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

THE CHEROKEE NATION, a federally recognized Indian Tribe, on its own behalf and as *parens patriae*; THE CHICKASAW NATION, a federally recognized Indian Tribe, on its own behalf and as *parens patriae*; and THE CHOCTAW NATION OF OKLAHOMA, a federally recognized Indian Tribe, on its own behalf and as *parens patriae*, Plaintiffs, v. WADE FREE, in his official capacity as Director, Oklahoma Department of Wildlife Conservation; NELS RODEFELD, in his official capacity as Assistant Director, Oklahoma Department of Wildlife Conservation; NATHAN ERDMAN, in his official capacity as Chief of Law Enforcement Division, Oklahoma Department of Wildlife Conservation; J. KEVIN STITT, in his official capacity as Governor of the State of Oklahoma; and RUSSELL COCHRAN, in his official Capacity as special counsel employed by the Governor, Defendants.	)	Case No. 25-cv-00630-CVE-JFJ

DEFENDANTS' RESPONSE AND OBJECTION TO PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

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Defendants Wade Free, Nels Rodefeld, Nathan Erdman, J. Kevin Stitt, and Russell Cochran, all sued in their official capacities as officers of the State of Oklahoma (collectively, the "State"), respectfully file this Response to Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction ("Motion") (Doc. 3) and request that the Motion be denied.

INTRODUCTION

Since statehood, the State of Oklahoma has exercised undivided criminal and civil jurisdiction in a non-discriminatory manner over all persons within its borders, to include many aspects of the affairs of its citizenry, Indian and non-Indian alike. And pursuant to the State's inherent sovereign authority to manage, protect, and conserve wildlife in the public trust, *see Hughes v. Oklahoma*, 441 U.S. 322, 338–39 (1979), the Oklahoma Department of Wildlife Conservation ("ODWC") has regulated hunting and fishing in Oklahoma for over a century. Even within what is known as "Indian country," the State has consistently exercised its regulatory jurisdiction over hunting and fishing on all publicly and privately owned fee lands (hereinafter, "fee lands") – and is entrusted with special responsibility for lands it owns, leases, or jointly manages with the federal government. But the State has not sought, and does not seek, to apply state hunting and fishing laws "to hunting and fishing by members of [tribes] on land held as Indian allotments and on land held in trust by the United States for the [tribes]" (hereinafter, "trust lands"). *See Cheyenne-Arapaho Tribes of Oklahoma v. State of Okl.*, 618 F.2d 665, 667-69 (10th Cir. 1980); *see also* Ex. 1, Aff. Wade Free, ¶ 3 (ODWC does not extend its enforcement authority to trust lands, except at the request of the tribes pursuant to cross-deputization agreements).

With a single decision of the United States Supreme Court on a totally unrelated matter, this century-long system of state-exercised jurisdiction has been upended. In *McGirt v. Oklahoma*, the Court held that Congress had not disestablished the Muscogee (Creek) Nation reservation for purposes of the Major Crimes Act ("MCA") and, therefore, all lands within the former reservation boundaries remained "Indian country," and an Indian who committed any of the enumerated crimes therein could

be prosecuted only "within the exclusive jurisdiction of the United States," under 18 U.S.C. § 1153(a). 591 U.S. 894, 929, 937 (2020). Prior to *McGirt*, "[m]ost everyone in Oklahoma previously understood that the State included almost no Indian country," but that long-held understanding unraveled in an instant, and "about 43% of Oklahoma – including Tulsa – is now considered Indian country." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 647 (2022).

The majority in *McGirt* downplayed the serious concerns raised by the State about potentially "significant consequences for civil and regulatory law" by assuring that it decided "***only***" the narrow issue of "the statutory definition of 'Indian country' as it applies in federal criminal law under the MCA." 591 U.S. at 935 (emphasis added). In his dissent, Chief Justice Roberts predicted otherwise:

> State and tribal authority are also transformed. As to the State, its authority is clouded in significant respects when land is designated a reservation. … [The *Bracker*] test mires state efforts to regulate on reservation lands in significant uncertainty, guaranteeing that many efforts will be deemed permissible ***only after extensive litigation***, if at all.

Id., at 972 (Roberts, C.J., dissenting) (emphasis added).

Chief Justice Roberts' prediction has become a daily reality for the State. Oklahoma's tribes have since challenged the State's regulatory, civil, and criminal authority across virtually every aspect of its affairs, from taxation to prosecution of non-major crimes, with the State's authority to regulate hunting and fishing for the public trust the latest example. Here, Plaintiffs Cherokee Nation, Chickasaw Nation, and Choctaw Nation of Oklahoma (the "Nations") do so by engaging in misleading linguistic gymnastics purposefully designed to extend *McGirt* well beyond its express holding. At the core of this plan is the use of the misleading term "Reservation" throughout their filings—a term purposefully left undefined.[1] The Nations use the term as interchangeable with "Indian

[1] The State distinguishes between "fee lands" and "trust lands" herein to provide clarity to the discussion. Even still, courts often use imprecise language. Fee lands are sometimes referred to as "off-reservation," "unrestricted," "fee-patented lands," or "non-Indian lands." Trust lands are sometimes referred to as "on-reservation," "restricted," "tribal lands," or "Indian lands." But regardless of terminology, the specific nature of the land at issue, including ownership and occupancy, is critical to this analysis.

country," as defined in the MCA and construed in *McGirt*, which means "all land within the limits of any Indian ***reservation*** under the jurisdiction of the United States Government, ***notwithstanding the issuance of any patent***, and, including rights-of-way running through the reservation …." 18 U.S.C. § 1151 (emphasis added). Within "Indian country," including the five "rediscovered reservations" portended by the majority decision in *McGirt* that encompass the entire eastern half of the State, however, "fee lands … make up more than 95% of the [Nations'] former territory." *McGirt*, 591 U.S. at 964 (Roberts, C.J., dissenting); *see also Matter of Stroble*, 2025 OK 48, ¶ 1, __ P.3d __ (per curiam) (recognizing that "[a]lmost all (around 95%) of this property is fee land, meaning it is not restricted or held in trust").[2] Thus, contrary to the strained arguments advanced by the Nations, the definition and meaning of Indian country alone is of no significant consequence to the outcome here, which turns entirely on "ownership" and "occupancy" of—and the sovereign authority of the State to regulate—the fee lands at issue.

Relying primarily on their strained reading of *McGirt*, and ignoring *Castro-Huerta*, the Nations filed this action seeking broad declaratory and injunctive relief that would categorically bar the State, its officers, and its executive agencies from enforcing ***any*** state wildlife laws and regulations against tribal members ***anywhere*** within Indian country – even on fee lands, including those owned or historically managed by the State.[3] But the Nations cannot demonstrate a likelihood of success on the merits. Essentially, they ask this Court to reserve to their members a perpetual free hunting and fishing license on fee lands, which the Nations and/or tribal members alienated years ago and that the State

[2] Although the Chief Justice was referring specifically to the Creek Nation territory in his dissent, the State has no reason to believe the relative percentages of trust land and fee land within the territories of any of the Nation Plaintiffs is meaningfully different.

[3] Curiously, in one of two forms of injunctive relief requested (Doc. 3 at 4), the Nations also ask the Court to enjoin the State from interfering with the enforcement of their own game and fish laws, or their prosecution of tribal members for violations of the same. But the Nations fail to plausibly allege or present evidence to suggest this is occurring, rendering this part of the relief requested unnecessary and improper.

now manages for the public trust, citing treaty rights and principles of inherent tribal sovereignty. But no treaty applicable here expressly reserves *any* hunting and fishing rights to the Nations (or their members) as required by *Castro-Huerta*, 597 U.S. at 654. And no decision of the U.S. Supreme Court has ever recognized such implicit rights on fee lands under a theory of inherent tribal sovereignty. *See also N. Arapahoe Tribe v. Hodel*, 808 F.2d 741, 748 (10th Cir. 1987) (tribes' implied rights to hunt and fish are "rights of possession" that are "derived from their status as occupants of the land"). To the contrary, the Supreme Court has expressly rejected the position that tribal members hold "a special right, nonexclusive but free of state regulation" on alienated lands no longer held in trust for the tribe. *See Oregon Dep't of Fish & Wildlife v. Klamath Indian Tribe*, 473 U.S. 753, 763-64 (1985). Even if the Nations could establish some implicit treaty-based hunting and fishing rights based on possession or occupancy, those rights vanish when the land is alienated. Thus, the Nations' claim fails on its face.

Alternatively, the Nations contend that federal law broadly preempts the exercise of any State jurisdiction in Indian country, whether criminal, civil, or regulatory, in the absence of express Congressional authority. But *McGir*t, the authority on which they rely, did not address, much less displace, the State's general police power or its authority to enforce non-MCA offenses or exercise civil regulatory jurisdiction. And as the U.S. Supreme Court held in *Castro-Huerta*, the presumption is exactly the opposite: "[A]s a matter of state sovereignty, a State has jurisdiction over all of its territory, including Indian country," and "the default is that States have criminal jurisdiction in Indian country unless that jurisdiction is *preempted*." 597 U.S. at 636, 638, 653 (emphasis in original). Because "Indian country is part of the State, not separate from the State," "States do not need a permission slip from Congress to exercise their sovereign authority." *Id.* at 636, 653. Thus, the Nations' sweeping legal theory here finds no support in *McGirt*, is foreclosed by *Castro-Huerta*, and conflicts with a long line of precedent recognizing both the States' broad police and trustee powers over wildlife conservation.

