No. 10-613

DEC 8 - 2010

In The
Supreme Court of the United States

ATTORNEY'S PROCESS AND
INVESTIGATION SERVICES, INC.,

Petitioner,

v.

SAC AND FOX TRIBE OF
THE MISSISSIPPI IN IOWA,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

Blank Page

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Petitioner, API, casts itself as an innocent victim of circumstances and tribal and federal judiciaries run wild. It is neither innocent nor a victim. API is an armed mercenary engaged by disgraced, corrupt, former Tribal Chairman, Alex Walker, Jr. to seize by force of arms what democratic elections denied him; control of the Tribe's government and the Tribe's Meskwaki Bingo Casino Hotel (hereinafter "the Casino"). Walker, like a tinhorn dictator of a third world country, refused to accept the democratically expressed will of the Sac and Fox Tribe of the Mississippi in Iowa (Meskwaki) people, and API readily inserted itself into the Tribe's internal relations and self-governance to accomplish Walker's aims.

API contracted with Walker to formulate a plan to achieve his goals. It did so well after Walker was removed as Tribal Chairman, and with full knowledge that his authority to act on behalf of the Tribe was in grave doubt. As is the case with most mercenaries, API preyed on the Tribe's internal strife, using the leadership dispute to enrich itself. It illegally took over $1,000,000.00 of the Tribe's funds for its direct, armed interference in the Tribe's governance and internal relations.

Petitioner argues that it acted under a cloak of federal authority. It states that in 2003 it could enter the Casino, eject what it refers to as "dissidents," take control of the premises, and operate the Casino.

Petitioner wraps its argument around a nucleus of misstated facts and law, which the Tribe addresses in detail below. But central to its argument is the contention that the National Indian Gaming Commission ("NIGC") orders and the BIA's continued recognition of Walker as Tribal Chairman vested Walker with *federal* authority to conduct tribal affairs and retake control of the Casino through any means at hand, including the use of force and, if necessary, violence.

Petitioner seeks to immunize itself from the fact that its conduct falls squarely within the second exception in *Montana v. United States*, 450 U.S. 544 (1981) by arguing that, by virtue of its contract with Walker, the authority these federal actors allegedly conferred on Walker extended to API. Its argument hangs on a slender thread; its contention that the NIGC order closing the Casino was a grant of power to Walker to act within a "federal sphere" of authority, independent of, and apparently even in violation of, limitations imposed by Meskwaki law. API argues that the doctrine of federal supremacy and the BIA's continued recognition of Walker resolved, insofar as the question of tribal court jurisdiction over it is concerned, the Tribe's leadership dispute.

Petitioner's argument fails, for resolution of matters of internal governance are exclusively within the jurisdiction of the Tribe. As this Court has said, such matters implicate tribal sovereign interests at their peak. *Montana*, 450 U.S. 544. The conduct forming the basis for the Tribal Courts' jurisdiction

over API occurred while the Bear Council was the Tribe's legitimate governing body, selected through democratic processes consistent with the Tribe's Constitution, elected by an absolute majority of all qualified voters. The Tribe resolved the leadership dispute with its May 22, 2003 election, regardless of whether it took federal authorities nine days, nine months, or nine years to recognize that result. The Tribal Court decisions merely memorialized what was a political and legal reality; only the Tribe could resolve the leadership dispute, and the Tribe did by electing the Bear Council.

API urges this Court to construe the BIA's continued recognition of Walker, taken with the NIGC's orders, as vesting Walker with authority to exercise the Tribe's sovereign powers in all areas involving federal statutes or regulations pertaining to Indian tribes. If the Court rejects Petitioner's contention, as it must be, then Petitioner was not empowered to mount an armed assault on the Tribe's Government Center, its Gaming Commission offices, and Casino.

Consequently, Petitioner now seeks to shift the debate to new issues, apparently hoping its misstatements of the factual record, its selective citation to snippets of this Court's decisions governing application of the *Montana* exceptions, and its tortured reading of the Eighth Circuit's holding, will lead this Court to grant the Petition. Its dishonesty should go unrewarded.

Examination of the record reveals the NIGC orders were never at issue in this litigation, "collaterally

attacked" by the Tribe, or implicated by the decisions below. The contention that the Eighth Circuit's decision "allow[ed] the Tribe and the tribal court to . . . collaterally attack the federal orders by retroactively assigning a dissident council sole authority over the casino," Pet. at 2, is a bald-faced fabrication entirely unsupported by the record. The Tribal Court, as a matter of tribal law, determined the Tribe had resolved its leadership dispute by removing the Walker Council and electing the Bear Council. Therefore, as a matter of *Tribal* law Walker was without authority over the Casino or any other aspect of the Tribe's governance at the time he entered the contract with API.

As discussed at length in the body of this brief, the only real issue the Court must decide is whether the Petitioner presents any compelling reason to grant the Petition. Given that the Eighth Circuit grounded its decision in this Court's precedent, properly respected the Tribal Court's factual findings, and correctly applied the law to those facts, the Petition must be denied.

Petitioner substantially misstates the facts of record, grossly distorts the procedural history, and mischaracterizes the holdings of the courts below. It raises for the first time here issues not preserved below, and fails in its duty of candor to this Court. The legal issues Petitioner discusses are purely hypothetical, divorced from the procedural history and facts of this case, and API presents no compelling reason why this Court should grant the Petition. The

Tribe presents multiple reasons why the Petition must not be granted, and respectfully requests that the Court deny it.

CONSTITUTIONAL, STATUTORY, AND OTHER PROVISIONS OF LAW INVOLVED

CONSTITUTION AND BYLAWS OF THE SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA

ARTICLE IV – COMPOSITION AND QUALIFICATIONS OF GOVERNING BODY

Section 2. All members of the Tribal Council must be recognized as persons of honor, law abiding, and of good character. The voting members of the Tribe shall be the sole judge of these qualifications.

ARTICLE X – POWERS OF THE TRIBAL COUNCIL

Section 1. Enumerated Powers. The Tribal Council shall exercise the following rights and powers, subject to any limitations imposed by the constitution or statutes of the United States and to all express limitations upon such rights and powers contained in this Constitution and Bylaws.

. . .

(e) To protect and preserve the property and natural resources of the Tribe.

. . .

