3-2003

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PREVIEW of United States Supreme Court Cases, pages 368–374. © 2003 American Bar Association.

Case at a Glance

This case stems from the decision of the Inyo County district attorney and the county sheriff to execute a search warrant by entering the Bishop Paiute Reservation in southern California and, over the tribe's objections, seizing its confidential personnel records. The Ninth Circuit held that the county district attorney and county sheriff had violated the tribe's sovereign immunity and were therefore liable along with the county itself for damages under 42 § 1983. The Supreme Court has agreed to review that decision.

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Issue

Are county officials liable for entering tribal land on an Indian reservation and seizing a sovereign Indian tribe's personnel records in the course of executing a search warrant stemming from allegations that individual tribal members employed by the tribe committed welfare fraud?

Facts

On February 14, 2000, the managing personnel of the Paiute Palace Casino, a tribally chartered gaming enterprise owned by the Bishop Paiute Tribe and located on tribally owned land within the boundaries of the Bishop Paiute Reservation in southern California, received a letter from the office of the district attorney of Inyo County requesting the records of three employees—all members of the tribe—suspected of fraudulently receiving state welfare payments in excess of their eligibility. An attorney for the tribe informed the county district attorney that under longstanding tribal policy the records could not be released unless the employees in question gave their written consent. Thereafter a peace officer from the county district attorney's office filed an affidavit in Inyo County Superior Court asserting probable cause to believe the three individuals fraudulently had received state welfare benefits. The county superior court issued a search warrant on March 23, 2000, authorizing search of the casino premises for the limited purpose of permitting the county officials to obtain payroll records for the three employees.

Later that same day, the Inyo County district attorney and the county sheriff entered the casino premises to execute the search warrant. Despite tribal officials' protest

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Docket No. 02-281

Argument Date:
March 31, 2003
From: The Ninth Circuit

that the state did not have jurisdiction to enforce a search warrant against a sovereign Indian tribe, the county officials proceeded to use deadbolt cutters to cut the locks off a secured facility near the casino in which the tribe's confidential personnel records were stored. The county officials seized time card entries, payroll registers, and payroll check stubs as well as quarterly payroll tax information that the tribe previously had submitted to the State of California pursuant to a tribal-state compact negotiated in compliance with the Indian Gaming Regulatory Act, 25 U.S.C. § 2701 *et seq.* The documents seized contained confidential information concerning the three individuals named in the warrant as well as 78 other tribal members employed by the casino. Notwithstanding the search warrant's limited scope, the county officials did not permit the tribe to redact information not specified or identified by the terms and conditions of the warrant. Charges against all three individuals named in the warrant subsequently were dropped for lack of probable cause.

Four months later, the county district attorney sent the tribe another letter requesting the personnel records for six additional tribal members employed at the casino during the period July 1999 through July 2000. Replying to the request, the tribe's attorney informed the county district attorney that the tribe was willing to provide the records without protest if the county would supply the tribe with a redacted copy of the last page of the signed county welfare application for each of the six individuals in question. For the tribe, these signatures constituted evidence of the individuals' consent to release of the information sought by the county, since the signatures indicated that the employment records of welfare assistance applicants were subject to review by county officials. Although honoring the tribe's request would have allowed the county to obtain all the information it sought without forcing a breach of tribal policy, the district attorney refused to accept the condition.

On August 4, 2000, the tribe filed a complaint in federal district court against the county district attorney and county sheriff in their individual and official capacities, seeking declaratory and injunctive relief as well as damages under 42 U.S.C. § 1983 for allegedly violating the tribe's Fourth Amendment rights against unreasonable search and seizure. The U.S. District Court for the Eastern District of California granted the county's motion to dismiss the tribe's complaint. In relevant part the district court held that the county district attorney and county sheriff could not be sued in their official capacities because they had acted as state officials rather than county officials when they secured and executed the search warrant against the tribe and hence were not "persons" subject to damages liability under § 1983. The court held further that the county district attorney and county sheriff had qualified immunity from suit in their personal capacities because their conduct did not violate any clearly established statutory or constitutional right of the tribe. Finally, the court rejected the tribe's claims for injunctive and declaratory relief for an alleged ongoing breach of tribal sovereign immunity because, in the court's view, a proper analysis of tribal sovereign immunity necessitated a judicial balancing of interests in which the county's interest in preventing welfare fraud outweighed the tribe's interest in protecting its right to self-governance.

