No. 18-9526

In The
Supreme Court of the United States

JIMCY MCGIRT,

Petitioner,

v.

OKLAHOMA,

Respondent.

On Writ Of Certiorari To The Oklahoma Court Of Criminal Appeals

BRIEF FOR NATIONAL CONGRESS OF AMERICAN INDIANS FUND AS AMICUS CURIAE IN SUPPORT OF PETITIONER

JOHN E. ECHOHAWK
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302
(303) 447-8760
jechohwk@narf.org

COLETTE ROUTEL
Counsel of Record
MITCHELL HAMLINE SCHOOL OF LAW
875 Summit Ave.
St. Paul, MN 55105
(651) 290-6327
colette.routel@mitchellhamline.edu

Counsel for Amicus Curiae

BETHANY BERGER
UNIVERSITY OF CONNECTICUT SCHOOL OF LAW
65 Elizabeth St.
Hartford, CT 06105
(860) 570-5282
bethany.berger@uconn.edu

DERRICK BEETSO
NATIONAL CONGRESS OF AMERICAN INDIANS
1516 P St., N.W.
Washington, D.C. 20005
(202) 630-0318
dbeetso@ncai.org

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

CONSTITUTIONS, TREATIES, STATUTES AND REGULATIONS

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page

INTEREST OF AMICUS CURIAE[1]

Established in 1944, the National Congress of American Indians is the Nation's oldest and largest organization addressing American Indian interests. The National Congress of American Indians Fund (NCAI Fund) is the nonprofit public education arm of NCAI. The NCAI Fund's mission is to educate tribal, federal, and state government officials, along with the general public, about tribal self-governance, treaty rights, and legal and policy issues affecting Indian tribes. The NCAI Fund has a strong interest in preserving the time-honored principles of Indian law, including the test for reservation disestablishment relied upon by Indian tribes and lower federal courts for decades. The NCAI Fund has also worked closely with federal, state, and local governments to develop productive models of intergovernmental cooperation to serve all persons within reservation boundaries.

SUMMARY OF ARGUMENT

In eight decisions spanning 58 years, this Court has articulated the test for determining whether an Indian reservation has been disestablished. *E.g.*, *Nebraska v. Parker*, 136 S. Ct. 1072 (2016); *Seymour v. Superintendent*, 368 U.S. 351 (1962). Under this "well

[1] No counsel for either party authored this brief in whole or in part, and no person other than amicus curiae or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. All parties have consented to the filing of this amicus brief.

settled" precedent, "'only Congress can divest a reservation of its land and diminish its boundaries,' and its intent to do so must be clear." *Parker*, 136 S. Ct. at 1078-79 (quoting *Solem v. Bartlett*, 465 U.S. 463, 470 (1984)). In determining congressional intent, statutory language is "of course" the "most probative evidence." *Id.* at 1079 (quoting *Hagen v. Utah*, 510 U.S. 399, 411 (1994)). Indeed, the Court has never found disestablishment without a "clear textual signal," and has stated that evidence must "'*unequivocally* reveal[] a widely held, contemporaneous understanding that the reservation would shrink'" to overcome lack of statutory text. *Id.* at 1080 (quoting *Solem*, 465 U.S. at 471) (emphasis in original).

Clear intent is even more necessary where, as here, disestablishment would violate a treaty with an Indian tribe. *See Herrera v. Wyoming*, 139 S. Ct. 1686, 1698 (2019). Through treaty, the United States "solemnly guarantied" the Creek (Muscogee) people their reservation as a "permanent home" in exchange for leaving their eastern homelands. Treaty with the Creeks, arts. XII, XIV, 7 Stat. 366 (1832); Treaty with the Creeks, preamble, 7 Stat. 417 (1833). In a later treaty, the United States reaffirmed that the reservation was "forever set apart as a home for said Creek Nation." Treaty with the Creeks, art. III, 14 Stat. 785 (1866). In order to abrogate the treaty rights, "Congress . . . 'must clearly express its intent to do so.'" *Herrera*, 139 S. Ct. at 1698, quoting *Minnesota v. Mille Lacs Band of Chippewa Indians*, 526 U.S. 172, 202 (1999).

The statutes alleged to abrogate this reservation wholly fail the precedential tests. They contain "none of the[] hallmarks of diminishment," or similarly explicit language. *Parker*, 136 S. Ct. at 1079. Far from revealing an "unequivocal understanding" that the reservation would shrink, the history of these statutes shows the United States early on abandoned the idea of demanding cession of the reservation. The statutes allotting the reservation, moreover, fit comfortably within definition of "surplus land acts," providing no justification for departing from established precedent. Section I(C), *infra*.

Any arguments about the negative impact of affirming the Creek Reservation are both overblown and legally irrelevant. As this Court explained in *Nebraska v. Parker*, judges may not "rewrite" statutory history in light of later developments. 136 S. Ct. at 1081-82. Equally important, such arguments are divorced from the realities of modern-day reservations. Under existing jurisprudence, jurisdiction over almost all non-Indian activities on fee land will remain unchanged: tribes will not have jurisdiction, and states and local governments will. Section II(A), *infra*. Throughout the nation, moreover, state, local, and tribal governments enter into cooperative agreements to ensure that reservation status actually increases economic opportunities and improves governmental services for both tribal and non-tribal citizens. *Id.* The experiences of Tacoma, Washington, Mount Pleasant, Michigan, and Pender, Nebraska, all cities affirmed to be partly or wholly within reservation boundaries, demonstrate

this reality. Affirming the Creek Reservation, therefore, will not disrupt, and has the potential to benefit, all within its boundaries.

ARGUMENT

I. SUPREME COURT PRECEDENT ON RESERVATION BOUNDARIES FULLY APPLIES TO THE STATUS OF THE CREEK RESERVATION.

The well-settled test for determining whether Congress has disestablished reservation boundaries fully applies here. Clear evidence of congressional intent to diminish is required because the solemn treaty promises of the United States established a reservation as a permanent homeland for the Creek Nation. The statutes that allotted the reservation are well within the class of statutes that the *Solem* test was designed to interpret, and nothing about Oklahoma statehood or Creek history undermines that fact.