(j) To receive, appropriate and expend for public purposes funds coming within the control of the Tribal Council, but no salaries shall be paid to Council members or other tribal officers without the approval of the Tribe.

ARTICLE XII – REFERENDUM AND RECALL

Section 1. Upon a petition signed by not less than thirty per cent of the eligible voters of the Tribe, enumerated at the last general election, the Tribal Council shall call a special election to ratify or reject any action by the Tribal Council or to recall any member of the Tribal Council.

BYLAWS OF THE SAC AND FOX TRIBE OF THE MISSISSIPPI IN IOWA

ARTICLE I – DUTIES OF OFFICERS

Section 3. The Treasurer of the Tribal Council shall receive, receipt for, deposit, and account for all funds handled through the Tribal Council. No money shall be disbursed without the consent of the Tribal Council and without the signature of the Chief and the Treasurer. The books of the Treasurer shall be open to inspection by members of the Tribe and by the Commissioner of Indian Affairs at all reasonable hours. An audit of accounts shall be made once a year and at such other times as the Tribal Council or Commissioner may require.

ARTICLE III – MEETINGS OF THE TRIBE

Section 1. In addition to meetings in connection with tribal elections, the Tribal Council shall have the

authority to call the Tribe for general meetings. Upon a petition signed by at least 30 per cent of the eligible voters of the Tribe it shall be the duty of the Tribal Council to call a meeting of the Tribe.

Section 2. Thirty per cent of the total number of the eligible voters, enumerated at the last general election of the Tribe shall constitute a tribal quorum.

Section 3. Written notice of all meetings shall be posted in public places at least five days in advance.

STATEMENT OF THE CASE

A. Statement of Facts

In 2002, the Sac and Fox Tribe of the Mississippi in Iowa (the "Tribe") Tribal Council chaired by Alex Walker, Jr. (the "Walker Council") was presented with petitions for recall of all Council members, signed by more than thirty percent of the Tribe's eligible voters. The petitions originated when tribal members discovered the Walker Council was involved in financial improprieties with the general manager of the Meskwaki Bingo Casino Hotel. *API Appeal*[1] (App.

[1] Throughout this brief, the Tribe refers to the Tribal Trial Court order denying API's motion to dismiss *Sac & Fox Tribe of the Mississippi in Iowa v. Attorney's Process and Investigation Services, Inc.*, case no. API-CV-DAMAGES-2005-01 (App. 635), as "*API Trial Court.*" The Tribe refers to the Sac & Fox Tribe of the Mississippi in Iowa Court of Appeals' decision affirming the Trial Court, case no. API-CV-APP-2008-02-124 (Pet. App. 63), as "*API*

(Continued on following page)

647).[2] The Petitions complied with the Article XII, Section 1 of the Constitution and Bylaws of the Sac and Fox Tribe of the Mississippi in Iowa (the "Constitution"), and when the Council accepted them, it had an absolute duty to conduct a special recall election. The Walker Council members violated the Tribe's Constitution and their oaths of office by refusing to hold the special election prior to March 4, 2003. *API Trial Court* (App. 637-38); *API Appeal* (Pet. App. 82a).

In March 2003, the Tribe's Hereditary Chief and the Tribe's members *lawfully* responded to the Walker Council's violation of the Tribe's Constitution by removing it from office and appointing an interim council, chaired by Homer Bear, Jr. (the "Bear Council") to govern until a special election could be held to fill the vacancies created by Walker's removal. *Id.* Walker's removal occurred two months before Petitioner contracted with him. *API Trial Court* (App. 637-38); *API Appeal* (Pet. App. 83a). Interpreting Article IV, Section 2 of the Tribe's Constitution as

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Appeal." The District Court's order staying *Attorney's Process and Investigation Services, Inc. v. Sac & Fox Tribe of the Mississippi in Iowa*, 401 F. Supp. 2d at 954 (N.D. Iowa 2005) is referred to as "*API District Court I*," and the June 18, 2009 order dismissing API's federal court suit against the Tribe (Pet. App. 35a), is referred to as "*API District Court II*." The decision of the Court of Appeals for the Eighth Circuit (Pet. App. 1a), will be referred to as "*API Federal Appeal*."

[2] The Tribe's citations to "App." are to the pages of the Appendix in *API Federal Appeal*. The Tribe's citations to "Pet. App." are to Petitioner's Appendix to this Court.

providing a procedure closely akin to federal impeachment, an absolute majority of eligible voters voted on April 14, 2002, to remove each member of the Walker Council, and on May 22, 2003, the Tribe held a special election for the vacant seats. Walker lost to Bear by a vote of 410 to 6. (App. 639). Consequently, after May 22, 2003, the governing body of the Sac and Fox Tribe was a Tribal Council chaired by Homer Bear, Jr. *API Trial Court* (App. 638); *API Appeal* (Pet. App. 63); API Fed. App. Ct. Br. 3.

On June 16, 2003, Petitioner entered into a consensual contract with Walker (App. 640), under which it took tribal funds without the Tribe's authorization, and tried to overthrow the Tribe's governing body. Petitioner, as Walker's agent, mounted an armed attack on the Tribe's Government Center, Gaming Commission offices, and Casino, all located on reservation land held in trust by the United States for the Tribe. *Attorney's Process and Investigation, Inc. v. Sac & Fox Tribe of the Mississippi in Iowa*, 609 F.3d 927 (July 7, 2010) (Pet. App. 1a-34a). Petitioner attempted to forcefully expel the constitutionally elected Tribal Council from the Government Center, forcefully install Alex Walker, Jr. as "Chairman," and physically took control of the Tribe's Government Center, Gaming Commission offices, and Casino, *id.*, through an illegal, forcible, Tribal Ct. Compl. ¶15 (Pet. App. 152a), armed, Tribal Ct. Compl. ¶31 (Pet. App. 154a), premeditated, Tribal Ct. Compl. ¶32, *id.*, coordinated, *id.*, trespass into the Tribe's Government Center and Casino, Tribal Ct. Compl. ¶7 (Pet. App. 150a); Def.

Admis. 9, 11 (App. 492-93), attempting a forcible takeover of the Tribe's property and government. As the Eighth Circuit Court of Appeals stated, the facts applicable to the Petition show Petitioner attempted an armed and violent *coup d'etat* on tribal trust land on the Sac and Fox Tribe of the Mississippi in Iowa Reservation. *API Federal Appeal* (Pet. App. 20a, n. 6).

