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

THE UNITED STATES OF AMERICA, **Plaintiff,** **and** **CHEROKEE NATION, CHICKASAW NATION, and CHOCTAW NATION OF OKLAHOMA,** **Intervenor Plaintiffs,** **and** **MUSCOGEE (CREEK) NATION,** **Consolidated Plaintiff,** **v.** **MATTHEW J. BALLARD,** **Defendant.**	**Case No. 24-CV-0626-CVE-SH** **(BASE FILE)** **Consolidated with:** **Case No. 25-CV-0050-CVE-SH**

DEFENDANT MATTHEW J. BALLARD'S REPLY IN SUPPORT OF MOTION TO DISMISS THE NATIONS' COMPLAINT AND BRIEF IN SUPPORT

This federal lawsuit joined by intervenors Cherokee Nation, Chickasaw Nation, and Choctaw Nation of Oklahoma (collectively, "Plaintiffs" or "Nations")—which seeks to jeopardize public safety throughout eastern Oklahoma and directly interfere with ongoing state prosecutions—is clearly barred by the *Younger* and *Colorado River* abstention doctrines. Defendant Matthew J. Ballard ("Defendant") readily concedes that the Nations are not parties to the ongoing state criminal proceedings. But that is only the beginning of the analysis. "The rule in *Younger v. Harris* is designed 'to permit state courts to try state cases free from interference by federal courts[.]' . . . Plainly, the same comity considerations apply where the interference is sought by some . . . not parties to the state case." *Hicks v. Miranda*, 422 U.S. 332, 349 (1975).[1]

Recognizing that their initial response brief (Doc. 69) failed to overcome the clear application of abstention doctrines, the Nations in their latest response (Doc. 93) now pivot to new arguments that are even more plainly unsupported by law. They attempt to press merits arguments at the dismissal stage, relying on a misapplication of *Younger*, an unwillingness to acknowledge that their claims are inextricably bound to and seek to enjoin ongoing criminal prosecutions (a critical fact absent from authority they invoke), and the false premise that their Complaint seeks only prospective relief—despite its express request to enjoin ongoing prosecutions (Doc. 78, ¶¶ 50-58, 65). They further contend, without support, that stripping the State of its ability to prosecute crimes, such as the possession, distribution, and manufacture of child pornography

[1] Notably, a petition for writ of certiorari to the U.S. Supreme Court addressing the very issue the Nations improperly raise here is due by July 7, 2025—90 days after the Oklahoma Court of Criminal Appeals (the "OCCA") denied rehearing in *Stitt v. City of Tulsa*, Order Denying Petition for Rehearing, No. M-2022-984 (Okla. Ct. Crim. App. Apr. 7, 2025); *see* Sup. Ct. R. 13.1. In *Stitt*, the OCCA reaffirmed its holding in *O'Brien* "that Oklahoma has concurrent criminal jurisdiction in Indian country over non-member Indian defendants accused of committing non-major crimes." *Id.*, Summary Opinion ¶ 8 (Mar. 6, 2025).

across its territory, does not implicate an important state interest—an argument that defies both precedent and common sense.[2]

I. The Nations' novel *Younger* argument fails.

The Nations attempt to bypass a straightforward application of abstention doctrines and jump directly to the merits. In doing so, they quote only from a parenthetical in a Tenth Circuit decision involving tribal sovereign immunity, *Seneca-Cayuga Tribe of Okla. v. Oklahoma ex rel. Thompson*, 874 F.2d 709, 716 (10th Cir. 1989), which was briefly summarizing an earlier Eleventh Circuit decision, *Baggett v. Dep't of Pro. Regul.*, 717 F.2d 521, 524 (11th Cir. 1983), suggesting it establishes a new *Younger* standard. Doc. 93 at 2-3. Specifically, they contend that "*Younger* is inapplicable 'where federal preemption [is] readily apparent and [the] state tribunal [is] therefore acting beyond its lawful authority.'" *Id*. Of course, a parenthetical is not the law, and the Nations' failure to cite any other authority supporting their novel *Younger* standard is unsurprising. Because the Nations' Response depends entirely on treating a parenthetical summation as controlling law—which it is not—their counterargument to *Younger* fails. This Court must abstain.

