

IN THE SUPREME COURT OF THE UNITED STATES

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No. 18-9526

JIMCY MCGIRT, PETITIONER

v.

STATE OF OKLAHOMA

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ON WRIT OF CERTIORARI  
TO THE OKLAHOMA COURT OF CRIMINAL APPEALS

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JOINT APPLICATION OF THE PARTIES, THE UNITED STATES,  
AND THE MUSCOGEE (CREEK) NATION FOR DIVIDED ARGUMENT  
AND ENLARGEMENT OF TIME FOR ARGUMENT

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Pursuant to Rules 21, 28.4, and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves for an enlargement of the time allotted for oral argument by ten minutes, to a total of 70 minutes, and for the United States and the Muscogee (Creek) Nation, as amici curiae, each to be allowed 15 minutes of argument time. Petitioner has consented to the allocation of 15 minutes of its argument time to the Creek Nation, and respondent has consented to the allocation of 15 minutes of its argument time to the United States. Counsel for both parties and the Creek Nation agree to and join this request.

1. Petitioner was convicted and sentenced under Oklahoma law for first-degree rape, lewd molestation, and forcible sodomy. On direct appeal, the Oklahoma Court of Criminal Appeals affirmed petitioner's convictions and sentences.

In 2017, the United States Court of Appeals for the Tenth Circuit held that Congress did not disestablish the Muscogee (Creek) Reservation in Oklahoma and that the State therefore lacked jurisdiction to prosecute Indians for the major offenses described in 18 U.S.C. 1153(a) when those offenses were committed on land within that territory. Murphy v. Royal, 975 F.3d 896. After this Court granted the State's petition for a writ of certiorari in that case, 138 S. Ct. 2026 (2018), petitioner filed an application for post-conviction relief in state court, in which he claimed that he is an Indian, that the sexual abuse occurred on the Creek Reservation, and that the State therefore lacked jurisdiction to prosecute him. Petitioner's post-conviction application was subsequently denied by the state trial court, and the Oklahoma Court of Criminal Appeals affirmed that denial.

After receiving briefing, hearing argument, and receiving supplemental briefing in Murphy (No. 17-1107) last Term, this Court did not issue a decision in that case, but instead restored the case to the calendar for reargument. The Court then granted petitioner's petition for a writ of certiorari in this case, which, like Murphy, presents the question whether the State of Oklahoma

has jurisdiction to prosecute Indians for crimes committed within the boundaries of the Creek Nation's historic territory.

2. The issues in this case arise against the backdrop of the complex history of Oklahoma and the Five Tribes, including the Creek Nation, and federal-tribal relations.

To that end, the United States has filed a brief as amicus curiae in support of the State, as it did in Murphy, and the Creek Nation has filed an amicus brief in support of petitioner, as it did in support of the respondent in Murphy. The United States and the Creek Nation have distinct and substantial interests in the resolution of this case. Most immediately, petitioner's position that all lands within the original territory of the Creek Nation constitute a present-day Indian reservation under 18 U.S.C. 1151(a) -- and that the State has no jurisdiction over crimes involving Indians on any such lands if those lands do constitute a present-day reservation -- would mean that the federal government, rather than the State, has jurisdiction to prosecute crimes committed by or against Indians within that three-million acre area. There also would be ramifications for allocations of civil jurisdiction and the exercise of other authority by the federal government, the State, and the Creek Nation.

The United States and the Creek Nation bring distinct and unique perspectives to these issues and the context of this case. For the United States, the expansion of criminal jurisdiction would

result in a great increase in the federal courts' jurisdiction and the federal government's Indian-related law-enforcement responsibilities. In addition, resolution of the case requires a detailed examination of the history of the United States' interactions and agreements with the Creek Nation and the Five Tribes more generally, as well as actions that Congress took around the turn of the 20th century in eastern Oklahoma and developments since that time. More broadly, the federal government maintains relationships with many Indian tribes and exercises significant jurisdiction and administrative responsibility over Indian lands. That experience provides the United States with a unique perspective on the issues in this case.

For its part, the Creek Nation is a sovereign tribe whose historic territory is the focus of this case. The Creek Nation is uniquely situated to present its own informed understanding of the Creek Nation's history and of the treaties and statutes governing its relationship with the United States. This includes responding to questions raised concerning whether relevant treaties established a reservation in the first instance and whether such a reservation was disestablished, as well as addressing the actions Congress took around the turn of the 20th century in eastern Oklahoma and developments since that time. The Creek Nation can also address its governmental activities in the territory in

question, and the consequences that would follow from a non-reservation holding.

The Court previously has recognized both the complexity of the question presented in this case and the substantial interests and distinct perspectives of the United States and the Creek Nation in the issues presented. In particular, the Court granted both the United States and the Creek Nation leave to participate in oral argument in Murphy; directed the Solicitor General and the Creek Nation, along with the parties, to file supplemental briefs and supplemental reply briefs in that case; and permitted the United States and the Creek Nation to file amicus briefs in excess of the usual word limits in this case, not to exceed 11,000 words.

3. Petitioner, respondent, the United States, and the Creek Nation all agree that an enlargement of the time for oral argument by ten minutes, to a total of 70 minutes, would provide a more adequate presentation and believe that it would be of substantial assistance to the Court in the complex setting of this case. That is especially so since it may be necessary at argument for the parties, the United States, and the Creek Nation to address not only the question of the existence of a present-day Creek Reservation, but the further questions on which the Court ordered supplemental briefing in Murphy concerning whether the State has criminal jurisdiction even if a reservation exists. See 139 S. Ct. 626.

Should the Court grant this request for an enlargement of time, the parties, the United States, and the Creek Nation propose the following structure for oral argument: 20 minutes for petitioner, 15 minutes for the Creek Nation, 20 minutes for respondent, and 15 minutes for the United States. The parties, the United States, and the Creek Nation jointly move in the alternative that the argument time for petitioner be divided, with petitioner and the Creek Nation each allotted 15 minutes of argument time, and that the argument time for respondent be divided, with respondent and the United States each allotted 15 minutes of argument time.

Respectfully submitted.

NOEL J. FRANCISCO  
Solicitor General  
Counsel of Record

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