No. 03-764

IN THE

Supreme Court of the United States

CALVERT TURLEY, *et al.*,

Petitioners,

v.

DANIEL EDDY, JR., *et al.*,

Respondents.

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

BRIEF IN OPPOSITION

ERIC N. SHEPARD
COLORADO RIVER INDIAN TRIBES
Office of the Attorney General
Route 1, Box 230B
Parker, AZ 85344
(928) 669-1271

ELLISON FOLK
Counsel of Record
MARK I. WEINBERGER
BRIAN J. JOHNSON
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, CA 94102
(415) 552-7272

Attorneys for Respondents

185128

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

QUESTIONS PRESENTED

1. Whether the court of appeals properly determined that an action against certain officials of the Colorado River Indian Tribes ("the Tribe") challenging tribal jurisdiction over those portions of the Colorado River Indian Reservation ("the Reservation") located within the State of California cannot proceed in the absence of the Tribe and must be dismissed because the Tribe retains sovereign immunity from a suit seeking to deprive the Tribe of jurisdiction over land that the United States determined is part of the Reservation and held in trust for the benefit of the Tribe.

2. Whether the court of appeals properly determined that an action seeking to overturn a 1969 determination by the United States that certain lands are part of the Reservation and held in trust for the benefit of the Tribe cannot proceed in the absence of the United States and must be dismissed because the United States has specifically retained sovereign immunity from actions affecting its interest in trust or restricted Indian property.

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Respondents Daniel Eddy, Jr., *et al.*, (collectively, "Respondents"), respectfully request that this Court deny the Petition for a Writ of Certiorari seeking review of the decision of the United States Court of Appeals for the Ninth Circuit in this case.

STATEMENT OF THE CASE

The petition does not reflect the facts of the case or the legal questions that it presents. At issue in this litigation is an area known as the Western Boundary lands (referred to by Petitioners as the West Bank), which the United States determined are part of the Colorado River Indian Reservation ("the Reservation"), held in trust by the United States for the benefit of the Colorado River Indian Tribes ("the Tribe" or "CRIT"). Since 1969, the United States and the Tribe have treated the Western Boundary lands as tribal land and Petitioners, who are former tenants in the Western Boundary, all signed permits explicitly recognizing that the land they occupied is Reservation land subject to the jurisdiction of the Tribe. Notwithstanding this acknowledgment, Petitioners filed suit against some members of the Tribal Council seeking a judicial determination that, pursuant to the so-called Four Reservations Act of April 8, 1864 and other authorities, the Reservation does not and cannot include the Western Boundary, or any other land located in California.

Since Petitioners' action would affect the interests of both the United States and the Tribe in the Reservation, the district court found that the Tribe and the United States were necessary and indispensable parties to the litigation pursuant to Rule 19 of the Federal Rules of Civil Procedure. Finding that both parties retain sovereign immunity from suits that seek to define the boundaries of an Indian reservation and

therefore, could not be joined, the district court dismissed Petitioners' case. The court of appeals upheld this determination in an unpublished memorandum decision and rejected the request for rehearing and rehearing en banc. Not a single judge on the Ninth Circuit voted to hear Petitioners' request for rehearing.

Although it purports to raise a series of questions regarding the scope of tribal sovereign immunity, the petition is little more than an attempt by holdover tenants to circumvent the Tribe's authority to evict Petitioners for failure to pay rent and otherwise comply with the terms of their permits. Ironically, as the district court recognized, even if Petitioners were to prevail, their action would do nothing to remedy their alleged harm, but would simply transfer jurisdiction over the Western Boundary to the United States Bureau of Land Management ("BLM"). While Petitioners might prefer to subject themselves to the jurisdiction of the BLM, they cannot do so by an action that would redefine the boundaries of an Indian reservation to exclude lands that the United States, the Tribe and they themselves have all acknowledged are part of that very same reservation. The district court's and circuit court's decisions expressly recognize this legal reality and these decisions should not be disturbed.

