

UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

MATTHEW JOSEPH DOUGLAS,

*Petitioner,*

v.

GERI WISNER,  
MATTHEW J. HALL, and  
LISA OTIPOBY-HERBERT,

*Respondents.*

No. CIV-24-74-JFH

**PETITION FOR WRIT OF HABEAS CORPUS UNDER 25 U.S.C. § 1303**

COMES NOW, Oklahoma Attorney General Gentner Drummond, and pursuant to his duty and authority to initiate actions where “the interests of the state or the people of the state are at issue,” OKLA. STAT. tit. 74, § 18b(A)(3), submits to this Court Matthew Joseph Douglas’ petition for a writ of habeas corpus pursuant to 25 U.S.C. § 1303. The Attorney General seeks this relief on behalf of Petitioner to vindicate the interest of Oklahoma in ensuring its public servants are not subject to extralegal prosecutions.

This action is not related to any previously filed case in this Court.

In support of this petition, Petitioner advises the Court as follows.

**INTRODUCTION**

Matthew Joseph Douglas (“Petitioner”) is a detention sergeant for the Okmulgee County Criminal Justice Authority jail (the “Jail”) and a non-Indian. Ex. 1 at ¶¶ 1, 3. He was charged on December 20, 2023, by the Muscogee (Creek) Nation (“MCN” or “Tribe”) with protected status battery in violation of 14 Muscogee (Creek) Nation Code (hereinafter “MCN”) § 2-303(B)(1), available at <https://www.creeksupremecourt.com/wp-content/uploads/title14.pdf>, and released on his own

recognizance after a virtual appearance on December 21, 2023. Ex. 1 at ¶¶ 4–5, 7–8; Ex. 2 at 1–2. His arraignment on these charges is scheduled for March 27, 2024. Ex. 1 at ¶ 11; Ex. 2 at 1.

By filing charges against Petitioner, the Tribe asserts authority that Congress has not granted. For the reasons set forth herein, this Court has jurisdiction to address this *ultra vires* prosecution of an Oklahoma public servant, and should grant the petition, dismiss the complaint, and dissolve Petitioner’s release bond.

Tribes lack inherent jurisdiction to prosecute non-Indians.<sup>1</sup> In 2022, Congress authorized tribes to prosecute non-Indians for assaults on tribal justice personnel—but only when those assaults are connected to certain “covered crimes” defined by federal statute. 25 U.S.C. § 1304(a)(1). Petitioner’s prosecution stems from a December 18, 2023, incident at the Jail involving Petitioner and one or more members of the MCN Lighthouse. Based on facts that cannot be reasonably disputed, and as explained in Section IV(B)(2) below, nothing that occurred in the Jail was related to a “covered crime.” Accordingly, the Tribe has no jurisdiction to prosecute Petitioner, and he is entitled, as a matter of law, to the relief he seeks.<sup>2</sup>

## I. JURISDICTION

1. This Court has jurisdiction to address this petition. The Indian Civil Rights Act of 1968 (“ICRA”) provides that “[t]he privilege of the writ of habeas corpus shall be available to any

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<sup>1</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978), *superseded by statute on other grounds as stated in United States v. Lara*, 541 U.S. 193, 205, 207 (2004); *United States v. Cooley*, 593 U.S. 345, 349–50 (2021). Even those who argue tribes’ criminal jurisdiction should be expanded acknowledge *Oliphant* remains good law: its “holding that tribes lost criminal jurisdiction over non-Indians has never been squarely rejected by Congress and so continues to function as a clear rule limiting tribal power.” Addie C. Rolnick, *Recentering Tribal Criminal Jurisdiction*, 63 UCLA L. REV. 1638, 1660–61 (2016).

<sup>2</sup> Petitioner strongly contends that his actions on December 18, 2023, were reasonable and did not violate Tribal (or any) criminal statutes. However, any statements Petitioner makes in support of this petition could be used by the MCN in connection with his *ultra vires* prosecution. Accordingly, this petition relies primarily on publicly-released excerpts from a body-worn camera worn by an MCN Lighthouse officer, rather than a declaration setting forth Petitioner’s description of what happened on December 18, 2023. As the MCN chose to release this body-worn camera footage to the media, it presumably views the video as inculpatory and expects to rely upon it in Petitioner’s prosecution.

person, in a court of the United States, to test the legality of his detention by order of an Indian tribe.” 25 U.S.C. § 1303.<sup>3</sup> For the reasons set forth in Section IV(A) below, Petitioner is “detained” and is not required to litigate this issue in a tribal court that lacks jurisdiction over him.