A. Federal Treaties Solemnly Guaranty the Creek Reservation Boundaries.

The United States established the boundaries of the Creek Reservation by solemn treaties. Treaties first promised the Creek Nation this reservation in the 1830s, in exchange for leaving its ancestral homelands and making the arduous trek west of the Mississippi River. In 1866, the United States negotiated a cession of a portion of the reservation, but guaranteed that the

remainder would be forever set apart for the tribe. By the time Congress enacted the statutes at issue here, moreover, Congress, courts, and the executive all acknowledged that these treaties established a "reservation" in its modern sense: an area "set apart . . . for residence of the tribe of Indians by the United States," *United States v. Kagama*, 118 U.S. 375, 383 (1886), where jurisdiction was "independent of any question of title," *United States v. Thomas*, 151 U.S. 577, 579 (1894), and whose boundaries could only be altered by Congress. *United States v. Celestine*, 215 U.S. 278, 284 (1909).

The Creek people were forced from their eastern lands through a combination of coercion, fraud, and violence. They had lost their lands in Georgia through a treaty that the United States later declared "null and void" for its fraudulence. Treaty with the Creeks, art. I, 7 Stat. 286 (1826). Alabama had claimed jurisdiction over remaining Creek lands, and President Jackson told the Creek people they must migrate west to escape state jurisdiction. Christopher D. Haveman, Rivers of Sand: Creek Indian Emigration, Relocation, and Ethnic Cleansing in the American South 85 (2016). Despite suffering caused by illegal squatters, starvation, and a smallpox outbreak, most Creeks still fiercely resisted federal pressure to give up their Alabama lands. *Id.* at 82.

The 1832 Treaty reflects both Creek resistance and federal eagerness to convince the Creek people to leave. The treaty includes guarantees that it would not be "construed so as to compel any Creek Indian to

emigrate," that the Creeks could have their lands individually patented to them, and that the United States would remove intruders from their lands. Treaty with the Creeks, arts. IV, V, XII, 7 Stat. 366 (1832). But because the United States was "desirous that the Creeks should remove to the country west of the Mississippi," *id.*, it promised that "[t]he Creek country west of the Mississippi shall be solemnly guaranteed to the Creek Indians, nor shall any State or Territory ever have a right to pass laws for the government of such Indians. . . ." *Id.* at art. XIV.

The 1833 Treaty reflects continuing efforts to persuade the Creeks to move west. This treaty "establish[ed] boundary lines which will secure a country and permanent home to the whole Creek Nation of Indians." Treaty with the Creeks, preamble, 7 Stat. 417 (1833). The treaty emphasizes that "the land assigned to the Muskogee Indians . . . shall be taken and considered the property of the whole Muskogee or Creek nation, as well of those now residing upon the land, as the great body of said nation who still remain on the east side of the Mississippi." *Id.* at art. IV.

Neither of these treaties use the word "reservation" to describe this "permanent home," because the word was not yet a term of art. Derived from public land law, "reservation" referred to any tract of land withdrawn from sale and set aside for some specific government purpose. *Celestine*, 215 U.S. at 284; Henry Campbell Black, *A Law Dictionary* 1026 (2d ed. 1910); Paul W. Gates, *History of Public Land Law Development* (1968). In this period, public authorities used the

term reservation to describe everything from naval timber reserves, Act of Mar. 1, 1817, 3 Stat. 347 (1817), to individual veterans' lands and public salt licks. *Edwards' Lessee v. Darby*, 25 U.S. 206 (1827). Indian treaties of the 1830s similarly used "reservation" to refer to lands set aside for any individual or public purpose. *E.g.*, Treaty with the Choctaw, arts. XIV, XV, XVII, XIX, 7 Stat. 333 (1830) (describing individual "reservations" for various Choctaws and non-Choctaws); Treaty with the Cherokee, arts. III, IV, XIII, 7 Stat. 478 (1835) (describing military reservations and reservations for individual mixed-bloods and missionaries). The 1832 Treaty with the Creeks does this as well, describing an "agency reserve" and individual "reserves" in the ceded lands east of the Mississippi. Art. II, 7 Stat. 366 (1832).

In the 1850s, it became more common to use the term "reservation" to refer to tribal homelands. The United States described such reservations with the same terms used in the Creek treaties. In 1850, for example, the Annual Report of the Commissioner of Indian Affairs described reservations as lands "assigned to [a] tribe" as a "permanent home" with "well-defined boundaries," Ann. Rep. of the Comm'r of Indian Aff., S. Exec. Doc. No. 31-1, 4 (1850), and in 1855, it described reservations as "homes set apart and assigned to them," where the "guarantees of their treaty grants are . . . sacred and binding." Ann. Rep. of the Comm'r of Indian Aff., S. Exec. Doc. No. 34-1, 18 (1855). This Court, moreover, has never required that treaties use the term "reservation" to create a reservation. In *Menominee Tribe v. United States*, 391 U.S. 404, 405 (1968), for

example, the Court acknowledged that the "Menominee Tribe of Indians was granted a reservation in Wisconsin," by the Treaty of Wolf River, which simply set aside land "to said Indians for a home." Treaty with the Menominee, art. II, 10 Stat. 1064 (1854).

By the late nineteenth century, when the statutes at issue here were enacted, the definition of the term "Indian reservation" was well-established. Congress had clearly tied jurisdiction to "reservation" status. Act of July 31, 1882, 22 Stat. 179 (amending Indian trader statutes to apply "on any Indian reservation"); Major Crimes Act, § 9, 23 Stat. 362, 385 (1885) (authorizing federal criminal prosecutions for certain crimes committed "within the limits of any Indian reservation"). This Court followed Congress's lead by holding that all land within reservation boundaries—regardless of land ownership—was subject to federal jurisdiction. *Thomas*, 151 U.S. at 585.

