No. 02-281

In The

Supreme Court of the United States

INYO COUNTY, A PUBLIC ENTITY; PHIL MCDOWELL, INDIVIDUALLY AND AS DISTRICT ATTORNEY; DAN LUCAS, INDIVIDUALLY AND AS SHERIFF
Petitioners

v.

PAIUTE-SHOSHONE INDIANS OF THE BISHOP COMMUNITY OF THE BISHOP COLONY; AND BISHOP PAIUTE GAMING CORPORATION
Respondents

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

AMICI CURIAE BRIEF OF THE NATIONAL SHERIFFS' ASSOCIATION, ET AL. IN SUPPORT OF PETITIONERS

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AMICI CURIAE BRIEF OF THE NATIONAL SHERIFFS' ASSOCIATION, ET AL. IN SUPPORT OF THE PETITIONERS

The National Sheriffs' Association, et al. respectfully submit this *amici curiae* brief in support of Petitioner, Dan Lucas, individually and as elected Sheriff of Inyo County, California. Pursuant to Supreme Court Rule 37.2.(a), this *amici curiae* brief is filed with the written consent of all the parties.[1]

IDENTITY AND INTEREST OF *AMICI CURIAE*[2]

The National Sheriffs' Association is a § 501(c)(4) non-profit association, formed in 1940, which promotes the fair and efficient administration of criminal justice throughout the United States; and, in particular, in advancing and protecting the Office of Sheriff throughout the United States. The NSA has over 21,000 members, and is the advocate for 3,088 sheriffs throughout the United States.

The National Sheriffs' Association promotes the public interest goals and policies of law enforcement in the nation. The National Sheriffs' Association participates in judicial processes where the vital interests of law enforcement and its members are affected.

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[1] Copies of the consent letters have been filed with the Clerk of the Court. In compliance with the Supreme Court Rule 37.6, NSA represents that no counsel for any party authored this brief in whole or in part, and the following made monetary contribution to assist in the costs of counsel employed to prepare and submit this brief: Western State Sheriffs' Association.

[2] For a list of all of the sheriffs' organizations who join as *amici curiae*, please see Appendix A.

The office of sheriff is one of the oldest publicly elected offices known in the common law system of jurisprudence; and the modern office of sheriff is a peacekeeper and serves and executes official court documents. Throughout the nation, the office of sheriff has retained the responsibility of being the primary law enforcement organization which secures the order and safety of the local community.

In the normal course of his or her civil and criminal duties and jurisdiction, a sheriff or deputy is required, frequently on a daily basis, to serve and execute writs, subpoenas, summonses, search warrants and other facially valid court papers. This Court will not be surprised to learn that, in the course of a year, the Nation's sheriffs and their deputies serve and execute millions of facially valid court papers. The petitioner, Sheriff Lucas, individually and in his official capacity as the elected Sheriff of Inyo County, California, was – through his deputies – carrying out the statutory and constitutional duties of the office of sheriff by assisting in the service and execution of a facially valid search warrant, and is therefore entitled to the defense of qualified immunity under 42 USC § 1983.

The Western States Sheriffs's Association[3] is interested in this *Amici Curiae* brief because of the prevalence of Indian Lands in their jurisdictions. The sheriffs, who are members of more than 30 individual state sheriffs' associations found in Appendix A, are also intensely interested in the important issue of the service and execution of facially valid search warrants.

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[3] The Western States Sheriffs's Association includes Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington and Wyoming.

The *Amici Curiae* believe they can be of material assistance to the Court in this case regarding the sheriff and his deputies' qualified immunity with regard to the service of a facially valid search warrant secured by another. The failure of the Ninth Circuit to sustain the petitioner's defense of qualified immunity, under the facts of this case, could have far-reaching adverse effects on the 3,088 sheriffs in our Nation, if this Court does not reverse.

SUMMARY OF ARGUMENT

This Court should reverse the Ninth Circuit first to conclusively establish that its ruling in *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001) controls the facts of this case. This Court has never ruled on the propriety of the service of a facially valid search warrant on Indian Tribal Governments, their casinos or other offices and for-profit businesses.

Equally as important, this Court should reverse the clearly erroneous opinion of the Ninth Circuit regarding the doctrine of qualified immunity. In this case, Sheriff Lucas and his deputies should have been afforded qualified immunity, particularly since they were assisting with a facially valid search warrant which had previously been obtained and actually served by the Inyo County D.A.'s office.