During Petitioner's armed, military-style attack, Petitioner committed assaults, batteries, unlawful imprisonment and other criminal acts. Compl. ¶31; *API Appeal* (Pet. App. 68a-69a). Petitioner broke into secured areas of the Tribe's Casino, and allowed persons who were banned from the Casino for violations of tribal gaming laws, access to those areas as well. Compl. ¶24 (Pet. App. 153a). Petitioner acted in conscious or intentional disregard of, or indifference to the rights of, safety of, or damages to, the Tribe. Compl. ¶34, 37 (Pet. App. 154a).

Between June 16, 2003 and early November 2003, Petitioner took possession of $1,022,171.26 of the Tribe's money. *API Trial Court* (App. 640); *API Appeal* (Pet. App. 68a). The Tribe's Constitution requires authorization from the Tribal Council as a prerequisite to expenditure of tribal funds, Sac & Fox Const. Art. X, §1(j) of the Tribe's Constitution; Bylaws, Art. I, §3, and the signature of the Tribe's Chairman and Treasurer on all checks. Sac & Fox Bylaw Art. I, §3. Neither the Chairman nor the Treasurer of the Bear Council signed any documents

permitting payment of tribal funds to Petitioner. *API Appeal* (Pet. App. 63a).

As part of its armed assault, Petitioner worked in the Tribe's Casino, Tribal Ct. Compl. ¶7 (Pet. App. 150a), and obtained and exercised control over the Casino and, all or nearly all tribal gaming information, tribal Gaming Commission information, and tribal gaming supplies and gaming machine components. Tribal Ct. Compl. ¶10 (Pet. App. 151a); *API Appeal* (Pet. App. 69a).

Petitioner did not submit an application for a gaming license to the Tribe's Gaming Commission, Tribal Ct. Compl. ¶34 (Pet. App. 154a), was not granted a gaming license from the Tribe's Gaming Commission, *id.*, is morally unfit to hold a gaming license, *id.*, and therefore is unfit to work in gaming.

In the Tribal Court proceedings, Petitioner did not dispute the Complaint's factual allegations detailing its conduct on October 1, 2003. Consequently, for purposes of all proceedings in this case, the allegations are treated as proven facts of record. *API Federal Appeal* (Pet. App. 9a). On the facts of record here, Petitioner's conduct fits squarely within the second *Montana* exception.

B. Procedural History

The procedural history required to make an informed judgment on Petitioner's claims commenced in 2003, with the Tribe's leadership dispute. In April

2003, members of the Walker Council filed a suit styled *Sac & Fox Tribe of the Mississippi in Iowa v. Bear*, 258 F. Supp. 2d 938 (N.D. Iowa 2003), asserting they were "recognized" by the United States and therefore had authority to expend tribal funds and control tribal property, to the exclusion of the Bear Council. Like API here, the former Walker Council alleged that its authority derived from continued federal recognition, which gave it authority to enter into contracts and exercise other powers of office conferred to the Tribal Council by the Sac and Fox Tribe of the Mississippi in Iowa Constitution.

The United States District Court for the District of Northern Iowa dismissed Walker's suit, holding that only the Tribe, not the federal courts, could resolve the competing claims to tribal office and competing claims of authority to enter into contracts on behalf of the Tribe. *Id.* The Eighth Circuit affirmed that decision, *Sac & Fox Tribe of the Mississippi in Iowa/Meskwaki Casino Litig.*, 340 F.3d 749 (8th Cir. 2003), and Walker did not seek this Court's review of the decision.

On May 12, 2003, the NIGC ordered the Tribe to temporarily close its Casino. Invoking exceptions to the general rule requiring exhaustion of administrative remedies, the Tribe filed a federal court action seeking to enjoin the NIGC from executing the closure order. Walker intervened in the Tribe's federal court suit, and again asked the federal court to order Bear to vacate government offices and the Casino. The federal court repeated its prior holding, stating

federal actors have no authority to determine a tribe's leaders. The case ended when Walker abandoned his claims.

Walker appealed the NICG Temporary Closure Order. The ALJ ruled against both Walker and the NIGC (Pet. App. 117a, 130a), and Walker appealed to the NIGC (which sits in review of its own orders), asserting the NIGC should modify its closure order to provide that the Casino could reopen if it was in Walker's control. The NIGC rejected Walker's argument. The NIGC held that the Casino could reopen when it was under the control of "a duly elected, federally recognized Tribal Council." Since Walker was never again "duly elected" he never had authority to reopen the Casino, and ultimately the Casino reopened under control of the Tribe's constitutionally elected governing body, *i.e.*, the Council chaired by Homer Bear, Jr.

In January 2004, an "Election Board" appointed by Walker, brought a federal court suit challenging the BIA's formal recognition of the Bear Council. *Sac & Fox Tribe of the Mississippi in Iowa Election Board [sic] v. Bureau of Indian Affairs*, N.D. Iowa case no. C04-1. The federal district court dismissed the suit on the Tribe's motion, the "Election Board" appealed, and the Eighth Circuit again confirmed that it lacked authority to resolve matters involving the Tribe's internal relations and governance. *Sac & Fox Tribe of the Mississippi in Iowa Election Board [sic] v. Bureau of Indian Affairs*, 439 F.3d 832 (8th Cir.

2006). Walker's "Election Board" did not seek this Court's review.

Consequently, by August 2005, when the Tribe filed suit against API in the Tribal Court, the question whether Walker had authority to exercise the Tribe's sovereign powers by committing it to a contract had been presented to the federal district court (Judge Reade presiding in all matters) and the Eighth Circuit repeatedly, all with the same result; federal law and federal actors could not determine Walker's authority – only the Tribe, applying tribal law, could determine his authority.

The Tribe's complaint alleged that API committed multiple intentional torts against the Tribe when it mounted its military style assault at the Tribe's Government Center and Casino. API filed a motion to dismiss for lack of jurisdiction. Through its motion to dismiss, API raised the issue of whether the Tribe was a party to the June 16, 2003, contract, arguing that the BIA's "recognition" of the former Walker Council made the Tribe a party to the contract, the contract required arbitration of claims, and the Tribal Court therefore lacked jurisdiction over API.

