No. ____

IN THE

Supreme Court of the United States

CITIZENS FOR SAFER COMMUNITIES,
Petitioner,

v.

GALE A. NORTON, in her official capacity as United States Secretary of the Interior; RONALD M. JAEGER, in his official capacity as Regional Director for the Pacific Region of the United States Department of the Interior, Bureau of Indian Affairs; THE UNITED STATES BUREAU OF INDIAN AFFAIRS; THE UNITED STATES DEPARTMENT OF THE INTERIOR; and THE UNITED STATES OF AMERICA,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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PETITION FOR WRIT OF CERTIORARI

WILLIAM P. HORN *
BIRCH, HORTON, BITTNER AND CHEROT
1155 Connecticut Avenue, N.W.
Suite 1200
Washington, DC 20036
(202) 659-5800

* Counsel of Record

Counsel for Petitioner

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTION PRESENTED

Whether the Court of Appeals and the United States Secretary of the Interior correctly decided that the Secretary's acceptance of a 50-acre parcel of land in Placer County, California for the United Auburn Indian Community's establishment of a 200,000-square-foot casino, which parcel is adjacent to growing residential communities and within a short distance of residences and schools, with which the United Auburn Indian Community had no previous historical, cultural, temporal or other connection or ownership and which was remote and separate from the former Auburn Rancheria, constituted a "restoration of lands" to the United Auburn Indian Community under 25 U.S.C. § 2719(b)(1)(B)(iii) of the Indian Gaming Regulatory Act such that the Secretary of the Interior could forgo the prerequisite statutory determination that using the parcel for gaming would not be detrimental to the surrounding community.

PARTIES TO THE PROCEEDING

Plaintiffs and Appellants below included the Cities of Roseville, Rocklin and Lincoln, California in addition to Petitioner Citizens for Safer Communities. Defendants and Appellees below included Neal McCaleb, in his official capacity as United States Assistant Secretary of the Interior of Indian Affairs in addition to Respondents Gale A. Norton, in her official capacity as United States Secretary of the Interior, Ronald M. Jaeger, in his official capacity as Regional Director for the Pacific Region of the United States Department of the Interior, Bureau of Indian Affairs, The United States Bureau of Indian Affairs, The United States Department of the Interior and The United States of America.

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PETITION FOR WRIT OF CERTIORARI

Citizens for Safer Communities, a nonprofit mutual benefit corporation composed principally of residents of the Cities of Roseville, Rocklin and Lincoln, California, petitions for a writ of certiorari to review the judgment and opinion of the United States Court of Appeals for the District of Columbia Circuit entered in this case.

OPINION BELOW

The opinion of the Court of Appeals ("App.", *infra* 1a) is reported at 348 F.3d 1020.

JURISDICTION

The judgment of the Court of Appeals was entered on November 14, 2003. This petition was filed February 11, 2004, within 90 days of the date of the entry of the judgment below. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS

The Auburn Indian Restoration Act, 25 U.S.C. § 1300*l*, *et seq.* (2003) ("AIRA"), provides in pertinent part as follows:

25 U.S.C. § 1300*l*-2. Transfer of land to be held in trust

(a) Lands to be taken in trust

The Secretary may accept any real property located in Placer County, California, for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary if, at the time of such conveyance or transfer, there are no adverse legal claims on such property, including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to the authority of the Secretary under the Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(b) Former trust lands of the Auburn Rancheria

Subject to the conditions specified in this section, real property eligible for trust status under this section shall include fee land held by the White Oak Ridge Association, Indian owned fee land held communally pursuant to the distribution plan prepared and approved by the Bureau of Indian Affairs on August 13, 1959, and Indian owned fee land held by persons listed as distributees or dependent members in such distribution plan or such distributees' or dependent members' Indian heirs or successors in interest.

(c) Lands to be part of the reservation

Subject to the conditions imposed by this section, any real property conveyed or transferred under this section shall be taken in the name of the United States in trust for the Tribe or, as applicable, an individual member of the Tribe, and shall be part of the Tribe's reservation.