In any event, a closer look at the parenthetical reveals that in *Baggett*—the case summarized—preemption was "readily apparent" due to *express* "*preemption* by the federal statutes[.]" 717 F.2d at 524 (emphasis added). Importantly, the Eleventh Circuit first rejected a general rule like the one the Nations ask the Court to adopt here that *Younger* does not apply where the plaintiff makes a preemption argument, holding that "[i]t would be an overstatement to suggest that when the federal question is one of preemption, abstention under the principle of *Younger v. Harris* is never appropriate." *Id*. In other words, the court in *Baggett* engaged in a proper

[2] Defendant also hereby incorporates as though fully set forth herein his Reply in Support of Motion to Dismiss Plaintiff's Complaint and Brief in Support (Doc. 85).

preemption analysis—one reaffirmed in *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 655 (2022), which explicitly held that the General Crimes Act, the statute at issue here, does *not* preempt state jurisdiction. That correct approach is a far cry from the inverse, flawed framework advanced by the Nations: that Congress must expressly grant states authority to prosecute crimes committed in Indian country, despite the Supreme Court's clear holding that "a State has jurisdiction to prosecute crimes committed in Indian country unless state jurisdiction is preempted." *Id*., at 655.[3] The Court

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[3] This recitation of the preemption framework applicable in Indian country is neither isolated nor limited to the specific facts of *Castro-Huerta*. And while the defendant in *Castro-Huerta* was a non-Indian, the Court's reasoning rested on principles of state sovereignty and preemption that apply regarding of the defendant's identity. The Court emphasized that the State has jurisdiction to prosecute all crimes committed in Indian country, unless such jurisdiction is preempted by federal law:

> To begin with, the Constitution allows a State to exercise jurisdiction in Indian country. Indian country is part of the State, not separate from the State. To be sure, under this Court's precedents, federal law may preempt that state jurisdiction in certain circumstances. But otherwise, as a matter of state sovereignty, a State has jurisdiction over all of its territory, including Indian country. See U.S. Const., Amdt. 10. As this Court has phrased it, a State is generally "entitled to the sovereignty and jurisdiction over all the territory within her limits." …
>
> Since the latter half of the 1800s, the Court has consistently and explicitly held that Indian reservations are "part of the surrounding State" and subject to the State's jurisdiction "except as forbidden by federal law." …
>
> In accord with that overarching jurisdictional principle dating back to the 1800s, States have jurisdiction to prosecute crimes committed in Indian country unless preempted. …
>
> In short, the Court's precedents establish that Indian country is part of a State's territory and that, unless preempted, States have jurisdiction over crimes committed in Indian country.

Castro-Huerta, 597 U.S. at 636-38 (internal citation omitted). The Court then reaffirmed the two ways preemption may occur:

> Under the Court's precedents, as we will explain, a State's jurisdiction in Indian country may be preempted (i) by federal law under ordinary principles of federal

rejected any categorical bar to state jurisdiction and reaffirmed that preemption—not identity—is the touchstone. *Id*. at 652-53. The Nations' theory disregards that principle and overreads *McGirt v. Oklahoma*, 591 U.S. 894 (2020), a case addressing only the Major Crimes Act. *Id*. at 934 ("Mr. McGirt's appeal rests on the federal Major Crimes Act.").

Even assuming *Younger* abstention could be avoided where federal preemption is "readily apparent," and the state tribunal is therefore acting beyond its lawful authority, the Nations' argument still fails. First, unlike *Baggett*, there is no express preemption of the State's jurisdiction to prosecute nonmember Indians who commit non-major crimes within the "State's territory [that] is part of [Oklahoma], not separate from" it. *Castro-Huerta*, 597 U.S. at 652-53. Second, it cannot credibly be said that federal preemption is "readily apparent" when the OCCA has reached the opposite conclusion in *O'Brien* and *Stitt*—the latter of which is sure to be imminently appealed to the United States Supreme Court, further counseling against this Court's intervention in state proceedings. The OCCA held "that Oklahoma has concurrent criminal jurisdiction in Indian country over non-member Indian defendants accused of committing non-major crimes." *Stitt v. City of Tulsa*, 565 P.3d 857, 859-60 (Okla. Ct. Crim. App. 2025). Third, the Nations themselves hedge on whether *McGirt* is controlling (it is not), implicitly conceding that preemption is not "readily apparent" even under their exclusive reliance on *McGirt*. Doc. 78, ¶ 38 (alleging, "even assuming, *arguendo*, that *McGirt* is not controlling here . . .").