After moving to dismiss the Tribal Court suit, but before the Tribal Court ruled, API filed a federal district court suit styled *API v. Sax & Fox Tribe of the Mississippi in Iowa* (N.D. Iowa case no. 05-CV-16). Like Walker had already repeatedly done, API asserted Walker's "federal recognition" meant Walker's authority to act on behalf of the Tribe was a federal law issue. On the Tribe's motion, the federal court

suit was stayed pending exhaustion of Tribal Court remedies on the jurisdictional issues.

The dispute then returned to Tribal Court and API's challenge to Tribal Court jurisdiction was not on the pleadings, for API requested and was granted discovery, limited to jurisdictional issues. API argued *on the facts*, that it had a contract with the Tribe. In support of its motion, API submitted deposition testimony, affidavits, and numerous documents. The Tribal Court held that the Tribe resolved its leadership dispute by removing the Walker Council and electing the Bear Council, that the Tribe had never entered into any agreement with API, and that Petitioner's conduct fell squarely within the Tribal Court's jurisdiction under the second exception articulated in *Montana*, 450 U.S. 544. *API Trial Court* (App. 663).

API appealed to the Tribe's Court of Appeals but (with one inconsequential exception) did not challenge the Trial Court's findings of fact. On December 23, 2008, the Tribal Court of Appeals affirmed the Trial Court's holding that the case came within the jurisdiction of the Sac and Fox Tribe of the Mississippi in Iowa Court under the second *Montana* exception.

After the Tribe's Court of Appeals issued its decision affirming tribal court jurisdiction, API moved to reopen its federal court suit, and in support of that motion API expressly pled that it had completed its Tribal Court challenges to jurisdiction, the Tribe did not resist the motion to reopen, and the federal

district court granted API's motion to reopen. (App. 50-57). The Tribe promptly moved to dismiss the federal court suit. The district court granted the Tribe's motion to dismiss, and API appealed.

On appeal, the Eighth Circuit Court affirmed that only the Tribe could resolve matters of self-governance and internal relations, including its leadership dispute, and accepted the Tribe's determination that after May 22, 2003, the Tribe was governed by the Bear Council, that Walker was entirely without authority to bind the Tribe, and that no contract had been formed between API and the Tribe. It also affirmed that unless API could show clear error, it must accept the factual record from the Tribe's courts. Before the Eighth Circuit API neither contested the factual findings of the Tribe's courts, nor established clear factual error existed, and the Court confirmed that all uncontested allegations of the complaint were therefore proven facts in this procedural posture. *API Federal Appeal* (Pet. App. 16a). The Eighth Circuit rejected Petitioner's argument here: that a "federal sphere" of tribal sovereign authority exists, and that it is conferred by federal actors on a "Chairman" who can exercise the Tribe's sovereign powers within that federal sphere, to the exclusion of the Tribe's chosen Chairman.

Because there was no contract between API and the Tribe, the Court analyzed the Tribe's jurisdiction over API under the line of cases commencing with *Montana*, strictly applying this Court's precedent as guidance. The Court concluded that based upon the

second *Montana* exception, the Tribal Court had jurisdiction over claims stemming from Petitioner's attempt to overthrow the Tribe's governing body on October 1, 2003. The Court remanded to the district court for further consideration of whether the Tribal Court had jurisdiction under the first *Montana* exception. Petitioner sought review by this Court.

REASONS FOR DENYING THE PETITION

Petitioner grossly misstates what this case is about; this case *does not* constitute a collateral attack on federal administrative "orders" of the NIGC and the BIA. First, the letters of the BIA do not constitute "orders"; they represent nothing more than the BIA's acknowledgement that it could not decide the Tribe's internal leadership dispute, and that the Tribe had to resolve the dispute itself.

The NIGC orders were never at issue in this litigation, "collaterally attacked" by the Tribe, or implicated by the decisions below. The contention that the Eighth Circuit's decision "allow[ed] the Tribe and the tribal court to . . . collaterally attack the federal orders by retroactively assigning a dissident council sole authority over the casino," Pet. at 2, is a bald-faced fabrication entirely unsupported by the record. The Tribal Court, as a matter of tribal law, determined the Tribe had resolved its leadership dispute by removing the Walker Council on April 14, 2003, and electing the Bear Council on May 22, 2003.

Therefore, as a matter of *Tribal* law Walker was without authority over the Casino or any other aspect of the Tribe's governance at the time he entered the contract with API, regardless whether federal authorities recognized him as the Tribe's Chairman.

What the record *does* establish is that in the predawn hours of October 1, 2003, API mercenaries armed with batons and at least one handgun, stormed the Tribe's Government Center, which is the seat of the Tribe's government, housing the Tribal Council Chambers, financial offices, and offices of Tribal Operations. It broke into the Tribe's Government Offices, absconded with financial and legal documents, and sought to use physical force to expel the Bear Tribal Council from the Government Center. The Tribe did not authorize API's illegal conduct.

In a carefully orchestrated action, API simultaneously mounted an armed attack on the Tribe's Casino and its Gaming Commission offices. API illegally broke the locks on the Tribe's Gaming Commission offices, entered and occupied them, and removed files and sensitive documents. Tribal and federal law strictly controls access to Gaming Commission premises and documents, as does the Compact between the Sovereign Indian Nation of the Sac and Fox Tribe of the Mississippi in Iowa and the Sovereign State of Iowa to govern Class III Gaming on Indian Lands of the Sac and Fox Tribe of the Mississippi in Iowa. Access is restricted to authorized persons. Sac & Fox Gaming Code §§113101(a); 11-3103(h); 25 U.S.C. §2710(b)(2)(F). API was not a

person authorized to enter Gaming Commission offices, or to possess Gaming Commission files.

Petitioner, accompanied by individuals whose gaming licenses had been revoked by the Gaming Commission, broke into the Security and Surveillance areas of the Casino, and broke down doors to Casino back-of-house and management offices. While illegally in control of these restricted areas of the Casino, Petitioner permitted the former Casino general manager, whose license had been revoked for financial impropriety and who was banned from even entering the Casino, to access and remove sensitive electronic and paper files from management and accounting offices. Access to the Casino back-of-house, including, *inter alia*, Security, Surveillance, financial, casino operations and management offices, is restricted to authorized persons. Sac & Fox Gaming Code §§11-3101(a); 11-3103(h); 11-6202; 25 U.S.C. §2710(b)(2)(F) API was not a person authorized to be in restricted areas of the Casino, and had no authority to permit others such access, particularly those deemed by the Gaming Commission as unfit to engage in gaming. It did not have a Meskwaki gaming license, which, under federal and tribal law, is a prerequisite to entering such areas. Therefore, even if this Court were to slice tribal sovereignty into a federal and a tribal sphere, API was not a person authorized by the NIGC, federal law, and tribal law, to engage in the conduct it did, and that conduct falls squarely within the second *Montana* exception.

