

No. 03-107

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IN THE SUPREME COURT OF THE UNITED STATES

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UNITED STATES OF AMERICA, PETITIONER

v.

BILLY JO LARA, RESPONDENT

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

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

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Respondent hereby moves this Court to strike portions of the Brief of *Amici Curiae* filed on behalf of Eighteen American Indian Tribes (the “*Amici Brief*”).<sup>1</sup> The *Amici Brief* contains references to Respondent Billy Jo Lara’s prior activities on the Spirit Lake Sioux Reservation that are not part of the record on appeal and are irrelevant to the present matter pending before this Court. See Brief of *Amici Curiae* on Behalf of Eighteen American Indian Tribes at 4-8. Respondent respectfully requests that this Court strike Argument Sections I.A. and I.B. of the *Amici Brief*.

First, Respondent’s prior conduct was never put at issue in either his tribal prosecution or subsequent federal prosecution. There is nothing in the record supporting the statements made by the *Amici*. In such instances, the federal rules of appellate procedure counsel that such new evidence should not be considered by the court on appeal and should be stricken. See Fed. R. App. P. 10; *Ewers v. Board of County Comm.*, 802 F.2d 1242, 1250 (10th Cir. 1986) (denying consideration of evidence not presented below) *rehearing granted*, 813 F.2d 1583 (10th Cir. 1987); *cert. denied*, 484 U.S. 1008 (1988), *on rehearing* 874 F.2d 736 (10th Cir. 1989); *Commonwealth of Massachusetts v. United States Veterans Admin.*, 541 F.2d 119, 123 n.5 (1st Cir. 1976) (granting a motion to strike documentary evidence which was not part of the record below).

Second, although Respondent recognizes that courts generally disfavor motions to strike, courts will grant such motions in the context of scandalous allegations that have no

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<sup>1</sup> The Eighteen American Indian Tribes include the Confederated Salish and Kootenai Tribes of the Flathead Indian Reservation of Montana, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Eastern Band of Cherokee Indians of North Carolina, the LacCourte Oreilles Tribe of Wisconsin, the Lummi Nation of Washington, the Menominee Tribe of Wisconsin, the Metlakatla Indian Community of Alaska, the Mississippi Band of Choctaw Indians, the Mohegan Tribe of Connecticut, the Nez Perce Tribe of Idaho, the Oglala Sioux Tribe of South Dakota, the Pascua Yaqui Tribe of Arizona, the Pawnee Nation of Oklahoma, the Pueblo of Santa Clara of New Mexico, the Salt River Pima-Maricopa Indian Community of Arizona, the Spirit Lake Sioux Tribe of South Dakota, and the Three Affiliated Tribes of the Fort Berthold Reservation of North Dakota.

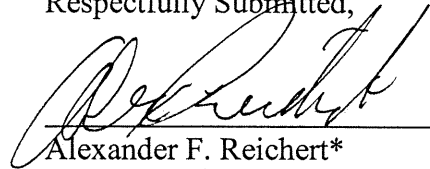
relation to the controversy and may cause prejudice to a party. See 5A Charles Alan Wright and Arthur R. Miller, *Federal Practice and Procedure* § 1382 (2d ed. 1990). The scandalous and immaterial references to Respondent's prior activity contained in the *Amici* Brief are not relevant to the government's current appeal and serve only to prejudice Respondent in this matter. It is highly likely that such evidence would have been inadmissible at Respondent's federal proceeding. See Fed. R. Evid. 404, 608 & 609; see also *United States v. McCourt*, 925 F.2d 1229 (9th Cir. 1990) (holding evidence of prior bad acts was inadmissible). Similarly, this Court should decline to consider such immaterial and irrelevant evidence in reviewing this matter.

Respondent, therefore, respectfully requests that this Court grant Respondents Motion to Strike and strike Argument Sections I.A. and I.B of the Brief *Amicus Curiae* on Behalf of Eighteen American Indian Tribes.

December 31, 2003

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Respectfully Submitted,



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**PROOF OF SERVICE**

I, Alexander F. Reichert, do swear or declare that on this date, September 30th, 2003 as required by Supreme Court Rule 29 I have served the enclosed **RESPONDENT'S MOTION TO STRIKE ARGUMENT SECTIONS I.A. AND I.B. OF THE BRIEF AMICUS CURAE ON BEHALF OF EIGHTEEN AMERICAN INDIAN TRIBES** on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Theodore B. Olson  
Solicitor General of the United States  
Department of Justice  
Room 5614  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Tracy Labin  
Native American Rights Fund  
1712 N Street, N.W.  
Washington, DC 20036

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on December 31, 2003.

**REICHERT LAW OFFICE**

  
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