The Indian Gaming Regulation Act, 25 U.S.C. § 2701, *et seq.* (2003) ("IGRA"), provides in pertinent part as follows:

25 U.S.C.§ 2719. Gaming on lands acquired after October 17, 1988

(a) Prohibition on lands acquired in trust by Secretary

Except as provided in subsection (b) of this section, gaming regulated by this chapter shall not be conducted on lands acquired by the Secretary in trust for the benefit of an Indian tribe after October 17, 1988, unless—

(1) such lands are located within or contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; or

(2) the Indian tribe has no reservation on October 17, 1988, and—

(A) such lands are located in Oklahoma and—

(i) are within the boundaries of the Indian tribe's former reservation, as defined by the Secretary, or

(ii) are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma; or

(B) such lands are located in a State other than Oklahoma and are within the Indian tribe's last recognized reservation within the State or States within which such Indian tribe is presently located.

(b) Exceptions

(1) Subsection (a) of this section will not apply when—

(A) the Secretary, after consultation with the Indian tribe and appropriate State, and local officials, including officials of other nearby Indian tribes, determines that a gaming establishment on newly acquired lands would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community, but only if the Governor of the State in which the gaming activity is to be conducted concurs in the Secretary's determination; or

(B) lands are taken into trust as part of -

(i) a settlement of a land claim,

(ii) the initial reservation of an Indian tribe acknowledged by the Secretary under the Federal acknowledgment process, or

(iii) the restoration of lands for an Indian tribe that is restored to Federal recognition.

STATEMENT OF THE CASE

1. Statement of Facts

The Auburn Indian Band is a small band of Indians (numbering fewer than 250) that formerly resided on the outskirts of Auburn, California, about 40 miles northeast of Sacramento and about the same distance from the subject land on which the Band erected a gambling casino. In 1917, the government acquired 20 acres in trust for the Band and in 1953 added 20 acres. These 40 acres became know as the Auburn Indian Rancheria. In 1958, Congress passed the Rancheria Act that terminated the Auburn Indian Rancheria and 40 others. By 1967, the Commissioner of Indian Affairs had transferred title to all the residential rancheria land to the

individual residents and had transferred title to commonly held lands to the White Oak Ridge Association, a community organization.

In 1991, individual Indians claiming to be descendants of the Auburn Band formed the United Auburn Indian Community ("UAIC"). Following an administrative denial of UAIC's request for federal tribal recognition, Congress passed the Auburn Indian Restoration Act in 1994. At that time there were approximately 170 enrolled members of UAIC, 52 of whom resided on land within the boundaries of the former rancheria. The Auburn Indian Restoration Act, in pertinent part, extended federal recognition to the UAIC, restored rights and privileges diminished or lost under the 1958 Act and allowed that the Secretary of the Interior "may accept any real property located in Placer County, California, for the benefit of the Tribe," so long as the land was free of adverse legal claims. Of the many Indian restoration acts that Congress passed, AIRA is alone in its use of "may" instead of "shall" in its grant of authority to the Secretary to accept title to lands for the benefit of the subject tribes.

In 1987, Congress passed IGRA to regulate and limit gaming on Indian land. IGRA was Congress's reaction to *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987), which held that the determination of whether to conduct a commercial gaming enterprise on an Indian reservation falls within the governing tribe's recognized sovereignty, precluding state jurisdiction over Indian gaming absent an act of Congress. IGRA authorized casino gaming on Indian lands only under express conditions, including a tribal-state compact and a resolution of the tribe promising protection of public health and safety. Among other limitations was a prohibition on such gaming unless the Secretary of the Interior determined that gaming on Indian lands acquired after October 17, 1998 "would not be detrimental to the surrounding community." IGRA Section

20(b)(1)(A), 25 U.S.C. § 2719(b)(1)(A). There were exceptions to this prohibition, however, including an exception for lands "taken into trust as part of . . . the restoration of lands for an Indian tribe that is restored to Federal recognition," IGRA Section 20(b)(1)(B)(iii), 25 U.S.C. § 2719(b)(1)(B)(iii).