## II. PARTIES

2.1 Petitioner Matthew Joseph Douglas, who resides in the city of Okmulgee, is a detention sergeant at Jail and a non-Indian. He was charged by a criminal complaint in the MCN District Court on December 20, 2023, under case number CF-2023-1937.

2.2 Respondent Matthew J. Hall holds the MCN’s criminal “Office of the Prosecutor,” 14 MCN § 1-201, and is assigned to the prosecution of Petitioner’s case. Ex. 1 at ¶ 6; Ex. 2 at 1. Respondent Hall “shall exercise independent professional judgment related to the investigation, prosecution and sentencing in all criminal . . . matters . . . .” 14 MCN § 1-201.

2.3 Respondent Geri Wisner is MCN’s Attorney General. As such, Respondent Hall is “subject to the general administrative supervision of [Respondent Wisner] with regard to . . . general office procedures.” 14 MCN § 1-201.

2.4 Respondent Lisa Otipoby-Herbert is the MCN District Judge presiding over Petitioner’s case. Ex. 1 at ¶ 6; Ex. 2 at 1.

## III. FACTUAL AND PROCEDURAL BACKGROUND

### A. The Okmulgee County Criminal Justice Authority Jail

3.1 The Okmulgee County Criminal Justice Authority (“OCCJA”) administers jail facilities located in Okmulgee County, Oklahoma. *See* OCCJA, *Our Mission*, <https://www.occjajail.org/index.php>.

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<sup>3</sup>This Court also has jurisdiction pursuant to 28 U.S.C. § 1331, which “encompasses the federal question [of] whether a tribal court has exceeded the lawful limits of its jurisdiction . . . .” *Nat’l Farmers Union Ins. Companies v. Crow Tribe of Indians*, 471 U.S. 845, 857 (1985).

3.2 In December 2023, the Jail had no agreement to accept arrestees charged with violating MCN statutes. Ex. 3 at ¶ 9. The Jail did, however, take custody of individuals charged with violating Oklahoma law. *Id.* at ¶¶ 3–4, 6–7.

### **B. The Events of December 18, 2023**

3.3 Three MCN Lighthouse officers brought an arrestee (the “Arrestee”) to the Jail on December 18, 2023. Ex. 3 at ¶ 2. One of those officers filled out an Arrest and Booking Data form that reflected the Arrestee was being accused of violating Oklahoma law by possessing a controlled dangerous substance within 1,000 feet of a school and possessing drug paraphernalia. *Id.* at ¶¶ 5, 7; Ex. 4 at 1. The form also reflected that the arresting agency was “Muscogee Creek Nation / GRDA” and that K. Bell was the arresting officer. Ex. 3 at ¶ 6; Ex. 4 at 1; Exs. 5–6. The Arrestee has since been charged with state crimes. Ex. 3 at ¶¶ 2, 4, 7; Ex. 7 at 1.

3.4 As depicted in a body-worn camera video downloadable from an MCN press release,<sup>4</sup> an altercation occurred between members of the MCN Lighthouse and jail staff. *See Muscogee Nation Attorney General Issues Remarks Regarding Incident with Okmulgee County Jail Officials*, MUSCOGEE (CREEK) NATION (December 21, 2023), <https://www.muscogeenation.com/2023/12/21/muscogee-nation-attorney-general-issues-remarks-regarding-incident-with-okmulgee-county-jail-officials/>; *see also* Tres Savage and Tristan Loveless, ‘Sad State of Affairs’: After Altercation, Muscogee Nation Charges Okmulgee County Jailer, NONDOC (December 21, 2023), <https://nondoc.com/2023/12/21/after-altercation-muscogee-nation-charges-okmulgee-county-jailer/>.