BACKGROUND

A. The Colorado River Indian Reservation.

The Reservation "was originally created by an Act of Congress in 1865, but its area was later increased by Executive Order." *Arizona v. California*, 373 U.S. 546, 596 (1963) ("*Arizona I*") (internal footnotes omitted). In 1969,

the United States Department of the Interior determined that the correct boundary of the Reservation as established by Congress and the executive orders includes the land known as the Western Boundary. Petition ("Pet.") at 8; *see* Petition Appendix ("Pet. App.") at 10a, 14a; *see also* Supplemental Excerpts of Record of Defendants and Appellees ("SER") at 19-20 (1969 survey order).[1] The Western Boundary lands are therefore part of the Reservation, held in trust by the United States for the benefit of the Tribe. *See* Pet. App. at 14a; SER at 20. Since 1969, and without interruption, both the United States and the Tribe have acted in accordance with the United States' 1969 boundary determination. Pet. App. at 10a; *see id.* at 14a.[2]

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1. The district court relied in part on the 1969 survey order and Petitioners' tribal permits; these documents are contained in the Supplemental Excerpts of Record lodged with the court of appeals.

2. Although the Western Boundary is among the most recent California land to be recognized as part of the Reservation, it is not the first. *See, e.g.*, *Arizona I*, 373 U.S. at 595-96 (describing the Reservation, "located partly in Arizona and partly in California"); *Arizona v. California*, 439 U.S. 419, 428 (1979) (*Arizona I* supplemental decree establishing water rights for Reservation lands in California as of the dates of 1873, 1874 and 1876 executive orders); *Colorado River Indian Tribes v. Town of Parker*, 705 F. Supp. 473, 473 (D. Ariz. 1989) (quoting 1908 act of Congress appropriating funds for "the Colorado River Indian Reservation in California and Arizona"). Even the title of the Act of April 30, 1964, which Petitioners cite for the proposition that the Reservation *cannot* extend into California, describes the Reservation "located in the States of Arizona and California." Pet. App. at 25a.

B. The Petitioners and the Instant Dispute.

Petitioners were residents of developments located on the Reservation pursuant to use permits issued by the Tribe. Pet. App. at 5a. By signing the permits, Petitioners specifically acknowledged the legal status of the lands at issue in this case:

> Applicant hereby acknowledges that the title and right to possession of said lands is and has at all times during applicant's past occupancy and/or use thereof been vested in the United States of America, hereinafter referred to as United States, now held in trust for the [Colorado River Indian Tribes].

SER at 64, 67, 70, 77 (permits); *see* Pet. App. at 10a.

When the Tribe terminated Petitioners' permits and gave Petitioners notice to vacate the premises, Petitioners filed the instant action challenging the Tribe's authority to govern the Western Boundary and other lands in California. *See* Pet. App. at 5a. Specifically, Petitioners filed suit against seven then-members of the Tribal Council and one employee of an economic enterprise owned by the Tribe. *See* Pet. App. at 5a. As the district court noted, Petitioners seek a declaration that (1) the "'Four Reservations Act . . . precludes any expansion of the [CRIT] Reservation into the State of California;'" (2) the "'1865 Act [establishing the CRIT Reservation] precludes any expansion of the [CRIT] Reservation into the State of California;'" and (3) the "'actions of the defendants in asserting tribal jurisdiction over the plaintiffs and the West Bank Lands are contrary to federal law and beyond CRIT's sovereignty;'" and also an injunction

prohibiting defendants "'from asserting that the CRIT reservation extends into the State of California and from undertaking any exercise of tribal reservation jurisdiction within California.'" Pet. App. 9a (district court order, quoting complaint) (parentheses by the court).