By this time, Congress and the Executive Branch regularly referred to the Creek territory as the "Creek Reservation." In its 1866 Treaty with the Creek Nation, for example, the United States acquired a cession of the western half of the Creek Reservation for a lump sum. Treaty with the Creek Indians, art. III, 14 Stat. 785 (1866). This treaty refers to the remaining territory as the "reduced Creek reservation," *id.* at art. IX, and pledges that it would be "forever set apart as a home for said Creek Nation" and "guarantee[d] them quiet possession of their country." *Id.*, arts. I, III. Numerous other congressional and executive statements referred to these 1866 treaty boundaries as defining

the "Creek Reservation." *E.g.*, Treaty with the Cherokee Nation, art. IV, 14 Stat. 799 (1866) (referring to the "reduced Creek Reservation"); Cong. Globe, 42nd Cong., 1st to 3d Sess. 763-65, 1258, 2117 (1873) (multiple references to the "Creek Reservation" and "Creek Indian Reservation" in discussing authorizing "negotiat[ion] with the Creek Indians for the cession of a portion of their reservation"); 11 Cong. Rec. 2351 (1881) (discussing "the dividing line between the Creek reservation and their ceded lands"); Act of Feb. 13, 1891, 26 Stat. 749, 750 (describing the boundaries of a Sac and Fox land cession by referencing the "west boundary line of the Creek Reservation"). Courts, meanwhile, repeatedly recognized that distinct jurisdictional rules applied on the Creek Reservation regardless of land ownership. *See Buster v. Wright*, 135 F. 947, 949, 951 (8th Cir. 1905) (holding that it was "beyond debate" that the Nation retained "authority to fix the terms upon which noncitizens might conduct business within its territorial boundaries guaranteed by the treaties of 1832, 1856, and 1866"); *Maxey v. Wright*, 54 S.W. 807, 810 (1900) (affirming the existence of the Creek Reservation and upholding Creek authority to regulate economic activity by non-Indians on fee land).

When Congress enacted the statutes at issue here, Congress, the courts, and the executive all recognized that the Creek Nation had a reservation solemnly guaranteed by its treaties with the United States. The applicable statutes, therefore, must provide clear evidence of congressional intent before those treaty-prescribed boundaries are altered.

B. Creek Treaties Provided Fee Simple Ownership to Afford Stronger Protection for Creek Land.

Contrary to Oklahoma's arguments in *Carpenter v. Murphy*, *see* Brief for Petitioner, No. 17-1107, at 5, 19, fee-simple ownership is in no way inconsistent with reservation status. Indeed, fee patents were initially believed to create more federal protection for Creek boundaries. This Court, moreover, later repeatedly held that these fee lands had the same status as other tribal lands.

Throughout the nineteenth century, reservations were created using many different forms of land tenure.[2] *Cohen's Handbook of Federal Indian Law* notes that "the language used to define the character of the estate guaranteed an Indian tribe by treaty varied so considerably that any detailed classification would not be useful." § 15.04[3][a] at 1006. Use of the term "trust" to describe a specific form of land tenure, moreover, was not common in the treaty period, and did not appear in a general statute until the 1887 Dawes or General Allotment Act ("Dawes Act"). *Id.* § 15.03 at 998 (citing 24 Stat. 388, 389 (1887)).

---

[2] Many treaties fix boundaries without saying anything about land tenure. *See*, *e.g.*, Treaty with the Kickapoos, art. II, 7 Stat. 202 (1819). Other treaties set apart land for "use and occupation" of the tribes. *See*, *e.g.*, Treaty with the Navajo, art. II, 15 Stat. 667 (1868). Still other treaties provide that reservations would contain all individually-owned allotted land from their inception. *See*, *e.g.*, Treaty with the Chippewa, arts. II, III, 14 Stat. 637 (1864).

Cohen's Handbook lists grants in fee simple first in describing common forms of reservation land tenure. *Cohen's*, *supra*, § 15.04[3][a] at 1006. Multiple treaties other than those with the Five Tribes established reservations to be held in fee simple. *E.g.*, Treaty with the New York Indians, art. II, 7 Stat. 550 (1838) (setting apart land "[t]o have and to hold the same in fee simple to the said tribes or nations of Indians"); Treaty with the Senecas & Shawnees, art. II, 7 Stat. 411 (1832) (granting lands "in common . . . in fee simple; but the lands shall not be sold or ceded without the consent of the United States"); Treaty with the Wyandots, etc., art. VI, 7 Stat. 160 (1817) (granting "by patent, in fee simple" reservations for the Wyandot, Seneca, and Shawnee tribes). Such reservations were created and ceded with the same formalities as any other reservation. *E.g.*, Treaty with the Seneca, arts. I, II, 7 Stat. 348 (1831) (providing for cession of fee-simple reservation granted under prior treaty and grant of 67,000 acres "by patent, in fee simple, as long as they shall exist as a nation and remain on the same").

When the 1830s treaties guaranteed the Creek Reservation, fee-simple status was believed to create *more* federal protection for tribal lands. After *Johnson v. M'Intosh* ruled that the doctrine of discovery gave the United States "absolute ultimate title" in lands held under the "Indian title of occupancy," 21 U.S. 543, 592 (1823), some claimed that "Indian title" provided no protection at all. The House Report arguing for Indian removal, for example, argued that it would secure to the United States "the actual enjoyment of property

claimed by the right of discovery." H. Rep. No. 227, 21st Cong., 1st Sess. (1830). *But see Mitchel v. United States*, 34 U.S. 711, 746 (1835) (declaring the Indian "right of occupancy . . . as sacred as the fee simple of the whites"). To help persuade tribes to cede their eastern lands, therefore, the Indian Removal Act authorized the President "solemnly to assure the tribe or nation . . . that the United States will forever secure and guaranty [their lands] to them," and "if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same." Indian Removal Act, § 3, 4 Stat. 411, 412 (1830). Relying on this authority, the 1833 Treaty promises that the "United States will grant a patent, in fee simple, to the Creek nation of Indians for the land assigned said nation . . . and the right thus guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation. . . ." Treaty with the Creeks, art. III, 7 Stat. at 417.

Initially, fee status did provide more protection. It was the reason that the Five Tribes and the Seneca Tribe were exempt from the original Dawes Act. Tom Holm, *Indian Lobbyists: Cherokee Opposition to the Allotment of Tribal Lands*, 5 Am. Ind. Quarterly 115, 121-22 (1979); *see* Dawes Act, § 8, 24 Stat. at 391. The 1893 Dawes Commission agreed that fee status meant it needed consent of the Five Tribes before acquiring or allotting their lands. Holm, *supra*, at 125. This Court, however, soon held that the federal government had the same authority over tribal fee lands as over other tribal lands. *See Cherokee Nation v. Hitchcock*, 187 U.S.

294, 307-08 (1902); *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 656 (1890). Despite the fee patents, moreover, the Creek Nation was "entitled to rely on the United States, its guardian, for needed protection" of its reservation. *See Creek Nation*, 295 U.S. at 109-10.