3.5 Shortly after the incident that Petitioner understands is the reason for his prosecution by the MCN, OCCJA Director Shannon Clark consulted with the Okmulgee County district attorney, who instructed him to accept custody of the Arrestee. Ex. 3 at ¶ 4.

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<sup>4</sup> It appears a portion of the original video was excised from the version MCN released, based on the observable jump in time between time stamp 00:18–00:19.

### C. Petitioner's Charges, Court Appearances, and Ongoing Obligation to Appear

3.6 Petitioner was charged on December 20, 2023, with “FELONY-Protected Status Battery (Law Enforcement, et al)” under 14 MCN § 2-303(B)(1). *Muscogee (Creek) Nation v. Matthew Joseph Douglas*, CF-2023-1937. Ex. 2 at 1–2. Respondent Hall is listed as the prosecuting attorney, and Respondent Judge Lisa Otipoby-Herbert is the listed presiding judge. *Id.* at 1.

3.7 On the day the charges were filed, Petitioner learned he had a warrant for his arrest through word-of-mouth. Ex. 1 at ¶ 4. MCN Lighthouse officers were dispatched to the Jail in what appeared to be an effort to arrest Petitioner. Ex. 3 at ¶ 8. Petitioner also learned he was required to attend a virtual hearing before an MCN tribunal the next day. Ex. 1 at ¶ 5.

3.8 Petitioner did as he was instructed and joined the virtual hearing on December 21, where he was told he had been charged with “protected status battery on law enforcement,” a felony crime under tribal law. *Id.* at ¶¶ 5, 7. Petitioner had no attorney. *Id.* at ¶ 6. Respondent Hall represented the MCN. *Id.* Respondent Judge Otipoby-Herbert presided over the matter and recalled the arrest warrant. *Id.* at ¶¶ 6, 8. She also ordered that Petitioner be subject to a personal recognizance bond and appear at his arraignment, which was scheduled for January 17, 2024. *Id.* at ¶¶ 8–9.

3.9 Attorney Stephen W. Lee was retained for Petitioner's defense in the MCN tribal court proceedings. *Id.* at ¶ 10. At some point in early January, Mr. Lee reset Petitioner's arraignment to March 27, 2024. *Id.* at ¶ 11. Petitioner believes he must attend that arraignment or a warrant for his arrest will again be issued. *Id.* at ¶ 12.

### IV. ARGUMENT AND AUTHORITIES

Petitioner is entitled to a writ of habeas corpus. This Court has jurisdiction to grant the writ because Petitioner is “detained” and is not required to exhaust his remedies before a tribal court that patently lacks jurisdiction over him. The MCN has criminal jurisdiction over non-Indians like Petitioner only to the extent Congress has granted it. Congress requires a “covered crime” as a

predicate for tribal jurisdiction over non-Indians. No “covered crime” occurred during the conduct that forms the basis of Petitioner’s tribal charges. Accordingly, the Court should grant the writ.

**A. Petitioner is “Detained” by the MCN and Is Not Required to Exhaust His Remedies in Tribal Court**

A petitioner seeking a writ of habeas corpus under 25 U.S.C. § 1303, which grants “[t]he privilege of the writ of habeas corpus . . . to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe,” must establish he or she is “detained.” *Carter v. United States*, 733 F.2d 735, 736 (10th Cir. 1984); 25 U.S.C. § 1303.

“Detention” under § 1303 is analogous to the “in custody” requirement under 25 U.S.C. § 2241. *See Dry v. CFR Ct. of Indian Offenses for Choctaw Nation*, 168 F.3d 1207, 1208 n.1 (10th Cir. 1999) (citing *Poodry v. Tonawanda Band of Seneca Indians*, 85 F.3d 874, 890–93 (2d Cir.), *cert. denied*, 519 U.S. 1041 (1996)). In the Tenth Circuit, defendants who are released on their own recognizance by tribal courts but “remain[] obligated to appear for trial at the court’s discretion” are “detained” under § 1303. *Dry*, 168 F.3d at 1208 & n.1; *see also Fife v. Moore*, 808 F.Supp.2d 1310, 1312–13 (E.D. Okla. 2011) (Indian defendants charged in MCN court and released on bond were “detained” as required by 1303).