C. The Rulings Below.

The district court granted defendants' motion to dismiss. Pet. App. at 4a-15a. In an unpublished order, the court concluded that, because the action seeks to define the boundaries of the Reservation, both the Tribe and the United States are necessary and indispensable parties under Rule 19 and neither the Tribe nor the United States can be joined because they retain sovereign immunity with respect to the suit. *Id.* at 14a-15a. The court found that both the Tribe and the United States have long considered the Western Boundary to be part of the Reservation. Pet. App. at 10a; *see id.* at 14a. Moreover, the district court found that Petitioners relied on the same determination when they obtained permits from the Tribe. *Id.* at 10a. Before the district court, Petitioners "conceded that Plaintiffs are holdover tenants and have no right to possess or occupy" the developments. *Id.* at 6a n.2. The district court noted that "[a]s holdover tenants, Plaintiffs' acknowledge that they can be lawfully evicted," but they argue that only the United States, and not the Tribe, can evict them. *Id.* Under these circumstances, the court concluded that the Tribe and the United States claim an interest in whether the land is part of the Reservation and are therefore necessary and indispensable parties to a suit seeking to define the Reservation boundary otherwise. *Id.* at 10a, 14a.

The court of appeals, after determining that the case was suitable for decision without oral argument, determined that the district court did not abuse its discretion and affirmed. *Id.* at 1a-3a.

REASONS FOR DENYING THE PETITION

The petition fails to identify any basis upon which this Court should grant review. The lower courts' rulings do not conflict with any decision of this Court or any circuit court, and do not present any unsettled issues of law. Indeed, Petitioners have cited no federal case—and Respondents are aware of none—that has ever allowed a suit similar to the present one to proceed against either a tribe or tribal officials, where the requested relief would have the effect of determining the boundaries of a reservation or a tribe's right to govern a particular area.

Lacking any rationale for this Court's review, Petitioners misrepresent the facts of the dispute, the rulings below, and the decisions of this and other courts. Most significantly, Petitioners claim repeatedly that this Court must hear the case in order to determine whether a tribe may "unilaterally expand" a reservation without fear of judicial review. Pet. at 5; *see id.* at 4, 13-14. While that may be an interesting question, it is not a question presented by this case. Here, the United States, not the Tribe or its officials, determined that the Reservation includes the Western Boundary.

Thus, contrary to Petitioners' claim that the courts below "dismissed the case on sovereign immunity grounds without inquiry as to the scope of tribal sovereignty," (Pet. at 3), the district court dismissed the case (and the circuit court affirmed) because both the United States and the Tribe claim

an interest in the Western Boundary, based on the United States' determination that the Western Boundary is part of the Reservation. Pet. App. at 14a; *see id.* at 2a. Under well-established precedent, both the Tribe and the United States are necessary and indispensable parties to a judicial proceeding that seeks, in effect, to overturn that determination.

I. Petitioners Do Not Present Any Issue Warranting This Court's Review of the Determination That the Tribe Is a Necessary and Indispensable Party.

As the district court recognized, Petitioners' action would terminate tribal governance over the Western Boundary and therefore would directly impair the Tribe's sovereign interests. *See* Pet. App. at 10a, 12a-14a. The district court determined that the Tribe is a necessary party under both Rule 19(a)(1), because in the Tribe's absence "complete relief cannot be accorded" and Rule 19(a)(2)(i), because the Tribe claims a legally protected interest in the action such that disposition in the Tribe's absence may, "as a practical matter impair or impede" the Tribe's ability to protect that interest. Pet. App. at 7a-10a; *see* Fed. R. Civ. P. 19(a).

The district court's analysis is consistent with all of the relevant legal precedent, including those cases cited by Petitioners. *Dawavendewa v. Salt River Project Agric. Improvement & Power Dist.*, 276 F.3d 1150, 1153 (9th Cir. 2002), *cert. denied*, 537 U.S. 820 (2002) (dismissing case seeking to challenge a hiring preference instituted by a private firm pursuant to tribal rules because tribe is necessary and indispensable party); *Tamiami Partners, Ltd. v. Miccosukee Tribe*, 177 F.3d 1212, 1225-26 (11th Cir. 1999) (dismissing claims against tribal officials because relief against the

