

**CASE NO. 22-5034**

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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**JUSTIN HOOPER,  
Plaintiff/Appellant,**

**VS.**

**THE CITY OF TULSA,  
Defendant/Appellee.**

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**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OKLAHOMA  
District Court Case No. 21-CV-165-WPJ-JFJ  
The Honorable William P. Johnson, District Judge**

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**APPELLANT'S SUPPLEMENTAL REPLY BRIEF**

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May 15, 2023

The Court directed supplemental briefing on whether Mr. Hooper carried his burden at the pleading stage to demonstrate standing. April 20, 2023 Order at 3. The parties agree that he did, and that the Court should reach the merits. That should have marked the end of Tulsa’s supplemental briefing. However, in that brief, Tulsa goes beyond the Court’s directive and expands on arguments about the alleged consequences of a reversal that it made in its Response Brief. *See* Appellee Resp. Br. 31–32 & n.5. Mr. Hooper briefly replies here.

Tulsa’s argument that reversal would undermine its ability to ensure traffic safety, Appellee Suppl. Resp. Br. 4–5, is meritless. It cites the case of Marvin Stitt, but that example defeats its point. *Id.* The Creek Nation is party to numerous cross-deputization agreements with municipalities within its borders, including Tulsa, that allow any law enforcement officer to enforce traffic laws against any person, and to refer persons not subject to their jurisdiction to the appropriate sovereign.<sup>1</sup> Tulsa could readily have referred Mr. Stitt to the Creek Nation for prosecution, as other municipalities within the Creek Nation are doing, but has elected not to participate in the very agreements it entered. *See* Affidavit of Muscogee (Creek) Nation Attorney General Geri Wisner, ¶¶ 15–17.<sup>2</sup> Its concern is plainly about claiming jurisdiction and not about public safety.

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<sup>1</sup> *See* Br. of Amicus Curiae Muscogee (Creek) Nation in Supp. of Appellant Seeking Reversal (July 7, 2022) at 24–25 & n.8.

<sup>2</sup> <https://www.muscogeenation.com/wp-content/uploads/2022/07/Affidavit-of-Attorney-General-Geri-Wisner.pdf>.

Indeed, in *Ute Indian Tribe of the Uintah and Ouray Reservation v. Utah*, 790 F.3d 1000 (10th Cir. 2015), this Court rejected the argument that a lack of jurisdiction over Indians would cripple the ability of non-Indian governments to ensure traffic safety because, as is the case here,

nothing ... prevent[s] the State and County from patrolling [their] roads ..., from stopping motorists suspected of traffic offenses to verify their tribal membership status ..., from referring suspected offenses by Indians to tribal law enforcement, or from adjudicating disputes over the Indian status of accused traffic offenders when meaningful reasons exist to question that status.

*Id.* at 1007 (Gorsuch, J.). And without valid jurisdiction, “the defendants’ claims to injury should an injunction issue [against prosecuting Indians for traffic offenses] shrink to all but the vanishing point.” *Id.* (quotation marks omitted). The same is true here.

Tulsa also points to numerous of its codes (building, fire, and the like) that are “enforceable by misdemeanor prosecution in municipal court,” Appellee Suppl. Resp. Br. 3–4, and to others, including nuisance and firearms provisions, *id.* at 4, violations of which are likewise criminal offenses.<sup>3</sup> But its claim that reversal will allow Tulsa’s Indian residents to violate such provisions “simply because they are Indian,” *id.*, is pure fearmongering. The Creek Nation’s criminal code expressly incorporates as Creek law “any criminal offense” prescribed by other governments within its Reservation boundaries – i.e., including Tulsa. *See* MCN Code, tit. 14, ch. 2, § 2-114(B). And these matters are likewise within the scope of the cross-deputization agreements.<sup>4</sup>

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<sup>3</sup> Tulsa Revised Ordinances, tit. 24, ch. 1, § 106 (nuisance); Tulsa Revised Ordinances, tit. 27, ch. 15, § 1507 et seq. (firearms).

<sup>4</sup> *See* <https://www.sos.ok.gov/documents/filelog/63941.pdf>.

Tulsa’s dire warnings of law enforcement disruption echo those in its (and Oklahoma’s) briefing in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020).<sup>5</sup> The Court was not persuaded, in part because inter-governmental agreements had proven that Oklahoma and the Tribes “can work successfully together as partners” on a range of criminal and civil law enforcement issues. *McGirt*, 140 S. Ct. at 2481. The only obstacle to such partnership in this case is Tulsa’s refusal to participate. The disruption it warns of, then, would be of its own making, rendering its claims the epitome of *McGirt*’s admonition that “dire warnings are just that, and not a license for us to disregard the law.” *Id.*

Respectfully submitted this 15th day of May, 2023.

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<sup>5</sup> Br. of the City of Tulsa as Amicus Curiae in Support of Resp’t at 27–34, *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) (No. 18-9526), 2020 WL 1433475.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 15<sup>th</sup> day of May 2023, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of Notice of Electronic Filing to the following ECF registrants:

David E. O’Meilia  
ECF Registrants from the City of Tulsa

/s/ John M. Dunn

**CERTIFICATE OF DIGITAL SUBMISSION**

I certify that all required privacy redactions have been made, and, with the exception of those redactions, every document submitted in digital form or scanned PDF format is an exact copy of the written document filed with the Clerk.

I also certify that the digital submission has been scanned for viruses with the most recent version of a commercial scanning program, PC Matic Supershield. I further certify that according to the commercial virus scanning program, this digital submission is free of viruses.

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