The U.S. Court of Appeals for the Ninth Circuit reversed in relevant part. The court held that the county district attorney and county sheriff violated the tribe's sovereign immunity—whether conceptualized as a product of interest balancing or application of a per se rule—by obtaining and executing a search warrant against the tribe and its property. The court held further that by violating the tribe's sovereign immunity, the county district attorney and county sheriff, as well as the county itself, were liable for damages under § 1983 because (1) the county district attorney and county sheriff had acted as county officers rather than state officers when they executed the warrant against the tribe, and (2) the county officers were not entitled to qualified immunity since they knew or should have known that executing the warrant in disregard of tribal sovereign immunity violated the tribe's clearly established constitutional right against unreasonable search and seizure. After the Ninth Circuit denied Inyo County's petition for rehearing en banc, the Supreme Court granted its petition for certiorari, limiting review to the issues of (1) whether executing the search warrant violated tribal sovereign immunity; (2) whether such violation is actionable under 42 U.S.C. § 1983; and (3) whether the doctrine of qualified immunity shields the county district attorney and county sheriff from § 1983 liability.

Case Analysis

California, in which Inyo County and the Bishop Paiute Reservation are located and in which the allegedly illegal search and seizure of tribal property took place, is a so-called Public Law 280 state. Public Law 280 was enacted in 1953 as a centerpiece of Congress's then-prevailing "termination" policy, under which Congress sought to extinguish the United States government's longstanding trust obligations

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toward Indian tribes and Indian people. Although Congress eventually repudiated termination (replacing it with a general policy of supporting tribal sovereignty and self-determination), Public Law 280 has not been repealed but instead continues to function as a limited grant of governmental authority to certain states over Indians in Indian country. As one of six "mandatory" Public Law 280 states, California thus is federally authorized to enforce its criminal laws against individual Indians even with respect to crimes alleged to have taken place on tribal land within the boundaries of an Indian reservation.

In the proceedings below, the Ninth Circuit rejected Inyo County's argument that Public Law 280 effected a congressional waiver of tribal sovereign immunity, and the briefs of the parties and their *amici* before the Supreme Court reflect the county's apparent abandonment of this waiver theory. Such a theory would be difficult to reconcile with a unanimous 1976 Supreme Court decision narrowly construing Congress's grant of governmental authority to the states under Public Law 280 and observing that although the statute subjects individual Indians to state criminal jurisdiction, "there is notably absent any conferral of state jurisdiction over the tribes themselves... " *Bryan v. Itasca County,* 426 U.S. 373, 389 (1975). Accordingly, the county now argues that irrespective of Public Law 280, an Indian tribe does not possess sovereign immunity shielding the tribe from execution of a state search warrant issued for the purpose of investigating an alleged crime otherwise within the state's criminal jurisdiction, even when the investigation entails entering tribally owned land within reservation boundaries without the tribe's consent and forcibly seizing property owned by the tribal government itself. Alternatively, the county argues that even if the Bishop Paiute Tribe possesses sovereign immunity from compulsory state-court process, the tribe is entitled only to injunctive relief and not damages under 42 U.S.C. § 1983 because (1) the statute does not apply in this case, and (2) the county officials enjoy qualified immunity from suit.

At the core of this dispute is a disagreement concerning the existence, nature, and scope of tribal sovereign immunity as a bar to compulsory state-court process in Indian country. The tribe maintains—and the Ninth Circuit held—that under established decisions of the Supreme Court and settled principles of Indian law, Indian tribes as sovereign governments are immune from judicial process absent a waiver of immunity by Congress or the tribes themselves. The tribe relies on a series of Supreme Court decisions consistently affirming tribal immunity from state-court orders, including the most recent such decision, *Kiowa Tribe of Oklahoma v. Manufacturing Technologies, Inc.,* 523 U.S. 751 (1998). In *Kiowa Tribe,* the Court held that tribal sovereign immunity shielded an Indian tribe from a commercial contract suit brought in state court, even though the contract was executed off-reservation. Although the Court expressed some concern about "perpetuating the doctrine," it intimated that the decision whether tribal immunity should be limited or otherwise altered is best left to Congress since "Congress is in a position to weigh and accommodate the competing policy concerns and reliance interests." *Id.* at 759. The Bishop Paiute Tribe further argues that *Kiowa Tribe*'s concern about "tribal immunity extend[ing] beyond what is necessary to safeguard tribal self-governance," *id.* at 758, is inapplicable to the present dispute since this case does not involve "purely off-reservation conduct ... that has no meaningful nexus to the tribe's land or its sovereign functions," *id.* at 764 (Stevens, J., dissenting).