Nor can the Nations demonstrate great and immediate irreparable harm to justify the

extraordinary remedy they seek. The only consequence of denying an injunction is the continuation of the same regulatory framework that has governed hunting and fishing in Oklahoma for more than a century. The Nations have never previously challenged this status quo that, at most, imposes minimal burdens on individual hunters – limits the Nations recognize in the declarations attached to the Motion are necessary and consistent with their own view of wildlife conservation. *See, e.g.*, Doc. 3-14, Decl. Baker, ¶ 5 (recognizing that the State's wildlife Code was an appropriate model for the Nation's wildlife regulations because it "reflected appropriate practices for conservation and wildlife management"). By contrast, an injunction would inflict substantial and irreversible harm on the State, stripping it of core sovereign and property rights it has exercised since statehood. Enjoining the State from equally enforcing the law would impede Oklahoma's constitutional and statutory conservation responsibilities over nearly half of its territory, disrupt the State's management of hunting and fishing on fee lands, diminish ODWC revenues from the issuance of State hunting and fishing licenses central to its core conservation function, jeopardize longstanding hunting-access leases, and even interfere with state-federal jurisdictional arrangements. The balance of harms weighs decisively against injunctive relief. This Court should reject the Nations' unprecedented—and unsupported—request for sweeping relief and deny the Motion.

FACTUAL BACKGROUND

A. The ODWC's History of Managing the State's Bird, Fish, Game and Wildlife Resources as Necessary for Conservation.

By the turn of the twentieth century, Oklahoma had already experienced dramatic losses in many native wildlife species due to unregulated harvest and habitat changes following statehood. Ex. 2, Aff. Scott Parry, ¶¶ 2, 4-10 (specific wildlife species); Ex. 3, Aff. Kenneth Cunningham, ¶¶ 2-4 (fish).[4] In response to these early declines and the need for coordinated management, just two years

[4] As the Oklahoma Historical Society explains, "Oklahoma had already lost several of its wildlife species, including the grizzly bear (*Ursus arctos*), gray wolf (*Canis lupus*), passenger pigeon (*Ectopistes*

later, Oklahoma created what is now the ODWC (then known as the Game and Fish Department). Ex. 1, Aff. Free, ¶¶ 2, 4-5. Since at least 1909, the State has maintained a comprehensive regulatory system governing hunting, possession, sale, and transportation of wildlife, including restrictions on methods of take, seasons, bag limits, and conduct on public and private lands. *See* S.B. 2, 1909 O.S.L. ch. 44 (Mar. 8, 1909). Even at that time, it was "unlawful to kill or capture, or attempt to kill and capture, any game bird or game animal at night" and "unlawful to hunt within the State of Oklahoma without a proper license, except as herein provided." *Id.* at §§ 3517, 3528.

The conservation of Oklahoma's wildlife, and the right to responsibly hunt and fish, was so important to the people of Oklahoma that, in 1955, Oklahoma voters made the ODWC and its Commission a constitutional body, specifically tasked with "the control, management, restoration, conservation and regulation of the bird, fish, game and wildlife resources of the State, including the purchase or other acquisition of property for said purposes, and for the administration of the laws pertaining thereto …" OKLA. CONST. art. XXVI, §§ 1, 4 (added by Laws 1955, SJR 22, Section 1, State Question 374, Legislative Referendum 115, adopted at election held July 3, 1956). In 1974, the Legislature enacted the "Oklahoma Wildlife Conservation Code," 29 O.S. §§ 1-101 *et seq.* (the "Code"), conferring certain powers and duties on its Director, 29 O.S. § 3-105, including one requiring all hunters to carry State licenses, 29 O.S. § 4-101(D). And in 2008, Oklahoma voters directly added Article II, Section 36 to the Oklahoma Constitution, providing in relevant part:

> *All citizens of this state* shall have a right to hunt, fish, trap, and harvest game and fish, subject only to reasonable regulation as prescribed by the Legislature and the Wildlife Conservation Commission. *The Wildlife Conservation Commission shall have power and authority to approve methods, practices and procedures for hunting, trapping, fishing and the taking of game and fish.*

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migratorius), Eskimo curlew (*Numenius borealis*), Carolina parakeet (*Conuropsis carolinensis*), ivory-billed woodpecker (*Campephilus principalis*), elk (*Cervus elaphus*), and American bison (*Bison bison*)." OKLA. HISTORICAL SOCIETY, *The Encyclopedia of Oklahoma History and Culture: Endangered Species*, https://tinyurl.com/ms9dueka (last visited Dec. 9, 2025).

OKLA. CONST. art. II, § 36 (added by State Question No. 742, Legislative Referendum No. 345, Nov. 4, 2008) (emphasis added). That language unequivocally applies to all citizens, and there is no carveout for Indians and/or "Indian country."

ODWC is a non-appropriated, user-funded agency that receives no general revenue funds or legislative appropriations from the State of Oklahoma to fund these operations. Ex. 4, Aff. Andrea Crews, ¶ 2. Sales of hunting and fishing licenses provide essential revenues to enable ODWC to carry out wildlife habitat improvement, law enforcement, fish hatcheries, public access programs, land management, and conservation education initiatives. *Id.* ODWC is also able to access substantial matching federal grant funds from these revenues, primarily from the U.S. Fish and Wildlife Service through the Wildlife and Sport Fish Restoration Program ("WSFRP"). *Id.*, ¶ 3. In fiscal year 2025, ODWC generated approximately $28 million in gross revenue from sales of hunting and fishing licenses and related activities, matched by another $28 million in federal grant reimbursements. *Id.*, ¶ . This user-pay/user-benefit system has sustained wildlife conservation in Oklahoma for generations, and it necessarily depends on universal participation by all user groups, including tribal citizens. *Id.*, ¶¶ 7-14, Ex. 1, Aff. Free, ¶¶ 4-15.

Today, pursuant to its constitutional and statutory authority, ODWC regulates hunting and fishing and enforces the wildlife Code and its regulations on public and private fee lands throughout Oklahoma. Ex. 1, Aff. Free, ¶ 2. Its primary mission is "the sound management and use of fish and wildlife resources" throughout the State. Ex. 3, Aff. Cunningham, ¶ 5. ODWC exercises its jurisdiction on all publicly and privately owned fee lands and also manages: (1) approximately 372,405 acres of wildlife management areas ("WMAs"), public lakes, department offices, and fish hatcheries owned in fee by ODWC; (2) approximately 364,656 acres of private land leased for public wildlife management from various individuals or entities; and (3) various properties owned by federal and private entities, comprising more than 700,000 acres, for which ODWC bears wildlife management responsibilities.

Ex. 5, Aff. Parry, at ¶¶ 6-15. ODWC's Law Enforcement Division consists of 118 game wardens tasked with enforcing State wildlife and conservation laws throughout the State, including issuing citations, making arrests, serving warrants, and taking subjects into custody. Ex. 6, Aff. Nathan Erdman, ¶¶ 2-4; *see also* 29 O.S. § 3-201(B).

Under the Code, the State requires everyone from the age of 18 to 65 to obtain an annual State license to hunt and/or fish within Oklahoma, subject to certain exemptions. *See* 29 O.S. § 4-112 (hunting); § 4-110 (fishing). One of the exemptions to the licensing requirement is for hunting and fishing by owners or tenants "on land owned or leased by them." 29 O.S. § 4-112(B)(5) (hunting); 29 O.S. § 4-110(B)(4) (fishing). The Code provides that "no person may hunt or take by any means or method upon the land of another without the consent of the owner, lessee or occupant of such land." 29 O.S. § 5-202(A). The State also regulates methods of take, seasons, and bag limits based on decades of biological research, population surveys, and harvest data, for purposes of conservation and population management. Ex. 2, Aff. Parry, ¶¶ 4-12 (wildlife); Ex. 3, Aff. Cunningham, ¶¶ 7-15 (fisheries). For example, ODWC regulations make it "unlawful to place and/or hunt over bait on lands owned or managed" by ODWC. OKLA. ADMIN. CODE § 800:3-1-21.

B. The Nations' Enactment of Hunting and Fishing Regulations.

Notwithstanding the position taken by the Nations that the State has no "conservation-based jurisdiction" for enforcing its wildlife regulations throughout nearly half of Oklahoma, or that prior to October 8, 2025, tribal members were allowed to hunt and fish on fee lands in Indian country "free from state interference" (Doc. 3-1, at 8 n.12, 16-17), the evidence presented, including the declarations made by members of the Nations themselves, paints a different picture – one that recognizes the role of the State in furtherance of a common mission and purpose. *See, e.g.*, Doc. 3-4, Decl. Dixon, ¶ 4 ("Our staff [at the Chickasaw Nation Fish and Wildlife Service] has generally had a good relationship with ODWC's game wardens and staff. Ultimately, we share the common goal of good wildlife

management."); Doc. 3-6, Decl. Gamble, ¶¶ 6, 10 (noting that the primary goals of the Choctaw Nation Department of Wildlife Conservation are to ensure the harvest is "sustainable" and to "prioritize conservation"); Doc. 3-7, Decl. Berst, ¶ 8 (recognizing that "the Nation and ODWC shared trust in our approaches to conservation."). And nothing contained in the evidence presented by the Nations contests that the State has been the principal regulating authority over wildlife conservation for almost the entirety of statehood.