officials would require action by the sovereign); *Imperial Granite Co. v. Pala Band of Mission Indians*, 940 F.2d 1269, 1271-72 (9th Cir. 1991) (dismissing suit seeking relief from allegedly unlawful closure of an access road for which plaintiff claimed an easement); *Alaska v. Native Village of Venetie*, 856 F.2d 1384, 1387 (9th Cir. 1988) (declining to reach issue of sovereign immunity); *Snow v. Quinault Indian Nation*, 709 F.2d 1319, 1321-22 (9th Cir. 1983) (citing *Swift Transp., Inc. v. John*, 546 F. Supp. 1185, 1188 (D. Ariz. 1982)) (dismissing claims by non-Indian business owners against a tribe); *see also Davis v. United States*, 343 F.3d 1282, 1294 (10th Cir. 2003); *American Greyhound Racing, Inc. v. Hull*, 305 F.3d 1015, 1025 (9th Cir. 2002); *Citizen Potawatomi Nation v. Norton*, 248 F.3d 993, 999 (10th Cir. 2001); *Pit River Home & Agric. Coop. Ass'n v. United States*, 30 F.3d 1088, 1103 (9th Cir. 1994); *Shermoen v. United States*, 982 F.2d 1312, 1320 (9th Cir. 1992).

In an effort to avoid the inevitable result compelled by the Rule 19 analysis, Petitioners' assert that the Tribe has no legally protected interest in the matter, because Petitioners believe the Reservation cannot include the Western Boundary lands. Pet. at 11 ("[T]he Tribe cannot be prejudiced if its claim to the West Bank Lands is illegal."). This, of course, is simply what Petitioners seek to prove with their suit. As the circuit court noted, a plaintiff "cannot avoid the requirements of Rule 19 merely by asserting that a party has no legally protected interest." Pet. App. at 3a (citing *American Greyhound*, 305 F.3d at 1024; *see* Fed. R. Civ. P. 19(a)(2) (non-party is necessary if it "claims" an interest that may be impaired); *Davis*, 343 F.3d at 1291 (rejecting argument

similar to Petitioners' as "untenable because it would render the Rule 19 analysis an adjudication on the merits").[3]

Indeed, this Court explicitly rejected a similar attempt to circumvent sovereign immunity with respect to an Indian tribe's challenge to a state's jurisdiction over land. *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 282 (1997) (rejecting suit to prevent state officials from taking actions affecting the tribe's claimed interest in submerged lands within the reservation because "[t]he suit seeks, in effect, a determination that the lands in question are not even within the regulatory jurisdiction of the State. . . . The suit would diminish, even extinguish, the State's control over a vast reach of lands and waters long deemed by the State to be an integral part of its territory."); *see also Dawavendewa*, 276 F.3d at 1160 (rejecting "attempted end run" around tribal sovereign immunity); *Shermoen*, 982 F.2d at 1320; *Imperial Granite*, 940 F.2d at 1270-71.

II. Petitioners Do Not Present Any Issue Warranting This Court's Review of the Determination That the United States Is a Necessary and Indispensable Party.

The lower courts also determined that the United States is a necessary and indispensable party. Pet. App. at 2a, 14a. Petitioners apparently concede that the United States is an

3. Petitioners' claim that this Court's review is necessary to avoid "a theoretical license [for tribes] to unilaterally expand their reservations without accountability" (Pet. at 5) ignores the facts of this case and the relevant legal standard. As the lower courts recognized and as the court of appeals specifically found, the Tribe's "legitimate, non-frivolous claim" is sufficient to demonstrate an interest protected by Rule 19. Pet. App. at 3a; *see Davis*, 343 F.3d at 1291; *Shermoen*, 982 F.2d at 1318; *see also Wildman v. United States*, 827 F.2d 1306, 1309 (9th Cir. 1987).

indispensable party to any suit involving "the fixing of a boundary" to trust or restricted Indian property, and that the Quiet Title Act explicitly retains the government's sovereign immunity for the purposes of such suits. Pet. at 12-13; *see* 28 U.S.C. § 2409a (Quiet Title Act); *United States v. Mottaz*, 476 U.S. 834, 843 (1986) (stating "when the United States claims an interest in real property based on that property's status as trust or restricted Indian lands, the Quiet Title Act does not waive the Government's immunity").

