19th due to settlement negotiations by the existing parties, so there is no substantial prejudice to their interests at this time. Whereas Mr. Solomon-Simmons and the MCIFB may suffer serious prejudice if their motion is not granted, and they may lose out on an opportunity to ensure that their interests are protected. To the extent there are any unusual circumstances, those would also support intervention due to the MCN's history of discrimination and disenfranchisement of Creek Freedmen. Accordingly, this factor weighs in favor of granting the motion.

2. Mr. Solomon-Simmons and the MCIFB Have a Direct Interest in the Subject of this Action that May be Impaired Without Relief.

To meet this element, Mr. Solomon-Simmons and the MCIFB need only show that they have "an interest that could be adversely affected by the litigation." *Kane County*, 928 F.3d at 892 (noting that a court should rely on its "practical judgment" when assessing an interest); *see also Windsor v. United States*, 797 F. Supp. 2d 320, 324 (S.D.N.Y. 2011) (noting that the interest does not need to be in property or a transaction when, for example, the issue is the lawfulness of government action). This "presents a minimal burden" for a proposed intervenor, and such an interest can arise even from a "*stare decisis* effect" from the court's judgment against their requested relief. *WildEarth Guardians v Nat'l Park Serv.*, 604 F.3d 1192, 1199 (10th Cir. 2010). In *Zinke*, the Tenth Circuit found that a proposed intervenor had a valid interest in pursuing reforms related to the core of its mission that could have been jeopardized by the disposition of the pending action. *See* 877 F.3d at 1165. Their "record of advocacy" on the issue firmly demonstrated they

had a valid interest for the purposes of intervening. *Id.*; *see also Coalition*, 100 F.3d at 841 (finding that an individual can have a record of advocacy—the proposed intervenor need not be an interest group).

Mr. Solomon-Simmons has a direct interest in this Action due to his record of advocacy and personal stake in ensuring he is not subjected to unlawful exercises of criminal jurisdiction by the Defendant Tulsa—the MCIFB shares this interest for its members, including Mr. Solomon-Simmons. He has also devoted his life to civil rights issues at the core of this Action, which uniquely positions him as a proposed intervenor alongside the MCIFB. If he and the MCIFB are not allowed to intervene, a potentially adverse result is likely to cause him and other similarly situated Creek Freedmen to suffer injustice at the hands of both the MCN and the Defendant. Any exercise of criminal jurisdiction against him or other Creek Freedmen in the future, which is very possible for Mr. Solomon-Simmons given how he lives near and works on the MCN Reservation and regularly drives on MCN land, would be a violation of constitutional rights and federal law on "Indian" status. This has already occurred once to Mr. Solomon-Simmons since the MCN has filed suit. Accordingly, Mr. Solomon-Simmons and the MCIFB far exceed the minimal showing required to meet this element.

3. The MCN Refuses to Adequately Protect Creek Freedmen Descendants like Mr. Solomon-Simmons and Other Members of the MCIFB.

Given the MCN's long history of discriminating against Creek Freedmen descendants, including the expulsion of Creek Freedmen descendants from MCN communities, the divestiture of their citizenship rights, and erasure of their history and contributions, the MCN cannot be trusted to adequately protect Mr. Solomon-Simmons' and other similarly situated Creek Freedmen descendants' interest in this Action. A proposed intervenor's burden on this element is "'minimal," and 'it is enough to show that the representation 'may be' inadequate." *Kane County*,

928 F.3d at 892 (quoting *Nat. Res. Def. Council v. U.S. Nuclear Regul. Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978)). An existing party's representation is inadequate when the party does not seek to protect the proposed intervenor's interest in the action. *See Sanguine*, 736 F.2d at 1419. This often arises when the ability of a governmental authority to represent the proposed intervenor's interest is at issue. *See Clinton*, 255 F.3d at 1254-55. A governmental authority will often pursue the interests of its constituents at large, which may differ from those of the proposed intervenor. *See id.* Intervention is appropriate under those circumstances. *See id.*; *Kane County*, 928 F.3d at 892-93.