Petitioner, who was released on his own recognizance but understands that he is required to appear for future proceedings in the MCN court, Ex. 1 at ¶¶ 8, 12, has thus been “det[ained] by order of an Indian tribe,” 25 U.S.C. § 1303, under Tenth Circuit law. *Dry*, 168 F.3d at 1208 & n.1.

Petitioner is not required to exhaust his remedies in the tribal court before seeking relief from this Court for two reasons.<sup>5</sup>

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<sup>5</sup> 25 U.S.C. § 1304(e) reaffirms Petitioner’s right to seek relief under 1303, rather than limits it, and provides grounds for additional prospective relief. That statute provides that “[a] person who has filed a petition for a writ of habeas corpus in a court of the United States under section 1303 of this title may petition that court to stay further detention of that person by the participating tribe.” *Id.*; *see also* 25 U.S.C. § 1304(g) (requiring tribes to provide notice to defendants prosecuted under authority

First, exhaustion is only a matter of comity, not jurisdiction. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 16 n.8 (1987). Exhaustion is not required if (1) “the tribal court action is patently violative of express jurisdictional prohibitions,” (2) “it is plain that no federal grant provides for tribal governance of nonmembers’ conduct. . .” or (3) “it is otherwise clear that the tribal court lacks jurisdiction so that the exhaustion requirement would serve no purpose other than delay.” *Chegup v. Ute Indian Tribe of Uintah & Ouray Rsrv.*, 28 F.4th 1051, 1061 (10th Cir. 2022) (citations omitted)). Given that the MCN clearly lacks authority to prosecute Petitioner, comity should not be afforded here.

Second, “Federal courts . . . do not require exhaustion of tribal court remedies when the petitioner is a non-Indian.” Carrie E. Garrow, *Habeas Corpus Petitions in Federal and Tribal Courts: A Search for Individualized Justice*, 24 WM. & MARY BILL RTS. J. 137, 151 (2015) (collecting cases); *see also In re Garvais*, 402 F.Supp.2d 1219, 1220 (E.D. Wash. 2004). As the Ninth Circuit held, “when a tribal court attempts to exercise criminal jurisdiction over a person not a member of a tribe, no requirement of exhaustion need be enforced.” *Wetsit v. Stafne*, 44 F.3d 823, 826 (9th Cir. 1995); *cf. Hogshooter v. Cherokee Nation*, No. CIV 23-137-RAW, 2023 WL 3391411, at \*2 (E.D. Okla. May 11, 2023) (requiring *pro se* petitioners, who were Indian, to exhaust tribal court remedies).

It is rational to treat non-Indians and Indians differently when considering § 1303 habeas exhaustion requirements, given tribes’ extremely limited criminal jurisdiction over non-Indians. Petitioner should not be required to first seek relief from a tribal court that patently lacks jurisdiction over him—particularly when the relief he seeks would require the tribal court to acknowledge it lacks jurisdiction, presumably even to decide the very jurisdictional issue it was asked to address. *Accord Dry Creek Lodge, Inc. v. Arapahoe & Shoshone Tribes*, 623 F.2d 682, 685 (10th Cir. 1980) (“There must exist a remedy for parties in the position of plaintiffs to have the dispute resolved in an orderly manner. To

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granted by 1304 “to timely notify in writing such person of their rights and privileges under this section and under section 1303 of this title.” (emphasis added)).

hold that they have access to no court is to hold that they have constitutional rights but have no remedy.”).

Petitioner is thus “detained” and is not required to seek a decision from a tribal court that patently lacks jurisdiction over him before turning to this Court for relief.

## **B. The MCN Lacks Jurisdiction Over Petitioner**

### **1. Tribes Have No Inherent Criminal Jurisdiction Over Non-Indians**

It is well established that tribes “lack inherent sovereign power to exercise criminal jurisdiction over non-Indians.” *United States v. Cooley*, 593 U.S. 345, 349–50 (2021) (citing *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 212 (1978)). Only Congress may grant tribes jurisdiction to enforce their criminal code against non-Indians. *Id.*; accord *United States v. Lara*, 541 U.S. 193, 223 (2004) (Thomas, J., concurring to reiterate that “tribes’ exercise of criminal jurisdiction *against nonmember Indians* is consistent with federal policy” (emphasis added)).

