

No. 17-197

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IN THE
Supreme Court of the United States

—*—
ROGER FRENCH,

Petitioner,

v.

HONORABLE KARLA STARR, HONORABLE ROBERT N. CLINTON, and HONORABLE CHRISTINE WILLIAMS, in their capacities as judges of the CRIT Tribal Appellate court; HONORABLE LAWRENCE C. KING, in his capacity as the Chief and Presiding Judge of the CRIT Tribal Court; DENNIS PATCH, in his official capacity as CRIT Tribal Council Chairman; and HERMAN "TJ" LAFFOON, in his official capacity as CRIT Tribal Council Member,

Respondents.

—*—
On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

—*—
BRIEF IN OPPOSITION
—*—

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QUESTION PRESENTED

The questions presented are as follows:

(1) whether the Federal Courts correctly applied estoppel to bar Petitioner from contesting the ownership of land by the United States in trust for the Colorado River Indian Tribes (CRIT) after he occupied land for years pursuant to a lease that stated the land was part of the CRIT Reservation; and

(2) whether the Federal Courts properly applied this Court's precedent in holding that a tribal court has jurisdiction over an eviction action where Petitioner occupied tribal land pursuant to a lease with the tribe for more than a decade but then stopped paying rent and remained on the property for another 15 years.

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INTRODUCTION

In 1983, Petitioner entered into a year-to-year permit to occupy a residential lot (“Property”) described in the permit as “within the Colorado River Indian Reservation.” For a decade, Petitioner paid rent pursuant to the terms of the permit. But after convincing himself that the Property he leased was outside the boundary of the Reservation, Petitioner stopped paying rent. The Bureau of Indian Affairs (“BIA”), which had approved the permit and maintained for decades that the Property was within the Reservation, consequently terminated his permit in 1996. Nevertheless, Petitioner remained on the Property for an additional fifteen years without paying rent and without any claim of ownership or other authorization. CRIT filed a complaint for eviction in the CRIT Tribal Court in October 2010.

Every court (tribal and federal) to consider this basic, landlord-tenant dispute has concluded that CRIT’s Tribal Courts had jurisdiction over it. The Ninth Circuit found the question so straightforward it submitted the case on the briefs and then issued an unpublished memorandum disposition.

Undeterred by these decisions, Petitioner seeks this Court’s review. But, Petitioner’s personal belief that the United States government erred in establishing the Reservation boundary has no effect on whether the CRIT Tribal Courts had jurisdiction to evict him. Moreover, his challenges to the Reservation boundary and CRIT’s beneficial ownership of the Property are barred, as the Federal Courts below have correctly held.

Similarly, the question of whether the CRIT Tribal Court and Court of Appeals (collectively, “Tribal Courts”) properly exercised jurisdiction over an eviction action

brought by CRIT against Petitioner does not warrant review. The Federal Courts properly applied *Water Wheel Camp Recreation Area, Inc. v. LaRance*, 642 F.3d 802 (9th Cir. 2011), a case that involved the same Reservation, the same Tribal Courts, and a nearly identical challenge to the Courts' jurisdiction to evict a non-member trespasser from the western boundary area of the Reservation. In that case, as below, the Ninth Circuit unequivocally answered the question "yes" in accordance with this Court's precedent. The case does not warrant further review and the Petition should be denied.

★

STATEMENT OF THE CASE

For more than a decade, Petitioner leased land from CRIT for his vacation home along the Colorado River. Appellee's Supplemental Excerpts of Record, Vol. 1, pp. 520-36, 598 (hereafter "SER vol:p"). The lease, referred to as a "permit" under federal law,¹ clearly stated that the Property is tribal trust land located within the Colorado River Indian Reservation. SER 1:520-21 (describing Property as "one lot(s) . . . , within the Colorado River Indian Reservation, Riverside County, California"); *see also* SER 1:521, 523, 528, 534. It designates CRIT as the "Permitter" and requires the permittees to obtain CRIT's permission for certain changes. SER 1:520-21. Rental fees were to be submitted to the Bureau of Indian Affairs for the "use and benefit" of CRIT. SER 1:521-22. Further, the permit specified that "all of the Permittee's obligations under

¹ The federal leasing regulations, now codified at 25 C.F.R. Part 162 rather than Part 131, clarify that a "Permit" has the same meaning as a lease. 25 C.F.R. § 162.101.

this permit . . . are to the United States as well as to [CRIT].” SER 1:530.