The Nations only recently began enacting their own hunting and fishing regulations, which are largely modeled after and "nearly identical to" the Code and ODWC regulations. Doc. 3-1 at 17. In 2006, the Cherokee Nation enacted the Cherokee Nation Hunting and Fishing Code. *See* CHEROKEE NATION, *Hunting and Fishing Within the Cherokee Nation*, Ex. 7 at 1 ("Cherokee code"); Doc. 3-13, Decl. Justice, ¶ 5. The Cherokee code specifically adopted "many of the current hunting/fishing regulations of" ODWC, substituting only the licensing authority, "since in the Nation's view [the Code] basically reflects appropriate wildlife conservation practices." *Id.* In 2019, the Choctaw Nation enacted hunting and fishing regulations. *See* Choctaw Nation Fish, Game, and Animals Code, Title 110 (effective Dec. 23, 2019 through CB-39-20), https://tinyurl.com/pef4fsyf ("Choctaw code"). The Nation "modeled [the Choctaw] code after the State's" Code, because it "decided that the State of Oklahoma's hunting and fishing code reflected appropriate practices for conservation and wildlife management." Doc. 3-14, Decl. Baker, ¶ 5. The Chickasaw Nation enacted its hunting and fishing code in 2022. *See* Chickasaw Nation Wildlife Conservation Act of 2022, Title 11 § 101.1 (eff. Feb. 18, 2022 through PR39-005) https://code.chickasaw.net/Title-11.aspx. ("Chickasaw code"); Doc. 3-4, Decl. Dixon, ¶ 4. The Chickasaw Nation drafted its code "to closely resemble the State of Oklahoma's Wildlife Conservation Code … because the Chickasaw Nation and the State share citizens, and our wildlife law enforcement officers are cross-deputized to enforce each other's laws, so it is in our shared interest for our codes and regulations to interact seamlessly and for our teams to cooperate, both

during the drafting process and beyond." Doc. 3-7, Decl. Berst, ¶ 4.

None of the three Nations present any testimony or evidence that the State has interfered with or prevented them from enforcing their regulations against their tribal members. *See, e.g.*, Doc. 3-4, Decl. Dixon, ¶¶ 4-5 (the Chickasaw Nation requires its members to obtain a Tribal hunting and fishing license and uses a very similar system for registering a harvest as is used by the State); Doc. 3-7, Decl. Berst, ¶ 4 (even post-*McGirt*, in 2021 and 2022, the Chickasaw Nation worked with ODWC to develop its regulations which were drafted "to closely resemble" the Code); Doc. 3-13, Decl. Justice, ¶ 5, 10 (the Cherokee Nation adopted, and modified in 2021, its wildlife code largely following the State's code, including "to explicitly adopt the State's bag limits and season dates"). The Cherokee Nation acknowledges that it has worked closely with ODWC conservationists "[t]o ensure that we are aligned with current conservation practices." Doc. 3-13, Decl. Justice, ¶ 10. And the Chickasaw Nation acknowledges that ODWC was "supportive" of its effort to create its own wildlife regulations. Doc. 3-7, Decl. Berst, ¶ 8.

And the members of the Nations who provided declarations unequivocally acknowledged that the State does have – and always has had – jurisdiction in Indian country. *See, e.g.,* Doc. 3-5, Decl. Henry, ¶ 3 (former State game warden for 30 years who enforced State wildlife laws within Cherokee Indian country). For many years, State and tribal game wardens have worked together to enforce hunting and fishing regulations within Indian country pursuant to cross-deputization agreements. *See* Doc. 3-4, Decl. Harvey, ¶ 3 ("Although state game wardens are state officers, they can cite Indians for violating the Choctaw wildlife code on the Choctaw Reservation because they are cross commissioned with the Nation to enforce Nation's wildlife laws."); Doc. 3-15, Decl. Harvey, ¶ ("As a cross-commissioned officer with the State under a cross-deputization agreement between the Nation and ODWC, I also enforce state law against people who are subject to state jurisdiction…"). The evidence presented by the Nations is entirely devoid of any suggestion that the State has interfered with their

efforts to enact, apply, or enforce their own wildlife regulations against their own members.

C. The Instant Conflict and the Fee Lands at Issue.

For more than 100 years, the Nations freely acquiesced in the State's longstanding exercise of regulatory authority over hunting and fishing on fee lands, even those within Indian country. In fact, when it first adopted its own hunting and fishing laws nearly 20 years ago, the Cherokee Nation included an express warning to tribal members that a *State* license was required to hunt or fish beyond the Nation's trust lands:

> [I]t is possible that you may be stopped, or even cited, for hunting **off of trust or restricted land** using only your Cherokee Nation license. If you are in full compliance with Cherokee Nation regulations and you receive such a citation, notify the Cherokee Nation Office of the Attorney General or Marshal Service at (918) 456-9224. The Nation may or may not attempt to assert its hunting/fishing rights in your case as a defense. UNTIL THERE IS A FORMAL AGREEMENT WITH THE STATE, **YOU MAY BE SUBJECT TO FINES AND/OR OTHER PENALTIES FOR HUNTING ON STATE LAND WITHOUT A STATE LICENSE**.

Ex. 7, at 4 (emphasis added).[5]

Like many aspects of Oklahoma law and sovereignty, the State's long-settled wildlife conservation framework was cast into substantial uncertainty after *McGirt*. Although the decision has no applicability in the wildlife context, *McGirt's* ripple effects have produced an escalating conflict. Several tribes recently began to contend that, "[a]s a sovereign nation, . . . tribal members have an unquestionable right to hunt and fish on our reservation using their membership card as their license . . . ." *Derrick James*, NONDOC, *Drummond stops Choctaw citizen's hunting ticket, calls Stitt a 'petulant lame duck'* (Oct. 31, 2025), https://tinyurl.com/mun5jk3j. Building on that assertion, "the Five Tribes began issuing their own licenses and later signed reciprocal agreements in 2024, permitting their

[5] A compact was later entered between the State and the Cherokee Nation that allowed the Cherokee Nation to purchase discounted "compact licenses," but nothing therein purported to alter the State's jurisdiction. *See* Hunting and Fishing Compact Between the State of Oklahoma and the Cherokee Nation (filed Jun. 1, 2015), available at https://www.sos.ok.gov/documents/filelog/90614.pdf.

citizens to hunt and fish on one another's lands." *Id.; see also* Doc. 2-1. ODWC, in turn, has reiterated that "state fish and wildlife laws apply to everyone in Oklahoma" and "ODWC game wardens will continue to enforce the law and will issue citations to anyone in violation of the state's fish and game laws, regardless of tribal citizenship." Doc. 3-4 at p. 6.

The Governor has also appointed a Special Prosecutor, Mr. Cochran, to prosecute violations of the Code and ODWC regulations on non-trust fee lands. The prosecutions include serious violations of state hunting laws – spotlighting and bear baiting, respectively – that occurred on fee lands owned by private entities and leased to ODWC. *See* Information, *State v. Baker*, No. WL-2025-61 (McCurtain County), Ex. 8; Information, *State v. Medlock*, No. WL-2025-62 (McCurtain Cnty.), Ex. 9; Lease Agreement for the Operation of the Three Rivers Wildlife Management Area, Ex. 10. Other pending prosecutions occurred on lands managed by the State, highlighting the breadth of relief sought by the Nations. Shawn Robertson was cited for hunting without a license after he was found illegally crossbow hunting on the Hugo Wildlife Management Area, which is managed by the State. Doc. 3-9, Decl. Robertson, ¶ 2 *See* information, *State v. Robertson*, No. CM-2025-136 (Pushmataha County), Ex. 11. Kodie Shepherd was cited for hunting violations in the Chickasaw National Recreation Area, a unit of the National Park System located in south-central Oklahoma, on which ODWC manages hunting and related activities in cooperation with the National Park Service pursuant to an express delegation of authority by the Federal Government. Doc. 3-10, Decl. Shepherd, ¶ 2; Letter from U.S. Dep't of the Interior, Nat'l Park Servs. to Governor David L. Boren (Apr. 18, 1978), Ex. 12.

The Nations then filed this suit seeking to enjoin the State and ODWC from enforcing the wildlife laws and regulations against tribal members in nearly half of the State's territory. The Nations specifically challenge the jurisdiction of the State to: **(1)** continue requiring tribal members to obtain State hunting and fishing licenses in accordance with 29 O.S. §§ 4-110 and 4-112 (*see, e.g.*, Doc 3-6,

Decl. Gamble, ¶ 20; Doc. 3-8, Decl. Soap; Doc. 3-15, Decl. Harvey, ¶ 9; Doc. 3-16, Decl. Henry, ¶¶ 6, 8); **(2)** continue requiring tribal members to report certain big game harvests to the State pursuant to 29 O.S. § 4-101(H) (*see, e.g.*, Doc 3-6, Decl. Gamble, ¶ 17; Doc. 3-15, Decl. Harvey, ¶¶ 7-8, 10);[6] and **(3)** enforce violations of the Code and/or regulations by issuing citations and/or initiating state court prosecutions against tribal members (*see, e.g.*, Doc. 3-10, Decl. Shepherd, ¶¶ 4-5; Doc. 2-8 (Information); Doc. 3-9, Decl. Robertson, ¶¶ 3, 6).

ARGUMENT AND AUTHORITIES

Because injunctive relief is "an extraordinary remedy, the right to relief must be clear and unequivocal." *Dominion Video Satellite, Inc. v. Echostar Satellite Corp.*, 356 F.3d 1256, 1261 (10th Cir. 2004) (internal quotation marks and citation omitted). To obtain a preliminary injunction, the plaintiff bears the burden of establishing: (1) a likelihood of success on the merits; (2) a likelihood that the moving party will suffer irreparable harm if the injunction is not granted; (3) the balance of equities is in the moving party's favor; and (4) the preliminary injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).[7] Because the Nations cannot meet their burden under any of these required factors, let alone make the strong showing required for disfavored injunctive relief, their request must be denied.