### **2. Congress’s Limited Grant of Jurisdiction Extends Only to “Covered Crimes”**

In 2022, Congress granted “participating tribes” additional limited jurisdiction over crimes committed by non-Indians. Pub. L. No. 117-103, tit. VIII, 136 Stat. 49, 898–902 (2022).<sup>6</sup> The relevant amendments are codified in 25 U.S.C. § 1304. Emphasizing that tribes are otherwise unable to exercise the jurisdiction granted under § 1304, Congress defined “special Tribal criminal jurisdiction” as “the criminal jurisdiction that a participating tribe may exercise under this section *but could not otherwise exercise.*” *Id.* at § 1304(a)(14) (emphasis added). Accordingly, tribes may only exercise jurisdiction over non-Indians that strictly complies with § 1304.

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<sup>6</sup> A “participating tribe” is simply a tribe that “elects to exercise special Tribal criminal jurisdiction” within its external boundaries. *Id.* at § 1304(a)(10). Petitioner does not contest that the MCN is a “participating tribe.” *See* 2022 Nat’l Council Act 22-113, § 9, available at <https://www.creeksupremecourt.com/wp-content/uploads/NCA-22-113.pdf>.



The MCN has charged Petitioner with “Protected Status Battery (Law Enforcement, et al.)” under 14 MCN § 2-303(B)(1). This charge appears to be based on the jurisdiction contemplated by § 1304(a)(1), which provides:

The term “assault of Tribal justice personnel” means any violation of the criminal law of the Indian tribe that has jurisdiction over the Indian country where the violation occurs that involves the use, attempted use, or threatened use of physical force against an individual authorized to act for, or on behalf of, that Indian tribe or serving that Indian tribe *during, or because of, the performance or duties of that individual in--*

- (A) preventing, detecting, investigating, making arrests relating to, making apprehensions for, or prosecuting *a covered crime*;
- (B) adjudicating, participating in the adjudication of, or supporting the adjudication of *a covered crime*;
- (C) detaining, providing supervision for, or providing services for persons charged with *a covered crime*; or
- (D) incarcerating, supervising, providing treatment for, providing rehabilitation services for, or providing reentry services for persons convicted of *a covered crime*.

25 U.S.C. § 1304(a)(1) (emphases added).

Congress has thus authorized tribes to charge non-Indians with “assault of Tribal justice personnel” *only when* that assault is “during, or because of, the performance or duties” of the Tribal justice person in either (1) preventing, e.g.; (2) adjudicating, e.g., (3) detaining, e.g., or (4) incarcerating, e.g., *in connection with a covered crime*. 25 U.S.C. § 1304(a)(1)(A)-(D).

The statute further defines “covered crime” as including “assault of Tribal justice personnel,” as defined above, and “obstruction of justice.” 25 U.S.C. § 1304(a)(5)(A) & (E).<sup>7</sup>

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<sup>7</sup> The remaining “covered crimes” reflect the statute’s primary purpose of addressing domestic abuse, violence against children, and sex trafficking: (B) child violence; (C) dating violence; (D) domestic violence; (F) sexual violence; (G) sex trafficking; (H) stalking; and (I) a violation of a protection order. 25 U.S.C. § 1304(a)(5).

“Obstruction of justice,” in turn, “means *any violation of the criminal law of the Indian tribe* that has jurisdiction over the Indian country where the violation occurs that involves interfering with the administration or due process of *the laws of the Indian tribe, including any Tribal criminal proceeding or investigation of a crime.*” 25 U.S.C. § 1304(a)(9) (emphases added). To be a qualifying covered crime that allows a tribe to exert criminal jurisdiction over a non-Indian, then, obstruction of justice requires (1) a violation of the tribe’s criminal code and (2) interfering with the administration or due process of *the tribe’s* laws, “including any Tribal criminal proceeding or [Tribal] investigation of a crime.” 25 U.S.C. § 1304(a)(9).

### **3. The Events of December 18, 2023, Did Not Involve the Commission of a “Covered Crime”**

Without reaching the merits of the MCN charges against Petitioner, it is clear no covered crime, as required by 25 U.S.C. § 1304(a)(1), was committed. Accordingly, the MCN lacks jurisdiction over Petitioner.