Petitioner’s permit was one of many leases entered into by CRIT and the BIA with non-member tenants in the 1970s. These leases were the result of a wave of federal action designed to promote tribal self-governance and economic security. For example, in 1964 Congress adopted legislation authorizing the Secretary of the Interior (“Secretary”) to lease portions of CRIT’s lands for the benefit of the Tribes. Act of April 30, 1964 (“1964 Act”), Pub. L. No. 88-302, 78 Stat. 188 (1964) (fixing the beneficial ownership of the Colorado River Indian Reservation located in the States of Arizona and California) (SER 2:611-12).

While the 1964 Act limited the Secretary’s leasing authority in one portion of the Reservation until those lands were “determined to be within the reservation” (SER 2:612), that determination came in 1969. Relying on a Solicitor’s Opinion, the Secretary “determined that the proper location of the reservation boundary” lies to the west of the present day course of the Colorado River. SER 1:551-52. The portion of the Reservation between this boundary and the river is known as the “western boundary area.” Five months later, the BIA amended its regulations to authorize the Secretary to approve leases in the western boundary area. SER 1:554-55 (Certain California Lands Determined To Be Within Colorado River Indian Reservation, 35 Fed. Reg. 18051 (Nov. 25, 1970)). Petitioner’s permit, which was assigned to him in 1983 from the original permittees, Donald and Shirley Neatrour, was approved shortly thereafter. SER 1:321 n.1, 534-35.

Between 1983 and 1993, Petitioner paid rent pursuant to the terms of the permit. SER 1:518; Appellant’s Excerpts of Record, Vol. 2, p. 114 (hereafter “ER vol:p”). In

1994, however, Petitioner paid significantly less than what he owed. SER 1:518, 536-37; ER 2:114. As a result, in August 1994, CRIT sent Petitioner a letter notifying him that he was in violation of the terms and conditions of the permit because he had failed to pay the full amount of rent owed for 1994. SER 1:538-39; ER 2:114-15. Petitioner received the letter, but refused to pay. SER 1:519. Petitioner likewise ignored a Bureau of Indian Affairs letter notifying him that his permit was terminated for failure to pay rent. SER 1:519, 540-41.

On October 4, 2010, CRIT sent Petitioner a Notice to Quit by certified mail, demanding that Petitioner leave the Property by October 18, 2010. SER 1:491-510. Petitioner again remained on the Property. SER 1:491.

Faced with Petitioner's continued refusal to vacate the Property, CRIT filed an action for eviction and damages in the CRIT Tribal Court. SER 2:601-09. After extensive discovery, briefing, and oral argument, the Tribal Court granted CRIT's motion for summary judgment on its eviction claim. SER 1:408. The Tribal Court found that it had jurisdiction because Petitioner entered into a "consensual relationship" with CRIT "by accepting assignment of the Permit to occupy the Property." SER 1:413; *Montana v. United States*, 450 U.S. 544, 565 (1981). In addition, the Tribal Court held Petitioner was estopped from contesting the validity of the permit or the location of the Property within the Reservation, based on the language of the permit and Petitioner's longstanding use of the Property under it. SER 1:416, 419. As a result, the Tribal Court issued a writ of restitution and Petitioner finally vacated the Property. SER 1:318, 404-06; ER 2:121-22.

Petitioner appealed to the CRIT Court of Appeals. SER 1:387-94, 396-98. After considering the parties' briefs and oral argument, the Court of Appeals affirmed the

Tribal Court's grant of summary judgment and the resulting issuance of the writ of restitution. SER 1:314-41. The Court of Appeals held that Petitioner was estopped by "the express terms of the Permit and by his conduct" from challenging the Tribe's beneficial ownership of the Property and its location within the Reservation. SER 1:322. The Court of Appeals then affirmed the Tribal Court's determination of its jurisdiction on two independent grounds: the Tribes' inherent power to exclude non-members and Petitioner's consensual relationship with CRIT. SER 1:322-25.