Urging reversal of the Ninth Circuit's decision, Inyo County argues that tribal sovereign immunity consists exclusively of immunity from civil suit and does not include immunity from "the execution of process relating to off-reservation violations of state law." Pet. Br. at 32. The tribe counters that under established principles, sovereign immunity protects "the operations of governments and their property from any legal process to which the sovereign has not given its consent." Resp. Br. at 18. The tribe asserts that the Supreme Court's Indian law and sovereign immunity jurisprudence has never recognized the dichotomy between civil and criminal cases advocated by the county, adding that "[f]orcible execution of a search warrant, to which a tribe has no opportunity to object, is even more invasive of tribal sovereignty than a civil subpoena or discovery request which a tribe can oppose, or than civil litigation against it which a tribe can move to dismiss." Resp. Br. at 22.

By arguing that sovereign immunity does not encompass freedom from "the execution of process relating to off-reservation violations of state law," the county apparently assumes that any welfare fraud found to exist in this case properly would be classified as an "off-reservation violation" of state law. Although this assumption has utility in bolstering the county's further argument that tribal sovereign immunity "infringes on the retained sovereign rights of the states" (since states' *on*-reservation criminal jurisdiction over Indians exists solely by virtue of a federal statute), Pet. Br.

at 34, it is unclear whether this assumption is valid or appropriate when *the reservation* as logically may be regarded as the *situs* of the alleged welfare fraud and when Public Law 280 has extended the state's criminal jurisdiction to the on-reservation conduct of individual Indians in any event. The county also argues that because its search warrant was in the form of a directive addressed solely to county officials, the warrant "did not command the [tribe] to affirmatively do anything" and hence the present dispute is distinguished from prior cases in which the Supreme Court has upheld tribal sovereign immunity as protecting tribes from "being haled coercively into court for the purpose of being required to respond to a claim of civil liability. ..." Pet. Br. at 34.

A more involved argument advanced by Inyo County is that an Indian tribe's retained inherent sovereignty is not infringed by subjecting the tribal government and the tribe's own property within reservation boundaries to coercive search and seizure pursuant to a state-court search warrant issued for facilitating an investigation relating to an alleged off-reservation crime. In making this argument the county relies primarily on *Nevada v. Hicks,* 533 U.S. 353 (2001), and assumes once again that the welfare fraud alleged in this case properly may be classified as an alleged off-reservation crime. In *Hicks,* the Supreme Court held that an Indian tribe has no power to adjudicate civil claims brought against state officials for conduct occurring in the course of executing a search warrant against an individual tribal member and his on-reservation property for an alleged off-reservation crime.

Although the issue in *Hicks* was one of tribal governmental authority over state officials who were not tribal members (rather than state authority over the tribe itself), the Hicks Court adopted a mode of analysis that entailed an inquiry into whether tribal power to regulate the conduct of nonmember state officials was necessary to protect the tribe's right to govern itself and control its internal relations. Importing the classic test for determining whether an assertion of state authority in Indian county "infringe[s] on the right of reservation Indians to make their own laws and be ruled by them," *Williams v. Lee,* 358 U.S. 217, 220 (1959), the *Hicks* Court stated that Nevada's interest in executing a search warrant against a tribal member and his property for an alleged off-reservation crime was "considerable" and hence declared that "tribal authority to regulate state officers in executing process related to the violation, off reservation, of state law is not essential to tribal self-government or internal relations. ..." *Hicks,* 533 U.S. at 364.

Describing *Hicks* as "strikingly similar" to the present case, Pet. Br. at 29, Inyo County insists that the fact that the present dispute involves a search warrant executed against a tribal government and the tribe's own property does not distinguish *Hicks*—i.e., that the balancing of competing interests under the infringement test of *Williams v. Lee* in this case once again justifies permitting compulsory state judicial process within reservation boundaries as a tool for enforcing substantive criminal law otherwise within the state's jurisdiction.