I. Petitioner's Contention That Walker's "Federal Sphere" Authority Defeats Tribal Court Jurisdiction Is Unsupported By Law Or The Facts Of This Case.

A bedrock principle of Indian law is that a tribe, not the federal government, determines the tribe's leaders, and that it is through each tribe's unique democratic processes that it determines by whom it will be governed, in whom it will vest the authority to exercise the tribe's inherent sovereign powers. There is no disagreement among the circuit courts on this principle, nor could there be, because the legal rule is firmly established, and circuit court and Interior Board of Indian Appeals ("IBIA") decisions are in accord with one another. *Nero v. Cherokee Nation*, 892 F.2d 1457, 1463 (10th Cir. 1989) (holding there is no federal jurisdiction over tribal leadership dispute); *Wheeler v. Swimmer*, 835 F.2d 259, 262 (10th Cir. 1987) (same); *Goodface v. Grassrope*, 708 F.2d 335 (8th Cir. 1983); *Boe v. Ft. Belknap Indian Cmty.*, 642 F.2d 276, 278-80 (9th Cir. 1981); *Wadena v. Acting Minneapolis Area Director*, 30 IBIA 130 (1996).

The Eighth Circuit noted in its opinion below that "Because tribal governance disputes are controlled by tribal law, they fall within the exclusive jurisdiction of tribal institutions, and the BIA's recognition of a member or faction is not binding on a tribe, *API Federal Appeal* (Pet. App. 28a) (internal citations omitted), stating, "We have reaffirmed this rule in relation to the very governance dispute underlying this case." *Id.* Any other result would be an

affront to the democratic principles upon which this Nation is founded and to which it adheres to this day. Yet Petitioner would have this Court create a rule denying Indian people the right to vote for the leaders of their tribe; it would disenfranchise those members of the Tribe who removed Walker and elected Bear, in violation of this Court's precedent.

As these cases uniformly hold, the right of an Indian tribe to decide who will govern it is the very heart of a tribe's single, unitary sovereignty. Yet, Petitioner urges this Court to tear that heart in two, with the exercise of one part of a tribe's sovereignty (that in the nebulous "federal sphere") determined by federal agencies, and the remainder by the tribe.[3] In making this argument, Petitioner grossly misstates what this case is about, calling the results below a collateral attack on federal administrative orders. That argument is pure fantasy.

Nothing about this case constitutes a collateral attack on federal administrative "orders" of the NIGC and the BIA. API's characterization of the Interior Department letters as "orders" is misplaced; they

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[3] It would appear that virtually every act that a tribe might take would come within the "federal sphere" as contemplated by Petitioner. *See generally* 25 U.S.C. (Federal government provides funding and/or oversight for tribal housing, health care, natural resources, probate, water rights, child welfare, social services, courts, police, schools, gaming, public works and other programs), thus accepting Petitioner's argument entails reinstatement of the paternalistic federal role that existed in the past, one which Congress has expressly rejected.

represent nothing more than the BIA's acknowledgement that it lacked any authority to decide the Tribe's internal leadership dispute, because only the Tribe had that authority.[4]

The degree to which Petitioner distorts the nature of this case, and misrepresents the decisions of the courts below, is startling. API failed to convince the courts below that it was cloaked with the authority it contends the NIGC conferred on Walker – authority to exercise force to retake possession of the Casino. As the Eighth Circuit said, "the NIGC actions had neither the purpose nor the legal consequences API ascribes to them. The notice of violation and closure order disclose no intent to empower Walker to employ force by outsiders to retake the casino." (Pet. App. 30a). Because Petitioner's argument was so preposterous, both the tribal and the federal courts rejected the notion that the NIGC's Order somehow vested Walker with authority to act in a "federal sphere" of tribal sovereign power, entirely separated from the Tribe's own internal relations and self-governance, and independent of the strictures of the

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[4] For example, the March 17, 2003 letter quoted with approval an IBIA decision involving the Tribe, which states that the Tribe "has not only the right, but also the responsibility to resolve this [leadership] dispute for itself without further interference from BIA," and concluded, "the BIA lacks authority to involve itself in these matters." (Pet. App. 142a). *See also* (Pet. App. 145a) (acknowledging the leadership dispute, the BIA reiterates that it must refrain from interfering in the matter).

tribal democratic process, because they recognized it would directly intrude on the Tribe's sovereignty.

Before Petitioner unlawfully extracted over $1,000,000.00 of the Tribe's funds in exchange for its efforts to forcibly overthrow the Tribe's lawful and constitutionally elected governing body, the BIA (App. 142a), and the federal courts had applied this well established legal rule to the leadership dispute which existed on the Sac and Fox Tribe of the Mississippi in Iowa Settlement in 2003. *Bear*, 258 F. Supp. 2d 938, aff'd, *Sac & Fox Tribe of the Mississippi in Iowa/ Meskwaki Casino Litig.*, 340 F.3d 749 (8th Cir. 2003).

Further, whether the decisions below constitute a "collateral attack" was never raised by Petitioner as an issue – until it filed its Petition. The issue therefore is not preserved for review by this Court. Contrary to Petitioner's present claims, the Tribe never *claimed*, and the Eighth Circuit never *held* that federal courts are powerless to vindicate the NIGC's orders; in fact, the Federal District Court for the Northern District of Iowa fully vindicated the NIGC orders and closed the Tribe's Casino. *Sac & Fox Tribe of the Mississippi in Iowa v. United States*, 264 F. Supp. 2d 830 (N.D. Iowa 2003). The Eighth Circuit affirmed that decision on appeal. *Meskwaki Casino Litig.,* 340 F.3d 749 (8th Cir. 2003).