Petitioner then filed an action in Arizona District Court, naming as defendants four Tribal Court Judges² and two Tribal Council Members. ER 2:295-310. After considering the parties' briefs and the brief of the United States as Amicus Curiae in support of defendants, the district court affirmed the Tribal Courts' determination of jurisdiction. Pet. App. at 12a-27a.

Specifically, the district court found Petitioner was estopped by both contract (the terms of the permit) and conduct (Petitioner's occupation of the property and payment of rent) from challenging whether the Property is within the Reservation boundary. *Id.* at 17a-26a. Given this finding, the district court properly applied Ninth Circuit precedent analyzing nearly identical facts and upheld the Tribal Court's jurisdiction over the matter. *Id.* at 13a-17a, 27a.

On appeal, the Ninth Circuit issued an unpublished opinion affirming the district court. Pet. App. at 1a-3a

² Judge Moeller passed away during the course of the federal litigation and was replaced by Judge Christine Williams. Respondents have amended the caption of this brief accordingly.

(Fletcher, Tallmann, and Huck, JJ.). The opinion confirms that estoppel barred Petitioner from challenging CRIT's title and that the Tribal Courts properly exercised jurisdiction based on the Property's status as tribal trust land within the Reservation. *Id.* at 3a.

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REASONS TO DENY THE PETITION

The decision of the court of appeals is correct, and it does not conflict with any decision of this Court. This Court's review is therefore not warranted.

I. The Ninth Circuit's Application of Longstanding Principles of Estoppel Presents No Compelling Justification for Supreme Court Review.

At the heart of Petitioner's grievance is his belief that CRIT lacks the authority to exclude him from the Reservation because the ownership of the Property is somehow "disputed." Yet every court to consider this case has correctly rejected this argument, holding that Petitioner is estopped from contesting CRIT's title to the Property.

Petitioner occupied the Property pursuant to a permit from CRIT for more than a decade. SER 1:520-36, 598. The permit repeatedly described the Property as being "within the Colorado River Indian Reservation." SER 1:521, 523, 528. CRIT was expressly designated as the "Permitter." SER 1:520. Given this history, both the tribal and federal courts held that Petitioner was estopped from challenging CRIT's title. *E.g.*, Pet. App. at 3a, 17a-26a.

This holding is supported by more than a century of federal and state common law, as well as California and Arizona statutes, all of which provide that a tenant is estopped from challenging his landlord's title as a defense to eviction. *Williams v. Morris*, 95 U.S. 444, 455 (1877)

("[W]henever the possession is acquired under any species of tenancy, . . . the tenant is estopped from denying the title of the landlord."); *see also Quon v. Sanguinetti*, 60 Ariz. 301, 303 (1943) ("We think it may be stated as the universal law that a tenant who enters upon premises under a lease may not question his landlord's title as long as he has not been evicted therefrom."); *Wendt v. Smith*, No. EDCV 02-1361-VAP (SGL), 2003 U.S. Dist. Lexis 28797, at *13 (C.D. Cal. Jan. 30, 2003) ("a tenant in possession is estopped from contesting the landlord's title in an ejectment action"); *Richardson v. Van Dolah*, 429 F.2d 912, 917 (9th Cir. 1970) (same); Cal Evid. Code § 624 ("A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation."); Ariz. Rev. Stat. Ann. § 33-324 ("When a person enters into possession of real property under a lease, he may not, while in possession, deny the title of his landlord in an action brought upon the lease by the landlord . . .").³ Here, Petitioner entered the Property as CRIT's tenant; as a result, he cannot challenge CRIT's title, including CRIT's right to lease the Property.