I. THE NATIONS SEEK DISFAVORED INJUNCTIVE RELIEF THAT WOULD ALTER THE STATUS QUO.

Certain forms of injunctive relief are disfavored because they "don't merely preserve the parties' relative positions pending trial" but rather "(1) [] mandate[] action (rather than prohibiting it),

[6] The Nations recognize that the State harvest registration systems is necessary to wildlife conservation, and the "State and Tribes share data about the harvests with each other so that they know the state-wide harvest totals and the impacts of hunting on the statewide population of game" and can "track the health and abundance of species and set future seasons and bag limits for each species." Doc. 3-15, Decl. Harvey, ¶ 8.

[7] Although temporary restraining orders are drastic remedies subject to special considerations, both temporary restraining orders and preliminary injunctions must meet these same requirements. *See* Fed. R. Civ. P. 65(b); *Sampson v. Murray*, 415 U.S. 61, 89 n.59 (1974).

(2) [] change[] the status quo, or (3) [] grant[] all the relief that the moving party could expect from a trial win." *Free the Nipple-Fort Collins v. City of Fort Collins, Colorado*, 916 F.3d 792, 797 (10th Cir. 2019). To obtain such a disfavored injunction, a plaintiff must satisfy "a heavier burden on the likelihood-of-success-on-the-merits and the balance-of-harms factors[,]" making a "strong showing" on each of the prongs. *Id.*; *Fish v. Kobach*, 840 F.3d 710, 724 (10th Cir. 2016).

The Nations ask the Court to end State licensing requirements, suspend regulatory enforcement, halt criminal prosecutions, and compel State officials to treat tribal members differently from all other Oklahoma residents – relief that implicates all three disfavored categories and would fundamentally alter the status quo. The injunction requested would "affirmatively require the nonmovant to act in a particular way, and as a result . . . place the issuing court in a position where it may have to provide ongoing supervision to assure the nonmovant is abiding by the injunction." *Dominion Video*, 356 F.3d at 1261. The relief sought through the Injunction Motion is also virtually indistinguishable from the relief the Nations could expect from a trial win.

Perhaps more importantly, the requested injunction would disturb, not preserve, the status quo. "[T]he limited purpose of a preliminary injunction 'is merely to preserve the relative positions of the parties until a trial on the merits can be held.'" *Schrier v. Univ. of Co.*, 427 F.3d 1253, 1258 (10th Cir. 2005). The status quo is "the last **uncontested** status between the parties which preceded the controversy until the outcome of the final hearing." *Id.* at 1260 (emphasis added). In *Muscogee (Creek) Nation v. Kunzweiler*, No. 25-CV-75-GKF-JFJ, 2025 WL 3124450, at *6 (N.D. Okla. Nov. 7, 2025), Judge Frizzell found a similar request by the Creek Nation to prevent the State from asserting criminal jurisdiction over non-member Indians committing non-major crimes within the original boundaries of the Creek reservation was a disfavored preliminary injunction that would alter the status quo.

The last uncontested status preceding this controversy existed prior to the Court's ruling in

McGirt – not prior to October 8, 2025, as the Nations contend (Doc. 3-1 at 8 n.12).[8] For more than a century, ODWC has uniformly enforced its facially neutral hunting and fishing laws on all fee lands within the State, including those owned, leased, or managed by the State. *See* Ex. 1, Aff. Free, ¶¶ 2-5. The claimed right of the Nations to hunt free from State regulation on fee lands represents a recent (and significant) departure from that settled practice, spurred at the earliest by the 2020 *McGirt* decision. Indeed, it is only very recently that the Nations began challenging State licensing requirements and entered into the Reciprocity Agreement, and that individual tribal members such as Mr. Robertson and Mr. Shepherd stopped obtaining a State license to hunt. *See* Doc. 3-9, Doc. 3-10. An injunction would therefore alter, not preserve, the status quo. Accordingly, and for the independent reason that the Nations cannot satisfy their heightened burden, their disfavored injunctive relief should be denied.

II. THE NATIONS CANNOT ESTABLISH A SUBSTANTIAL LIKELIHOOD OF SUCCESS ON THE MERITS.

The Nations assert a legal right to allow all Indians to hunt and fish free of any State regulation, including enforcement of State licensing laws or the wildlife Code, on any lands they imprecisely refer to in their filings as "Reservations," which includes all former reservations of those three Nations, as well as the other two civilized tribes – the Muscogee (Creek) Nation and the Seminole Nation of Oklahoma. The sweeping relief they request would preclude the State from exercising its regulatory, civil, or criminal jurisdiction over wildlife conservation on roughly 43% of the lands within its borders, more than 95% of which are estimated to be fee lands. Because the Tribes cannot establish a likelihood of success for their sweeping relief, the Motion should be denied.

[8] The disruptive impact of *McGirt* is nearly impossible to overstate. *See, e.g., United States v. Budder*, 601 F. Supp. 3d 1105, 1116 (E.D. Okla. 2022), *aff'd.*, 76 F.4th 1007 (10th Cir. 2003) (noting "the reality that *McGirt* dramatically altered what the people of Oklahoma – absent, perhaps, a few appellate lawyers – considered settled jurisdictional questions."); *Oklahoma v. U.S. Dep't of Interior*, 577 F. Supp. 3d 1266 (W.D. Okla. Dec. 22, 2021); *State ex rel. Matloff v. Wallace*, 2021 OK CR 21, ¶ 38, 497 P.3d 686, 692; *United States v. Hamett*, 535 F.Supp.3d 1133, 1135-36 (N.D. Okla. 2021).

From the outset, the Nations' claims confront substantial legal obstacles. Before this Court may even reach the merits of their claims, the Nations must demonstrate a substantial likelihood of overcoming the threshold, dispositive defenses asserted in the State's Motion to Dismiss. These are no small hurdles. In sum, the Nations must show their suit is not barred by sovereign immunity, equitable principles such as laches, lack of standing, and applicable abstention doctrines. As set forth more fully in the State's Motion to Dismiss, each independently requires dismissal of this action. On that basis alone, the Nations cannot establish a substantial likelihood of success on the merits.

Even assuming the Nations could clear those threshold hurdles, the legal theories advanced by the Nations on the merits likewise fail. Specifically, the Nations contend that: **(1)** various treaties, each of which is silent as to hunting and fishing, implicitly grant the Nations and their members a special right to hunt free from State regulation anywhere within Indian country (including on the former reservations of other tribes, pursuant to a Reciprocity Agreement); **(2)** the State is preempted from regulating hunting and fishing by any Indians, anywhere within Indian country, under principles of inherent tribal sovereignty; and **(3)** alternatively, the State is preempted from exercising regulatory, civil or criminal jurisdiction over Indians anywhere in Indian country under *McGirt* because such authority has not been expressly provided to the State by Congress.

None of these legal theories demonstrate a likelihood of success under the *Castro-Huerta* preemption framework, or the "*Bracker* test," which originated in the Supreme Court's opinion in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142-43 (1980), and they are fundamentally flawed for three primary reasons. ***First***, by indiscriminately invoking the phrase "Indian reservations," they conflate the legal status of *trust lands* (still held in trust by or for the tribes) with *fee lands* (including privately owned land and lands owned or managed by the State). But "treaty rights with respect to reservation lands must be read in light of the subsequent alienation of those lands." *Montana v. U.S.*, 450 U.S. 544, 561 (1981). ***Second***, under the *Bracker* test, "there is a significant geographical

component to tribal sovereignty, a component which remains highly relevant to the pre-emption inquiry." 448 U.S. at 151. And any regulatory power a tribe might have under a treaty "cannot apply to lands held in fee by non-Indians," *see Brendale v. Confederated Tribes & Bands of Yakima Indian Nation*, 492 U.S. 408, 425 (1989), which constitutes the vast majority of Indian country in Oklahoma. The Nations lack any inherent tribal interest over fee lands no longer under their "absolute and undisturbed use and occupancy," *Montana*, 450 U.S. at 558-61, and their argument completely overlooks strong competing State interests that foreclose any preemption finding here. ***Third***, *McGirt* does not strip the State of regulatory, civil, or criminal jurisdiction over non-MCA offenses on fee land within Indian country. To the contrary, as the Court held in *Castro-Huerta*, "[t]he default is that States may exercise criminal jurisdiction within their territory" and "States do not need a permission slip from Congress to exercise their sovereign authority." 597 U.S. at 653.

A. Principles of Inherent Sovereignty Authorize the State to Regulate Hunting and Fishing on all Privately and Publicly Owned Fee Lands within its Borders.

It is beyond dispute that "the States, vested as they are with general police power, require no specific grant of authority in the Federal Constitution to legislate with respect to matters traditionally within the scope of the police power," including "the authority to provide for the public health, safety, and morals." *Dodger's Bar & Grill, Inc. v. Johnson Cnty. Bd. of Cnty. Comm'rs*, 32 F.3d 1436, 1441 (10th Cir. 1994) (citations omitted); *see also Torres v. Lynch*, 578 U.S. 452, 457-58 (2016) ("State legislatures, exercising their plenary police powers, are not limited to Congress's enumerated powers; and so States have no reason to tie their substantive offenses to those grants of authority."). In other words, "[t]he State has the 'sovereign right to protect the general welfare of the people . . . .'" *City of El Paso v. Simmons*, 379 U.S. 497, 508-09 (1965) (cleaned up). While that right is expressly reserved to the States in the Tenth Amendment, sovereignty, not the Constitution, is the source of state police power. *See* U.S. CONST. amend. X ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.").

