

IN THE SUPREME COURT OF THE UNITED STATES

No. 17-532

CLAYVIN HERRERA, PETITIONER

v.

STATE OF WYOMING

ON WRIT OF CERTIORARI
TO THE DISTRICT COURT OF WYOMING,
SHERIDAN COUNTY

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 this Court, the Solicitor General, on behalf of the United States, respectfully moves for leave to participate in the oral argument in this case supporting petitioner and requests that the United States be allowed ten minutes of argument time. Petitioner has consented to an allocation of ten minutes of his argument to the United States.

This case concerns the Crow Tribe of Indians' right under the Second Treaty of Fort Laramie of 1868 to hunt on "unoccupied lands of the United States." Treaty Between the United States of America and the Crow Tribe of Indians (1868 Treaty), May 7, 1868, 15 Stat.

650. The questions presented are whether that right survived Wyoming's admission to the Union and whether the establishment of a National Forest, in and of itself, renders lands within that forest "[]occupied" under the treaty.

The United States has a substantial interest in the proper interpretation of its treaties with Indian tribes, in light of both its status as a party to such treaties and its special relationship with the Indian signatories whose rights such treaties secure. At the Court's invitation, the United States filed a brief as amicus curiae at the petition stage of this case. The United States has also filed a brief as amicus curiae at the merits stage of this case. That brief as amicus curiae supporting petitioner contends that the Crow's right to hunt under the 1868 Treaty was not extinguished by Wyoming's admission to the Union and that lands do not become "[]occupied" under that treaty simply by virtue of becoming part of the National Forest System.

Although the United States is often a party to cases involving questions about the scope of tribal treaty rights, it has also participated as amicus curiae in oral argument in such cases. See, e.g., Washington State Dep't of Licensing v. Cougar Den, Inc., No. 16-1498 (argued Oct. 30, 2018); Oklahoma Tax Comm'n v. Chickasaw Nation, 515 U.S. 450 (1995); South Dakota v. Bourland, 508 U.S. 679 (1993); Puyallup Tribe, Inc. v. Department of Game of Wash., 433 U.S. 165 (1977). The United States' participation in oral argument will provide the Court with the federal perspective

on the questions presented, and division of the argument time will therefore materially assist the Court in its consideration of this case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

NOVEMBER 2018