In short, the Nations' reliance on a parenthetical summarizing an Eleventh Circuit opinion that ultimately supports Defendant's position, in an effort to press a premature and legally flawed

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> preemption, or (ii) when the exercise of state jurisdiction would unlawfully infringe on tribal self-government.

Id. at 638. The Court went on to find that "the General Crimes Act does not say . . . that state jurisdiction is preempted in Indian country." *Id*. at 639.

merits argument, is misguided. Even if that clause represented binding law, the analysis under it still fails to save the Nations' attempt to avoid *Younger*'s clear application.

II. The Nations' claims are too intertwined with criminal defendants to avoid *Younger*, and the Nations explicitly seek interference with ongoing state proceedings.

The Nations also argue that *Younger* abstention does not apply because they are not parties to the state prosecutions and their lawsuit does not seek to interfere with those ongoing criminal prosecutions. Doc. 93 at 9-16, 19-21.[4] The first point misses the mark, as their lawsuit is entirely dependent on—and inextricably intertwined with—the interests of the criminal defendants. The second argument is belied by the Nations' own Complaint and is, at best, disingenuous.

The Nations look to *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 928 (1975), to support their claim that *Younger* cannot apply because the Nations are not parties to criminal proceedings. Defendant embraces *Doran*, which cuts against the Nations' position. In *Doran*, the Supreme Court highlighted that *Younger* abstention must be applied on a party-by-party basis. There, three business owners filed a joint federal suit challenging a municipal ordinance. One was prosecuted after resuming the proscribed conduct; the others were not. The Court applied *Younger* abstention only to the prosecuted party, while allowing the claims of the others to proceed, emphasizing that "[w]hile there plainly may be some circumstances in which legally distinct parties are so closely related that they should all be subject to the *Younger* considerations which govern any one of them, this is not such a case." *Id*. at 928–29. The Court rejected the idea that mere similarities in legal arguments, business activities, or common counsel justified abstention for all parties. Here, the

[4] At pages 19-21, the Nations raise similar arguments, specifically contending that "[t]he state proceedings do not provide an adequate opportunity for the Nations to raise their claims." Doc. 93. The arguments in this section apply equally to that contention, and Defendant also adopts its argument at pages 3-7 of Doc. 85.

Nations are not themselves being prosecuted, but their claims are not independent. Unlike the non-prosecuted parties in *Doran*, the Nations seek to enjoin the State's ability to proceed in specific criminal cases to which they are not parties, based solely on asserted injuries arising from those prosecutions. As in *Doran*, the individualized nature of *Younger* analysis cuts against the Nations' attempt to shield themselves from abstention merely by invoking sovereign interests.

Several other features of *Doran* also reinforce abstention here. First, the Court applied *Younger* even though the state prosecution commenced only one day after the federal suit, when the federal litigation was still "in an embryonic stage." *Id*. at 929. Here, the Nations intervened well after multiple criminal prosecutions were underway, weighing more heavily in favor of abstention. Second, the Court declined to carve out an exception for serious constitutional claims—including First Amendment rights—making clear that abstention applies even where federal constitutional interests are implicated. *Id*. at 930. Third, the Court rejected the Court of Appeals' rationale that efficiency, judicial economy, or avoiding inconsistent outcomes justified reaching the merits for all parties. *Id*. at 928 (reinforcing that the need to protect ongoing state prosecutions overrides such considerations). Finally, *Doran* cautioned against using federal litigation as a backdoor challenge to state court authority—precisely what the Nations attempt here. Their suit would enjoin the State from exercising jurisdiction in prosecutions that are not only active but already include briefing from the Nations as amici. Because the Nations' claims are inseparable from, and entirely dependent upon, those ongoing prosecutions, abstention under *Younger* is not only appropriate—it is required.