Within this inherent sovereign authority, States are granted authority to "impose reasonable and nondiscriminatory regulations on an Indian tribe's treaty-based hunting, fishing, and gathering rights on state land when necessary for conservation." *Herrera v. Wyoming*, 587 U.S. 329, 339-40 (2019); *see also Puyallup Tribe v. Dep't of Game of Wash.*, 391 U.S. 392, 398 (1968) ("*Puyallup I*") (Notwithstanding a tribe's treaty right to fish "at all usual and accustomed places," the Court held that the "manner of fishing, the size of the take, the restriction of commercial fishing, and the like may be regulated by the State in the interest of conservation, provided the regulation meets appropriate standards and does not discriminate against the Indians."). Since soon after statehood, the State has exercised its sovereign authority over wildlife conservation to manage a comprehensive regulatory system governing hunting, possession, sale, and transportation of wildlife, including restrictions on methods of take, seasons, bag limits, and other conduct on all public and private fee lands within its borders.

Within the historical bounds of the "rediscovered" Indian country in Oklahoma, *see McGirt*, 591 U.S. at 938 (C.J. Roberts, dissenting) (recognizing that "[t]he rediscovered reservations encompass the entire eastern half of the State – 19 million acres that are home to 1.8 million people, only 10%-15% of whom are Indians"), the State has navigated a checkerboard ownership pattern, which includes both trust lands and fee lands (most of which are owned by non-Indians), with the vast majority falling in the latter category. *See Lower Brule Sioux Tribe v. State of S.D.*, 104 F.3d 1017, 1021 (8th Cir. 1997) ("[P]iecemeal sales of fee lands … created what is often called a 'checkerboard' map of trust lands, tribal lands, allotted lands, and fee lands. The boundaries between the variously classified lands are not marked, making it difficult for persons on the Reservation to determine the ownership status….").

This checkerboard pattern reflects Oklahoma's history and the "unique" system of property ownership among the Five Tribes – the Cherokee, Chickasaw, Choctaw, Muscogee (Creek), and Seminole Nations – as they possessed title to their historical lands in "communal fee simple," meaning the lands were "considered the property of the whole." *McGirt*, 591 U.S. at 939-40 (Roberts, C.J.,

dissenting). However, by the early 1900s, tribal governments had "completely fail[ed]" and the treaty principle that the lands "should be held in common for the equal benefit of the citizens" was "far departed from in practice." *Woodward v. De Graffenried*, 238 U.S. 284, 296-97 (1915). Following the creation of a commission to negotiate with the Five Tribes, "the Indians – including the Choctaws, Chickasaws, and Cherokees – agreed to the allotment of their lands and the termination of tribal affairs." *Choctaw Nation v. Oklahoma*, 397 U.S. 620, 627 (1970) (Marshall, J.) (citing 30 Stat. 495, 32 Stat. 716). And Congress then "set about transforming the Indian Territory into a State," enacting the Five Tribes Act, 34 Stat. 137, to provide for the "final disposition of the affairs of the Five Civilized Tribes in the Indian Territory," and the Oklahoma Enabling Act of 1906, 34 Stat. 267, to admit Oklahoma into the Union on "equal footing" with the other States. *Id.*; *see also McGirt*, 591 U.S. at 941-43 (Roberts, C.J. dissenting); *Castro-Huerta*, 597 U.S. at 654-55. As the Court held in *Castro-Huerta*,

> "[A]dmission of a State into the Union" "necessarily repeals the provisions of any prior statute, or of any existing treaty" that is inconsistent with the State's exercise of criminal [and civil] jurisdiction "throughout the whole of the territory within its limits," including Indian country, unless the enabling act says otherwise "**by express words**."

597 U.S. at 654 (emphasis added); *see also* 35 Stat. 312 (an Act for the removal of restrictions against alienation on allotted lands of the Five Tribes, either immediately or after a period of time). As a result of allotment, "Indian reservations today sometimes contain two kinds of land intermixed in a kind of checkerboard pattern: trust land held by the United States and [fee] land held by private parties." *Upper Skagit Indian Tribe v. Lundgren*, 584 U.S. 554, 558-59 (2018).

More than a century's worth of history, practice, and legal precedent supports the State's authority to regulate hunting and fishing within its borders in the interest of wildlife conservation and sustainability. And the Nations do not dispute that the State's comprehensive regulatory system governing hunting and fishing is reasonable. Instead, they concede the State Code "reflects appropriate wildlife conservation practices," and the Nations modeled their own wildlife regulations after the State Code, specifically including such practices as hunting seasons and bag limits. *See* Doc. 3-13, Decl.

Justice, ¶ 5; Doc. 3-14, Decl. Baker, ¶ 5; Doc. 3-7, Decl. Berst, ¶ 4.

The history of Oklahoma reflects an appropriate exercise of State jurisdiction over hunting and wildlife on fee lands within its borders. Accordingly, under the framework confirmed in *Castro-Huerta*, the only remaining question is whether the State's jurisdiction in Indian country is "preempted (i) by federal law under ordinary principles of federal preemption, or (ii) [because] the exercise of state jurisdiction would unlawfully infringe on tribal self-government." 597 U.S. at 638.[9] It is not.

B. No Treaty Rights, Either Express or Implied, Grant the Nations Members a Special Right to Hunt and Fish Free of State Regulation on Fee Lands.

The Nations' first contention—that they have treaty rights to hunt, and to regulate tribal members who are hunting, on their historical "Reservations" (Doc. 3-1 at 10) – misses the point entirely. The State does not here dispute the Nations' authority to regulate their members, and the Nations do not plausibly allege the State has attempted to interfere with that authority. Nor do the Nations claim a right to regulate non-Indian hunting or fishing within the State. Doc. 3-1 at 13 n.16. Thus, the lone question before the Court is whether the State is preempted by "federal law under ordinary principles of federal preemption" (*Castro-Huerta*, 597 U.S. at 638) from exercising regulatory jurisdiction on fee lands, including those owned or managed by the State, located within the boundaries of the Nations' "Indian country." The law clearly states that the State's sovereignty is not so preempted. "State sovereignty does not end at a reservation's border." *Nevada v. Hicks*, 533 U.S. 353, 361 (2001) ("Our cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation.").

First, no federal law preempts State jurisdiction over hunting and fishing within its borders, and the Nations do not contend otherwise. Although the Nations mention 18 U.S.C. § 1165 in passing

[9] Judge Frizzell has recently held that *Castro-Huerta* provides the proper framework under which lower courts must evaluate and decide whether State jurisdiction in Indian country is preempted in matters not involving the MCA. *See Kunzweiler*, 2025 WL 3124450, at *2.

(Doc. 3-1 at 13), that statute says nothing of *exclusive* federal jurisdiction, and deliberately excludes fee lands such as are at issue in this case from the scope of the law. *See Montana*, 450 U.S. at 561-63 ("If anything, however, that statute suggests the absence of such authority, since Congress deliberately excluded fee-patented lands from the statute's scope."); *compare* 18 U.S.C. § 1165 (making it a federal offense to hunt, trap, or fish "upon any land that belongs to any Indian or Indian tribe, band, or group and either are held by the United States in trust or are subject to a restriction against alienation imposed by the United States, or upon any lands of the United States that are reserved for Indian use," without the consent of the tribes); *with* 18 U.S.C. § 1151 (defining "Indian country") and 18 U.S.C. § 1153 (placing defined major crimes "within the exclusive jurisdiction of the United States").[10] Nor does the Nations' passing citation to 25 U.S.C. § 1301(2) support express preemption, as that provision is a *definition* and again says nothing about exclusivity or a limit on the State's jurisdiction.

Second, no treaty expressly authorizes tribal members to hunt and fish free of State regulation. To the contrary, as the Nations appear to recognize (Doc. 3-1 at 2-4), each of the treaties is ***silent*** as to hunting and fishing altogether. *See Herrera*, 587 U.S. at 349 ("Treaty analysis begins with the text" to determine whether a treaty right was reserved).[11] As the Court expressly recognized in *Castro-Huerta*, a State's admission into the Union "necessarily repeals the provisions of any … existing treaty" inconsistent with the State's exercise of jurisdiction "'throughout the whole of the territory within its limits,' including Indian country, unless the enabling act says otherwise '**by express words**.'" 597 U.S.

[10] *Castro-Huerta* likewise foreclosed any argument that Public Law 280 or the General Crimes Act somehow preempt concurrent state jurisdiction. *Id.* at 647.

[11] By contrast, other treaties have contained express reservation of such rights. For example, in *Herrera*, 587 U.S. at 335, an 1868 treaty memorialized that the Crow Tribe "shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts." And in *Tulee v. Washington*, 315 U.S. 681, 683 (1942), an 1859 treaty guaranteed to the Yakima Tribe "[t]he exclusive right of taking fish in all the streams, where running through or bordering said reservation … [and] also the right of taking fish at all usual and accustomed places, in common with citizens of the Territory."

at 654 (emphasis added).

Third, even assuming for the sake of argument that pre-statehood treaties impliedly permitted tribal members to hunt and fish on trust lands, no such implied right extends to fee lands. In *Klamath*, the Supreme Court expressly rejected the argument the Nations advance here (Doc. 3-1 at 2-4) that treaties can implicitly grant tribal members a perpetual "special right" to hunt and fish *free* from any regulation by the State on non-trust land. Indeed, Supreme Court precedent is clear and dispositive on this issue. Any implicit treaty-based hunting and fishing is ownership-based and flows with the land. As to the "millions of acres of non-Indian fee land located within the contiguous borders of Indian tribes … once tribal land is converted into fee simple, the tribe loses plenary jurisdiction over it." *Plains Commerce Bank v. Long Family Land & Cattle Co.*, 554 U.S. 316, 328 (2008).