The tribe, on the other hand, argues that *Hicks* does not control the present dispute because longstanding principles of Indian law compel the conclusion that tribal self-government is clearly infringed when a state search warrant is forcibly executed against a tribal government or tribal property (as distinguished from an individual tribal member's person or property). The Ninth Circuit had so held, concluding that "even if a balancing test is the appropriate legal framework" (as opposed to the "more categorical approach" reflected in the Supreme Court's tribal sovereign immunity cases), "the balance of interests favors a ruling for the Tribe." *Bishop Paiute Tribe v. County of Inyo,* 291 F.3d 549, 559 (9th Cir. 2002). Consistent with the reasoning of the court of appeals, the tribe argues that the search warrant in this case transgressed the tribe's right to govern itself and control its internal relations "by disrupting the Tribe's ability to control access to its confidential records and operate a vital enterprise on its reservation pursuant to its confidentiality policies." Resp. Br. at 26. The tribe further argues that the county had alternatives at its disposal for obtaining the records that would have avoided a confrontation with the tribe and a forcible violation of the tribe's right of self-government.

Countering the county's reliance on *Nevada v. Hicks,* the tribe argues that *Hicks* "is fully consistent with protecting the tribe from the state court warrant in this case" and that *Hicks* indeed "reinforces that tribes retain inherent authority 'necessary to protect tribal self-government or to control internal relations.'" Resp. Br. at 34 (quoting *Hicks,* 533 U.S. at 359). The tribe observes that none of the 19th-century cases invoked in *Hicks* for recognizing a limited ability of the states to serve process within reservation boundaries—*United States v. Kagama,* 118 U.S. 375 (1886); *Utah & Northern Railway Co. v. Fisher,* 116 U.S. 28 (1885); and *Fort Leavenworth Railway Co. v. Lowe,* 114 U.S. 525 (1885)—permitted interference with tribal governments and tribal prop-

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erty or otherwise "undermine[d] the longstanding rule guarding the right of a tribe, as a government, to be free from state intrusion." Resp. Br. at 34 n.24. The United States as amicus supports the tribe on this crucial issue, stating that the *Hicks* Court "did not suggest that either *Utah & Northern* or *Kagama* would support the issuance of state process running against the Tribe itself or calling for the seizure of property belonging to the Tribe." United States Br. at 19. The tribe argues further that *Hicks* is distinguished because as the Court noted, that case dealt primarily with tribal authority over "a narrow category of outsiders," *Hicks,* 533 U.S. at 371, and did not directly address the issue of a tribe's power to govern itself and its internal relations in the face of coercive assertions of state authority applied directly against the tribal government and tribal property.

A highly contentious issue addressed at length by the parties and all *amici* is whether enforcing state-court process against tribal governments and their property is necessary to prevent Indian reservations from devolving into sanctuaries for harboring criminals and sheltering evidence of off-reservation crime. Inyo County raises the specter of such enclaves of lawlessness in a series of imaginative "what if" scenarios:

> What if the recent Washington D.C. area sniper suspects had taken refuge in a tribal hotel or casino? What if a solo or serial murderer or rapist, child molester, money launderer, drug dealer, or other perpetrator of state crime seeks refuge for himself or the bounty of evidence of his crime in tribal hotels, resorts, or casinos, or within the acreage of tribal casinos or tribal motocross, RV, or other parks? State search and arrest warrants will be meaningless and useless in the search for the suspects, and in searching for the bounty of evidence and instrumentalities of crime—making state sovereignty and state law enforcement activities regarding investigation and prosecution of off-reservation state crimes against our citizens subject to the approval of a multitude of various tribal governments. ...

Pet. Br. at 23-24.

Although the county does not explain how these scenarios relate to the county's specific legal arguments, presumably they are pressed either as concerns to be taken into account in judicially modifying criminal law enforcement policy in Indian country or as factors to be considered in weighing the state's interests against the tribe's under the *Williams v. Lee* test for determining whether the search warrant in this case infringed on tribal self-government.