It is the failure of the Ninth Circuit to recognize the doctrine of qualified immunity, when the search warrant was facially valid, which is the focal point of this *Amici Curiae* brief. This is particularly true in light of *Saucier v. Katz*, 533 U.S. 194, 121 S. Ct. 2151, 150 L. Ed. 2d 272 (2001), where this Court recently reversed another Ninth Circuit holding which failed to appreciate the proper contours of qualified immunity.

ARGUMENT

THE PETITIONER SHERIFF AND HIS DEPUTIES WERE ENTITLED TO QUALIFIED IMMUNITY REGARDING A FACIALLY VALID SEARCH WARRANT

Three Paiute-Shoshone Indians, working as employees at the for-profit enterprise at the Paiute Palace Casino("Casino"), in Inyo County, California, failed to report income received as wages from the Casino and, as such, violated California state law because they were concurrently receiving wages and public welfare assistance from the state.

Investigator Leslie Nixon, of the Inyo County District Attorney's Office, requested the employees' payroll documents from the Casino, but was denied. Therefore, she obtained a search warrant from the California Superior Court which authorized a search for the three employees' records at the Casino. When investigator Nixon attempted to execute the search warrant, the Casino rebuffed her by claiming sovereign immunity and denying her access to an out-building where the employee records were actually located.

Investigator Nixon then called the office of Sheriff Lucas; and deputies were dispatched to assist and to maintain peace and good order at the Casino. The deputies inspected the search warrant, concluded it was facially valid, and secured bolt cutters, which were then used to cut the padlock, whereupon the appropriate records were seized by Nixon.

The Paiute-Shoshone lost a declaratory judgment/ injunctive relief case in the U.S. District Court, but that decision was appealed and reversed by the Ninth Circuit, which also countenanced the right of the tribe to seek a money

judgment against Sheriff Lucas and his deputies under the federal civil rights statute, 42 U.S.C. § 1983.

A. Background of Qualified Immunity

The doctrine of qualified immunity provides a full defense if a defendant's conduct did ". . . not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818, 102 S. Ct. 2727, 2738, 73 L. Ed. 2d 396, 410 (1982). (Emphasis added.) Officials are not liable for bad guesses in gray areas; they are only liable for transgressing bright lines.

The district court below was correct when it concluded that ". . . the sheriff has qualified immunity because his department merely executed a facially valid search warrant signed by the magistrate." *Petition for Writ of Certiorari*, Appendix A, p. 58a.

In *Saucier v. Katz*, *supra*, this Court again visited the important doctrine of qualified immunity and, in reversing the same Ninth Circuit whose ruling brings us here, this Court clearly enunciated a two-step qualified immunity test:

1. Did the official violate a constitutional right (viewing the facts in a light most favorable to the plaintiff)?

2. Assuming the trial court answers question one affirmatively,[4] was the constitutional right clearly established in the specific context of the case that a

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[4] As the *Saucier* Court pointed out, if a trial court cannot establish a constitutional violation, then there is no further inquiry required and the official prevails. *Saucier*, *supra* at 201, 121 S. Ct. at 2156, 150 L. Ed. 2d at 281.

reasonable official would understand that what he or she is doing violates that right[5]

This Court has also written that the privilege ". . . is an immunity from suit rather than a mere defense to liability; and like an absolute immunity, it is effectively lost if a case is erroneously permitted to go to trial." *Mitchell v. Forsyth*, 472 U.S. 511, 526, 105 S. Ct. 2806, 2815, 86 L. Ed. 2d 411, 425 (1985). (Emphasis in original.) As a result, " . . . we repeatedly have stressed the importance of resolving immunity at the earliest possible stage in litigation." *Hunter v. Bryant*, *supra* at 227, 112 S. Ct. at 536, 116 L. Ed. 2d at 595.

B. The Ninth Circuit Erroneously Concluded That Respondents Had A Right To Be Free From A Facially Valid Search Warrant

Incorrectly citing *United States v. James* , 980 F.2d 1314 (9th Cir. 1992), *cert. denied*, 510 U.S. 838, 114 S. Ct. 119, 126 L. Ed. 2d 84 (1993) as the basis for finding that the respondents' constitutional rights were violated by petitioners, the Ninth Circuit ignored the controlling law of *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001). If the Ninth Circuit had correctly followed the *Nevada* decision, it would not have declared a violation of any constitutional rights by Sheriff Lucas or his deputies; and the district court's ruling would have been summarily affirmed.