In June 1998 and October 1999, UAIC submitted applications to the Bureau of Indian Affairs ("BIA") within the Department of the Interior to have three parcels taken into trust: (i) 1,100 acres, neither within nor contiguous to the former rancheria, for residential and community purposes, (ii) three acres within the former rancheria for cultural, religious and recreational purposes and (iii) the 50 acres at issue, historically and geographically (by some 40 miles) removed from the former rancheria, for casino gaming purposes. In 2002, UAIC dropped the requests for the residential, community, cultural, religious and recreational lands and asked only for the 50 acres for the casino.

The gaming parcel is located on unincorporated land in Placer County, California. While not close to the rancheria, the parcel is bounded on three sides by the Cities of Roseville, Rocklin and Lincoln, parties to the proceedings below. The gaming parcel is less than two miles away from existing and planned residential neighborhoods within the three cities and within one-and-one-half miles of community schools. These cities are rapidly growing and densely populated. At the time of the trust application and up until the land was taken into trust, Stations Casinos, a Nevada corporation, owned the gaming parcel. Stations Casinos now manages the UAIC casino.

The cities whose residents comprise Petitioner passed unanimous resolutions opposing UAIC's application to have the parcel taken into trust for casino gaming, and they filed formal objections to the application supported by studies showing how casino gaming leads directly to greatly

increased crime and other community detriment. The studies were both actual, looking at operating casinos, and projected in the event that the UAIC casino went forward. The communities' objections could not be refuted. Even the analysis prepared by UAIC's representatives determined that the casino would lead to an additional 670 new felony arrests and more than 1,000 additional misdemeanor arrests annually. Regrettably for these communities, the fear has become reality. Reported crime, extensive roadside litter, traffic congestion and other detrimental effects have increased since the casino opened.

In reviewing UAIC's application, however, BIA and the Department of the Interior rejected—without review—both an analysis of the detrimental impact of a casino on the adjoining suburban communities under Section 20(b)(1)(A) of IGRA, 25 U.S.C. § 2719(b)(1)(A), and an analysis of the relationship, if any, of UAIC to the subject parcel. Instead, the Secretary rotely ruled that any and all of the 1,500 square miles of Placer County, regardless of the absence of temporal, historical, cultural, functional and other relationships to the rancheria and UAIC, that the Secretary accepted under the authority of 25 U.S.C. § 1300*l*-2 of AIRA constituted "the restoration of lands for an Indian tribe" and therefore were exempt both from IGRA detrimental-impact scrutiny and from any consideration of whether the lands in fact were a "restoration" as courts have applied that term. Accordingly, the Secretary accepted the 50 acres and permitted UAIC and Stations Casino to construct and to operate a 200,000-square-foot-casino within shouting distance of the homes and schools of the families comprising Petitioner and residing in the three cities.

2. Proceedings Below

On April 3, 2002, Petitioner and the cities of Roseville and Rocklin filed their complaint in the United States District Court for the District of Columbia seeking an order setting aside the United States Department of the Interior decision

accepting the 50 acres of land adjacent to the three cities' and Petitioner's suburban communities, but remote from, separate from and otherwise wholly unrelated to UAIC's former rancheria, for the massive casino. By Order dated July 8, 2002, the District Court granted UAIC's motion to intervene and consolidated Plaintiffs' motion for a preliminary injunction with the proceedings on the merits. The Court held two hearings, on August 27, 2002 and September 9, 2002, and announced its decision at the latter hearing. The Court granted Defendants' motion to dismiss in part, granted Defendants' motion for summary judgment in part and denied Plaintiffs' motion for summary judgment, thereby disposing of the complaint in its entirety. The Court followed the September 9, 2002 decision with a Memorandum Opinion and a Judgment dated September 11, 2002. App. 23a.

Plaintiffs filed timely Notices of Appeal on September 9, 2002 and September 24, 2002. On November 14, 2003, the United States Court of Appeals for the District of Columbia Circuit issued its decision affirming the decision of the District Court. App. 1a. This petition for a writ of certiorari followed.