The tribe and numerous *amici*—including the states of New Mexico, Arizona, Montana, and Washington—vigorously deny the accuracy of the county's depiction of Indian reservations as potential havens of criminal activity and lawlessness. The tribe argues that the existing comprehensive framework of federal, state, and tribal law enforcement on Indian reservations "preclude[s] any danger that reservations could become havens for criminals or criminal activity" and posits that "[i]f any changes in this framework should become necessary, these should be made by Congress." Resp. Br. at 41. An *amicus* brief submitted by the National Congress of American Indians, the National Indian Gaming Association, and 17 tribes asserts that the county's argument is based on "the stereotypical and entirely unsupported premise that, absent the specter of state coercion, Tribes will willingly harbor criminals and conceal evidence," NCAI et al. Br. at 7, and provides numerous examples of tribal-state law enforcement partnerships, extradition codes, and cooperative agreements that contribute to comprehensive law enforcement in Indian country. Likewise, the brief for the states of New Mexico, Arizona, Montana, and Washington notes that those states "prefer to cooperate with tribes and work together in a mutually respectful, government-to-government relationship" and "do not want the Court to be misled by the Petitioners as to the state of law enforcement on Indian lands." New Mexico et al. Br. at 1, 5.

The final overarching issue in dispute is whether any breach of the tribe's sovereign immunity would subject the county to damages liability under 42 U.S.C. § 1983. The county alleges multiple errors in the Ninth Circuit's conclusion that the tribe was entitled to such damages. First, the county argues that the tribe is not a "person" within the meaning of the statute's language rendering eligible for compensatory relief "any citizens of the United States or other person within the jurisdiction thereof." The tribe counters that the issue of whether the tribe is a "person" was not raised in the proceedings below and thus is not properly before the Court. The tribe also challenges the county's reliance on cases addressing whether *states* are covered by the language of § 1983 and observes that the statute's legislative history "gives no indication that Congress intended to exclude Indian tribes from the category of 'persons' capable of bringing an action under the Act." Resp. Br. at 43.

The county next argues that the tribe has failed to allege any Fourth Amendment violation actionable under § 1983. The county asserts

that a breach of tribal sovereign immunity is not equivalent to a constitutionally impermissible search and seizure and that no "clearly established statutory or constitutional rights of which a reasonable person would have known," *Conn v. Gabbert,* 526 U.S. 286, 290 (1999), are at issue in this case to make the county liable in damages, in part because no case has held that Indian tribes are included within the meaning of "the people" as used in the Fourth Amendment or "person" as used in the Fourteenth Amendment. The tribe responds that the Ninth Circuit was correct in concluding that the county had violated the tribe's constitutional rights because in executing the search warrant the county had acted beyond its jurisdiction, and hence its search and seizure of the tribe's property were "unreasonable" with the meaning of the Fourth Amendment. The tribe also urges the Court to reject the county's argument that Indian tribes are outside the scope of the Fourth Amendment term "the people" because the county failed to raise that issue in the proceedings below and thus the issue is not properly before the Court. Moreover, the tribe argues that "infringement of the Tribe's right to self-government and its sovereign immunity are rights under the Constitution and laws of the United States enforceable under Section 1983." Resp. Br. at 46.

Finally, the county argues that compensatory relief under § 1983 is not available to the tribe because the county officials have qualified immunity from suit. The county urges the Court to reverse the Ninth Circuit's contrary holding on this issue, insisting that at the time the search warrant was executed, a reasonable county official could not have known the search was unlawful. The county relies on a passage from *Nevada v. Hicks* indicating that prior to that decision in June 2001, it "was not entirely clear" whether states' off-reservation criminal jurisdiction gave rise to a "corollary right" of states to execute compulsory process within reservation boundaries against individuals accused of committing off-reservation crime. *Hicks,* 533 U.S. at 364. The tribe responds that the Ninth Circuit was correct in concluding that at the time the search was executed, the law concerning tribal sovereign immunity was "clearly established," and hence the county district attorney and county sheriff had "fair warning" of the tribe's rights and accordingly are ineligible for qualified immunity. Resp. Br. at 48-49. The tribe notes that its attorney had advised the county district attorney of the county's lack of jurisdiction at the time the search was forcibly executed, and that less intrusive alternatives were available for the county to obtain the information it sought without violating the tribe's sovereignty.