#### **a. The Arrestee Was Not Charged with a “Covered Crime”**

The Arrestee the MCN Lighthorse sought to lodge in the Jail was accused of violating state narcotics laws, and the Arrestee was subsequently formally charged in state court. Ex. 3 at ¶ 7; Ex. 4 at 1; Ex. 7 at 1.

Congress does not include (1) narcotics charges or (2) violation of any *state* laws as “covered crimes.” 25 U.S.C. § 1304(a)(5). Accordingly, the MCN does not have jurisdiction to charge Petitioner with a violation of tribal law for his conduct on December 18, 2023, as any alleged “assault of Tribal justice personnel” must have been “*during, or because of, the performance or duties*” of that officer in “detaining . . . persons charged with *a covered crime*” or “incarcerating . . . persons *convicted of*<sup>8</sup> a *covered*

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<sup>8</sup> As the Arrestee was not being incarcerated in connection with a *conviction*, subsection D is doubly inapplicable.

*crime.*” 25 U.S.C. § 1304(a)(1)(C)–(D) (emphases added). Because the Arrestee was not charged with, or convicted of, a covered crime, the MCN has no jurisdiction to charge Petitioner.

**b. “Obstruction of Justice” Does Not Provide a Predicate “Covered Crime”**

Petitioner expects the MCN will make a somewhat tortured argument that it has jurisdiction over him because (1) he somehow “obstructed justice” by not immediately booking the Arrestee as MCN Lighthouse officers requested, and (2) that “obstruction” is somehow connected to the alleged assault. While it could perhaps be more easily dispatched on the facts, this meritless argument fails as a matter of law.

**i. The MCN Lighthouse Were Exercising State, Not Tribal, Authority When They Endeavored to Induce the Jail to Take Custody of the Arrestee**

In December 2023, the MCN and the Jail had no arrangement requiring, or even permitting, the Jail to take custody of arrestees charged with, or prisoners charged with or convicted of, violations of the MCN criminal code. Ex. 3 at ¶¶ 9–10. As reflected in the Arrestee’s booking documents, the MCN sought to exercise authority pursuant to a cross-deputization agreement with the Grand River Dam Authority (“GRDA”)—both by bringing the Arrestee to the Jail to request that the Jail take custody of him and by lodging state charges against him. Ex. 3 at ¶ 6; Ex. 4 at 1; Exs. 5–6.

Congress, once again, narrowly defines when a violation of tribal “obstruction of justice” qualifies as a “covered crime”: it must “involve[] interfering with the administration or due process of *the laws of the Indian tribe, including any Tribal criminal proceeding or investigation of a crime.*” 25 U.S.C. § 1304(a)(9) (emphasis added). Congress thus instructs that obstruction of justice can be a “covered crime” only when, in effect, it is *the tribe’s* justice process that is obstructed.<sup>9</sup> As the MCN Lighthouse

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<sup>9</sup> The statutory analysis principle of *noscitur a sociis*—“a word is known by the company it keeps”—provides firm grounding for this conclusion. *McDonnell v. United States*, 579 U.S. 550, 569 (2016) (citation omitted). The Supreme Court has described this canon as “often wisely applied where a word is capable of many meanings in order to avoid the giving of unintended breadth to the Acts of

sought to exercise powers they understood to be granted to them via a memorandum of understanding between the MCN and GRDA, any alleged obstruction of those *state* powers was not a “covered crime” under federal law.

**ii. The Elements of the MCN Obstruction of Justice Statute Are Not Met**

Federal law requires the MCN to be able to prove Petitioner violated every element of the MCN obstruction of justice statute for obstruction of justice to be a “covered crime” predicate for the protected status assault crime the MCN has charged. 25 U.S.C. § 1304(a)(9) (requiring tribe to prove a “*violation* of the criminal law of the Indian tribe” for the “covered crime” of obstruction of justice (emphasis added)). Even if the MCN Lighthouse were somehow “administ[ering] . . . the laws of the Indian tribe,” under 25 U.S.C. § 1304(a)(9), nothing reflected in the December 18, 2023, video footage fulfills the elements of the MCN obstruction of justice statute. That statute provides:

It is a crime for a person with the purpose to hinder the apprehension, prosecution, conviction or punishment of another for a crime, to harbor or conceal the other, provide a weapon, transportation, disguise or other means of escape, warn the other of impending discovery or volunteer false information to a law enforcement officer. Any person convicted of violating the forgoing provision shall be guilty of a misdemeanor.