REASONS FOR GRANTING THE PETITION

Section 20 of IGRA prohibits casino gaming on lands acquired in trust by the United States after October 17, 1988 that are neither located within nor contiguous to the boundaries of existing Indian lands, unless the Secretary of the Interior determines, *inter alia*, that the casino "would not be detrimental to the surrounding community." Section 20 also contains exceptions to these requirements, including where the lands are taken into trust as part of "the restoration of lands for an Indian tribe that is restored to federal recognition."

At issue here is this "restoration of lands" exception, which the Secretary invoked and the Court of Appeals approved so that the Secretary could, as she did, ignore confronting the obvious and quite possibly disqualifying detrimental impact

of planting this casino adjacent to residential communities. The determination of whether or not a parcel of land is a "restoration of lands" exception requires a two-step analysis: (1) the tribe in question must be one that is "restored" within the meaning of this provision; and (2) the land in question must be taken into trust as part of a "restoration" of land to the restored tribe. It is thus not sufficient merely that the land in question is being taken into trust on behalf of a restored tribe. The acquisition of a particular parcel of land must itself constitute a "restoration" of that land.

The Court below declined to engage in any analysis of whether the 50 acres were, in fact, a restoration of lands. Rather, and contrary to prior District Court decisions (as the Court of Appeals noted, it was the first Circuit Court to confront the issue), the Court of Appeals held, simply, that because the land fell within the wide geographical area within which the Secretary "may" accept land for the benefit of UAIC—the entirety of Placer County, running from the Nevada border to Sacramento—the Secretary's mere acceptance of the land made the 50 acres, *ipso facto*, a "restoration" exempting the land from a consideration of the detriment to the community. Declining to concur with earlier District Court decisions, the Court of Appeals' decision reads all definitional substance out of the term "restoration," contrary to any plain meaning of the term and contrary to the intent of Congress.

1. The term "restoration," by any common definition, contains the element of giving back that which had been taken or bringing back to a position comparable to that which preexisted the taking. *See, e.g.*, Webster's New World Dictionary of American English (Simon & Schuster, Inc. 1991) ("Webster's") at 1144-45, defining "restoration" as:

> 1. a restoring or being restored; specif., a) reinstatement in a former position, rank, etc. b) restitution for loss, damage, etc. c) a putting or bringing back into a

> former, normal, or unimpaired state or condition; 2. a representation or reconstruction of the original form or structure, as of a building, fossil animal, etc.; 3. something restored.

"Restore" itself means:

> 1. to give back (something taken away, lost, etc.); make restitution of; 2. to bring back to a former or normal condition, as by repairing, rebuilding, altering etc. [to restore a building, painting, etc.].

See also Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians v. Babbitt, 116 F. Supp.2d 155, 162 (D.D.C. 2000) ("*Confederated Tribes*"); *Grand Traverse Band of Ottawa and Chippewa Indians v. United States*, 46 F. Supp.2d 689, 696 (W.D. Mich. 1999) ("*Grand Traverse I*"). Reliance on the synonym "restitution" for a different or just for a more attenuated meaning is unavailing. Restitution means:

> 1. a giving back to the rightful owner of something that has been lost or taken away; restoration; 2. making good for loss or damage; reimbursement; 3. a return to a former condition or situation.

Webster's at 1144. Nowhere in these definitions, be they dictionary definitions or judicial considerations, is there support for the Court of Appeals' definition of "restoration" as merely any and all land in Placer County that the Secretary accepts into trust, without regard for considerations of putting or giving back, reconstruction, return to a former condition or situation or similar "restoration."

In order for there to have been a true "restoration," there must have been a consideration of, and there must have been established, some link, some nexus, between the 50 acres and UAIC's pre-termination existence, between what was lost and what was being restored. There was none of this in the decision of the Court of Appeals (or in the decision of the

Secretary). In this respect, the decision below conflicts with the plain meaning of the word "restoration."