SIGNIFICANCE

This case is being closely watched because it cuts to the heart of one of the most essential principles of Indian law—federal protection of sovereign tribal governments and their property from state intrusion. The foundational case of *Worcester v. Georgia,* 31 U.S. 515 (1832), resoundingly affirmed the federal government's role in safeguarding Indian tribes and their reserved territories from invasion and dispossession by the states, declaring that Georgia law had no application whatsoever within the territorial boundaries of the Cherokee Nation. Significantly, the Supreme Court in *Worcester* expressly rejected the argument that total and absolute exclusion of state law and process within the boundaries of an Indian reservation effected a "usurpation" of inherent state sovereignty, *id.* at 558, and this holding casts considerable doubt on suggestions advanced by Inyo County and its *amici* that California has a sovereign right to execute a search warrant within the boundaries of the Bishop Paiute Reservation.

Although limited exceptions to *Worcester*'s total exclusion of state authority in Indian country have been recognized by the Supreme Court over the years, the Court repeatedly has affirmed the nation's deeply rooted "policy of leaving Indians free from state jurisdiction and control," *Rice v. Olson,* 324 U.S. 786 (1945), by resolving conflicts over governmental authority in Indian country in a manner consistent with that historic policy in the absence of countermanding congressional policy to the contrary. Indeed, in what is widely regarded as its first modern Indian law case, the Supreme Court in *Williams v. Lee* reiterated that "the basic policy of *Worcester* has remained," 358 U.S. 212, 219 (1959), and subsequent cases—most notably those affirming tribal sovereign immunity—likewise reflect the Court's continuing adherence to the policy of insulating sovereign Indian tribes and their reservations from the intrusion of state law.

The present case tests whether the Supreme Court will continue adhering to its historic policy of protecting tribal governments from state intrusion in the face of arguments about the states' need to coercively penetrate the sovereignty of Indian tribes in order to prevent Indian reservations from becoming a refuge for criminals and havens of lawlessness. While *Nevada v. Hicks* appears to countenance execution of state-court search warrants against individual tribal members and their property within reservation boundaries to facilitate police

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investigations into allegations of off-reservation crime, there are indications in *Hicks* itself that the Court would not be inclined to extend that decision to grant states the authority to disrupt tribal governments and seize tribal property. It would be incongruous, for instance, for the Court to deny the tribe federal court relief in this case when *Hicks* partially justified its denial of tribal court authority over state officials accused of violating a tribal member's rights on tribal land by pointing out that federal courts are available for redressing such violations.

Moreover, despite the Court's unanimity on the narrow issue of the tribal court's jurisdiction, the Supreme Court justices in *Hicks* were divided as to whether a proper balancing of interests had been conducted in concluding that the state's interest in enforcing its off-reservation criminal law outweighed the tribe's interest in ensuring that tribal members and their property within reservation boundaries are free from the imposition of state-court process. Presumably, those justices concerned about whether the *Hicks* majority had imposed a per se rule favoring the state under the guise of pursuing a balancing inquiry would have even greater cause for concern if tribal interests were disregarded in the present case, in which California's avowed interest in maintaining law and order on Indian reservations is rebutted by other states and in view of the fact that the Court itself consistently has protected Indian tribes under a categorical rule of tribal sovereign immunity from being coercively subjected to state-court process.

Thus despite Indian tribes' fears that the Supreme Court's decision in this case may strike another severe blow to tribal sovereignty, the Court instead may use the present dispute between the Bishop Paiute Tribe and Inyo County to revitalize the foundational principles of Indian law by reaffirming limits on the imposition of state law against tribal governments and tribal property within reservation boundaries.

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Amicus Briefs

In Support of Inyo County et al.

California State Sheriffs' Association (Paul R. Coble (714) 446-1400)

Los Angeles County et al. (George M. Palmer (213) 974-3899)

National Sheriffs' Association et al. (John J. Brandt (703) 536-2600)

State of California et al. (Marc A. LeForestier (916) 322-5452)

United States (Theodore B. Olson, Solicitor General, U.S. Department of Justice (202) 514-2217)

In Support of Paiute-Shoshone Indians of the Bishop Community et al.

National Congress of American Indians et al. (Riyaz A. Kanji (734) 769-5400)

New Mexico et al. (Christopher D. Coppin (505) 222-9000)

United South and Eastern Tribes Inc. (William W. Taylor III (202) 778-1800)