Despite the plain language of the Treaty of 1866, the MCN still maintains that Mr. Solomon-Simmons and other Creek Freedmen are neither citizens of the Tribe nor "Indians" under federal law.[11] Therefore, the MCN's position is that the relief it seeks would not be afforded to Creek Freedmen who are subjected to Tulsa's criminal jurisdiction under identical circumstances as other Creeks. Unless Mr. Solomon-Simmons and the MCIFB intervene in this Action, Mr. Solomon-Simmons' interests and those of other similarly situated Creek Freedmen descendants will not be protected by the MCN even if federal law, including the Treaty of 1866, demands it. The MCN has also been adverse to parties represented by Mr. Solomon-Simmons in multiple other actions over the past two decades, including one pending before the MCN's Supreme Court

[11] Further, as recently as July 11, 2024, following a press conference Mr. Solomon-Simmons held regarding a separate matter currently in front of the MCN Supreme Court, the MCN Press Secretary Jason Salsman was quoted saying that the Mr. Solomon-Simmons' is a liar and his Creek Freedmen clients were "not Creek at all" despite all of them having direct lineal ancestors listed on the Dawes Rolls and guaranteed citizenship per the Treaty of 1866. Tristen Loveless, *Creek Freedmen Allege 'Court Packing' Ahead of Historic Muscogee Nation Hearing*, NonDoc.com (Mar. 15, 2025), https://nondoc.com/2024/07/11/creek-freedmen-allege-court-packing-ahead-of-historic-muscogee-nation-hearing/.

relating to the citizenship of Creek Freedmen.[12] There is little doubt that the MCN will continue to oppose Mr. Solomon-Simmons' and other Creek Freedmen Descendants' interests when it comes to this Action.

Tulsa is also unable to represent Mr. Solomon-Simmons and the MCIFB's interest because Tulsa is directly opposed to ceasing its policy of exercising criminal jurisdiction over Indians on Indian land. Also, both the MCN and Tulsa are governmental authorities that will pursue the interests of their constituents, which will tend to differ from those of Mr. Solomon-Simmons and the MCIFB. That alone is sufficient to find that this element is satisfied given *Clinton* and *Kane County*. This Court should find that Mr. Solomon-Simmons and the MCIFB meet all four elements of intervention as of right and grant their motion.

B. In the Alternative, this Court Should Find that Mr. Solomon-Simmons and the MCIFB Have Permission to Intervene.

A court may grant a motion for permissive intervention when the proposed intervenor "has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). In the Tenth Circuit, a court must also consider undue delay or prejudice to the existing parties, but other factors may also be considered, like the ability of existing parties to

[12] On September 27, 2023, following an April 2023 trial in the MCN court system regarding MCN's refusal to grant citizenship to two Creek Freedmen Descendants, MCN District Judge Denette Mouser ruled that "There can be no doubt that the Treaty must be followed in all regards, including as it relates to the eligibility for citizenship of those whose ancestors are listed on the Creek Freedmen Roll." *See Muscogee Nation judge rules in favor of citizenship for slave descendants*, The Associated Press (Sept. 28, 2023, 4:34 PM ET), available at https://www.npr.org/2023/09/28/1202417288/muscogee-nation-freedmen-citizenship. Sadly, reminiscent of former Governor of Alabama, George Wallace, who infamously lived by the creed "Segregation today, Segregation tomorrow, Segregation forever!" and shamelessly stood in the doorway to block the integration of the University of Alabama by Black students in 1963, MCN Chief David Hill immediately announced on Facebook that he ordered his Attorney General to appeal the ruling to the MCN Supreme Court. The MCN Supreme Court immediately accepted the appeal and stayed enforcement of the District Court's order pending the outcome of the appeal. The appeal is presently pending oral argument.

protect the proposed intervenor's interests. *See Tri-State Generation & Transmission Ass'n v. N.M. Pub. Regul. Comm'n*, 787 F.3d 1068, 1074 (10th Cir. 2015); Fed. R. Civ. P. 24(b)(3); *see also Garfield County v. Biden*, No. 4:22-cv-00059-DN-PK, 2023 WL 2561539, at *6 (D. Utah Mar. 17, 2023) ("A district court has 'very broad' discretion to grant permissive intervention . . . ."). Given the overlap of these considerations with the elements of intervention as of right, this Section will focus on Mr. Solomon-Simmons and the MCIFB's claim and its commonalities with the Action. *Supra* I.A.1, I.A.3 (discussing timeliness and the ability of existing parties to protect Mr. Solomon-Simmons and the MCIFB's interests, respectively).