With the advent of allotment, many tribes had fee-patented lands within their borders. From the very early years of this period, the Supreme Court held that reservation status and federal jurisdiction in such lands remained "independently of any question of title." *Thomas*, 151 U.S. at 585. Soon after, *Celestine* affirmed that although the parties to a crime had received patents to their lands, "both tracts remained within the reservation until Congress excluded them therefrom." 215 U.S. at 284 (1909). In 1948, Congress codified the longstanding judicial understanding that reservations included fee lands, *see* 18 U.S.C. § 1151, Reviser's Note, and every one of the modern Indian country cases relies on this understanding.

When the 1832 and 1833 treaties were ratified, both the Creek Nation and the United States believed fee patents provided greater protection for the tribe. Since then, generations of judicial decisions and congressional acts have established that the Creek Nation's fee lands are entitled to the same respect as other reservation lands.

C. This Court Created the Disestablishment Test to Interpret Statutes Like These.

The statutes at issue here fit neatly within *Solem*'s description of "surplus land acts": statutes enacted "at the turn of the century to force Indians onto individual allotments carved out of reservations and to open up unallotted lands for non-Indian settlement." 465 U.S. at 467. As *Solem* recognized, "each surplus land Act employ[s] its own statutory language, the product of a unique set of tribal negotiation and legislative compromise." *Id.* As discussed below, the differences in the statutes here provide stronger evidence against reservation termination than presented in previous cases. In addition, even more clearly than in previous cases, Congress considered unambiguously terminating reservation status by obtaining a tribal cession of defined land in exchange for a sum certain, yet chose not to take that path.

The statutes at issue here were enacted during the same time period as those in previous reservation-boundary cases. This case concerns statutes enacted between 1893 and 1906; the modern Court's eight earlier reservation diminishment cases involved statutes enacted between 1882 and 1908. There is no reason to treat these statutes differently from those enacted in the same time period.

The statutes at issue here are also clearly allotment statutes. The first statute is the 1893 authorization to seek allotment or cession of the lands of the Five Tribes, and the creation of a commission to negotiate

the same. Act of Mar. 3, 1893, 27 Stat. 612, 645. Tellingly, the first head of this commission was former Senator Henry Dawes, so associated with allotment that the "Dawes Act" is an alternate name for the General Allotment Act. 2 Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* 666-71, 748-49 (1984). Although Dawes died in 1903, it remained the "Dawes Commission" that oversaw allotment of the Five Tribes' territories, and the "Dawes rolls" that identified those eligible for allotment. Allotment of the Indian Territory, in other words, was not an exception to the allotment policy, but the eponymous final project of its best-known architect.

Like the acts construed in previous cases, the operative statutes here also open certain lands to non-Indian purchase. All of the statutes provide for non-Indian purchase of lands within towns on the reservation. *E.g.*, Act of Mar. 1, 1901, 31 Stat. 861, 865. The Five Tribes Act, 34 Stat. 137 (1906), the final statute regarding allotment, is even more comprehensive. By this time, the Supreme Court had ruled that tribal consent was not necessary to allot treaty lands. *Lone Wolf v. Hitchcock*, 187 U.S. 553, 566 (1903). The Five Tribes Act, therefore, broadly provides that all lands not otherwise disposed of "shall be sold by the Secretary of the Interior under rules and regulations to be prescribed by him and the proceeds of such sales deposited in the United States Treasury to the credit of the respective tribes." § 16, 34 Stat. at 143. This language is similar to the provisions regarding sales of unallotted lands in *Parker*, Act of Aug. 7, 1882, §§ 2-3, 22 Stat. 341, and

provides even stronger evidence of continued reservation status than the language construed in *Solem, Seymour*, and *Mattz v. Arnett*, 412 U.S. 481 (1973), which provide for sale according to homestead and other general laws. *See* Act of May 29, 1908, § 2, 35 Stat. 460, 461 (*Solem* act); Act of Mar. 22, 1906, § 3, 34 Stat. 80, 80-81 (*Seymour* act); Act of June 17, 1892, 27 Stat. 52, 52-53 (*Mattz* act).

Notably, not all statutes construed as "surplus land" acts even use that term. *Compare* § 2, 35 Stat. at 461 (*Solem* act, not using term surplus), *and* 27 Stat. at 52 (*Mattz* act, not using term surplus), *with* § 3, 34 Stat. at 80 (*Seymour* act, using term surplus). The Five Tribes Act does, however, specifically refer to unallotted lands as "surplus lands." § 16, 34 Stat. at 143.

The statutes at issue here also resemble other allotment acts in their treatment of allotments. Allotted lands are temporarily immune from taxes and encumbrances, but this immunity lifts after a period of time or for persons believed capable of managing their lands. *Compare* Five Tribes Act, § 19, 34 Stat. at 144 (restricting lands owned by full-bloods for twenty-five years), *and* Act of June 30, 1902, § 16, 32 Stat. 500, 503 (restricting Creek allotments for five years, and homesteads for twenty-one years), *with* Dawes Act, § 5, 24 Stat. at 389 (restricting allotments for twenty-five years) *and* Burke Act, 34 Stat. 182, 183 (1906) (authorizing early lifting of restrictions for those "capable of managing his or her affairs"). Like other allotment acts, these statutes subject inheritance of allotments to state or territorial law. *Compare* 1902 Act, § 6, 32

Stat. at 501, *with* Dawes Act, § 5, 24 Stat. at 389. In addition, Creek allottees, like other allottees, could lease their lands for certain purposes. *Compare* 1902 Act, § 17, 32 Stat. at 504 (permitting Creeks to lease their allotments), *with* Act of May 31, 1900, 31 Stat. 221, 229 (permitting all Indian allottees to lease their allotments). These policies did not constitute diminishment in previous cases, and they do not do so here.

Congress knew full well how to diminish the Creek Reservation, and knowingly took another path. In the 1866 Treaty, the Creek Nation agreed to "cede and convey to the United States . . . the west[ern] half of their entire domain" in exchange for almost a million dollars. Treaty with the Creek Indians, art. III, 14 Stat. 785 (1866). This is like the cession and sum certain language the Court has found "precisely suited to terminating reservation status." *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 344 (1998). In 1893, however, Congress authorized the Dawes Commission to negotiate *either* "cession . . . to the United States" *or* "allotment and division . . . in severalty." § 16, 27 Stat. at 645. After finding "unanimity among the people against the cession of any of their lands to the United States," the Commission early on "abandoned all idea of purchasing any of it and determined to offer them equal division of their lands." J.A. 19. While the Commission admitted it would be simpler if the Five Tribes agreed to "a cession of the entire territory at a given price," there were "great difficulties" in even getting the Tribes to "accept allotment in severalty." J.A. 27-28.