14 MCN § 2-819. The statute thus requires MCN prosecutors to prove that Petitioner somehow *intended* (“with the purpose”) to “hinder the apprehension, prosecution, conviction[,] or punishment” of the Arrestee—perhaps by “volunteer[ing] *false* information.”<sup>10</sup> 14 MCN § 2-819 (emphasis added).

As a matter of law, Petitioner did not violate the MCN obstruction of justice statute. First, the Arrestee was already “apprehended,” and nothing that occurred in the Jail on December 18, 2023,

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Congress.” *Id.* (citation omitted). That guidance is particularly appropriate here, given that tribes “lack inherent sovereign power to exercise criminal jurisdiction over non-Indians.” *United States v. Cooley*, 593 U.S. 345, 349–50 (2021).

<sup>10</sup> Petitioner does not concede he provided “false information” to the MCN Lighthouse. However, as Petitioner is entitled to the writ he seeks as a matter of law, he is not asking this Court to address this element at this time.

“hinder[ed]” his “prosecution, conviction[,] or punishment.” 14 MCN § 2-819. Second, any delay in taking Arrestee into Jail custody was not “*for the purpose*” of “hinder[ing]” the Arrestee’s apprehension, prosecution, conviction[,] or punishment,” but was simply to verify that the Jail had authority to take custody of the Arrestee. Ex. 3 at ¶ 4. Accordingly, obstruction of justice in violation of tribal law is not a viable “covered crime,” and the MCN lacks jurisdiction to charge Petitioner.

## V. CONCLUSION

Petitioner submits that his entitlement to a writ of habeas corpus is established as a matter of law, without addressing the fact that he did not commit “protected status battery” under 14 MCN § 2-303(B)(1), even if the MCN had jurisdiction over him.<sup>11</sup>

To be clear, Petitioner believes that these charges are unfounded, unjust, and unwise, and he intends to vigorously contest them—either in federal court, if those facts were deemed relevant to this Court, or in tribal court, if this petition were not granted.<sup>12</sup> Because, however, the MCN prosecution is patently *ultra vires*, Petitioner submits that it is unnecessary for the Court to carefully examine the conduct that forms the basis for the MCN charges and instead seeks an expedited ruling to end the Respondents’ clear abuse of the limited authority Congress has granted them to enforce MCN’s criminal code against non-Indians.

Therefore, pursuant to 25 U.S.C. § 1303, Petitioner Matthew Joseph Douglas submits this petition for a writ of habeas corpus and requests this Court grant the petition, dismiss the complaint,

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<sup>11</sup> See, e.g., 14 MCN § 2-303(B) (requiring prosecutors to prove “a person *unlawfully* applic[e]d force” to a “[l]aw enforcement official] . . . during performance of or related to [his] duties” (emphasis added)); 14 MCN § 2-1005(F) (providing “exculpating affirmative defenses” for law enforcement officers, including that “the crime charged involve the use of non-deadly force against another which the defendant believes is reasonable and appropriate under the circumstances as viewed by a reasonable person in the defendant’s situation”); 14 MCN § 2-113(P) (defining “[l]aw enforcement official” as “any federal, state or Tribal police officer, sheriff, deputy sheriff, highway patrol officer, investigator or similar public officer or official”).

<sup>12</sup> The Attorney General represents the Petitioner only in connection with this petition for a writ of habeas corpus and does not represent him in the MCN case. See Ex. 1 at ¶ 10.

dissolve Petitioner's release bond, issue injunctive relief against continued prosecution, and grant all other relief available under the law and consistent with the grounds raised herein.

Respectfully submitted,

*s/ Gentner Drummond*  
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<sup>13</sup> Application for admission to practice as an attorney in the United States District Court for the Eastern District of Oklahoma is pending.