

No. _____

In the **Supreme Court** *of the* **United States**

CASINO PAUMA, an Enterprise of the Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, a federally-recognized Indian Tribe,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

UNITE HERE INTERNATIONAL UNION,

Intervenor-Respondent.

On Application for an Extension of Time to File a Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

**PETITIONER CASINO PAUMA'S APPLICATION FOR AN
EXTENSION OF TIME TO FILE A PETITION FOR WRIT OF
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TO THE HONORABLE JOHN J. ROBERTS, JR., Chief Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Ninth Circuit:

Petitioner Casino Pauma, a governmental enterprise of the federally-recognized Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, hereby moves pursuant to Supreme Court Rule 13(5) for a sixty (60) days extension of time in which to file a petition for writ of certiorari with the Court. The United States Court of Appeals for the Ninth Circuit issued its dispositive opinion in this case on April 26, 2018 (*see* Appendix A), and subsequently denied rehearing *en banc* on August 7, 2018. *See* Appendix B. Absent an extension of time, the deadline for filing a petition for writ of certiorari with this Court is November 5, 2018. With the sixty-day extension of time, the new deadline would instead be Friday, January 4, 2019. The jurisdiction of this Court arises from 28 U.S.C. § 1254(1), and the reasons this Court should find that good cause exists for the foregoing extension of time are as follows:

1. This case presents a number of substantial and important questions of federal law, some of which have sharply divided the circuits and all of which require significant attention to determine which should be presented to the Court via the petition for writ of certiorari. For starters, in the opinion below, the Ninth Circuit held that the National Labor Relations Act ("NLRA" or "Act"), 29 U.S.C. § 151 *et seq.*, applies to Indian tribes on the basis of Congressional silence even though the administering agency, the National Labor Relations Board ("NLRB" or "Board"), held otherwise in its own case law and interpretive regulations for the first seventy-plus years of the Act. *See Fort Apache Timber Co.*, 226 N.L.R.B. 503 (1976); 32 Fed. Reg. 277 (Apr. 28, 1936) (to be codified at 29 C.F.R. § 102.1 (2017)). This decision concerning the applicability of the Act has deepened one of the worst-conceivable circuit splits, with the Ninth Circuit and the District of Columbia Circuit ruling in favor of applying the Act, the Tenth Circuit conversely

holding that the Act cannot supplant tribal labor laws, and the Sixth Circuit applying the Act even though a majority of the six judges to hear the issue in two near-contemporaneous cases believe that doing so contravenes Supreme Court precedent. *Compare San Manuel Indian Bingo & Casino v. NLRB*, 475 F.3d 1306 (D.C. Cir. 2007); *with NLRB v. Pueblo of San Juan*, 276 F.3d 1186 (10th Cir. 2002) (*en banc*); *and with NLRB v. Little River Band of Ottawa Indians Tribal Gov't*, 788 F.3d 537 (6th Cir. 2015); *and with Soaring Eagle Casino & Resort v. NLRB*, 791 F.3d 648 (6th Cir. 2015).

2. The applicability of the Act may be the gateway issue, but the manner in which the Ninth Circuit reached its decision also appears to run afoul of recent Supreme Court opinions. For one, during the seventy-plus years in which the NLRA did not apply to Indian tribes, Congress enacted the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 *et seq.*, pursuant to which tribes and states around the Nation sat down in negotiations to devise "compacts" that would set forth the external civil regulations for casinos on Indian lands. Pauma entered into one of these with the State of California that contains an arbitration agreement explaining "all issues" on the labor front at the casino are supposed to be resolved through an "exclusive" and "binding" arbitration process. Despite this, the Ninth Circuit held that this arbitration agreement was of no significance in the case at hand even though this Court issued an opinion last term that may indicate otherwise. *See Epic Sys. Corp. v. Lewis*, 584 U.S. ___, 138 S. Ct. 1612 (May 21, 2018).

3. Further, the Ninth Circuit reached its holding by giving *Chevron* deference to the decision of an administrative agency in interpreting its own jurisdiction under a federal statutory scheme in a manner that is diametrically opposed to how it used to interpret the same language for the first seventy years of the legislation. Whether *Chevron* deference is appropriate in this situation appears to be a very real issue in light of a number of opinions from the Court last term. *See, e.g.*,

Epic Sys. Corp., 138 S. Ct. 1612; *Wisconsin Cent., Ltd. v. United States*, 585 U.S. ___, 138 S. Ct. 2067 (June 21, 2018). Thus, without even broaching the substantive issues, the opinion below presents at least three intertwined and significantly-important foundational issues, and presenting one or more of them to the Court in a coherent manner will take longer than the time afforded by the base ninety-day period.

4. Past practice also supports granting the requested extension of time. As to that, in late 2015, the counsels of record for two tribes who were then-considering petitioning the Court to address just the base issue of the applicability of the NLRA to Indian tribes requested and received sixty (60) day extensions of time to file their petitions for writs of certiorari. See *Soaring Eagle Casino & Resort v. NLRB*, No. 15A633 (U.S. Dec. 16, 2015); *Little River Band of Ottawa Indian Tribal Gov't v. NLRB*, No. 15A604 (U.S. Dec. 8, 2015).

5. Finally, counsel of record for the planned-Petitioner Casino Pauma - a partner with a two-person law firm - is presently facing an atypically and unexpectedly heavy workload, one that has required briefing at least four large substantive motions during the last month and is likely to remain just as time-consuming for most, if not all, of the remainder of the original filing period for the petition. While many attorneys may seek an extension of time in order to accommodate holiday plans, the unfortunate reality is that counsel of record is seeking one so it can use the fall and winter holidays in order to draft the petition.

For the foregoing reasons, Casino Pauma respectfully request an order extending the deadline for filing a petition for writ of certiorari with this Court from November 5, 2018 to January 4, 2019.

RESPECTFULLY SUBMITTED this 25th day of September, 2018

By: 
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