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 PETITION FOR 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

John J. Brandt*
**Counsel of Record*
James R. Parrish
BRANDT, JENNINGS, ROBERTS, DAVIS & SNEE, PLLC
6565 Arlington Boulevard
Suite 200
Falls Church, Virginia 22042
(703) 536-2500
(703) 536-2600 (facsimile)

Attorneys for *Amici Curiae*

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Statutes:

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 country. The National Sheriffs' Association participates in judicial processes where the vital interests of its members are affected.

---

[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 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 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 several 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' 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 state associations found in Appendix A, are also intensely interested in the important issue of the service and execution of facially valid search warrants.

---

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

The *Amici Curiae* believe they can be of assistance to the Court in this case regarding the sheriff and his deputies' qualified immunity surrounding 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 membership of the National Sheriffs' Association if this Court does not reverse.

REASON FOR GRANTING CERTIORARI

This Court should grant *certiorari* 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 businesses.

Equally as important, this Court should reverse the 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 served by investigator Nixon.

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 Paiute Palace 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. The deputies inspected the search warrant, concluded it was facially valid, and secured bolt cutters, which the assistant DA 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 the Sheriff 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 liable for transgressing bright lines and qualified immunity "'. . . protects all but the plainly incompetent . . . .'" *Hunter v. Bryant*, 502 U.S. 224, 229, 112 S. Ct. 534, 537, 116 L. Ed. 2d 589, 596 (1991) (*per curiam*) (citations omitted).

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 three-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?[5]

3. If the official makes a mistake about what is legal, was such a mistake reasonable under the circumstances facing the official?

This Court also reminded 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

---

[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.

[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).

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). By so doing, the Ninth Circuit erred by directly contravening both *Nevada* and *Saucier*. Had the Ninth Circuit correctly followed the *Nevada* decision, it would have declared no violation of any constitutional rights by the sheriff or his deputies; and the district court's ruling would have been summarily affirmed.

In *Nevada*, this Court held that state officers were permitted " . . . to investigate or prosecute violations of state law occurring off the reservation." *Id.* at 365-66, 121 S. Ct. at 2313, 150 L. Ed. 2d at 411. This is the fact pattern existant here, namely that the search warrant was served because of a violation – off reservation – of California state criminal law. *Nevada* held that there is no tribal sovereign immunity which would permit a court to prohibit the search of its property for criminal evidence of "off-reservation" state crime.

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

C. Respondents Had No Clearly Established Right To Avoid Service Of A Facially Valid Search Warrant And Therefore Petitioner Was Entitled To Qualified Immunity

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?" 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.

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 be 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).

D. The Petitioner Sheriff Or His Deputies Could Reasonably Have Believed That They Were Not Violating Respondents' Fourth Amendment Rights

The third test of the qualified immunity doctrine holds that if a reasonable person standing in the shoes of the sheriff or his deputies would not have known that his conduct was constitutionally impermissible, then qualified immunity protects them. *Harlow v. Fitzgerald*, *supra* at 818, 102 S. Ct. at 2738, 93 L. Ed. 2d at 410. However, the Ninth Circuit erroneously ruled that the Sheriff could not reasonably have believed that he was not violating respondents' Fourth Amendment rights. The facts 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. The deputies arrived, viewed the facially valid search warrant and expressed their belief that it was proper.

These actions by sheriff's deputies were 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 to them appears 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* – thousands of this Nation's sheriffs will be unable to perform daily their constitutional and statutory duties with any degree of confidence.

Because the Ninth Circuit erroneously denied the sheriff and his deputies qualified immunity regarding a facially valid

search warrant, this Court should grant the Petition for Writ of Certiorari.

Respectfully submitted,

JOHN J. BRANDT*
**Counsel of Record*
JAMES R. PARRISH
BRANDT, JENNINGS, ROBERTS,
DAVIS & SNEE, PLLC
6565 Arlington Blvd., Suite 200
Falls Church, Virginia 22042
(703) 536-2500
(703) 536-2600 (facsimile)

Attorneys for *Amici Curiae*

Dated: October 21, 2002

APPENDIX

APPENDIX A

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

National Sheriffs' Association
1450 Duke Street
Alexandria, VA 22314

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
1 Sheriffs Lane
North Little Rock, AR 72114

County Sheriffs' of Colorado, Inc
9008 North US Hwy 85, Bldg. C
Littleton, CO 80125

Florida Sheriffs' Association
PO Box 12519
Tallahassee, FL 32317-2519

Georgia Sheriffs' Association
3000 Hwy 42 N
P.O. Box 1000
Stockbridge, GA 30281-1000

Idaho Sheriffs' Association
PO Box 636
Pocatello, ID 83204

Illinois Sheriffs' Association
2626 East Andrew Road
P.O. Box 263
Sherman, IL 62684-0263

Indiana Sheriffs' Association
7215 East 21st Street, Ste. E
P.O. Box 19127
Indianapolis, IN 46219

Iowa State Sheriffs' & Deputies' Association
P.O. Box 536
Atlantic, IA 50022-0526

Kentucky Sheriffs' Boys and Girls Ranch
2367 Valley Vista Road
Louisville, KY 40205

Louisiana Sheriffs' Association
1175 Nicholson Drive
Baton Rouge, LA 70802

Maryland Sheriffs' Association
12 Francis Street
P.O. Box 511
Annapolis, MD 21404-1714

Massachusetts Sheriffs' Association
200 Nashua Street
Boston, MA 02114

Michigan State Sheriffs' Association
515 North Capitol Avenue
Lansing, MI 48933

Minnesota State Sheriffs' Association
1210 South Concord Street
South St. Paul, MN 55075

Missouri Sheriffs' Association
229 Madison Street
Jefferson City, MO 65101

Montana Sheriffs' & Peace Officers' Association
34 West Sixth Avenue
Helena, MT 59601

Nebraska Sheriffs' Association
PO Box 81822
Lincoln, NE 68501-1822

New Hampshire Sheriffs' Association
270 County Farm Road
PO Box 1218
Dover, NH 03821-1218

New Jersey State Sheriffs' Association
Post Office Box 47
Camden, NJ 08101

New Mexico Sheriffs' & Police Association
P.O. Box 37068
Albuquerque, NM 87176

New York State Sheriffs' Association
27 Elk Street
Albany, NY 12207

North Carolina Sheriffs' Association
3709 National Drive, Ste. 101
P.O. Box 20049
Raleigh, NC 27619-0049

Ohio - Buckeye State Sheriffs' Association
6230 Busch Blvd., Ste. 260
Columbus, OH 43229

Oklahoma Sheriffs' Association
P.O. Box 1094
Norman, OK 73070

Oregon State Sheriffs' Association
PO Box 2313
Salem, OR 97308

Pennsylvania Sheriffs' Association
P.O. Box 61857
Harrisburg, PA 17106-1857

South Carolina Sheriffs' Association
7338 Broad River Road
Irmo, SC 29063

Sheriffs' Association of Texas
1601 South Interstate Hwy 35
Austin, TX 78741-2503

Utah Sheriffs' Association
P.O. Box 489
Santa Clara, UT 84765

Vermont Sheriffs' Association
12 Baldwin Street, Drawer 33
Montpelier, VT 05601

Virginia Sheriffs' Association
701 East Franklin Street, Ste. 706
Richmond, VA 23219-2512

Washington Association of Sheriffs and Police Chiefs
2629 12th Ct. SW
P.O. Box 826
Olympia, WA 98507-0826