

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-1107

MIKE CARPENTER, INTERIM WARDEN, PETITIONER

v.

PATRICK DWAYNE MURPHY

(CAPITAL CASE)

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. Petitioner has consented to the allocation of ten minutes of its argument time to the United States.

This case presents the question whether the State of Oklahoma had criminal jurisdiction to prosecute respondent, a member of the

Muscogee (Creek) Nation, for murder of another Nation member committed within the boundaries of the Nation's historic territory.

The United States has filed a brief as amicus curiae supporting petitioner, arguing that the State of Oklahoma had criminal jurisdiction over respondent's crime. In particular, the United States argues that the crime did not occur in "Indian country" as defined in 18 U.S.C. 1151(a) because Congress disestablished the historic territory of the Creek Nation when, in preparation for Oklahoma statehood, it passed a series of statutes that broke up the Creek Nation's lands, abolished its courts, greatly circumscribed its governmental authority, applied state law to Indians and non-Indians alike in its territory, provided for allotment of almost all of its communal lands to individual tribal members, distributed tribal funds to individual Indians, and set a time-table for dissolution of the Tribe. Moreover, the United States contends that even if the Creek Nation's former territory might still be recognized in some sense, Oklahoma would have jurisdiction over respondent's crime because Congress granted the State jurisdiction to prosecute crimes involving Indians in the former Indian Territory as part of the series of Acts leading to Oklahoma statehood.

The United States has a substantial interest in the resolution of this case. The court of appeals' holding that all lands within

the original territory of the Creek Nation in Oklahoma constitute a present-day "Indian reservation under the jurisdiction of the United States" -- and therefore qualify as "Indian country" under 18 U.S.C. 1151(a) -- would mean that the federal government, rather than the State, must prosecute crimes committed by or against Indians within that three-million acre area. The United States filed a brief as amicus curiae at the petition stage of this case urging the Court to grant review.

The United States has participated in oral argument as amicus curiae in prior cases considering the allocation of criminal and civil jurisdiction among tribes, States, and the federal government. E.g., Nebraska v. Parker, 136 S. Ct. 1072 (2016); Plains Commerce Bank v. Long Family Land & Cattle Co., 554 U.S. 316 (2008); Nevada v. Hicks, 533 U.S. 353 (2001); South Dakota v. Yankton Sioux Tribe, 522 U.S. 329 (1998); Hagen v. Utah, 510 U.S. 399 (1994); Duro v. Reina, 495 U.S. 676 (1990). The United States' participation in oral argument is therefore likely to be of material assistance to the Court.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

SEPTEMBER 2018