> [W]hen an Indian tribe conveys ownership of its tribal lands to non-Indians, it loses any former right of absolute and exclusive use and occupation of the conveyed lands. The abrogation of this greater right … implies the loss of regulatory jurisdiction over the use of the land by others.

S. Dakota v. Bourland, 508 U.S. 679, 689 (1993); *see also Nevada*, 533 U.S. at 360 (The "absence of tribal ownership [is] virtually conclusive of the absence of tribal civil jurisdiction.").

Even the authority on which the Nations rely, *N. Arapahoe Tribe*, 808 F.2d at 748, confirms that any implied rights to hunt and fish are "rights of possession" that are "derived from [a tribe's] status as occupants of the land."[12] And Supreme Court authority forecloses the argument that tribes retain implicit hunting and fishing rights that are not tied to possession and occupancy of the land. For example, in *Puyallup III*, the Court rejected a tribe's argument that general treaty language that the land was to be "set apart" for the tribe amounted "to a reservation of a right to fish free of state interference." *Puyallup Tribe, Inc. v. Dep't of Game of State of Wash.*, 433 U.S. 165, 174 (1977) (*Puyallup*

[12] The policy of the Bureau of Indian Affairs similarly rejects any such tribal right to hunt or fish beyond trust lands free of state regulation: "Indians who hunt, fish, trap, or gather off-reservation or on lands not restricted or held in trust are subject to applicable state fish and game laws." Indian Affairs Manual, Part 56, ¶ 1.2(B) (issued Feb. 13, 2017), https://www.bia.gov/policy-forms/manual).

III). And in *Montana*, the Court held that an 1868 Crow treaty—which like the treaties here contained no express language reserving hunting and fishing rights—created tribal authority only over lands "on which the [Crow] Tribe exercises 'absolute and undisturbed use and occupancy'" and provided "no support for tribal authority to regulate hunting and fishing on land owned by non-Indians." *Montana*, 450 U.S. at 559, 561. Thus, even if an earlier Crow "treaty created tribal power to restrict or prohibit non-Indian hunting and fishing on the reservation, that power cannot apply to lands held in fee by non-Indians[.]" *Id.* at 558-59; *see also Brendale*, 492 U.S. at 422-25 (fee lands allotted to individual members of the Yakima tribe and alienated under the Allotment Act were no longer subject to "any regulatory power the Tribe might have under [a] treaty").

Finally, in *Klamath*, the Court unanimously held that the Klamath Tribe's (*express*) "exclusive right of taking fish in the streams and lakes" under an 1864 Treaty was a "right to be exercised within the reservation" and did ***not*** extend to lands ceded to the United States in 1901, even though those lands were located within the historic reservation boundaries. 473 U.S. at 763-64. The Court further rejected the Tribe's claim of an implied "special right, nonexclusive but free of state regulation" to hunt and fish on the lands no longer held by the tribe. *Id.* at 765-74. The Court distinguished between trust land (where tribal rights remain strong) and alienated land (where state regulation applies), specifically rejecting the Tribe's "incorrect" assumption that the "1864 Treaty created hunting and fishing rights that were separate from and not appurtenant to the reservation." *Id.* at 773.[13]

Because hunting and fishing rights are necessarily appurtenant to, and not separate from, the land, and extend only to those lands over which a tribe still exercises "absolute and undisturbed use and occupancy," like other tribes that have previously challenged State jurisdiction, the Nations here

[13] By contrast, in *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 177 (1999), the Court found that an 1837 Treaty guaranteeing the Chippewa Tribe "[t]he privilege of hunting, fishing, and gathering the wild rice, upon the lands, the rivers and the lakes included in the territory ceded" did grant the tribe usufructuary rights not tied to land ownership.

do not hold any "special right, nonexclusive but free of state regulation" on fee lands within the boundaries of their Indian country in Oklahoma. No implicit treaty right preempts State jurisdiction.

C. The Exercise of State Jurisdiction over Wildlife Conservation and Management on Non-Trust Fee Lands Would Not Unlawfully Infringe on Tribal Self-Government.

The Nations' second argument—that principles of inherent sovereignty confer on the Nations exclusive jurisdiction over hunting and fishing anywhere within their Indian country without regard to land ownership or occupancy—also fails. *See Bracker*, 448 U.S. at 151 ("[T]here is a significant geographical component to tribal sovereignty"). This issue must be analyzed under what is known as the "*Bracker* test," which begins from the premise that when "state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land." *Nevada*, 533 U.S. at 362. After all, "[o]ur cases make clear that the Indians' right to make their own laws and be governed by them does not exclude all state regulatory authority on the reservation." *Id.* at 361. Such exercise of State jurisdiction may be preempted, however, if it would "unlawfully infringe 'on the right of reservation Indians to make their own laws and be ruled by them.'" *Bracker*, 448 U.S. at 142. Under *Bracker*, "'the "who" and the "where" of the challenged [regulation] have significant consequences,' ones that are often 'dispositive.'" *Otoe-Missouria Tribe of Indians v. New York State Dep't of Fin. Servs.*, 769 F.3d 105, 113 (2d Cir. 2014) (citing *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95, 101 (2005)). The Nations here ask the Court to focus only on the "who" and ignore the "where" – painting all of "Indian country" with a single stroke. But as to hunting and fishing on fee lands, where the State has enforced its non-discriminatory wildlife laws since statehood, the State's interests are particularly strong vis-à-vis the Nations. *See White Mountain Apache Tribe v. State of Ariz., Dep't of Game & Fish*, 649 F.2d 1274, 1283 (9th Cir. 1981) (the "state interest is shared with, not displaced by, the similar tribal interest when the fish and game are within the boundaries of both the state and the reservation").

Under the *Bracker* test, "the Court considers tribal interests, federal interests, and state

interests." *Castro-Huerta*, 597 U.S. at 649. The Supreme Court has repeatedly found that state interests outweigh tribal interests on non-trust fee lands. For example, in *Montana*, the Court held that an Indian tribe did not have authority to regulate hunting and fishing on lands within the reservation owned in fee simple by nonmembers of the tribe. 450 U.S. at 557, 563-67. Analyzing the tribe's arguments under principles of inherent sovereignty, the Court held that "[s]ince regulation of hunting and fishing by nonmembers of a tribe on lands no longer owned by the tribe bears no clear relationship to tribal self-government or internal relations, the general principles of retained inherent sovereignty did not authorize" the tribe to enforce its own regulations on fee lands. *Id.* at 564–65. And, again in *Bourland*, the Court expressly held that "[g]eneral principles of 'inherent sovereignty' … do not enable [a tribe] to regulate non-Indian hunting and fishing" on *former* reservation lands the tribe had since conveyed. 508 U.S. at 688–95.

Bracker expressly provides that "any applicable regulatory interest of the State must be given weight." 448 U.S. at 144. Oklahoma's authority to conserve and manage wildlife resources on all fee lands within its borders is a core incident of state sovereignty. *See White Earth Band of Chippewa Indians v. Alexander*, 683 F.2d 1129, 1137 (8th Cir. 1982) (Under the *Bracker* test, "[t]he state has a strong legitimate interest in regulation of hunting and fishing because of its investment in and historic management of reservation game and fish resources."). States hold wildlife in trust for the benefit of the public and may enact reasonable regulations to conserve species, protect public safety, ensure equitable access, and preserve habitat. This authority extends to licensing, seasons, methods of take, bag limits, and area restrictions. The State's authority to regulate hunting and fishing on all fee lands, including those owned by tribal members, is essential to the State's overall wildlife conservation goals and to ensure uniform and effective enforcement. *See* Ex. 1, Aff. Free, ¶ 5. The Nation's requested relief would frustrate these conservation objectives and undermine uniform enforcement and the transparency required for uniform management of public wildlife resources.

Another important *Bracker* consideration is that, as in *Montana*, Oklahoma has exercised "near exclusive" regulation of hunting and fishing over fee lands in Oklahoma for over a century. *See* 450 U.S. at 566-67 (recognizing that the tribe "has traditionally accommodated itself to the State's 'near exclusive' regulation of hunting and fishing on fee lands within the reservation"). As the Supreme Court held in *City of Sherrill, N.Y. v. Oneida Indian Nation of New York*, 544 U.S. 197, 218 (2005), "long acquiescence may have controlling effect on the exercise of dominion and sovereignty over territory," and "[w]hen a party belatedly asserts a right to present and future sovereign control over territory, longstanding observances and settled expectations are prime considerations." Formal diminishment of a tribal reservation is not the only means of establishing State jurisdiction; "[t]he longstanding assumption of jurisdiction by the State over an area that is over 90% non-Indian, both in population and in land use," may create "justifiable expectations." *Id.* at 215 & n.9. Contrary to the State's longstanding assumption of jurisdiction over wildlife conservation throughout Oklahoma, it is only in the years since *McGirt* that the Nations have challenged the State's jurisdiction over nearly half of the State's territory, and even the Nations' exercise of jurisdiction in the field of wildlife conservation itself is an extremely new development. This weighs heavily against preemption.

