

No. 01-107

IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES,

*Petitioner,*

V.

BILLY JO LARA,

*Respondent.*

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On Writ of Certiorari to the United States  
Court of Appeals for the Eighth Circuit

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RESPONSE TO RESPONDENT'S MOTION TO STRIKE ARGUMENT SECTIONS I.A  
AND I.B OF THE BRIEF AMICUS CURIAE ON BEHALF OF EIGHTEEN AMERICAN  
INDIAN TRIBES

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Amici respectfully request that the Court deny *Respondent's Motion to Strike Argument Sections I.A and I.B of the Brief Amicus Curiae on behalf of Eighteen American Indian Tribes*.

By providing this Court with the facts contained in Sections I.A and I.B, the tribal amicus brief does precisely what amicus briefs are meant to do. The brief “brings to the attention of the Court relevant matter not already brought to its attention by the parties.” Sup. Ct. R. 37(1). Sections I.A and I.B are particularly relevant as they draw attention to the substantial effect and practical implications that the Supreme Court’s decision and legal ruling will have in Indian country today. Because they are germane to the case, these sections should not be stricken.<sup>1</sup>

The facts presented by amici in Section I.A are part of the official records of the Spirit Lake Tribal Court – the court which initially prosecuted Mr. Lara. The facts, particularly those concerning the Spirit Lake Tribe’s history with Mr. Lara, paint for the Court a clear picture of how community law and order would be disrupted were tribes to lose criminal jurisdiction over non-member Indians within Indian country – one of the potential consequences of this case. By showing that repeated acts of severe domestic abuse against a tribal member went unpunished by the federal government, and that federal prosecution was only forthcoming once a federal officer was struck, the brief exemplifies the gravity of crimes being committed on reservations and how such crimes would likely go totally unpunished if tribes lost the jurisdiction prosecute them. Also, by fleshing out the underlying facts in this case, the section provides a concrete example of

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<sup>1</sup> Contrary to Respondent’s charges that, “references to Respondent’s prior activity” are “scandalous allegations,” none of the information presented by Sections I.A and I.B comes even close to “scandalous matter” as contemplated by the rules of this Court. *See, e.g., Supreme Council of the Royal Arcanum v. Green*, 237 U.S. 531, 546 (1915)(striking from files a brief “so full of vituperative, unwarranted, and impertinent expressions as to opposing counsel that we feel we cannot, having due regard to the respect we entertain for the profession permit the brief . . . to remain upon our files”).

the inadequacy of the remedy of exclusion. Finally, Section I.A provides the Court with pertinent information regarding the Spirit Lake Tribal Court system, including the fact that the Tribe has a well-developed law and order code, and that it gives defendants extensive protections and process – information about which the Court would otherwise not be aware, and which is directly responsive to arguments concerning due process.

After providing the Court with concrete, specific examples in Section I.A, the brief in Section I.B shows how these examples fit within the national context. By providing information from public, national studies prepared by the U.S. Department of Justice, White House Committees, the National Congress of American Indians, and other highly reputable, public sources, this section shows how the situation faced by the Spirit Lake Tribe is representative of that found throughout Indian country. Tribes throughout the nation have communities which include non-member Indians, and which are overwhelmingly burdened by crime. And, as in the case here, the state and federal governments either do not have, or do not exercise their right to protect tribal communities from this crime. But, as this section explains, tribes themselves, equipped with sophisticated and fair judicial systems, are addressing the criminal problems within their communities in order to make those communities safe. Again, this information is relevant as loss of jurisdiction is one of the potential implications of this case.

As the information presented in sections I.A and I.B is relevant, it is permissible, even though it is “not part of the record on appeal,” as Respondent charges. It is well-established that, in an amicus brief, relevant matter may include facts that “may not be in the record of the case.” Robert L. Stern, et al., *Supreme Court Practice*, 664 (8<sup>th</sup> ed. 2002) (“Stern & Gressman”) (*citing* as examples, *Regents v. Bakke*, 438 U.S. 265, 316-317 (1978); *San Antonio School District v.*

*Rodriguez*, 411 U.S. 1, 56-57 n. 11 (1973)).<sup>2</sup> The Court’s consideration of such extra-record material is particularly appropriate where, as here, the information brings to the Court’s attention “material containing facts that bear upon the reasonableness of legislation.” Stern & Gressman at 652 (describing the “Brandeis Brief”). Here, the facts are presented in support of the reasonableness, indeed the necessity, of the amendments to the Indian Civil Rights Act, 25 U.S.C. § 1301 – legislation which recognizes tribal authority to prosecute individuals like Mr. Lara and which is the subject legislation in this case.

Because the facts presented in Sections I.A and I.B demonstrate the real-world consequences for law and order on reservations if the amendments to the Indian Civil Rights Act were struck down, amici respectfully request that the Court deny Respondent’s motion to strike these pertinent sections.


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<sup>2</sup> Importantly, there is no allegation by Respondent that the facts are untrue. *See* Stern & Gressman at 664 (“Preferably [non-record facts] should be incontrovertible and ‘have the ring of truth on their face’”).

Dated this 8<sup>th</sup> day of January, 2004.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 8<sup>th</sup> day of January, 2004 a copy of the foregoing  
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AND I.B OF THE BRIEF AMICUS CURIAE ON BEHALF OF EIGHTEEN AMERICAN  
INDIAN TRIBES**, was served via U.S. mail, first class, postage prepaid to the following:

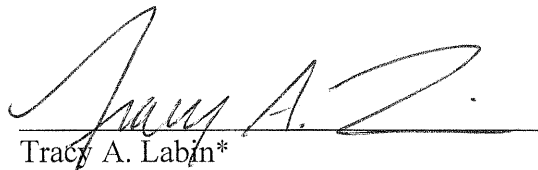
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