It therefore abandoned any efforts to seek reservation diminishment.

This is familiar territory from other cases. The first modern diminishment decision held that a 1906 allotment act did not diminish the Colville Reservation because it did not contain language similar to an earlier act that had restored lands in the southern portion of the reservation to the public domain. *Seymour*, 368 U.S. at 356. Similarly, *Mattz v. Arnett* held that failed bills that would have terminated the Klamath Reservation "compel[] the conclusion" that a subsequent act did not do so. 412 U.S. at 504. Most recently, *Nebraska v. Parker* held that in 1882, "Congress legislated against the backdrop" of earlier treaties that diminished the Omaha Reservation "'in unequivocal terms.'" 136 S. Ct. at 1080 (citation omitted). As in *Seymour* and *Mattz*, the "change in language . . . undermine[d] petitioners' claim" that the 1882 act diminished the reservation. *Id.*

In short, what happened to the Creek Reservation was not exceptional. The statutes and their history reflect the distinct situation of the Creek Nation, but their key elements—allotting tribal territories, eventually lifting restrictions on sale and taxation, and selling other lands for the benefit of the tribe—are the same as those in this Court's previous cases. Their result—extensive non-Indian settlement—is the same as well. Even more than in previous cases, moreover, the statutes and their history contradict congressional intent to affect reservation boundaries. This Court's

decisions from *Seymour* to *Parker* dictate how to interpret these statutes.

D. Statehood and Federal Authority Over Tribal Governments Do Not Undermine Reservation Status.

Although the statutes at issue here diminished Creek authority, increased federal authority, and clearly contemplated Oklahoma statehood, none of this undermines reservation status. First, as Petitioner discusses, the statutes themselves expressly preserve tribal and federal authority within reservation boundaries. But even without this statutory evidence, over a century of congressional policy and Supreme Court decisions—some even involving the Creek Nation itself—establish that reservations are consistent with statehood and survive federal intrusion on tribal self-governance.

First, statehood is simply not inconsistent with reservation status. Before enacting the first of these statutes, Congress passed the Major Crimes Act providing that it applied to crimes on "any Indian reservation, and within the boundaries of any State." § 9, 23 Stat. at 385. The Supreme Court quickly found that statehood was not a constitutional bar to federal jurisdiction on reservations, *Kagama*, 118 U.S. at 383-84, and reaffirmed this conclusion throughout the allotment period. *Thomas*, 151 U.S. at 585; *Donnelly v. United States*, 228 U.S. 243, 263 (1913). The Court later implicitly endorsed this conclusion with respect to the

Creek Nation itself, finding that the fact that tax immunity of Creek allotments might "embarrass the finances of a state or one of its subdivisions" was irrelevant to taxing jurisdiction. *Bd. of Cnty. Comm'rs v. Seber*, 318 U.S. 705, 718 (1943).

Nor is the alleged existence of state jurisdiction inconsistent with reservation status. State jurisdiction over non-Indians on reservations was well-established before the passage of the laws at issue here. *United States v. McBratney*, 104 U.S. 621, 624 (1881) (holding states had exclusive jurisdiction over crimes between non-Indians). And allotment acts themselves often imposed state taxation on Indian-owned fee lands. *E.g.*, Burke Act, 34 Stat. at 183.

The consistency of state jurisdiction and reservation status has been reaffirmed in the modern era. In 1948, the same year Congress codified the definition of reservations, it also gave New York criminal jurisdiction over Indians "on Indian reservations" in the state. Act of July 2, 1948, 62 Stat. 1224. A few years later, as a result of Public Law 280, 67 Stat. 588 (1953), Indians on many reservations became subject to state civil and criminal jurisdiction. This Court nevertheless declared that Public Law 280 was not the equivalent of a termination statute, relying on the reservation-boundary jurisprudence to find that "clear" language was still necessary to infer further intrusions on tribal sovereignty. *Bryan v. Itasca Cnty.*, 426 U.S. 373, 392-93 (1976) (quoting *Mattz*, 412 U.S. at 504-05).

Federal jurisdiction and control over tribal governmental institutions is also not inconsistent with reservation status. Indeed, if it were, there would be no reservations in the United States. The federal government has asserted jurisdiction over crimes by Indians against non-Indians in Indian country since 1817, 3 Stat. 383 (1817), and has extensively interfered with tribal courts and police since the 1870s. Prucha, *supra*, at 646-48. As the Court held in *United States v. Wheeler*, however, federal control does not imply loss of sovereign rights not otherwise withdrawn by treaty or statute. 435 U.S. 313, 323-24 (1978).

In short, any argument that the relevant statutes are inconsistent with reservation status depends on propositions this Court has soundly rejected, sometimes with regard to the Creek Nation itself. They cannot decide this case.

II. RESERVATION STATUS WILL NOT BE DISRUPTIVE.

Any other concerns about the effect of reservation status are divorced from both federal Indian law and the realities of the Creek Nation. Such concerns ignore decades of jurisprudence holding that tribes generally lack jurisdiction and states have comprehensive jurisdiction over non-Indians on reservation fee land. They also ignore the wealth of intergovernmental agreements between tribes, states, and municipalities—many of which the Creek Nation already has in place—that ensure that predominantly non-Indian cities and

towns thrive within and alongside reservations. The experience of cities recently affirmed to be within reservations demonstrates this reality. With respect to law enforcement in particular, the addition of tribal and federal resources will likely result in better outcomes for both Indians and non-Indians on the Creek Reservation.

A. With Intergovernmental Cooperation, Predominantly Non-Indian Cities and Towns Thrive Within Reservations.

There are hundreds of predominantly non-Indian cities and towns within reservations. These communities experience many benefits from reservation status, including federal tax credits for non-Indian businesses and economic opportunities from doing business with Indian tribes. For non-Indians in such communities, moreover, jurisdiction is little different than outside reservation boundaries. The rapidly growing number of agreements between tribal and non-tribal governments cabins any remaining uncertainty, and ensures that overlapping jurisdiction leads to more effective services for both Indians and non-Indians.