2. The courts in *Confederated Tribes* and *Grand Traverse I* correctly recognized that inherent in the word "restoration" is the necessity of establishing some link between the replaced and the replacement. In *Confederated Tribes*, the Court referenced the necessity of linkage "to avoid the result contemplated by the defendants—that any and all property acquired by restored tribes would be eligible for gaming." 116 F. Supp.2d at 164. In *Grand Traverse I*, 46 F. Supp.2d at 701-02, the Court examined and found temporal and historical connections to the particular lands, leading the Court to conclude, in its final decision on the merits, that the subject land "was of historic, economic and cultural significance to the Band." *Grand Traverse Band of Ottawa and Chippewa Indians v. United States*, 198 F. Supp.2d 920, 936 (W.D. Mich. 2002).

The Court of Appeals' decision conflicted with both. In contrast to *Confederated Tribes*, the Court of Appeals below affirmed the very "result contemplated" that the Government sought "to avoid" in *Confederated Tribes*. The Court of Appeals also sanctioned the reverse of *Grand Traverse I*. There, the Band asserted—against the Government—that it was "not claiming that any lands which are taken into trust necessarily amount to restored lands." Instead, the Band argued that "in order to meet the requirements of the exception, the land must in some sense be said to be 'restored.'" 46 F. Supp.2d at 701. The *Grand Traverse I* Court agreed. In contrast, the Court of Appeals accepted the argument that "any lands [in Placer County] which are taken into trust necessarily amount to restored lands."

3. Absent some connection to give meaning to the term "restoration," IGRA requires that the Secretary determine that

the casino "would not be detrimental to the surrounding community" before excepting it from the general prohibition on casino gaming. Congress knew well the deleterious effects on residential communities such as the Cities of Roseville, Rocklin and Lincoln of placing casinos in their midst. That is one reason why placement near these communities is the exception, not the rule, allowed only where there is no disqualifying detrimental effect. But under the Court of Appeals' decision below, the Cities' objections on these very grounds "were . . . not legally relevant." App. 4a. As a consequence of this determination of irrelevance, the detriment that Congress expressly thought it was preventing is happening.

Furthermore, by effectively stripping "restoration" of any substantive meaning and relegating the citizens' fact-based and vital objections to legal irrelevancy, the Court of Appeals left Petitioner and the cities with no voice in one of the most critical issues affecting them and put the future of the communities and the neighborhoods into the hands of elements antithetical to the values and aspirations of tens of thousands of families.

Also neglected was any balance in what the Court of Appeals was approving. No one denies that American Indians have been severely hurt by generations of subjugation, appropriation and physical harm. But here, the case presented is of a few hundred Indians, who already have made millions of dollars and likely already have per capita wealth exceeding that of the citizens of Roseville, Rocklin and Lincoln, whose narrowly based gaming interest is trumping the widely based interests of thousands of families. Clearly, this was a case where, had the Secretary examined the factors she should have, there was room for accommodation. But the Court of Appeals rejected—in fact disallowed—any such balancing.

CONCLUSION

The Court of Appeals wrongly discarded the relationship requirement for lands to be restored lands and in so doing avoided facing, and wrongly disregarded, the undeniable and undisputed ruinous consequences on the Roseville, Rocklin, Lincoln and other adjacent communities of placing this mammoth gambling complex next door. Sadly, what the Court of Appeals' decision does is replicate in reverse the United States's devastation of Indian communities and way of life. Here, the behemoth casino will infect and indelibly degrade the adjacent residential communities and their way of life, without the Secretary's or the Court of Appeals' having given any consideration to or having shown any concern for these consequences. And, under the Court of Appeals decision, this situation can occur anywhere else in Placer County as well, in perpetuity. Congress never intended this result. For the foregoing reasons, the petition should be granted.

Respectfully submitted,

WILLIAM P. HORN*
BIRCH, HORTON, BITTNER
AND CHEROT
1155 Connecticut Avenue, N.W.
Suite 1200
Washington, DC 20036
(202) 659-5800

* Counsel of Record

Counsel for Petitioner