The Nations' reliance on *Steffel v. Thompson*, 415 U.S. 452 (1974), is also misplaced. *Steffel* involved a plaintiff who was not being prosecuted and sought only declaratory relief to protect his own rights. The Court allowed his claim precisely because it would not interfere with

his companion's pending prosecution. *Id*. at 471 n.19. Here, by contrast, the Nations seek to enjoin the State from proceeding with prosecutions of others—relief that would directly interfere with those cases. That places their claims squarely within *Younger*'s reach. As in *Doran*, where abstention applied to claims intertwined with a pending prosecution, the Nations' suit—though styled as a request for declaratory relief—functions as a collateral attack on ongoing proceedings. *Steffel* offers no safe harbor for that. Neither *Doran* nor *Steffel* provide a carveout for declaratory relief designed to neutralize prosecutions by proxy.

The Nations further cite *D.L. v. Unified Sch. Dist. No. 497*, 392 F.3d 1223 (10th Cir. 2004) to argue that abstention is inapplicable because they are not parties to the state prosecutions. But *D.L.* also reinforces abstention here. The Tenth Circuit emphasized that abstention applies when a federal plaintiff's claims are so closely aligned with a state defendant's interests that the federal suit would interfere with the state proceeding. 392 F.3d at 1230–31. That is exactly the case here. The Nations' claims—styled as independent—advance the same legal theory being raised by criminal defendants in ongoing prosecutions: that the State lacks jurisdiction over non-member Indians for non-major crimes in Indian country.

The distinction in parties advancing the same claim does not matter. *D.L.* explained that *Younger* applies where a "legally distinct party to the federal proceeding is merely an alter ego" of a state defendant or where "only one claim is at stake." *Id.* at 1231. That is this case. The Nations' legal theory is not distinct; it is the same jurisdictional challenge advanced by the criminal defendants—only repackaged in a different wrapper. Their attempt to sidestep *Younger* by inserting minimal nuance into a common claim should be rejected.[5]

[5] For example, in *State v. Williams*, No. CF-2023-311 (Rogers Co. Dist. Ct.), the criminal defendant raised the same *claim*—that the State lacks jurisdiction to prosecute non-member Indians who

The Nations' effort to distinguish *Hicks*, 422 U.S. at 348–49, fails as well. *Hicks* squarely holds that *Younger* abstention applies when the federal plaintiff's claims are aligned with state defendants. That is precisely the case here, where the Nations seek relief that would halt prosecutions they openly challenge in their Complaint. Their claims are neither distinct nor insulated—they are derivative.

And their attempts to sidestep *Spargo v. N.Y. State Comm'n on Jud. Conduct*, 351 F.3d 65, 86–87 (2d Cir. 2003), and *Citizens for a Strong Ohio v. Marsh*, 123 F. App'x 630, 633–34 (6th Cir. 2005), also miss the mark. In both, federal claims were barred because they were inextricably tied to pending state proceedings. The same is true here. And *Tony Alamo Christian Ministries v. Selig*, 664 F.3d 1245, 1254 (8th Cir. 2012), and *Global Impact Ministries v. Mecklenburg County*, 2021 WL 982333 (W.D.N.C. Mar. 16, 2021), reject the notion that labeling relief as prospective (and the Nations do not) or asserting organizational interests avoids abstention. The Nations' real aim—stopping active state prosecutions—puts them squarely within *Younger*'s reach.

Aware of those pitfalls, the Nations claim—for the first time—that they seek only prospective relief. *See* Doc. 93 at 9, 13. That revisionist framing cannot be squared with their own Complaint, which repeatedly demands judicial intervention in ongoing prosecutions. For instance, they allege that "[t]he very continuation of [those prosecutions] is the violation of federal law that this action seeks to remedy." Doc. 78, ¶ 1. They claim "present harm," caused by Defendant's "continuing" exercise of jurisdiction (*id*., ¶¶ 14–15) and seek to enjoin Defendant from "initiating or conducting state court proceedings" against Indians (*id*. at Prayer, ¶ 2).