Throughout its brief, Petitioner pretends that the Tribe's claims relate solely to Petitioner's actions at the Tribe's Casino, and implies its acts were all committed in public areas of the Casino. It steadfastly

refuses to acknowledge the fact that the Tribe's complaint alleges Petitioner also committed intentional torts at the Government Center, Gaming Commission offices, and restricted areas of the Casino. All of Petitioner's torts were part of their general scheme to overthrow the Tribe's governing body, and *Petitioner simply has no plausible argument that overthrowing a constitutionally and democratically elected tribal governing body is within a federal sphere* and was or could have been lawfully authorized by any federal actor or any removed former tribal officer.

In the proceedings below, Petitioner never raised the doctrine of collateral attack. The Courts below have not analyzed or ruled on this legal issue, and Petitioner cannot raise this new issue in a petition for a writ of certiorari. Because the issue was not directly presented to the Court below, the Court below did not rule on that issue, so there could not possibly be conflict with any other circuit on this issue. Also, any decision on Petitioner's collateral attack argument here would be limited to the narrow, unique, and complex procedural and factual history of this case. This Court has far more important cases to consider than Petitioner's new and factually and legally unsupported claim that the Tribe engaged in an improper collateral attack.

Finally, Petitioner asserts that there will be "broad negative consequences" from the Eighth Circuit's decision holding the Tribal Court had jurisdiction over API. It is actually Petitioner's arguments

regarding a "federal sphere" of tribal authority which would have "broad negative consequences." Accepting API's argument would constitute a diminution of inherent tribal sovereignty on an unprecedented scale. Such a result would overturn the vast majority of this Court's Indian law precedent and violate the doctrine of *stare decisis*. It would contravene the stated policy and purpose of countless statutes governing Indian matters, violate Congress' express intent to promote tribal self-government, usurp authority vested solely in Congress by the United States Constitution, and create catastrophic and debilitating chaos and uncertainty in Indian affairs throughout Indian country. Its policy argument is without merit and presents no grounds upon which to grant the Petition.

II. The Court Of Appeals Properly Stated The Multi-Factor Test For Application Of The *Montana* Exceptions And Properly Applied That Test To The Arguments Which Petitioner Raised And To The Complex Factual And Procedural History Presented To It.

As Petitioner itself admits, this Court has clearly defined the two *Montana* exceptions.

> To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians on their reservations, even on non-Indian fee lands. A tribe may regulate, through taxation, licensing, or

> other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements. A tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe.

Montana v. United States, 450 U.S. 544, 565 (1981) (citations omitted). Since then, the Court has repeatedly reaffirmed these two exceptions. *E.g.*, *Plains Commerce Bank v. Long Family Land and Cattle Co.*, 128 S.Ct. 2709, 2724 (2008) (reiterating the validity of both "*Montana* exceptions"); *Nevada v. Hicks*, 533 U.S. 353 (2001) (same); *Strate v. A-1 Contractors*, 520 U.S. 438 (1997) (same).

Montana is based upon general principles of federal Indian law. American Indian tribes have given up or had taken from them substantial jurisdiction. They have literally given up or had taken the great majority of the lands which are now the United States. But in giving up this land and jurisdiction, they have reserved or retained some jurisdiction, and the federal government's policy is to foster the tribes' active exercise of their retained jurisdiction and sovereign authority. *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 18 (1987). As recognized in *Montana*, one of the powers which tribes have retained is the power to exercise jurisdiction over non-Indians who chose to

come onto the Tribe's lands and engage in certain types of conduct which harms the Tribe.

Before even beginning with a discussion of the second *Montana* exception, this Court should take note that since it has moved to the federal courts, Petitioner has taken the position that all of its acts were as Walker's agent. In the Tribal Court, Petitioner never claimed it was acting within the scope of its authority as Walker's agent when it committed those intentional torts and Petitioner instead proceeded under a claim that it was a non-Indian. Petitioner cannot have it both ways: either it committed the acts as Walker's agent (in which case *Montana* does not even apply), or it committed its torts and violated the scope of authority provided to it by Walker (in which case its claim that Walker provided legally sufficient authorization fails on its facts).

Even if Petitioner were a "non-Indian" for *Montana* analysis, the present matter is a paradigm example of the power which the Tribe has retained. The core of the second *Montana* exception is the protection of the Tribe's political integrity and its right to make its own laws and be ruled by them. Here the Tribe made its own laws: it adopted a Constitution which defined how its leaders are elected and which provided processes for removal of corrupt leaders like Walker, and who has the power to enter into contracts on behalf of the Tribe. The Tribe has highly detailed laws regulating entry into the secured areas of the Tribe's Casino and entry into the tribal Gaming Commission offices.

After Walker was removed from tribal office, Petitioner chose to attack the very core of the Tribe's political integrity: it attempted to forcibly return Walker to power. As is obvious, and as every court which has looked at this matter has agreed, Petitioner's conduct fits within the very core purpose of the second *Montana* exception. Petitioner's conduct clearly threatened the political integrity of the Tribe. It tried to depose the constitutionally and democratically elected governing body, a governing body that the majority of tribal members repeatedly declared was suited to hold the office of Tribal Council member. It attempted to do so using force to gain entry to and control of tribal government offices.

Appellant's same conduct clearly threatened the economic security of the Tribe. Appellant tried to take over both the Tribe's Gaming Commission offices (which is to provide independent regulation of the Tribe's gaming) and the Tribe's Casino, the source of funds the Tribe uses to fund health care; education; housing; youth, family and senior services; welfare programs; child protection programs and other services and programs. Its actions in violation of the Indian Gaming Regulatory Act, 25 U.S.C. §§2701-2721, the Gaming Compact between the Tribe and the State of Iowa, the Sac and Fox Gaming Code and regulations, an NIGC closure order, and a federal district court order created a grave risk of further sanctions and closures.

Because this Court has already clearly defined the applicable legal rule and has repeatedly reaffirmed

the existence of that rule, the Eighth Circuit had no difficultly correctly identifying and applying it to the very complex factual and procedural history in this case. Like the Tribal Court and federal district court, it agreed with the Tribe's analysis that the present matter was a paradigm example of a factual scenario under which a tribal court has jurisdiction under the second *Montana* exception.

Given this Court's numerous cases defining the second *Montana* exception, including recent cases, this is not a situation where there is any disagreement in the Circuit Courts of Appeals, and Petitioner does not seriously contend that there is any such disagreement.

