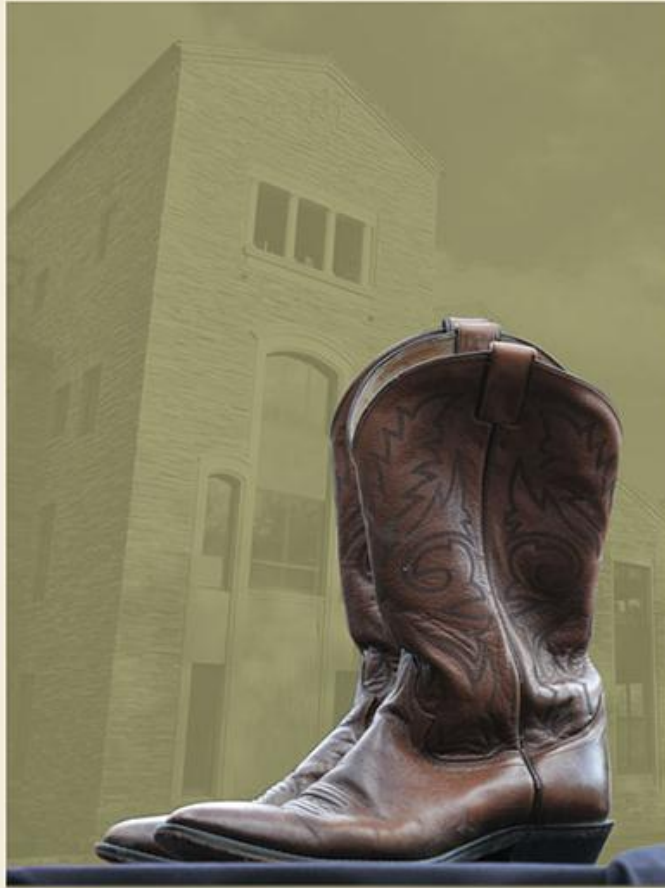


University of Colorado Law School
William A. Wise Law Library



David H. Getches Collection

Memorandum of Respondents in Opposition to Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit, *Callahan v. Kimball*, cert. denied, 419 U.S. 1019 (1974) (No. 73-1575) (David H. Getches and Daniel H. Israel, Native American Rights Fund; Of counsel, Don B. Miller).

Reproduced with the assistance of the National Indian Law Library.

3

EXTRA COPY

IN THE
Supreme Court of the United States
OCTOBER TERM, 1973

—
No. 73-1575
—

JOHN D. CALLAHAN, ET AL., *Petitioners*,

v.

CHARLES E. KIMBALL, ET AL., *Respondents*.

—
**MEMORANDUM OF RESPONDENTS IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**
—

DAVID H. GETCHES
DANIEL H. ISRAEL
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, Colorado 80302
(303) 447-8760

Of Counsel: *Counsel for Respondents*

DON B. MILLER
P.O. Box 1257
Klamath Falls, Oregon 97601
(503) 882-4441



IN THE
Supreme Court of the United States
OCTOBER TERM, 1973

No. 73-1575

JOHN D. CALLAHAN, ET AL., *Petitioners,*

v.

CHARLES E. KIMBALL, ET AL., *Respondents.*

**MEMORANDUM OF RESPONDENTS IN OPPOSITION
TO PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Respondents submit that Petitioners' Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit should be denied for the following reasons:

1. The opinion of the Court of Appeals for the Ninth Circuit expressly and correctly relies on important Indian law principles recently established by this Court in *Menominee Tribe v. United States*, 391 U.S. 404 (1968).

2. The opinion of the Court of Appeals for the Ninth Circuit is of narrow applicability. This case is not of national importance and affects only the Klamath Indians who were subject to the Klamath Termination Act, 25 U.S.C. §§ 564-564x.

3. Petitioners' reliance on an alleged conflict between the Court of Appeals for the Ninth Circuit and the Oregon Court of Appeals (Petition, p. 4) as a reason the writ should be granted is improper. No such conflict exists because the Oregon Court of Appeals decision relied on the lower court ruling in this case which was subsequently reversed by the Court of Appeals for the Ninth Circuit. Moreover, even if there exists such a conflict, it is not between two federal courts of appeal and thus is not a proper ground for granting a writ of certiorari, under Rule 19, Rules of the Supreme Court of the United States.

4. Petitioners' undocumented allegation (Petition, p. 6) that respondents' hunting and fishing treaty rights have been sold by respondents is unsupported by the record and furthermore was rejected by the Court of Appeals for the Ninth Circuit (Petition, Appendix A, fn. 9, p. 21).

The issuance of the mandate of the Court of Appeals for the Ninth Circuit in this case has been vacated pending a determination by this Court of Petitioners' Petition for a Writ of Certiorari. As a result, respondents

request this Court to render its decision as soon as is practicable.

For the above reasons, respondents submit that the Writ of Certiorari should be denied.

Respectfully submitted,

DAVID H. GETCHES
DANIEL H. ISRAEL
NATIVE AMERICAN RIGHTS FUND
1506 Broadway
Boulder, Colorado 80302
(303) 447-8760

Counsel for Respondents

Of Counsel:

DON B. MILLER
P.O. Box 1257
Klamath Falls, Oregon 97601
(503) 882-4441

May 1, 1974