Oklahoma's jurisdiction over fee lands within Indian country was specifically recognized in *Cheyenne-Arapaho*, 618 F.2d at 667-69, where the Tenth Circuit found that state wildlife laws did not apply to hunting and fishing by member Indians "on land held as Indian allotments and on land held in trust by the United States for the Tribes," but hunting and fishing on fee lands was subject to a system of "dual regulation." For its description of "dual regulation," the Tenth Circuit relied on the Supreme Court's decision in *Puyallup I*, 391 U.S. at 398, which involved 99.86% fee lands (as the tribe had alienated all but 22 acres of their 18,000-acre reservation in fee simple). *Puyallup III,* 433 U.S. at 171-73. The tribe challenged the jurisdiction of the State of Washington to regulate fishing by tribal members on these fee lands, but the Court held that the State, in "an appropriate exercise of the police

power," *could* impose non-discriminatory regulations on fishing by tribal members, such as requiring State licenses and regulating the "manner of fishing, the size of the take … and the like," all "in the interest of conservation." *See also Organized Vill. of Kake v. Egan*, 369 U.S. 60, 75-76 (1962) ("This Court has never held that States lack power to regulate the exercise of [implied] Indian rights … or of those based on occupancy.").

The Nations rely heavily on *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324 (1983), to bolster their assertion of tribal interests. Doc. 3-1 at 13-14. But the factual context there was the mirror image of this case (and *Puyallup*). There, the tribe owned all but 193.85 of the more than 460,000 acres of the reservation (99.96%) and about 2,000 tribal members resided there compared to fewer than 200 non-Indians (90.9%). 462 U.S. at 325–26. The tribe's constitution, approved by the Secretary of the Interior, specifically charged the tribal council with protecting and preserving the tribe's wildlife and natural resources. *Id.* at 326. Over time, the tribe, in coordination with federal agencies, had developed a sophisticated, reservation-wide wildlife management program and invested heavily in game and fish resources. *Id.* at 328. Given those facts, the Court concluded that the tribe's authority to regulate hunting and fishing preempted State jurisdiction over activities occurring *entirely on trust lands*. *Id.* at 336-341. According to the Court, "[c]oncurrent State jurisdiction would supplant this regulatory scheme with an inconsistent dual system: members would be governed by Tribal ordinances, while nonmembers would be regulated by general State hunting and fishing laws." *Id.* at 339.

But this case presents the inverse scenario. Here, less than 5% of Oklahoma's Indian country (and, upon information and belief, much less) are trust lands. The overwhelming majority – and the areas where the State exercises jurisdiction – are non-trust fee lands, including lands owned or managed by the State. The Nations simply do not possess an inherent sovereign interest over the territory of their Indian country comparable to the interest at issue in *Mescalero Apache Tribe*. In fact, any tribal interest in the fee lands at issue here is arguably non-existent. The Nations do not hold any

ownership or occupancy interest in alienated fee lands. The Nations have not historically managed wildlife within what was recently recognized as Indian country, and have no longstanding history of enforcing conservation laws—having only very recently adopted tribal hunting and fishing licensing codes. There is no comprehensive federal-tribal wildlife management scheme on these fee lands for State law to "disturb and disarrange." *Id.* at 338. To the contrary, the Nations largely copied or adopted the *State's* wildlife laws and regulations, further underscoring the significance and necessity of the *State's* comprehensive system of wildlife conservation.

Nothing about the enforcement of state wildlife conservation laws in these fee lands has any bearing on a tribal interest in self-governance. Again, any claimed tribal interest in these particular lands is diminished by the historical reality that, until *McGirt* in 2020, neither the Tribes nor the State, nor the United States, understood this land to be "Indian country." *Budder*, 601 F. Supp. 3d at 1115 ("prior to *McGirt*, all parties were operating under the belief that Oklahoma had jurisdiction over these areas ..."). Contract rights, property rights, and agreements entered between the State and the federal government would be impacted by attempts to retroactively project reservation boundaries over State-owned, privately owned, and even some federally-owned fee lands. That history matters.

The federal interests also matter, and federal law expressly supports the State's jurisdiction in fee lands. For example, in national wildlife refuges like the Chickasaw National Recreation Area (where Shepherd was cited), the Secretary of Interior specifically "retrocede[d] and relinquish[ed] to the State of Oklahoma, and accept[ed] from them, such measure of legislative jurisdiction (to include criminal jurisdiction) as is necessary to establish concurrent jurisdiction between the Federal Government and the State of Oklahoma over all lands comprising the Chickasaw National Recreation Area." Ex. 12 at 2. Numerous federal laws and regulations confirm the State's authority in these areas. *See, e.g.,* 16 U.S.C. § 460hh-2 ("The Secretary shall permit hunting and fishing on lands and waters within the recreation area in accordance with applicable Federal and State laws"); 50 C.F.R. § 32.2(a), (d) (providing that

any individual "engaged in public hunting on areas of the National Wildlife Refuge System" must, in relevant part, "secure and possess the required State license" and "comply with the applicable provisions of the laws and regulations of the State wherein any area is located . . .").

In sum, the law is well-settled that tribes do not retain exclusive rights to regulate hunting and fishing on fee lands, and principles of inherent tribal sovereignty do not preempt States from exercising their regulatory jurisdiction over wildlife conservation and management on the same. To the contrary, the State has an extremely strong sovereignty interest in enforcing its wildlife conservation laws in fee lands, and that interest is confirmed by federal law and interests.

D. The State Does Not Require a Permission Slip from Congress to Exercise Jurisdiction over all Oklahomans, including Tribal Members, Violating the State's Wildlife Code on Fee Lands.

The Nations' alternative third argument – that the State requires express congressional authorization to enforce its wildlife Code and regulations against tribal members within Indian country – finds no support in the law. As in numerous other areas of the law, the Nations ask the Court to find that the definition of "Indian country" at issue in *McGirt* is determinative of *any* question regarding the appropriate intersection of State and tribal jurisdiction – with the State's authority to regulate Indians, for any purpose, ending at the outer boundary of Indian country unless Congress has expressly stated otherwise. But that is simply not the 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. As this Court has phrased it, a State is generally "entitled to the sovereignty and jurisdiction over all the territory within her limits."

Castro-Huerta, 597 U.S. at 636. "Indian country is part of a State's territory," and therefore, "States do not need a permission slip from Congress to exercise their sovereign authority." *Id.* at 638, 653.

Although *McGirt* complicated certain jurisdictional questions related to the MCA by holding

that Congress had never disestablished the Muscogee (Creek) reservation and, as a result, all of what was understood to be "former" reservation lands is now part of "Indian country" for purposes of the MCA, the Court did not address lesser offenses, did not hold that States lack jurisdiction in Indian country over non-MCA crimes, and did not purport to disturb longstanding state jurisdiction over wildlife offenses. As discussed above, no federal law preempts the State from exercising regulatory or enforcement authority over hunting and fishing within the State. And no provision of the federal criminal code singles out misdemeanor wildlife violations as a category subject to exclusive federal enforcement. There is no legal impediment to the State's authority to enforce its wildlife Code and regulations against tribal members hunting and fishing on fee lands.

As the State has attempted to deal with jurisdictional challenges raised since *McGirt*, courts have repeatedly and unequivocally confirmed that State jurisdiction is the default rule and refused to extend *McGirt* beyond its holding. "*McGirt* by its own terms sets forth a *general* rule, not a *per se* rule against criminal jurisdiction of any kind." *City of Tulsa v. O'Brien*, 2024 OK CR 31, ¶ 26, __ P.3d __ (emphasis in original); *see also Freedom Mortgage Corp. v. Springer*, No. 25-CV-288-DES, 2025 WL 2528834, at *2 (E.D. Okla. Sept. 3, 2025) (refusing to extend *McGirt* to a civil law foreclosure action); *Stroble*, 2025 OK 48, ¶ 11 (refusing to extend *McGirt* to the State's civil or taxing jurisdiction). For example, in *O'Brien*, the Oklahoma Court of Criminal Appeals reversed a trial court order dismissing a case against a non-member Indian prosecuted for a traffic violation committed within Indian country, applying *Castro-Huerta* and the *Bracker* test, and finding that Oklahoma's criminal jurisdiction over non-major crimes was not preempted by federal law or as unlawfully infringing upon tribal self-government. 2024 OK CR 31, ¶¶ 17-35, 38; *see also Stitt v. City of Tulsa*, 2025 OK CR 5, ¶ 8, 565 P.3d 857, 860, *corrected* (Mar. 13, 2025), *cert. denied sub nom. Stitt v. Tulsa,* No. 25-30, 2025 WL 2824125 (U.S. Oct. 6, 2025) ("Tulsa's exercise of jurisdiction in this case does not unlawfully infringe upon tribal self-government and Appellant's claims are without merit."). And in *Kunzweiler*, Judge Frizzell denied

a tribe's motion seeking to enjoin the State from exercising concurrent jurisdiction over non-member Indians charged with committing crimes not covered by the MCA within Indian country, as not preempted by the General Crimes Act or unlawfully infringing on tribal self-government, again applying *Castro-Huerta* and the *Bracker* test. 2025 WL 3124450, at *4-5.

The State's enforcement authority over Indians here is also supported by the U.S. Supreme Court's *Puyallup* trilogy of decisions. After first finding in *Puyallup I* that the State could impose non-discriminatory restrictions on the Indians' treaty-based fishing rights, including regulating the "manner of fishing, the size of the take … and the like," the Court in *Puyallup III*, 433 U.S. at 171-73, confirmed that the State likewise had jurisdiction to enforce its regulatory authority against tribal members fishing on the alienated fee lands. Specifically, the Court held that individual tribal members were **not** immune from suit in state court for violations of Washington's regulations, and state courts "had jurisdiction to decide questions relating to … the **size of the catch** the tribal members may take [and] their right to [fish] **without paying state license fees**." *Id.* at 173 (emphasis added).

