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United States v. Mitchell

463 U.S. 206 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University





Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 21, 1983

Re: 81-1748 - U.S. v. MITCHELL

Dear Thurgood:

I join.

Regards,

Justice Marshall

Copies to the Conference



CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

Supreme Court of the United States
Washington, D. C. 20543

June 1, 1983

No. 81-1748

United States v. Mitchell, et al.

Dear Thurgood,

I agree.

Sincerely,

Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1983

Re: 81-1748 - United States v. Mitchell

Dear Thurgood,
Please join me.

Sincerely,



Justice Marshall
Copies to the Conference
cpm

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

81-1748

UNITED STATES, PETITIONER *v.*
HELEN MITCHELL ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

[June —, 1983]

JUSTICE MARSHALL delivered the opinion of the Court.

The principal question in this case is whether the United States is accountable in money damages for alleged breaches of trust in connection with its management of forest resources on allotted lands of the Quinault Indian Reservation.

I

A

In the 1850s, the United States undertook a policy of removing Indian tribes from large areas of the Pacific Northwest in order to facilitate the settlement of non-Indians.¹ Pursuant to this policy, the first Governor and Superintendent of Indian Affairs of the Washington Territory began negotiations in 1855 with various tribes living on the west coast of the Territory. The negotiations culminated in a treaty between the United States and the Quinault and Quileute Tribes, 12 Stat. 971 (Treaty of Olympia). In the Treaty the Indians ceded to the United States a vast tract of land on the Olympic Peninsula in the State of Washington, and the

¹See Act of June 5, 1850, 9 Stat. 437; Appropriation Act of March 3, 1853, 10 Stat. 226, 238; *Quinault Allottee Association v. United States*, 202 Ct. Cl. 625, 628-269, 485 F. 2d 1391, 1392 (1973), cert. denied 416 U. S. 961 (1974).

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PP, 10-12 6

STYLISTIC CHANGES THROUGHOUT.

To: The Chief Justice
Justice Brennan
Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Marshall

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

81-1748

UNITED STATES, PETITIONER *v.*
HELEN MITCHELL ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

[June —, 1983]

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 27, 1983

MEMORANDUM TO THE CONFERENCE

Case Held for No. 81-1748, United States v. Mitchell

81-1747, United States v. Duncan

Respondents are Pomo Indians of the Robinson Rancheria in Northern California. Rancherias are small Indian reservation communities in California, the lands for which were purchased by the Government for Indian use. Respondents brought suit against the United States in the Court of Claims seeking to recover damages for injuries allegedly suffered as a result of the unlawful termination of the reservation status of the Rancheria and their own special legal status. (In a companion case in the Northern District of California against the Secretary of the Interior and other federal officials, the Indians had obtained declaratory and injunctive relief grounded on that court's conclusion that the termination was unlawful. No appeal was taken from that decision.)

The Court of Claims granted respondents' motion for partial summary judgment on liability. The Court determined that a trust relationship existed between the United States and the Pomos of the Robinson Rancheria, relying on the Appropriations Acts which had provided the funds to purchase the Rancheria property and on §9 of the Rancheria Act of 1958. The court then held that the government could be held accountable in money damages for violation of the trust relationship. In so holding, the Court of Claims relied on its decision in Mitchell v. United States, 591 F.2d 1300 (1979) (Mitchell I).

The United States sought review of the Court of Claims' decision in Duncan I. After this Court reversed the Court of Claims in United States v. Mitchell, 445 U.S. 535 (1980), we granted the Government's petition in Duncan I and vacated and remanded the judgment for consideration in light of the Mitchell decision. United States v. Duncan, 446 U.S. 903 (1980).

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 3, 1983

Re: No. 81-1748 - United States v. Mitchell

Dear Thurgood:

Please join me.

Sincerely,

Justice Marshall

cc: The Conference

U.S. SUPREME COURT LIBRARY OF CONGRESS

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 1, 1983

81-1748 United States v. Mitchell

Dear Thurgood:

As I am unpersuaded that a damages remedy should be imposed on the government in this case,, I will write a dissent - though it may be a while.

Sincerely,

Lewis

Justice Marshall

lfp/ss

cc: The Conference

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JUN 18 1983

FIRST DRAFT: United States v. Mitchell, No. 81-1748

JUSTICE POWELL, dissenting.

