

No. 23A73

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IN THE  
*Supreme Court of the United States*

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CITY OF TULSA,

*Applicant,*

v.

JUSTIN HOOPER,

*Respondent.*

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**On Application to Stay the Mandate Issued by the United States Court of  
Appeals for the Tenth Circuit**

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**RESPONSE IN OPPOSITION TO EMERGENCY APPLICATION FOR A  
STAY OF MANDATE PENDING THE FILING AND DISPOSITION OF A  
PETITION FOR WRIT OF CERTIORARI**

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TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE TENTH CIRCUIT:

The City of Tulsa asks the Court to stay the Tenth Circuit's mandate while Tulsa seeks certiorari review. Tulsa's motion does not establish any plausible basis for such relief. To succeed on a stay application of this type, Tulsa

must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.

*Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

Tulsa's motion does not overcome these hurdles. This Court considers certiorari review where, inter alia, a court of appeals' decision conflicts with that of another court of appeals or a state court of highest resort, a court of appeals has departed from "the accepted and usual course of judicial proceedings," a court of appeals' decision conflicts with a decision of the Supreme Court, or a court of appeals has decided an important federal question that should be heard by the Supreme Court. Sup. Ct. R. 10(a), (c). Even under these circumstances, review "will be granted only for compelling reasons." Sup. Ct. R. 10.

None of these considerations exist here and Tulsa does not contend that they do. Tulsa's only argument is that under Rule 10(c), the proper interpretation of Section 14 of the Curtis Act, ch. 517, 30 Stat. 495, is an important federal question that should be reviewed by the Court. Emergency Appl. for a Stay of Mandate Pending the Filing and Disposition of a Pet. for Writ of Cert. ("Appl.") 8. But on the merits, Tulsa's application makes abundantly clear that its petition will be no more

than a request for error correction, which is not a likely basis for a grant of certiorari. See Stephen M. Shapiro et al., *Supreme Court Practice* § 5.12(c)(3) (10th ed. 2013) (“[E]rror correction ... is outside the mainstream of the Court’s functions and ... not among the ‘compelling reasons’ ... that govern the grant of certiorari[.]”).

And even if the Court were to review it, there is no fair prospect of reversal because the Tenth Circuit’s interpretation of the relevant statute clearly is the right one. In Section 14 of the Curtis Act, Congress permitted cities and towns in the Indian Territory to organize as federally chartered municipal entities authorized to enforce certain federally borrowed laws of Arkansas over all their inhabitants regardless of race. 30 Stat. at 499–500. But Congress conditioned that grant of jurisdiction on those cities and towns being “incorporated as provided in chapter twenty-nine of Mansfield’s Digest of the Statutes of Arkansas,” and it limited every grant of power in the provision to “such” cities and towns, and only “when so authorized and organized.” *Id.* at 499; see *Hooper v. Tulsa*, 71 F.4th 1270, 1283–85 (10th Cir. 2023) (discussing same). That is the plain text of Congress, and Tulsa acknowledges that “Congress has never repealed or amended those words” and that “Oklahoma statehood did not repeal Congress’s words by implication or otherwise.” Appl. 10.

It is undisputed here that, upon Oklahoma statehood, Tulsa was no longer organized under Mansfield’s Digest as required by the text of Section 14, and that remains true today. The Tenth Circuit, therefore, got it exactly right in concluding that “Section 14 provides cities and towns in the Indian Territory organized and

authorized according to chapter twenty-nine of Mansfield's Digest jurisdiction over municipal violations committed by their inhabitants. Because Tulsa is no longer such a city or town, Section 14 no longer grants jurisdiction to Tulsa." 71 F.4th at 1285.

The brief filed on this date by amici Tribal Nations provides a more detailed discussion of why the Tenth Circuit's statutory analysis is correct and unlikely to be reviewed and reversed. It also sets forth the reasons why Tulsa's irreparable harm arguments lack merit, both on their own terms and as a basis for a stay. Those Nations are well-positioned to assist the Court on the factual and legal history surrounding Section 14 and its application in the Indian Territory; and Tulsa's irreparable harm arguments centrally involve the governmental relationship between Tulsa and the Muscogee (Creek) Nation and the Cherokee Nation. Accordingly, rather than burden the Court with duplicative argument, Mr. Hooper adopts and incorporates in its entirety the brief filed on this date by the amici Tribal Nations.

For the above reasons and those adopted and incorporated, it is not reasonably probable that the Court will grant certiorari review, there is not a fair prospect of reversal, and there is no likelihood of irreparable harm. Mr. Hooper respectfully requests that the Court therefore deny Tulsa's emergency application for a stay.

Respectfully submitted,

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