First, reservation status does not affect jurisdiction over the vast majority of non-Indian activities on reservation fee land. On fee land—the only land affected by reservation status—tribal jurisdiction over non-Indians is "presumptively invalid." *Plains Commerce Bank v. Long Family Land & Cattle Co., Inc.*, 554 U.S. 316, 330, 341 (2008) (rejecting tribal jurisdiction

over sale of fee land); *see also Atkinson Trading Co. v. Shirley*, 532 U.S. 645, 659 (2001) (rejecting tribal hotel occupancy tax); *Strate v. A-1 Contractors*, 520 U.S. 438, 459 (1997) (rejecting tribal court jurisdiction over tort action). State jurisdiction over non-Indians, in contrast, is presumptively valid absent meaningful federal and tribal involvement. *See*, *e.g.*, *Cotton Petroleum Corp. v. New Mexico*, 490 U.S. 163, 185 (1989) (upholding state oil and gas severance taxes); *Washington v. Confederated Tribes of the Colville Indian Reservation*, 447 U.S. 134 (1980) (upholding state cigarette taxes). Even with respect to tribal citizens, many federal allotment statutes authorize state and municipal property taxes on Indian-owned fee land. *E.g.*, *Cnty. of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 258-59 (1992) (holding that Dawes Act, as amended by the Burke Act, authorized taxation of allotments).

This jurisprudence has been accompanied by an "increasing trend" toward intergovernmental agreements between tribes, states, and local governments. *See* Conference of Western Attorneys General, *American Indian Law Deskbook* § 14.1 (2018). According to the Conference of Western Attorneys General, such agreements not only "resolve the core uncertainties" on jurisdiction, but also result in more effective service delivery. *Id.* § 14 Introduction; *see also Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 514 (1991) (noting that states can "enter into agreements with the tribes to adopt a mutually satisfactory regime for [tax] collection"). The National

Conference of State Legislatures similarly reports that intergovernmental agreements are often "the best way to provide services to these unique populations without wasting valuable resources on ineffective programs." Susan Johnson, et al., Nat'l Conference of State Legislatures, *Government to Government: Models of Cooperation between States and Tribes* 3 (2009).

Several states, including Oklahoma, have statutes broadly authorizing their officials to negotiate intergovernmental agreements with tribes.[3] Oklahoma's statute notes that this cooperation is "in furtherance of federal policy for the benefit of both the State of Oklahoma and tribal governments." Okla. Stat. tit. 74, § 1221(B). The website of the Oklahoma Secretary of State lists hundreds of tribal-state agreements, including many on taxation and law enforcement. *See* Tribal Compacts and Agreements, https://www.sos.ok.gov/gov/tribal.aspx.

Like Oklahoma, "[n]early every state that has Indian lands within its borders has reached some type of tax agreement with the tribes." Judy Zelio, National Conference of State Legislatures, *Piecing Together the State-Tribal Tax Puzzle* (2005). Such agreements "benefit both governmental entities by streamlining the tax collection process and facilitating compliance with state and tribal law." Deskbook, *supra*, § 14.8. In family law, moreover, tribal-state cooperation is "vital for the

---

[3] *E.g.*, Idaho Code Ann. §§ 67-4001 to 67-4003; Mont. Code Ann. §§ 18-11-102 to 18-11-112; Neb. Rev. Stat. §§ 13-1501 to 13-1509; N.M. Stat. Ann. §§ 11-1-1 to 11-1-7; Wash. Rev. Code Ann. §§ 39.34.010 to 39.34.230.

thousands of American Indian and Alaska Native children who are over-represented in state and tribal welfare systems." Johnson, *supra*, at 72. In law enforcement, too, the Western Attorneys General report that cross-deputization creates relationships between "tribal and non-tribal police officers" that "can enhance the effectiveness of law enforcement." Deskbook, *supra*, § 14:10.

There are also distinct financial advantages to doing business in Indian country. Non-Indian businesses on reservations benefit from accelerated depreciation, 26 U.S.C. § 168(j), economic empowerment zone credits, 26 U.S.C. § 1391(g)-(h); 26 U.S.C. §§ 1392, 1396, and other incentives. *Cohen's*, *supra*, § 21.02[4] at 1330. Tribes themselves have become valuable economic partners. They employ hundreds of thousands of Indians and non-Indians. In fact, many tribes are the largest employers in their regions, and are the lifeblood of areas where manufacturing jobs have disappeared. Angela R. Riley, *(Tribal) Sovereignty and Illiberalism*, 95 Calif. L. Rev. 799, 833 (2007). The Oneida Indian Nation of New York, for example, is the largest employer in central New York; and the Department of the Interior found that it turned around a region that had been in economic decline. Allison Dussias, *The Reports of Our Death Are Greatly Exaggerated—Reflections on the Resilience of the Oneida Indian Nation of New York*, 2018 BYU L. Rev. 1231, 1270-71. The Tonto Apache Tribe, similarly, became the largest employer in Payson, Arizona, after the local lumber mill closed. Jonathan B. Taylor, *The Economic Impact of Tribal*

Government Gaming in Arizona 9 (1999). This is the case in Oklahoma as well: individual tribal nations are the fourth, twelfth, twenty-first, twenty-eighth, fifty-second and fifty-eighth largest employers in the state. Oklahoma Dept. Commerce, Oklahoma Top Employers by # of Employees (2019 Ranking), https://www.okcommerce.gov/wp-content/uploads/Oklahoma-Largest-Employers-List.pdf. Broad statistical and econometric analyses show that tribal businesses substantially increase both income and employment in surrounding areas. Randall K.Q. Akee, et al., *Social and Economic Changes on American Indian Reservations in California: An Examination of Twenty Years of Tribal Government Gaming*, 18(2) UNLV Gaming Res. & Rev. J. 39, 53-54, 57 (2014); Jonathan B. Taylor, et al., *The National Evidence on the Socioeconomic Impacts of American Indian Gaming on Non-Indian Communities*, Harvard Project on American Indian Economic Development 19-23 (2000).