Likewise, under "estoppel by contract," facts recited in a contract are "conclusively presumed to be true" as between the parties to it. Cal. Evid. Code § 622; *see also Sanders Constr. Co. v. San Joaquin First Fed. Sav. & Loan Ass'n*, 136 Cal. App. 3d 387, 395 (1982) (applying rule to prevent party from asserting invalidity of lease); *Weeks v. Goltra*, 7 F.2d 838, 839, 844 (8th Cir. 1925) (barring lessee

³ The CRIT Tribal Courts apply federal law and regulations or the laws of Arizona or California where "a case or controversy arises which is not covered by the traditional customs and usages of the Tribes, or ordinances of the Tribal Council." CRIT Law & Order Code Section 110.

of federal boats from challenging title where lease identified owner in “plain, direct, and unequivocal” language “incapable of misunderstanding”). Again, Petitioner’s permit and assignment agreement repeatedly describe the Property as being “within the Colorado River Indian Reservation” and “Tribal Land.” SER 1:521, 523, 528, 534. The tribal and federal courts therefore properly presumed these facts to be true.

Petitioner attempts to reframe this issue as one worthy of this Court’s review by claiming that federal courts may not rely on principles of estoppel in determining tribal court jurisdiction. Pet. at 21-25. But Petitioner cites no case in support of this claim and nothing in this Court’s jurisprudence remotely suggests that courts are not permitted to apply general legal principles—like estoppel—to make factual findings predicate to a review of tribal court jurisdiction. To the contrary, this Court applied a legal presumption governing title to riverbed lands to reach its jurisdictional conclusion in *Montana*, 450 U.S. at 553 (finding that the United States reserved the land in question for transfer to the state). Thus, this Court has recognized that such bedrock principles of federal law as presumptions, estoppel, and waiver can be used to make factual findings necessary for determining tribal jurisdiction.

Moreover, Petitioner does not attempt to challenge the validity of the doctrines of estoppel by conduct or by contract. He merely claims they should not be applied to him. Pet. at 21-25. But an asserted “misapplication of a properly stated rule of law” is not grounds for granting a petition for writ of certiorari, and Petitioner has shown no other “compelling reason” for this Court’s review. Sup. Ct. R. 10.

II. The Ninth Circuit's Determination of Tribal Court Jurisdiction Falls Squarely within Supreme Court Precedent.

The Ninth Circuit's conclusion that the Tribal Courts had jurisdiction to hear an eviction action against a non-member who had leased land from CRIT for more than a decade does not conflict with Supreme Court precedent; therefore, the Petition does not raise questions within the scope of Rule 10(c).

The district court held, and the Ninth Circuit agreed, that CRIT's Tribal Courts had jurisdiction to hear the eviction action against Petitioner under *Water Wheel*, a Ninth Circuit decision involving nearly identical facts and concluding that tribal courts generally have jurisdiction to adjudicate eviction actions to remove non-members from tribal land.

The facts of *Water Wheel* are remarkably similar to the facts here. In that case, CRIT sought to evict another holdover tenant in the western boundary area of the Reservation whose lease had expired and who refused to vacate the property. The defendants in *Water Wheel* were a non-Indian, closely held corporation (Water Wheel) and its non-Indian owner (Johnson) (together, "Water Wheel"). *Water Wheel*, 642 F.3d at 805. After CRIT brought an eviction action in tribal court, Water Wheel moved to dismiss the case, arguing the tribal court did not have jurisdiction under *Montana*, 450 U.S. 544, which limited tribes' civil jurisdiction over nonmember activities on non-Indian fee land. *Water Wheel*, 642 F.3d at 805-06.

Applying *Montana*, the Tribal Courts found that they had jurisdiction over the eviction action because the defendants had established a consensual relationship with the Tribe. *Id.* at 806; *Montana*, 450 U.S. at 565-66 (internal

citations omitted). Because Water Wheel had entered into a lease with CRIT, and because Water Wheel's refusal to vacate the property was depriving CRIT of significant revenue from its own lands, the Tribal Courts concluded they had jurisdiction under *Montana*. See *Water Wheel*, 642 F.3d at 816.

The Ninth Circuit affirmed this exercise of tribal court jurisdiction. In its opinion, the Ninth Circuit discussed two lines of Supreme Court cases relevant to the eviction action before it: those discussing a tribe's general jurisdictional authority within the boundaries of its reservation and those discussing a tribe's power to exclude non-members from its reservation. *Water Wheel*, 642 F.3d at 809-14 (discussing numerous Supreme Court cases, including *Montana*, 450 U.S. 544; *Strate v. A-1 Contractors*, 520 U.S. 438 (1997); *Nevada v. Hicks*, 533 U.S. 353 (2001); *Duro v. Reina*, 495 U.S. 676, 696-97 (1990), superseded on other grounds as stated in *United States v. Lara*, 541 U.S. 193, 207 (2004); *New Mexico v. Mescalero Apache Tribe*, 462 U.S. 324, 333 (1983); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130, 144-45 (1982)).

