

Nos. 07-7068 & 15-7041

In the United States Court of Appeals for the Tenth Circuit

Patrick Wayne Murphy, Petitioner-Appellant,

v.

Terry Royal, Warden, Oklahoma State Penitentiary, Respondent-Appellee.

On appeal from the United States District Court for the Eastern District of
Oklahoma, Case Nos. 6:03-cv-443 and 6:12-cv-191

**United States' Motion as Amicus Curiae for Extension of Time
to File Brief in Support of Petition for Rehearing**

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The State of Oklahoma has petitioned this Court for panel rehearing or rehearing *en banc* of its August 8, 2017 decision in this matter. The United States is currently evaluating whether to participate as amicus curiae that would address the Court's decision and the State's petition. The decision whether the United States will participate as amicus curiae in the court of appeals is assigned to the Solicitor General of the United States. *See* 28 C.F.R. 0.20(c). That decision has not been made yet, but if the Solicitor General authorizes the filing of a brief by the United States as amicus curiae, the brief will be due on September 28, 2017. The United States hereby moves for a short extension of that deadline of 12 days, to October 10, 2017, for the reasons set out below:

1. Under Fed. R. App. P. 29(b)(5), any brief filed by the United States as *amicus curiae* in support the State's petition is due September 28, 2017.

2. The Court's lengthy opinion addresses the exceedingly complex issue of whether the reservation of the Creek Nation has been disestablished. The parties have already devoted over 150 pages to this question in initial briefing to the Court. The United States has not yet been heard on this issue of substantial import to the federal government.

3. Analysis of the issue presented requires thorough review of no fewer than eight Congressional statutes and years of legislative history and other evidence of contemporaneous Congressional intent.

4. The Court's opinion has important consequences for the United States with respect to law enforcement authority in Oklahoma. The Court has

held that Mr. Murphy's Oklahoma State conviction is invalid and that "[t]he decision whether to prosecute Mr. Murphy in federal court rests with the United States." The Court's decision may also obligate the United States to retry other Indians who have been convicted by the State of crimes that occurred within the original borders of the Creek Nation, as well as shift law enforcement authority from the State to the United States over a significant area that has long been subject to State enforcement. And, while the Court's decision addresses only the Creek Nation Reservation, its reasoning may also be applicable to the reservations of similarly-situated Oklahoma Tribes and thus result in a sea change in law enforcement in nearly all of Eastern Oklahoma.

5. Any brief filed by the United States in support of the State's petition must be reviewed by others in the Department of Justice, including personnel in the Office of the Solicitor General and the three Offices of the United States Attorneys, and then approved by the Assistant Attorney General for the Environment and Natural Resources Division. It will also have to be reviewed by other Federal agencies, including the United States Department of the Interior.

The government has endeavored to complete decision making and preparation of a draft brief for filing if authorized by the Solicitor General by the current due date, but will be unable to meet that deadline due to the press of other commitments coinciding in time with that process in this case. The

requested extension is therefore necessary to enable the United States to make a fully informed decision on whether to participate in this case.

6. Counsel for the respondent-appellee consents to the relief sought by this motion. Counsel for the petitioner-appellant objects to this extension.

For these reasons, the United States respectfully asks the Court to grant it a short, 12-day extension of time to submit a brief as *amicus curiae* in the support of the State's petition for rehearing, from September 28, 2017 to October 10, 2017.

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September 25, 2017
90-12-15031

Certificate of Service

I hereby certify that on September 25, 2017, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ James A. Maysonett

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Certificate of Digital Submission

I hereby certify that with respect to the foregoing:

- (1) all required privacy redactions have been made per 10th Cir. R. 25.5;
- (2) if required to file additional hard copies, that the ECF submission is an exact copy of those documents;
- (3) the digital submissions have been scanned for viruses with the most recent version of a commercial virus scanning program, Microsoft System Center Endpoint Protection (version 1.251.1412.0, updated Sept. 25, 2017) and according to the program are free of viruses.

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