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[5] Importantly, where a state official is accused of a violation of a citizen's "rights," this Court requires that a plaintiff "particularize" the right so that "The contours of the right . . . [are] sufficiently clear that a reasonable official would understand that what he is doing violates that right." *Anderson v. Creighton*, 483 U.S. 635, 640, 107 S. Ct. 3034, 3039, 97 L. Ed.2d 523, 531 (1987).

The Ninth Circuit's ruling to the contrary should be corrected by this Court.

C. Respondents Had No Clearly Established Fourth Amendment Rights, Cognizable By A Reasonable Sheriff, To Avoid A Facially Valid Search Warrant

Assuming, *arguendo*, that respondents had a constitutional right to be free from the search warrant, was the second test satisfied, *i.e.*, was that right "clearly established," such that a reasonable sheriff, or his deputies, would have understood that the search warrant violated respondents' Fourth Amendment rights particularized to the facts of this case? The answer is "no" because in *Baker v. McCollan*, 443 U.S. 137, 99 S. Ct. 2689, 61 L. Ed. 2d 433 (1979), this Court established that there was no constitutional right implicated by the mistaken arrest of a citizen, so long as the officer possessed a facially valid arrest warrant.

This Court found that a sheriff, executing such an arrest warrant, was not " . . . required by the Constitution to investigate independently every claim of innocence whether the claim is based on mistaken identity or a defense such as lack of requisite interest." *Id.* at 145-46, 99 S. Ct. at 2695, 61 L. Ed. 2d at 442.

Respondents citation to *Malley v. Briggs*, 475 U.S. 335, 106 S. Ct. 1092, 89 L. Ed. 2d 271 (1986) and *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405, 82 L. Ed. 2d 677 (1984) are not to the contrary. Indeed,*Malley* proclaims that qualified immunity protects ". . . all but the plainly incompetent or those who knowingly violate the law." *Id.* at 341, 106 S. Ct. at 1096, 89 L. Ed. 2d at 278. *Malley* did not deny qualified immunity to a police officer who arrested with a warrant; it simply remanded for a determination whether the officer acted with

objective reasonableness. The *Leon* decision supports petitioners because the Court found that a police officer's reliance, on a magistrate's determination of probable cause for a search warrant, was objectively reasonable.

1. The Ninth Circuit Erroneously Concluded That Fourth Amendment Law Under the Facts Of This Case Clearly Prohibited The Sheriff And His Deputies From Acting Pursuant To A Facially Valid Search Warrant

As petitioners correctly argue, *Nevada v. Hicks*, 533 U.S. 353, 121 S. Ct. 2304, 150 L. Ed. 2d 398 (2001) controls this case and, inexplicably, was ignored by the Ninth Circuit. That simple circumstance requires reversal.

It is apparent that the Ninth Circuit was wrong when it concluded that a reasonable sheriff would certainly have realized that respondents' Fourth Amendment rights were clearly established to prevent the use of a facially valid search warrant on tribal property even if it be for off-reservation criminal activity.

If one is to argue that Sheriff Lucas cannot access *Hicks* itself for his qualified immunity,[6] he should surely yield to the several cases cited by *Hicks* in support of this Court's eventual ruling. Thus, the case of *Washington v. Confederated Tribes of Colville Reservation*, 447 U.S. 134, 151, 100 S. Ct. 2069, 2080, 65 L. Ed. 2d 10, 27-28 (1980) was cited by Justice Scalia for the proposition that a state can impose minor burdens on an

[6] Since the operative facts of this case occurred before the *Hicks* decision, respondents may arguably contend that there was no clearly identified case which demonstrated qualified immunity for the sheriff and his deputies.

Indian retailer to assist in collecting taxes. He also cited *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 148-49, 93 S. Ct. 1267, 1270, 36 L. Ed. 2d 114, 119 (1973) for the proposition that off-reservation crimes subject Indians to state criminal jurisdiction.

If this Court was able to conclude in *Hicks* that a state official could enter tribal lands to execute a search warrant against a tribe member suspected of having violated state law outside the reservation, then the Ninth Circuit should have been able to understand that petitioners reasonably believed that Fourth Amendment law was not clearly established to prevent using a facially valid search warrant on tribal property related to off-reservation crimes.