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commit non-major crimes in Indian country—relying on similar *arguments*, including the assertion that "the Cherokee Nation's power to govern its Reservation would be decimated[]" if the State could exercise such jurisdiction. *Id.*, No. CF-2023-311, Supp. Mot. to Dismiss for Lack of Jurisdiction (Rogers Co. Dist. Ct. Oct. 15, 2024).

In short, the Nations do not merely share alignment with the criminal defendants—they rest their claims on the prosecutions themselves. *See id*., ¶¶ 51–58. Their own pleadings make clear they are asking this Court to stop prosecutions already underway. That position is irreconcilable with their newfound theory that their claims stand apart from those cases. They don't.

Finally, the Nations' assertion that, under Defendant's view, "*Younger* would require abstention in any federal case presenting an issue also pending in state court" (Doc. 93 at 19-20), is incorrect and underscores their misunderstanding of *Younger*—particularly its foundation in principles of federalism and comity. Defendant does not argue that the mere presentation of a similar issue automatically triggers *Younger*. Rather, it is the presentation of the same claim for the purpose of securing federal court intervention in ongoing state criminal proceedings that does.[6]

III. The state criminal prosecutions of violations of Oklahoma law implicate important state interests.

The Nations' assertion that state prosecutions of crimes committed within Oklahoma's borders by non-member Indians do not implicate important state interests is flatly contradicted by settled law and common sense. As the Supreme Court made clear in *Castro-Huerta*, 597 U.S. at 651, the State has a "strong sovereign interest in ensuring public safety and criminal justice within its territory," including Indian country. The Nations attempt to reframe the merits of their jurisdictional claim as a reason to deny abstention, but that misstates the inquiry. The existence of a jurisdictional dispute—albeit one that has been and continues to be addressed in state court proceedings—does not diminish the State's significant interest in enforcing its laws. And contrary

[6] As for the claim in footnote 11 of the Nations' brief (Doc. 93 at 12)—that their challenge is not limited to the State's jurisdiction over non-member Indians who commit non-major crimes—the Nations merely underscore their attempt to draw this Court into hypothetical disputes rather than an actual case or controversy. The only prosecutions at issue involve non-member Indians charged with non-major crimes.

to the Nations' effort to distance themselves from *Castro-Huerta*, its preemption framework squarely governs here. As confirmed by the OCCA in *Stitt* and *O'Brien*, the State has jurisdiction under that framework to prosecute non-member Indians for non-major crimes in Indian country. The Nations overread *McGirt*, which addressed major crimes and assuredly did not address the State's authority to prosecute non-member Indians who commit non-major crimes within the State's boundaries. In the end, there is no serious question that ongoing criminal prosecutions implicate vital state interests—*Younger* applies.

IV. No extraordinary circumstances exist to override *Younger*.

The Nations cite *Phelps v. Hamilton*, 122 F.3d 885 (10th Cir. 1997), to argue that a *Younger* exception applies because they purportedly cannot defend their rights through a single prosecution. But *Phelps* undermines their position. First, the Tenth Circuit held that *Younger* abstention did apply in *Phelps*, despite similar arguments that exceptions should apply. Second, the exception the Nations invoke is inapposite. The *Phelps* court quoted *Younger* in stating that "the threat to the plaintiff's federally protected rights must be one that cannot be eliminated by his defense against a single prosecution." *Younger*, 401 U.S. at 46. That language clearly refers to the criminal defendant—not a third party seeking collateral federal relief, as the Nations do here. The Nations are not subject to any prosecution, nor do they claim to be. And the individual criminal defendants they reference in their Complaint are fully capable of asserting any federal rights in their respective prosecutions.

Accordingly, the Court should abstain under *Younger* and avoid disruption of ongoing state criminal prosecutions.

Date: June 3, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 3, 2025, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing.

s/Phillip G. Whaley
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