The primary issue which Petitioner claims it would present under the second *Montana* exception is its disagreement with the Sac and Fox Tribe of the Mississippi in Iowa Trial Court, Sac and Fox Tribe of the Mississippi in Iowa Appellate Court, federal district court, and federal Court of Appeals' applications of the established legal rule to the complex procedural and factual context of this case. Pet. §II.A.1-4. As Supreme Court Rule 10 states, this Court will rarely grant a petition for a writ of certiorari when the alleged error is misapplication of a properly stated rule of law.

The present matter is clearly not one of those rare cases where the Court should review the alleged misapplication of the established legal rule. As

discussed above, the courts below based their decision upon the very complex and unique procedural history of this long-running case. The decision below is based in part upon *Petitioner's* own strategic decision to invoke Tribal Court jurisdiction to determine whether the Tribe was a party to the contract with Walker and whether Walker had any actual or apparent authority to enter into any contract on behalf of the Tribe; and Petitioner's own decision to ask the Tribal Court to compel arbitration.[5] The Court would also have to analyze the effect of numerous prior tribal, federal court and federal administrative decisions related to the Tribe's 2003 leadership dispute. The Court's decision would not resolve any new issues, and would only provide yet another application of the accepted rule to a unique factual scenario.

A. Petitioner's Conduct Brought It Squarely Within Tribal Court Jurisdiction Under *Montana*.

Petitioner has never been able to make any non-frivolous argument that the Tribal Court lacked

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[5] The present case would not present any legal issue related to arbitration. It is settled law that disputes must be heard by a court with lawful jurisdiction unless the parties have agreed to arbitration. Petitioner is not claiming that the Court should reverse this settled law. Here, Petitioner asked the Tribal Court to determine whether the Tribe had agreed to arbitration, the Tribal Court correctly held that the Tribe had not agreed to arbitration, and Petitioner simply does not like the answer it got to the question it asked.

jurisdiction over the conduct in which Petitioner actually engaged while in the Tribe's Government Center, Casino and Gaming Commission offices, and therefore Petitioner has created several and ever-changing arguments to try to distract the courts from Petitioner's conduct. Petitioner asserts that the federal courts should look at the conduct of some hypothetical person who did not commit intentional torts on tribal trust land against the Tribe with the purpose of forcibly overthrowing the Tribe's constitutionally elected governing body.

Petitioner acknowledges, as it must given this Court's precedent and the uniformity of lower court decisions, that this Court has directed the lower courts to focus on the conduct of a non-Indian party, which is what the courts below did. Petitioner, however, now argues the Eighth Circuit should have considered only Petitioner's conduct fitting within the elements of the tort claims of trespass and conversion. Because this Court's precedents are directly contrary to Petitioner's argument, Petitioner meanders through federal court interpretations of federal statutes related to the federal well-pleaded complaint rule, federal criminal sentencing, and the National Labor Relations Act, and discussion of cases involving negligent torts which do not, as is the case here, involve attempting to overthrow the Tribe's constitutionally elected leadership. Petitioner argues that the Eighth Circuit erred by considering Petitioner's conduct. Petitioner's conduct, which Petitioner euphemistically refers to as the "context" of its torts,

included an attempt to forcibly overthrow a constitutionally elected tribal governing body, on tribal trust land, at the very seat of the tribal government. Unlike any other case before, Petitioner committed intentional torts against the Tribe itself. The federal Court of Appeals properly considered this "context" when it determined that the Tribal Court had jurisdiction.

Petitioner's argument on this issue provides a good example of the procedural and factual complexity of this case, and of Petitioner's inability to construct an argument which is based upon the facts and procedural posture. The Eighth Circuit's discussion of the "context" of the Tribe's claims was the result of API having argued that the federal courts should apply the federal well-pleaded complaint rule when analyzing whether a tribal court has jurisdiction. Petitioner's assertion, that the Court of Appeals reference to the "context" of the Tribe's claims, is without foundation in the law, and must be rejected for a number of reasons.

First, Petitioner did not raise this argument in the Tribal Court or in the federal district court. It raised it for the first time on appeal to the Eighth Circuit. Second, if Petitioner had raised the issue in the Tribal Court, any claimed "defect" in the Tribal Court complaint could have been cured by amendment. Petitioner admitted this in the federal Court of Appeals. API Fed. App. Ct. Br. 23 (noting that Petitioner's argument for "lack of jurisdiction" is based on the current tribal court complaint, acknowledging

that other claims may have been possible). Petitioner argues that the fact that it attempted to violently overthrow the Tribe's elected governing body is irrelevant because the Tribe did not bring a tort claim for attempted *coup d'état*, instead its claims are based upon the more standard torts which Petitioner committed during its attempted *coup*. If, as Petitioner contends, the Tribe was required to plead and prove a claim for attempted *coup d'état*, it clearly could have done so, and amendment, not dismissal, would have been the proper remedy if the issue had been timely raised in the Tribal Court. *Inge v. Rock Financial Corp.*, 281 F.3d 613 (6th Cir. 2002); *Tingey v. Pixley-Richards West, Inc.*, 953 F.2d 1124 (9th Cir. 1992). Third, Petitioner, through its new appellate counsel, asserts that the Tribe's trespass and trade secret claims do not turn on the circumstances of the Tribe's internal leadership dispute. But Petitioner's trial court counsel stated exactly the opposite to both the Tribal Court and the federal district court, asserting that this case turns on whether Walker or Bear was the Tribe's lawful Chairman. Petitioner's own prior position and legal arguments clearly preclude a grant of certiorari upon the grounds Petitioner now advances.

Even if Petitioner had, from the outset of this matter, asserted that the courts should have applied a "categorical approach," Pet. at 23, Petitioner's argument would not provide any reason for granting the Petition. Petitioner's argument is based upon a few words from this Court's cases, taken out of context. From those snippets, Petitioner argues that this

Court is heading toward a "categorical approach" in which the courts do not look at the facts of the case. But this Court's two most recent decisions, *Hicks* and *Plains Commerce Bank* appear to head in the exact opposite direction. Prior to this Court's decision in *Hicks*, most courts and legal scholars believed that the Court categorically held that acts on tribal land came within tribal court jurisdiction. *Hicks* and *Plains Commerce Bank*, collectively held that the *Montana* test is a multi-factor test, with land status being one of the important factors. As shown in *Hicks*, the importance of this one factor can be overcome when all other factors are on the other side. Some courts interpreted *Hicks* to mean that land status was not relevant or not of much importance, and in *Plains Commerce Bank* this Court corrected that misimpression, holding that the status of the land is a very important factor.