2. The Responsibility Of The Sheriff And His Deputies Is Not Measured By The Collective Hindsight Of The Ninth Circuit

The legal duty imposed upon Sheriff Lucas and his deputies to comply with constitutional requirements is measured by the knowledge of an objectively reasonable sheriff or his deputies. Furthermore, the actual knowledge of Sheriff Lucas and his deputies should be evaluated contemporaneously under the facts and circumstances of this case, and not by the selective hindsight of skilled attorneys and learned judges. As this Court enunciated in *Anderson v. Creighton*, 483 U.S. 635, 641, 107 S. Ct. 3034, 3039, 97 L. Ed. 2d 523, 531 (1987), generalities in the law do not measure the defense of qualified immunity; the rights, which an official is accused of violating, must be sufficiently concrete that a reasonable official would comprehend that he is truly violating a person's constitutional rights. ". . . [I]n the light of pre-existing law the unlawfulness must be apparent." *Ibid.*

The controlling "pre-existing law" are the U.S. Supreme Court decisions cited by Justice Scalia in *Hicks*, as discussed *supra*. These decisions would not dissuade the Sheriff and his deputies from acting upon a facially valid search warrant; they would have encouraged them toward the conduct they pursued.

Since *McCollan* protects state officials who serve facially valid arrest warrants which deprive persons of their liberty, it is even more appropriate that sheriffs and their deputies should be further protected when they serve facially valid search warrants which deprive persons only of their property. As such, the petitioners here are entitled to qualified immunity because respondents have no clearly established constitutional right to avoid a facially valid search warrant. *See e.g.*, *Aleotti v. Baars*, 896 F. Supp. 1, 6 (D.D.C. 1995), *aff'd*, 107 F.3d 922 (1996).

3. The Petitioner Sheriff And His Deputies Reasonably Did Not Believe They Were Violating Respondents' Fourth Amendment Rights

The Ninth Circuit erroneously ruled that Sheriff Lucas could not reasonably have believed that he was not violating respondents' Fourth Amendment rights. The facts of this case do not support that finding.

First of all, Sheriff Lucas was not even on the scene; secondly, his deputies were called by investigator Nixon after she secured the facially valid warrant from the California Superior Court, and became concerned about a possible disturbance of the peace at the Casino. The deputies arrived, viewed the facially valid search warrant, which related to an alleged violation of a state welfare fraud penal statute, and expressed their belief that it was proper.

The actions undertaken by Sheriff Lucas' deputies were objectively reasonable, as a matter of law, because the deputies correctly perceived "all of the relevant facts," and even if this Court finds that the deputies had a "mistaken understanding" whether the facially valid search warrant was "legal in those circumstances," such a mistake was reasonable and "the officer is entitled to the immunity defense." *Saucier* at 205, 121 S. Ct. at 2158, 150 L. Ed. 2d at 284.

In this day and age, where innumerable facially valid search warrants must be served daily by sheriffs' offices throughout the country, sheriffs and their deputies must not be "chilled" from doing what in the normal course of their duties appears to be reasonable. It is submitted that nothing is more reasonable than serving a facially valid search warrant.

CONCLUSION

Unless this Court reverses the Ninth Circuit's decision to deny Sheriff Dan Lucas and his deputies the defense of qualified immunity – a ruling which squarely conflicts with the bright line tests of *Saucier* – all of our Nation's sheriffs, and their deputies, will be unable to perform daily their constitutional and statutory duties with any degree of regularity or confidence.

Because the Ninth Circuit erroneously denied qualified immunity regarding a facially valid search warrant to Sheriff Lucas and his deputies, this Court should now reverse the Ninth Circuit's ruling and reinstate the District Court's grant of qualified immunity to Sheriff Dan Lucas.

Respectfully submitted,

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Dated: January 22, 2003

APPENDIX

APPENDIX A

LIST OF SHERIFFS' ORGANIZATIONS WHO JOIN IN THIS *AMICI CURIAE* BRIEF

National Sheriffs' Association
1450 Duke Street
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Western States Sheriffs' Association
4718 Ponderosa Drive
Carson City, NV 89701-6735
Includes: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington and Wyoming

Alabama Sheriffs' Association
514 Washington Avenue
Montgomery, AL 36104-4385

Arizona Sheriffs' Association
1109 Arizona Avenue
Parker, AZ 85344-5743

Arkansas Sheriffs' Association
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Tallahassee, FL 32317-2519

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Stockbridge, GA 30281-1000

Idaho Sheriffs' Association
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Michigan State Sheriffs' Association
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Minnesota State Sheriffs' Association
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South St. Paul, MN 55075

Missouri Sheriffs' Association
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Jefferson City, MO 65101

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Helena, MT 59601

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New Hampshire Sheriffs' Association
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Dover, NH 03821-1218

New Jersey State Sheriffs' Association
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New Mexico Sheriffs' & Police Association
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