Would it surprise you to learn that more than 750,000 people in Oklahoma, including most Tulsa residents, live on an Indian reservation? That isn’t exactly what the Tenth Circuit held in *Murphy v. Royal*. But it illustrates what is at stake in this case, which the Supreme Court will decide next term.

Patrick Murphy killed George Jacobs. Oklahoma prosecuted Murphy. Per the Major Crimes Act states lacks jurisdiction to prosecute Native Americans who commit murder in “Indian country.” Murphy is Native American. Murphy and Oklahoma disagree over whether the murder took place on a Creek Nation reservation.

By the mid-nineteenth century, treaties with the federal government had given the Creek Nation a vast tract of land in modern Oklahoma. In 1901, the Creek Nation agreed to the allotment of tribal lands. Most of the land went to tribal members.

Per the Major Crimes Act “Indian country” includes “all lands within the limits of any Indian reservation.” Congress may disestablish or diminish Indian reservations. Allotment on its own does not disestablish or diminish a reservation.

In *Solem v. Barlett* (1984) the Supreme Court established a three-part test to determine when Congress has diminished a reservation. First courts “must examine the text of the statute purportedly disestablishing or diminishing the reservation.”

Murphy argues that Congress never diminished the 1866 territorial boundaries of the Creek Nation where the murder took place. The Fifth Circuit agreed. It reviewed eight statutes allotting Creek land and creating the State of Oklahoma. The court concluded that the statutory text “fails to reveal disestablishment.” “Instead, the relevant statutes contain language affirmatively recognizing the Creek Nation’s borders.”

Oklahoma argues the Tenth Circuit failed to fully account for “Oklahoma’s unique history” when deciding Congress didn’t diminish the Creek reservation. “To prepare the Indian Territory for statehood, Congress systematically dismantled tribal governments and their communal ownership of lands.”

As a result of this decision, for the purposes of the Major Crimes Act, the Creek Nation reservation encompass over 4,600 square miles of land. Oklahoma argues that the decision could to apply to half of Oklahoma, which the Five Tribes (Creek, Cherokee, Choctaw, Chickasaw, and Seminole Nations) formerly occupied.

At the time Oklahoma filed its certiorari petition “criminal defendants have invoked the decision, in at least 46 cases in both Oklahoma state and federal courts, arguing that their crimes occurred on a reservation and thus fall outside state jurisdiction.”
Oklahoma acknowledges that the definition of “Indian country” only relates to federal criminal jurisdiction. But it points out that the Supreme Court has recognized “that it also generally applies to questions of civil jurisdiction.”

According to Oklahoma: “[a]bsent this Court’s review, the decision below will open up a Pandora’s Box of questions regarding the State’s regulatory power. For example, the State has limited power to tax tribal members on reservations. Reservation status also calls into question the State’s ability to regulate non-Indians in areas ranging from taxation to natural resources. Likewise, regulatory jurisdiction under major federal environmental statutes could shift from the State to the U.S. Environmental Protection Agency, absent EPA approval to delegate such responsibilities to the State.”

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