Synthesizing the principles of these cases, the Court held "where the non-Indian activity in question occurred on tribal land, the activity interfered directly with the tribe's inherent powers to exclude and manage its own lands, and there are no competing state interests at play, the tribe's status as landowner is enough to support regulatory without considering *Montana*." 642 F.3d at 814. The Ninth Circuit thus held that CRIT had the inherent power "through its sovereign authority over tribal land," to exclude Water Wheel and Johnson as trespassers who had violated the conditions of their entry. *Id.* at 811. CRIT's right to exclude them included the power to regulate

them as trespassers, and consequently to evict them through tribal court proceedings. *Id.* at 811-12.

Finally, the Ninth Circuit held that the CRIT Tribal Courts would also have had jurisdiction under *Montana's* principles, because the corporation's long-term lease with CRIT established a consensual relationship and the Tribe's eviction action bore a "close nexus" to that relationship. *Id.* at 817. Because the corporation had "full knowledge" that the leased land was tribal property and that under the lease's terms, CRIT laws and regulations applied, the Tribe "clearly had authority to regulate the corporation's activities under *Montana's* first exception." *Id.* The Ninth Circuit noted that, with a trespass claim, there is "no legal or logical basis to require a consensual relationship between a trespasser and the offended landowner." *Id.* at 819. This is "particularly true," noted the court, "when the trespass is to tribal land, the offended owner is the tribe, and the trespasser is not a tribal member." *Id.*

As the district court and Ninth Circuit correctly held, under *Water Wheel*, CRIT's Tribal Courts have jurisdiction over eviction actions when those actions seek to remove nonmembers from tribal lands. This decision is as unremarkable as it seems, and squarely aligns with this Court's precedent over nonmember conduct on tribal trust lands.

The primary distinction Petitioner makes between his case and the facts in *Water Wheel* is that Petitioner, unlike the *Water Wheel* trespassers, alleged that there was a dispute about whether the Property he occupied was tribal land. As discussed in Section I, however, the Federal Courts (like the Tribal Courts) correctly held that Petitioner was estopped from challenging the Tribes' ownership of the land because he leased the Property

from CRIT pursuant to a Permit expressly defining the Property as tribal land within the Reservation.

Petitioner also asserts that *Water Wheel* is distinguishable because, in that case, the Ninth Circuit applied both *Merrion* and *Montana*. But Petitioner ignores that the Ninth Circuit in this case applied *Water Wheel* whole cloth, including its discussion of both lines of Supreme Court precedent. Pet. App. at 3a.

With these asserted distinctions removed, the Federal Courts correctly held that the Tribal Courts had jurisdiction over this matter.

III. Petitioner Misrepresents the Record.

This Court demands “clear, definite, and complete disclosures concerning the controversy when applying for certiorari.” *S. Power Co. v. N. Carolina Pub. Serv. Co.*, 263 U.S. 508, 509 (1924). Petitioner ignores that admonition.

Specifically, Petitioner asserts that “California . . . challenge[d] CRIT’s title” in the district court, implying that the State raised a viable, independent claim against the tribal defendants that should be considered by this Court. Pet. at 12, 34-37. This statement is inaccurate. The State has not challenged the tribal court’s exercise of jurisdiction. Nor has it claimed that its interests are akin to the competing state interests found relevant in *Nevada v. Hicks*, 533 U.S. at 362.

Before the district court, the State of California filed a Motion for Leave to File Brief as Amicus Curiae in support of Petitioner. ER 1:41-44. Because the proposed brief focused exclusively on the location of the boundary, which Petitioner was estopped from contesting, “and not the grounds on which the Court [] decided th[e] matter,” the Court held the Motion was moot. Pet App. at 27a. The State did not seek review of this decision.

The State's attempt at involvement in this case says nothing about the propriety of the Tribal Court's exercise of jurisdiction.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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