Petitioner's attempt to replace *Montana* with a "categorical approach" similar to the federal well-pleaded complaint rule is not supported in law and is inconsistent with the current factual and procedural history. It also is not supported by any lower court decisions. The Court should not grant a writ of certiorari to determine an issue that was not raised below.

B. Petitioner's Minor Arguments In Section II.A.2, 3, And 4 Of Its Petition Are Without Merit.

In section II.A.2 of its Petition, Petition largely repeats its flawed argument from section I of its Petition, arguing that it could attempt to forcibly take over the Tribe's Casino (and *sub silentio* arguing that it could also forcibly overthrow the Tribe's constitutionally elected governing body) because of alleged BIA and NIGC orders. That argument is without merit for the reasons discussed in section II of this Brief.

In Section II.A.3, Petitioner makes the straw man argument that the Court of Appeals held that "the second *Montana* exception was satisfied because of the casino's location on trust land." Plainly the Court of Appeals did no such thing. Consistent with this Court's precedents, including *Hicks* and *Plains Commerce Bank*, the Court of Appeals properly considered the status of the land as *one factor* in its *Montana* analysis. One can always debate whether a lower court gave one factor in a multi-factor test the proper emphasis, but here the parties briefed the Eighth Circuit at length regarding what weight land status was to be given in that Court's analysis. The parties provided the Court of Appeals with detailed analysis of this Court's decisions in *Hicks* and *Plains Commerce Bank*, and other than Petitioner's straw man argument that the Court of Appeals held that land status was dispositive of the jurisdictional issues, Petitioner does not allege any error in the weight

assigned by the Eighth Circuit land status. Petitioner's argument in Section II.A.3 of its Petition is without any merit.

In Section II.A.4 of its Petition, Petitioner alleges that the Court of Appeals equated tribal legislative and adjudicative jurisdiction even though this Court has never equated the two. This Court should not grant a writ of certiorari based upon Petitioner's assertion for multiple reasons. First, it was Petitioner, in the courts below, who equated tribal legislative and adjudicative jurisdiction. Petitioner did so based upon its badly flawed and now abandoned argument that the Tribe did not have jurisdiction to legislate regarding Petitioner's conduct in tribal governmental buildings. *See* API Fed. App. Ct. Br. 13-14 (Petitioner equates the scope of tribal legislative and adjudicatory jurisdiction and states that *Montana* and its progeny applies to both).

Additionally and more important, to the extent the Court of Appeals equated tribal adjudicatory and legislative jurisdiction, any such statement was dicta. Petitioner does not argue that this case turns on any difference between the scope of tribal legislative and adjudicatory jurisdiction.

Finally, even if this Court has never held that a tribe has adjudicatory jurisdiction in every matter over which it has legislative jurisdiction, there is not yet any disagreement in the circuits on the issue, the parties below did not brief the issue at length and the Court of Appeals did not analyze the legal issue

because the issue was not central to its holding. The present case is simply not a vehicle for resolving this small, and nearly theoretical, issue.

Petitioner's new appellate attorneys understand that to get this Court to grant certiorari, they need to be able to present a significant legal issue to the Court. They try to distance their client from their client's prior actions and arguments, and try to twist the Court of Appeals' decision and this Court's own prior decisions to create such an issue. But in the end, they do not even come close to presenting any significant issue. Petitioner understood the risk it was taking when it decided to try to forcibly remove the governing body which it knew had the support of the vast majority of tribal members. This Court need not spend its valuable time considering whether Petitioner can avoid the consequences of its despicable attempt to overthrow a democratically elected tribal government.

III. Because The Court Of Appeals Remanded For Consideration Of Whether The First *Montana* Exception Applied, This Case Cannot Be Or Should Not Be Reviewed By The Court At This Time.

The current posture of this case is that the district court held that the Tribal Court has jurisdiction under the second *Montana* exception, but the district court has not determined whether the Tribal Court would also have jurisdiction under the first

Montana exception. The Court of Appeals affirmed that the Tribal Court has jurisdiction of several of the Tribe's claims under the second *Montana* exception, but the case was remanded to the district court to analyze and issue a determination on the applicability of the first *Montana* exception.

This Court must consider two issues stemming from the fact that the Court of Appeals remanded the case to the district court for further consideration. The first is whether this posture militates against the Court accepting this case at this time. In an opinion respecting denial of a petition for a writ of certiorari, Justice Scalia wrote: "We generally await final judgment in the lower courts before exercising our certiorari jurisdiction." *Va. Military Inst. v. United States*, 508 U.S. 946 (1993). The Court should apply this general rule here, and should deny certiorari. Under the current posture, this Court would only have before it one part of this case, and under every reasonably plausible scenario the case will eventually have to be remanded to the district court for consideration of the applicability of the first *Montana* exception (and as discussed above, the federal court will then have to hold that the Tribal Court had jurisdiction based upon the first *Montana* exception). The Court should decline to hear this case until final judgment has been issued by the courts below.

The second issue is whether the Court can take the case, *i.e.*, is the case ripe for this Court's review. The case is not ripe for review. *Bhd. of Locomotive Firemen and Enginemen v. Bangor & A. R. Co.*, 389

U.S. 327 (1967). In *BLFE*, the district court had enjoined a strike, the union had then gone on strike, and the district court then was asked to consider whether the Union and its president were in contempt of court. The alleged contemnors argued that: 1) the strike injunction was not binding against the alleged contemnors at the time of the alleged contempt; 2) the alleged contemnors were entitled to a jury trial; and 3) the district court had, in effect, granted summary judgment on the contempt claim even though there was a disputed issue of material fact. The district court rejected each of these arguments. The Court of Appeals rejected the first two of these arguments, but remanded for a non-jury hearing to determine whether the alleged contemnors were in fact in contempt. The alleged contemnors then filed a petition for a writ of certiorari, but this Court denied that request, holding "because the Court of Appeals remanded the case, it is not yet ripe for review by this Court." Similarly, the present matter is not ripe for review, and this Court therefore should deny the Petition for a Writ of Certiorari.

CONCLUSION

For all the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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