The controlling law in this case is clear. Speaking for the Court in United States v. Mitchell, 445 U.S. 535 (1980) (Mitchell I), JUSTICE MARSHALL reaffirmed the general principle that a cause of action for damages against the United States "'cannot be implied but must be unequivocally expressed.'" Id., at 538 (quoting United States v. King, 395 U.S. 1, 4 (1969)). See United States v. Hopkins, 427 U.S. 123, 128 (1976) ("specific command of statute or authorized regulations"); Lehman v. Nakshian, 453 U.S. 156, 170 (1981) (BRENNAN, J., dissenting). Where, as here, a claim for money damages is predicated upon an alleged statutory violation, the rule is that the statute does not create a cause of action for damages unless the statute "'in itself ... can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained.'" United States v. Testan, 424 U.S. 392, 402 (1976) (quoting Eastport S.S. Corp. v. United States, 372 F.2d 1002, 1008-1009 (Ct. Cl. 1967)). See, e. g., Army & Air Force Exchange Service v. Sheehan, 456 U.S. 728, 739-740 (1982) ("Testan [held] that the Tucker Act provides a remedy only where damages claims against the United States have been authorized explicitly") (emphasis added); id., at 739 (damages remedy available where the regulations "specifically authorize awards of money damages"); id., at 741 (reaffirming that an action for damages under the Tucker Act may not be premised upon "regulations ... which do not explicitly authorize damages awards").

In sum, whether the United States has created a cause of action

JUN 21 1983

Changes: 1-4, 6-9

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1748

UNITED STATES, PETITIONER *v.*
HELEN MITCHELL ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

[June —, 1983]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins,
dissenting.

The controlling law in this case is clear. Speaking for the Court in *United States v. Mitchell*, 445 U. S. 535 (1980) (*Mitchell I*), JUSTICE MARSHALL reaffirmed the general principle that a cause of action for damages against the United States "cannot be implied but must be unequivocally expressed." *Id.*, at 538 (quoting *United States v. King*, 395 U. S. 1, 4 (1969)). See *United States v. Hopkins*, 427 U. S. 123, 128 (1976) ("specific command of statute or authorized regulations"); *Lehman v. Nakshian*, 453 U. S. 156, 170 (1981) (BRENNAN, J., dissenting). Where, as here, a claim for money damages is predicated upon an alleged statutory violation, the rule is that the statute does not create a cause of action for damages unless the statute "in itself . . . can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." *United States v. Testan*, 424 U. S. 392, 402 (1976) (quoting *Eastport S.S. Corp. v. United States*, 372 F. 2d 1002, 1008-1009 (Ct. Cl. 1967)). See, e. g., *Army & Air Force Exchange Service v. Sheehan*, 456 U. S. 728, 739-740 (1982) ("*Testan* [held] that the Tucker Act provides a remedy only where damages claims against the United States have been authorized *explicitly*") (emphasis added); *id.*, at 739 (damages remedy avail-

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Justice Brennan
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Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Powell

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Change: 1

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1748

UNITED STATES, PETITIONER v.
HELEN MITCHELL ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FEDERAL CIRCUIT

[June —, 1983]

JUSTICE POWELL, with whom JUSTICE REHNQUIST and
JUSTICE O'CONNOR join, dissenting.

The controlling law in this case is clear. Speaking for the Court in *United States v. Mitchell*, 445 U. S. 535 (1980) (*Mitchell I*), JUSTICE MARSHALL reaffirmed the general principle that a cause of action for damages against the United States "cannot be implied but must be unequivocally expressed." *Id.*, at 538 (quoting *United States v. King*, 395 U. S. 1, 4 (1969)). See *United States v. Hopkins*, 427 U. S. 123, 128 (1976) ("specific command of statute or authorized regulations"); *Lehman v. Nakshian*, 453 U. S. 156, 170 (1981) (BRENNAN, J., dissenting). Where, as here, a claim for money damages is predicated upon an alleged statutory violation, the rule is that the statute does not create a cause of action for damages unless the statute "in itself . . . can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." *United States v. Testan*, 424 U. S. 392, 402 (1976) (quoting *Eastport S.S. Corp. v. United States*, 372 F. 2d 1002, 1008-1009 (Ct. Cl. 1967)). See, e. g., *Army & Air Force Exchange Service v. Sheehan*, 456 U. S. 728, 739-740 (1982) ("*Testan* [held] that the Tucker Act provides a remedy only where damages claims against the United States have been authorized *explicitly*") (emphasis added); *id.*, at 739 (damages remedy avail-

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 20, 1983

Re: No. 81-1748 United States v. Mitchell

Dear Lewis:

Please join me in your dissenting opinion.

Sincerely,

Wm

Justice Powell

cc: The Conference

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13

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 2, 1983

Re: 81-1748 - United States v. Mitchell

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

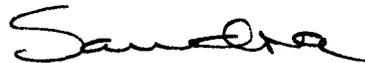
June 6, 1983

No. 81-1748 United States v. Mitchell

Dear Thurgood,

For now I will wait for the dissent in this case.

Sincerely,



Justice Marshall

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 21, 1983

No. 81-1748 U. S. v. Mitchell

Dear Lewis,

Please join me in your dissenting opinion.

Sincerely,

Sandra

Justice Powell

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