Predominantly non-Indian cities, therefore, can thrive within reservation boundaries. The cities of Tacoma, Washington, located partially within the Puyallup Reservation, and Mount Pleasant, Michigan, located within the Saginaw Chippewa Tribe's Reservation, provide telling examples. After generations of dispute, a federal settlement affirmed the boundaries of the Puyallup Reservation to include sizable portions of the 200,000-plus-person City of Tacoma and other predominantly non-Indian cities. *See* Puyallup Tribe of Indians Settlement Act of 1989, Pub. L. No. 101-41, 103 Stat. 83. Puyallup businesses include a casino,

innovative health care facilities, a 400-slip marina, and retail stores and gas stations. *Tiller's Guide to Indian Country: Economic Profiles of American Indian Reservations* 991-92 (Veronica E. Velarde Tiller ed., 2d ed. 2005). The Tribe contributes millions of dollars each year to Tacoma and other cities within the reservation, and donates additional funds to area non-profits.[4]

Having a core part of Tacoma within the Puyallup Reservation does not seem to have hurt the city. After suffering a post-industrial decline until the 1990s, Tacoma is now "experiencing unprecedented growth," becoming a center for private investment, higher education, and the arts. City of Tacoma, "About Tacoma," http://www.cityoftacoma.org/about_tacoma. In recognition of the value of its relationship with the tribe, Tacoma permanently installed the Puyallup Nation flag in the Tacoma City Council Chambers in 2018. Courtney Wolfe, *Puyallup Nation Flag Now a Permanent Fixture in Downtown Tacoma*, South Sound Magazine, Aug. 1, 2018, https://southsoundmag.com/puyallup-nation-flag-now-a-permanent-fixture-in-downtown-tacoma/.

In 2010, a federal decree affirmed the boundaries of the Saginaw Chippewa Tribe's Reservation, which include the City of Mount Pleasant, Michigan. *See*

---

[4] *E.g.*, *Puyallup Tribal Impact: Supporting the Economic Growth of our Community*, http://www.jumapili.com/wp-content/uploads/2013/09/www.puyallup-tribe.com_assets_puyallup-tribe_documents_puyallupcommunityreport_2012_web.pdf (describing extensive Tribal donations); *High-energy elder*, The News Tribune (July 7, 2008) (noting that the Puyallup Tribe is one of the largest donors to charity in Pierce County).

Saginaw Chippewa Indian Tribe v. Granholm, No. 05-10296-BC, 2010 WL 5185114 (E.D. Mich. Dec. 17, 2010). While settling the dispute, the Tribe negotiated detailed agreements with Michigan, Isabella County, and Mount Pleasant covering child welfare, law enforcement, zoning, land use, natural resources, and taxation. *Id.* at *1. In approving the settlement, the district court lauded the parties for providing "greater certainty and stability for the parties and their constituents." *Id.* at *4. Today, with over 3,000 employees, the Tribe is the largest employer in Isabella County. Middle Michigan Development Corporation, Top Employers, https://mmdc.org/site-selectors/top-employers/. In addition to funding tribal health and welfare programs, the Tribe has distributed over $249 million to schools and local governments since 1994. *Tribe distributes $2,946,602.98 for the 2018 spring 2 percent cycle*, 29(6) Tribal Observer 1 (June 2018), *available at* http://www.sagchip.org/tribalobserver/archive/2018-pdf/060118-v29i06.pdf. In Isabella County alone, the tribe distributes over two million dollars bi-annually, supporting everything from afterschool programs to census preparation to septic stations. Andrew Mullin, *Saginaw Chippewa Indian Tribe distributes around $2.3 million in Isabella County*, Central Michigan Life, http://www.cm-life.com/article/2019/11/tclv1z11pduqfxw (Nov. 25, 2019).

More evidence that reservation status is not disruptive comes from Pender, Nebraska. In 2016, this Court affirmed that Pender and its surroundings were within the boundaries of the Omaha Reservation. In

its briefs, Nebraska vociferously argued that affirmance would "seriously disrupt" the community, and "the practical consequences will be profound." Brief for Petitioner at 20, 23, *Nebraska v. Parker*, 136 S. Ct. 1072 (2016) (No. 14-1406). But news from the area reveals no such disruption. One 2018 report declared that Pender was "thriving when small-town America is shrinking." Brian Mastre, *Pender: Thriving When Small-Town America is Shrinking*, WOWT, Jan. 3, 2018, https://www.wowt.com/content/news/Pender-Thriving-when-small-town-America-is-shrinking-467969593. Another noted that Pender recently opened a new community center, hospital clinic, and renovated hotel, wondering how a small town could pull off so many projects. Paul Hammel, *How does Pender, Nebraska, pull off $25 million in improvement projects? Local pride, residents say*, Omaha World-Herald Bureau, Jan. 11, 2018, https://www.omaha.com/news/state_and_regional/how-does-pender-nebraska-pull-off-million-in-improvement-projects/article_1905c4c6-2b96-5d63-ba3c-3b7b05deed6e.html. In fact, the population of Pender has grown every year since 2014, when the U.S. District Court first affirmed reservation boundaries, reversing previous population declines. World Population Review, Pender, Nebraska, Population 2019, http://worldpopulationreview.com/us-cities/pender-ne-population/; *Smith v. Parker*, 996 F. Supp. 2d 815 (D. Neb. 2014).

As Tacoma, Mount Pleasant, and Pender show, jurisdictional rules and intergovernmental agreements mean that affirming reservation status is not disruptive. If anything, reservation status may enhance

governance and economic development. Across the country, tribal nations are working with states, municipalities, and private entities to build better economies and communities for all of their citizens. Affirming the treaty boundaries of the Creek Reservation will only increase those benefits in Oklahoma.

B. Affirmance Can Improve Law Enforcement on the Creek Reservation.

Reservation status does change criminal jurisdiction in certain cases, but change is badly needed. Oklahoma has one of the highest violent crime rates in the country. *See*, *e.g.*, Federal Bureau of Investigation, *Crime in the United States*, Tables 4 & 5 (2018), *available at* https://ucr.fbi.gov/crime-in-the-u.s/2018/crime-in-the-u.s.-2018 (publishing data showing Oklahoma as the state with the twelfth highest rate of violent crime reports). Tulsa, meanwhile, is the most dangerous mid-to-large size city in Oklahoma and the 23rd most dangerous nationwide. Sam Stebbins, The Midwest is Home to Many of America's Most Dangerous Cities, USA Today, Oct. 26, 2019, https://www.usatoday.com/story/money/2019/10/26/crime-rate-higher-us-dangerous-cities/40406541/. Affirming reservation status, however, will enhance the intergovernmental cooperation already occurring, remove the need to search tract books to determine jurisdiction, and make available much-needed tribal and federal resources.