Petitioners nonetheless assert that this is "not such a case," because the land is not part of the Reservation and therefore, is not trust or restricted Indian property. Pet. at 13. Petitioners' circular argument would render the Rule 19 analysis an adjudication on the merits, by requiring the federal courts to determine whether the Western Boundary is trust or restricted Indian property. Pet. App. at 3a, 14a; *American Greyhound*, 305 F.3d at 1024. Since the United States has explicitly retained its sovereign immunity for such purposes, the lower courts did not err in dismissing this case. *See Imperial Granite*, 940 F.2d at 1272 n.4; *Carlson v. Tulalip Tribes*, 510 F.2d 1337, 1338-39 (9th Cir. 1975) (dismissing claim by fee owners within reservation that could affect land claimed by the tribe, because the action might impair the United States' trust responsibilities).[4]

4. In a transparent effort to attract this Court's attention, Petitioners twice (and wrongly) assert that this Court "rejected" the government's 1969 boundary determination. Pet. at 8, 12. The Court, however, did *not* invalidate the Secretary of the Interior's 1969 survey order, but explicitly stated that, "[o]f course, we now intimate nothing as to the Secretary's power or authority to take the actions that he did or as to the soundness of his determination on the

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III. Petitioners' Other Authorities Have No Bearing on this Case.

Lacking any authorities that are remotely in tension with the rulings below, Petitioners cite a number of irrelevant decisions in a vain attempt to find something to justify review by this Court. First, the petition leads with a discourse on the possible sources of Congress' power to regulate commerce with tribes. *See* Pet. at 7 (citing cases). However, the nature of Congress' power was not at issue below, and Petitioners fail to explain how it might be at issue here.

In addition, Petitioners cite cases involving the California Land Review Commission Act of March 3, 1851 (Pet. at 12 n.6), statutes regarding the government's authority for purchasing land for tribes and adding it to reservations (Pet. at 12), and *Mattz v. Arnett*, 412 U.S. 481, 493-94 (1973), discussing the Act of April 8, 1864 (Pet. at 7).[5] Because the

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merits." *Arizona v. California*, 460 U.S. 605, 636-37 (1983) ("*Arizona II*"). Petitioners also misrepresent the *Arizona I* proceedings, (Pet. at 8), by failing to mention that the Court *rejected* the Special Master's determination of the boundary. *Arizona I*, 373 U.S. at 601 ("We disagree with the Master's decision to determine the disputed boundaries of the Colorado River Indian Reservation."). The water rights dispute relating to the Western Boundary lands eventually settled without adjudicating the issue of the boundary, and the 1969 order was not overturned. *See Arizona v. California*, 530 U.S. 392, 418-19 (2000) (*Arizona III*); *see also id.* at 419 n.6.

5. For instance, Petitioners contend that the Act of April 8, 1864 prohibits the Reservation's existence in California, even though, as discussed above, both Congress and the courts have repeatedly affirmed that the Reservation includes land in California. *See, e.g., Arizona I*, 373 U.S. at 595-96, 598; Pet. App. at 26a (Act of April 30, 1964).

Reservation was established pursuant to other authority, namely the Act of March 3, 1865, "as modified and further defined by" four executive orders signed between 1873 and 1915 (Pet. App. at 26a, the Act of April 30, 1964), Petitioners' authorities regarding other means by which land might become part of an Indian reservation are immaterial.

Finally, Petitioners state that the rulings below are "at odds with the modern trend in property law," citing three takings cases. Pet. at 13. However, Petitioners did not raise (and could not have raised) any such claims below. As the district court noted, Petitioners conceded they are holdover tenants with "no right to possess or occupy" the subject lands, and although they seek to divest the Tribe of beneficial ownership of the lands, they do not claim title themselves. Pet. App. 6a n.2. Thus, even if Petitioners were accorded the relief they seek, they would not own the land or even have a valid permit to remain.

CONCLUSION

Respondents respectfully request that the Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

ELLISON FOLK
Counsel of Record
MARK I. WEINBERGER
BRIAN J. JOHNSON
SHUTE, MIHALY & WEINBERGER LLP
396 Hayes Street
San Francisco, CA 94102
(415) 552-7272

ERIC N. SHEPARD
COLORADO RIVER INDIAN TRIBES
Office of the Attorney General
Route 1, Box 230B
Parker, AZ 85344
(928) 669-1271

Attorneys for Respondents