A proposed intervenor's claims share common questions of law or fact with the main action when the same conduct or underlying circumstances are in contention. *See Garfield County*, 2023 WL 2561539, at *6; *Univ. of Tulsa v. Johnson Matthey Inc.*, No. 16–CV–103–TCK–PJC, 2016 WL 10567162, at *1 (N.D. Okla. Oct. 26, 2016). In *Garfield County*, the proposed intervenors' defenses all concerned whether a proclamation by President Biden was lawful. *See* 2023 WL 2561539, at *6. Since the plaintiffs' claim was that the proclamation exceeded President Biden's statutory authority, there were common questions of law and fact that permitted intervention. *See id.* at *1, 6.

Here, Mr. Solomon-Simmons and the MCIFB allege that Tulsa unlawfully exercised jurisdiction over him by issuing him a traffic ticket while he, an Indian for purposes of federal law, was driving on Creek land, which is precisely the kind of conduct by Tulsa that the MCN is challenging. Mr. Solomon-Simmons and the MCIFB's claim and the existing claim asserted by the MCN depend on this Court's analysis of Tulsa's criminal jurisdiction over Creek land pursuant to *McGirt*, 591 U.S. at 902-13, and 18 U.S.C. § 1151(a). Thus, there are common questions of law and fact between Mr. Solomon-Simmons and the MCIFB's claim and that of the MCN against

Tulsa. Given how the additional factors weigh in favor of intervention, *supra* I.A.1, I.A.3, this Court should grant the motion for the sake of justice and judicial economy.

II. Mr. Solomon-Simmons and the MCIFB Have Article III Standing to Intervene.

This Court should also find that Mr. Solomon-Simmons and the MCIFB have standing to bring this claim as intervenors. The Supreme Court held that intervenors as of right must demonstrate standing under Article III of the United States Constitution, but the Court did not address permissive intervention. *See Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 442 (2017). Courts in the Tenth Circuit construe *Laroe* to require permissive intervenors to demonstrate Article III standing only when they seek additional relief beyond the plaintiff's requests. *See United States v. RaPower-3, LLC*, 341 F.R.D. 311, 316 (D. Utah 2022); *Parson v. Farley*, 352 F. Supp. 3d 1141, 1147-48 (N.D. Okla. 2018) (framing this principle as "piggyback standing" whereby a proposed intervenor need only show there is an ongoing controversy where another party on the same side of the case has standing). Mr. Solomon-Simmons and the MCIFB do not seek additional relief beyond what the MCN has requested—they merely seek that the relief, as stated in the MCN's Complaint, will be applied equally to Creek Freedmen like Mr. Solomon-Simmons—so, they are not required to establish independent standing for the purposes of permissive intervention. Even still, Mr. Solomon-Simmons and the MCIFB meet each of the three requirements of Article III standing: (1) an injury in fact, (2) the injury is fairly traceable to the defendant's challenged action, and (3) the injury can likely be redressed by a favorable decision. *See Am. Humanist Ass'n v. Douglas Cnty. Sch. Dist. RE-1*, 859 F.3d 1243, 1250 (10th Cir. 2017).

An association has standing when its members have standing to sue in their own right, the association's interest in the case is germane to its purpose, and "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 181 (2000); *see also Utah Ass'n of*

Cntys. v. Bush, 455 F.3d 1094, 1099 (10th Cir. 2006) ("Although this quotation refers to 'members,' plural, if even one member of the association would have had standing to sue in his or her own right, that is sufficient."). Thus, the MCIFB has standing because Mr. Solomon-Simmons is a member with standing, the MCIFB's purpose is to promote justice for Creek Freedmen, and this case would not require Mr. Solomon-Simmons to participate as an individual.

A. Mr. Solomon-Simmons and the MCIFB Have Suffered Injuries in Fact and Are Likely to Suffer Further Injuries.

An injury in fact is an invasion of a legally protected interest that is "(a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *See Lujan v. Defs. of Wildlife*, 504 U.S. 555, (1992) (quotations and internal citations omitted). A party's injury is concrete and particular when they have personally suffered harm, or are at risk of suffering harm, to one of their interests or freedoms. *See Tandy v. City of Wichita*, 380 F.3d 1277, 1284 (10th Cir. 2004). Such an injury is actual or imminent when it has already occurred or is likely to occur beyond merely unfounded speculation. *See Lujan*, 504 U.S. at 564 (finding that "some day" intentions are not enough to show an injury in fact).