Importantly, Oklahoma will continue to play the central law enforcement role within the boundaries of

the Creek Reservation. Regardless of reservation status, states have jurisdiction over non-Indians committing crimes against non-Indians, *Draper v. United States*, 164 U.S. 240 (1896), and victimless crimes. *Solem*, 465 U.S. at 465 n.2. The vast majority of crimes committed within the Creek Reservation will, therefore, remain under state jurisdiction. *See* Oklahoma State Bureau of Investigation, *Crime in Oklahoma*, 2-5 to 2-14 (2017), http://osbi.ok.gov/publications/crime-statistics (noting that less than eight percent of persons arrested for violent crimes are American Indian).

Affirmance of the Creek Reservation, however, makes additional tribal and federal resources available. The federal government can prosecute cases involving Indians throughout the reservation, rather than solely on trust or restricted-fee parcels. 18 U.S.C. § 1153 (jurisdiction over major crimes by Indians); 18 U.S.C. § 1152 (jurisdiction over crimes between Indians and non-Indians). If the defendant is Indian, the Creek Nation may prosecute as well. 25 U.S.C. § 1301(2). While no police force anywhere has enough funding, reservation status will also unlock federal funding sources targeting crime in Indian country. *See*, *e.g.*, 25 U.S.C. § 5412 (establishing Indian Law Enforcement Foundation); U.S. Dept. Justice, Coordinated Tribal Assistance Solicitation, Fiscal Year 2020 competitive grant announcement at 39-40, https://www.justice.gov/file/1223441/download (announcing almost $100 million in 2020 grants to improve safety and victim services in Indian country).

Recognizing Creek law enforcement authority on the reservation will also further Congress's position that "tribal justice systems are often the most appropriate institutions for maintaining law and order in Indian country." Tribal Law and Order Act of 2010, Pub. L. No. 111-211, Title II, § 202(a)(2)(b), 124 Stat. 2258. Accordingly, Congress has enhanced tribal criminal jurisdiction twice in recent years. *Id.* at §§ 213, 233-234; Violence Against Women Act Amendments of 2013, Pub. L. No. 113-4, § 904, 127 Stat. 54. The federal Indian Law and Order Commission similarly concluded that tribal governments are the institutions "best positioned to provide trusted, accountable, accessible, and cost-effective justice in Tribal communities." Indian Law & Order Comm'n, *A Roadmap for Making Native America Safer: Report to the President & Congress of the United States*, at v (2013).

Studies of Public Law 280 provide additional evidence of the benefits of affirming reservation status. Today, criminal jurisdiction on the Reservation outside trust lands and restricted allotments in Oklahoma is analogous to that in P.L. 280 states, where states have primary criminal jurisdiction over reservation Indians. *See* 18 U.S.C. § 1162. While one might assume that uniform state jurisdiction would make law enforcement easier, the Indian Law and Order Commission found that P.L. 280 reservations actually face more problems from "institutional illegitimacy and jurisdictional complexity" than other reservations. *Roadmap*, *supra*, at 11-13. A more targeted study found that P.L. 280 reservation residents rated police less available, slower in

response time, culturally insensitive, and less able to provide community policing than those on non-P.L. 280 reservations. Carole Goldberg, et al., *Final Report: Law Enforcement and Criminal Justice under Public Law 280*, 112, 476-79 (2007), https://www.ncjrs.gov/pdffiles1/nij/grants/222585.pdf. Indeed, respondents from two reservations that withdrew from P.L. 280 reported that crime decreased, and policing, prosecutions, and community well-being all increased after retrocession. *Id.* at 457-59.

Meanwhile, a growing body of evidence demonstrates that delivery of governmental services to tribal members is enhanced when tribes are able to take control over such programs themselves. *See*, *e.g.*, Rupinder Kaur Legha & Douglas Novins, *The Role of Culture in Substance Abuse Treatment Programs for American Indian and Alaska Native Communities*, 63(7) Psychiatric Servs. 686, 691 (2012) (concluding that tribal culture "should be integrated into substance abuse prevention and treatment" to improve its efficacy); Alyce S. Adams, et al., Governmental Services and Program: Meeting Citizens' Needs, *Rebuilding Native Nations: Strategies for Governance and Development* 223 (2007). The Creek Nation is particularly poised to be an effective partner in reservation law enforcement, with its robust police force, sophisticated judicial system, multiple prevention and rehabilitation programs, and numerous cross-deputization agreements.

In addition, because the area is already interspersed with trust land and restricted allotments, reservation status eliminates the need for "law

enforcement officers . . . to search tract books in order to determine . . . criminal jurisdiction over each particular offense." *Seymour*, 368 U.S. at 358. Amnesty International found that this process contributes to the crisis of sexual violence against Native women. According to Amnesty's 2007 Report, "[i]n Oklahoma, confusion around jurisdictional boundaries means it is not always immediately clear whether a case should be prosecuted by a tribal prosecutor, a federal prosecutor or a state prosecutor . . . [C]ourts may take years to determine whether the land in question is tribal or not." Amnesty Int'l, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* 62 (2007). Removing this jurisdictional uncertainty should allow more effective policing and timely justice.

In short, reservation status, by enhancing tribal, state, and municipal cooperation, and increasing law enforcement resources, could improve law and order for all concerned.

CONCLUSION

The Court should affirm that Congress did not abrogate the reservation boundaries created in its treaties with the Creek Nation.

Respectfully submitted,

JOHN E. ECHOHAWK
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, CO 80302
(303) 447-8760
jechohwk@narf.org

COLETTE ROUTEL
Counsel of Record
MITCHELL HAMLINE SCHOOL OF LAW
875 Summit Ave.
St. Paul, MN 55105
(651) 290-6327
colette.routel@mitchellhamline.edu

BETHANY BERGER
UNIVERSITY OF CONNECTICUT SCHOOL OF LAW
65 Elizabeth St.
Hartford, CT 06105
(860) 570-5282
bethany.berger@uconn.edu

DERRICK BEETSO
NATIONAL CONGRESS OF AMERICAN INDIANS
1516 P St., N.W.
Washington, D.C. 20005
(202) 630-0318
dbeetso@ncai.org

Counsel for Amicus Curiae