Across nearly ninety-two pages of briefing and pleadings, the Nations never meaningfully confront these authorities. In their only attempt to engage with the substance of *Castro-Huerta*, they dismiss it in passing, asserting that "*Castro-Huerta* did not consider state jurisdiction over Indians in Indian country . . . ." Doc. 3-1 at 20. The irony is that this interpretive side-step would apply with equal – if not greater – force to the Nations' reliance on *McGirt*, which preceded *Castro-Huerta* and addressed only a narrow question under the MCA. *Compare id.* at 21 ("neither *Castro-Huerta* nor *Kunzweiler* concerned Indian treaty hunting rights, which are protected by special rules,"); *with McGirt*, 591 U.S. at 935 (expressly disclaiming any application to "civil and regulatory law" while confirming the narrow holding applies only to "federal criminal law under the MCA").[14] While the Nations ignore

[14] The Nations also rely on sweeping dicta from lower court decisions that cannot be reconciled with *Castro-Huerta*. *Compare, e.g.*, Doc. 3-1 at 19–21 (quoting *Ute Indian Tribe v. Utah*, 790 F.3d 1000,

binding U.S. Supreme Court precedent in their briefs, this Court must follow the controlling law.

III. THE NATIONS CANNOT ESTABLISH IRREPARABLE HARM.

"To constitute irreparable harm warranting the issuance of an injunction, the plaintiff must make a prima facie showing of an injury which is certain, great, actual and not theoretical. 'Irreparable harm is not harm that is merely serious or substantial.'" *Nova Health Sys. v. Edmondson*, 373 F. Supp. 2d 1234, 1240 (N.D. Okla. 2005), *aff'd*, 460 F.3d 1295 (10th Cir. 2006) (quoting *Heideman v. South Salt Lake City,* 348 F.3d 1182, 1189 (10th Cir. 2003)); *see also City of Los Angeles v. Lyons*, 461 U.S. 95, 112 (1983) (recommending "restraint" in issuing injunctions against state officers administering state laws).

Rather than attempting to identify certain, great, actual, and non-theoretical harm, the Nations instead assert that claimed infringement on their "sovereignty" constitutes *per se* harm, relying principally on *Ute Indian Tribe*, 790 F.3d at 1005 and *Wyandotte Nation v. Sebelius*, 443 F.3d 1247, 1255 (10th Cir. 2006). Even if those cases recognize that an invasion of tribal sovereignty "can" constitute irreparable harm in some circumstances, they do not support the Nations' generalized assertions here. The Nations never articulate how the continued enforcement of Oklahoma's wildlife laws on fee lands, including lands owned, leased, or managed by the State, violates any specific tribal sovereignty interest. *See, e.g., Montana*, 450 U.S. at 564-65. Nothing in their declarations suggests enforcement is occurring or is about to occur on trust land. Nor do the Nations' submission show that the State's citation or prosecution of tribal members for violating State wildlife laws or regulations on fee lands prevent the Nations from likewise prosecuting them under tribal law. *See Kunzweiler*, 2025 WL 3124450, at *5 ("Just as a state and the federal government may each – as separate sovereigns – prosecute an individual for the same criminal conduct without causing harm to their respective sovereignty, so too can the Nation and the State exercise concurrent jurisdiction over a [tribal citizen] for the same criminal act without

1003-04 (10th Cir. 2015), *Indian Country, U.S.A., Inc. v. Oklahoma ex rel. Okla. Tax Comm'n*, 829 F.2d 967, 978 (10th Cir. 1987), and *Ute Indian Tribe v. Lawrence*, 22 F.4th 892, 900 (10th Cir. 2022)) *with Castro-Huerta*, 597 U.S. at 638, 653–54.

irreparable harm to the Nation.").

The remaining harms alleged are injuries belonging, if at all, to individual tribal members – not harms suffered by the Nations themselves. Assertions concerning threatened prosecutions, purported loss of treaty hunting rights, or supposed coercion to purchase licenses are personal to the individuals cited. But even viewed on their own terms, these claims fail to demonstrate concrete harms. The possibility of criminal prosecution is not irreparable unless "the threat to the plaintiff's federally protected rights . . . cannot be eliminated by his defense against a single criminal prosecution." *Younger v. Harris*, 401 U.S. 37, 46 (1971). The Nations supply no evidence to conclude a member will face an inability to obtain food, or subsistence, just because Oklahoma applies the same wildlife regulations to tribal members as it does to every other citizen (and as it has done since statehood). Doc. 3-1 at 22 (suggesting members "are being deprived of the right to hunt for subsistence purposes" and "refraining from hunting . . . for subsistence necessary to provide protein-rich food for the winter months"). Nor do the Nations demonstrate how purchasing a State hunting license somehow inflicts irreparable economic injury on any member, much less the Nations themselves. *See id.* (suggesting that members "are forced to accept state jurisdiction by purchasing state hunting licenses").

Nor can the Nations demonstrate any emergency that would now justify disturbing the long-settled status quo that has existed since statehood. Indeed, the Nations' significant delay in seeking relief (including more than 50 years since the State enacted the Code and more than five years since *McGirt* was issued), "cuts against finding irreparable injury." *Kobach*, 840 F.3d at 753. The only change they point to is ODWC's public clarification of the same principle that has governed since statehood: tribal status does not exempt an individual from compliance with Oklahoma's wildlife laws. ODWC's recent statements did not alter the law; they reiterated it and were necessitated by the Nations' own actions that were contrary to more than a century of established law. The Nations cannot manufacture irreparable harm by generating confusion through novel legal theories of an implied "special right,

nonexclusive but free of state regulation." *See Klamath*, at 473 U.S. at 763-64. Any such purported harm is entirely fabricated.

IV. THE NATIONS CANNOT SHOW THE BALANCE OF EQUITIES TIPS IN THEIR FAVOR OR THAT AN INJUNCTION IS IN THE PUBLIC INTEREST.

The third and fourth preliminary injunction standards – the balancing of the equities and the public interest—merge when the government is the party opposing the preliminary injunction. *Black Emergency Response Team v. Drummond*, 737 F. Supp. 3d 1136, 1157 (W.D. Okla. 2024) (*citing Aposhian v. Barr*, 958 F.3d 969, 978 (10th Cir. 2020)).

In contrast to the minimal harms alleged by the Nations, the State faces immediate and significant harm if an injunction issues. ***First***, interference with ODWC's enforcement of State wildlife laws and regulations on fee lands by creating a fragmented jurisdictional system would undermine the integrity of wildlife management in Oklahoma, creating biological risks by preventing or hindering coordinated management of fish and wildlife populations that move across all lands, data gaps relating to lack of complete harvest information, and enforcement gaps for the State's game wardens that cannot be remedied. Ex. 1, Aff. Free, ¶ 18; Ex. 5, Aff. Parry, ¶ 5; Ex. 6, Aff. Erdman, ¶¶ 5-6; *see also* Ex. 2, Aff. Parry, ¶¶ 4-18 (describing concerns related to wildlife management); Ex. 3, Aff. Cunningham, ¶¶ 5-33 (describing concerns related to fisheries management); Ex. 13, Aff. Micah Holmes, ¶¶ 2-7 (describing administrative and other burdens on ODWC).

Second, enjoining the State from enforcing its laws and regulations against all users on fee lands would interfere with State contracts and responsibilities, causing injury to the wildlife resources and citizens of Oklahoma who are the intended beneficiaries of ODWC's wildlife management, jeopardizing longstanding hunting-access leases, and threatening to cause ODWC to breach its federal and intergovernmental agreements. *See, e.g.,* Ex. 5, Aff. Parry, ¶¶ 5-15. For example, under the federal WSFRP program, ODWC is required to exercise continuing control over all federally-funded real property interests, a task made nearly impossible if ODWC is enjoined from enforcing its regulations

against all classes of users of these properties. *Id.*, ¶ 10-11. Moreover, in wildlife management areas like the Three Rivers WMA (where Medlock was cited for illegal bear baiting), the ODWC pays significant consideration to the private landowner in exchange for "providing the people of the State of Oklahoma with public hunting, fishing and recreational opportunities." Ex. 10, at 1; *see also* Ex. 5, Aff. Parry, ¶¶ 12-13 (explaining that ODWC currently leases 184,817 acres from Weyerhaeuser Timber Company under a 3-year contract at $4.17/acre, representing an annual payment of $770,912). The lease specifically requires ODWC "to enforce game and fish laws and regulations and manage wildlife species on said lands" and "undertake reasonable measures in preventing unauthorized burning, timber cutting, grazing, illegal dumping, road damage, and general trespass on said lands" among other things. Ex. 10, at 2. Thus, indiscriminately enjoining ODWC's ability to enforce state wildlife laws interferes with and threatens contractual and legal obligations.

Third, precluding the State from requiring hunting and fishing licenses in nearly half the State would have significant financial consequences to ODWC – a non-appropriated agency. Ex. 4, Aff. Crews, ¶¶ 7-14. It is estimated that a tribal exemption from State licensing requirements would cost ODWC $3.8 million annually, which alone exceeds ODWC's total approved Law Enforcement budget of $3 million in FY2026. *Id.*, ¶ 11. The total loss to ODWC's conservation efforts could exceed $15 million annually, when accounting for federal matching. *Id.*, ¶ 12.

The injury claimed by the Nations does not come close to outweighing the substantial and irreparable harm that would befall the State – harm to all Oklahomans and their collective wildlife resources, to the State's fundamental sovereignty, and to private and public property interests.

CONCLUSION

For these many reasons, Defendants respectfully request the Court deny Plaintiffs' Motion for Temporary Restraining Order and Motion for Preliminary Injunction.

Dated: December 19, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on December 19, 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 to the ECF registrants.

s/Phillip G. Whaley
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