When a party seeks prospective relief, they must also show a substantial likelihood they will suffer a future injury. *See City of Los Angeles v. Lyons*, 461 U.S. 95, 102 (1983). "Past wrongs [are] evidence bearing on 'whether there is a real and immediate threat of repeated injury,'" especially when a party has a "*present* plan" to put themselves in a position in which they will be at risk of suffering from the allegedly unlawful act. *Tandy*, 380 F.3d at 1283-84.

Mr. Solomon-Simmons and the MCIFB suffered an injury in fact from the Defendant Tulsa's policy of pursuing traffic enforcement against Creek Indians like Mr. Solomon-Simmons on MCN land. He and other members of the MCIFB are highly likely under the circumstances to be subject to further unlawful exercises of jurisdiction resulting in fines. This interest is concrete

and particularized given how it has already happened to him, creating more than a mere fear of injury. It is also actual or imminent because he drives on MCN land on a daily basis given where he resides and works. His present plan to continue to drive on Creek land where he will be at risk of being cited for any kind of traffic infraction is not a mere "some day" intention. Accordingly, Mr. Solomon-Simmons and the MCIFB have alleged an injury in fact for the purposes of standing.

B. The City of Tulsa's Conduct Is the Fairly Traceable Cause of Mr. Solomon-Simmons and the MCIFB's Injuries.

An injury is fairly traceable to a defendant's unlawful conduct when that conduct is the cause of the party's injury rather than "the independent action of some third party not before the court." *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 41-42 (1976). Causation is often a straightforward inquiry for standing purposes, *see Tandy*, 380 F.3d at 1285, and Mr. Solomon-Simmons' case is no exception. Tulsa is responsible for this harm underlying Mr. Solomon-Simmons and the MCIFB's claim. To the extent any third parties are involved in this policy, they are officials acting on behalf of Tulsa in their official capacities. Thus, Mr. Solomon-Simmons and the MCIFB have established causation.

C. Mr. Solomon-Simmons and the MCIFB's Injuries Are Redressable.

Redressability requires a party to show that their requested relief would remedy their alleged injuries. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103 (1998). For example, a party's claim is redressable if they request relief that, if granted, would be enforceable against the defendant and bring about an end to the unlawful conduct. *See Lujan*, 504 U.S. at 568. Here, this Court can grant Mr. Solomon-Simmons and the MCIFB's motion for declaratory and injunctive relief to end the Defendant Tulsa's unlawful exercise of criminal jurisdiction as it pertains to Mr. Solomon-Simmons and other Indians. This relief would fully remedy their injuries.

CONCLUSION

This Court should grant Mr. Solomon-Simmons and the MCIFB's motion to intervene as of right or with this Court's permission. To the extent it is necessary for his motion to intervene as of right, this Court should also find that they have standing under Article III.

DATED: March 18, 2025

Respectfully Submitted,

/s/ Damario Solomon-Simmons
Damario Solomon-Simmons, OBA #20340
SOLOMONSIMMONSLAW PLLC
601 S. Boulder Ave., Ste. 602
Tulsa, OK 74119
Telephone: (918) 551-8999
Facsimile: (918) 558-8039
dss@solomonsimmons.com

Jana L. Knott, OBA #30615
Bass Law
104 N. Rock Island Ave.
El Reno, OK 73036
Telephone: (405) 262-4040
Facsimile: (405) 262-4058
jana@basslaw.net

Mike McBride III, OBA #15431
Crowe & Dunlevy
222 N. Detroit Ave., Ste. 600
Tulsa, OK 74120
Telephone: (918) 592-9824
mike.mcbride@crowedunlevy.com

CERTIFICATE OF SERVICE

I hereby certify that on March 18, 2025, I electronically filed the foregoing paper with the Clerk of Court using this Court's CM/ECF system, which will serve and send a notice of electronic filing to all parties or their counsel of record.

/s/ Damario Solomon-Simmons
Damario Solomon-Simmons