

No. \_\_\_\_\_

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

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EGLISE BAPTISTE BETHANIE DE FT. LAUDERDALE, INC.,  
A Florida Non-Profit Corporation, et al.,

Applicants,

v.

SEMINOLE TRIBE OF FLORIDA, et al.,

Respondents.

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**EMERGENCY APPLICATION FOR INJUNCTIVE RELIEF  
PENDING APPEAL TO THE UNITED STATES COURT OF  
APPEALS FOR THE ELEVENTH CIRCUIT, CASE NO. 20-10173**

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TO THE HONORABLE CLARENCE THOMAS, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE ELEVENTH CIRCUIT:

## APPLICATION

Applicants Eglise Baptiste Bethanie De Ft. Lauderdale, Inc., et al. (“Applicants”), pursuant to the All Writs Act, 28 U.S.C. § 1651,<sup>1</sup> and Supreme Court of the United States Rule 22, respectfully apply for the entry of an injunction- pending Applicants’ appeal to the United States Court of Appeals for the Eleventh Circuit, Case No. 20-10173, from the Final Judgment entered by the United States District Court for the Southern District of Florida, Case No. 19-CV-62591- restoring Applicants to possession of the real and personal property of the Eglise Baptiste Bethanie De Ft. Lauderdale, Inc., a Florida non-profit corporation, including the bank accounts and the funds on deposit in those accounts (“the Church Property”).

## MEMORANDUM IN SUPPORT OF APPLICATION

### A. The Procedural Setting

Applicants, in a civil action styled *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc., et al. v. Seminole Tribe of Florida, et al.*, Case No. 2019-CV-62591-Bloom (“Case

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<sup>1</sup> The All Writs Act, 28 U.S.C. § 1651, provides:

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

No. 19-62591"), U.S. District Court, S.D. Florida, on December 23, 2019, moved for a preliminary injunction restoring Applicants to possession of the Church Property. [ECF 36] Quoting from Applicants' First Amended Complaint, Applicants' preliminary injunction motion related that:

SUBJECT-MATTER JURISDICTION

1. This is a civil action for damages and injunctive relief under 18 U.S.C. § 248(c)(1)<sup>2</sup> for which subject-matter

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<sup>2</sup> Section 248, Title 18, United States Code, in pertinent part provides:

**(a) Prohibited activities- Whoever-**

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, of in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

(3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worship,

Shall be subject to the penalties provided in subsection (b) and the civil remedies provided in subsection ©, except that a person or legal guardian of a minor shall not be subject to any penalties or civil remedies under this section for such activities insofar as they are directed exclusively at that minor.

**(b) Penalties- whoever violates this section shall-**

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(1) in the case of a first offense, be fined in accordance with this title, or imprisoned not more than one year, or both; and

(2) in the case of a second or subsequent offense after a prior conviction under this section, be fined in accordance with this title, or imprisoned not more than 3 years, or both;

except that for an offense involving exclusively a nonviolent physical obstruction, the fine shall be not more than \$10,000 and the length of imprisonment shall not be more than six months, or both, for the first offense; and the fine shall, notwithstanding section 3571. Be not more than \$25,000 and the length of imprisonment shall be not more than 18 months, or both, for s subsequent offense; and except that if bodily injury results, the length of imprisonment shall not be more than 10 years, and if death results, it shall be for any term of years or his life.

**(c) Civil remedies-**

**(1) Rights of action-**

**(A) In general.-** Any person aggrieved by reason of the conduct prohibited by subsection (a) may commence a civil action for the relief set forth in subparagraph (B), except that such an action may br brought under subsection (a)(1) only by a person involved in providing or seeking to provide, or obtaining or seeking to obtain, services in a facility that provides reproductive health services, and such an action may be brought under subsection (a)(2) only by a person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship or by the entity that owns or operates such place of religious worship.

**(B) Relief.-** In any action under subparagraph (A), the court may award appropriate relief, including temporary, preliminary or permanent injunctive relief and compensatory and punitive damages, as well as the costs of

jurisdiction exists by virtue of 28 U.S.C. §§ 1331 and 1343(a).

### EGLISE BAPTISTE

2. Plaintiff Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. ("Eglise Baptiste"), is (a) a Florida not-for-profit corporation, (b) a Haitian Baptist church and © affiliated with the Southern Baptist Convention. It adheres to the congregationalist mode of Christian church governance. Eglise Baptiste's principal place of business is located at 2200 N.W. 12<sup>th</sup> Avenue, Fort Lauderdale, Broward County, Florida 33311, and it possesses fee simple title to the approximately ten (10) acres of improved real property commonly known by the foregoing address and bearing Tax Identification Number 4942-28-32-0010 ("the Church Property"). The Church Property is located 11.1 miles from the Hollywood, Florida, reservation of Defendant The Seminole Tribe of Florida ("SemTribe").

### THE DEFENDANTS

3. SemTribe is a Native American tribe which has been recognized by the United States Department of the Interior pursuant to 25 U.S.C. § 5123. The Supreme Court of the United States has characterized the several Native American tribes, including SemTribe, as "dependent domestic sovereigns". SemTribe owns and maintains a reservation in Hollywood, Florida, and is governed by a Tribal Counsel, which is established by the Constitution And Bylaws of SemTribe. The Seminole Police Department ("the SPD") is an agency of SemTribe and operates under the supervision of the Tribal Council.

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suit and reasonable fees for attorneys and expert witnesses. With respect to compensatory damages, the plaintiff may elect, at any time prior to the rendering of final judgment, to recover, in lieu of actual damages, an award of statutory damages in the amount of \$5,000 per violation.

4. Defendant Aida Auguste is a resident of Broward County, Florida, and is not subject to any legal disabilities.

\* \* \* \* \*

### THE FACTS

25. Prior to his death on July 26, 2014, the Pastor of Eglise Baptiste was the Rev. Usler Auguste ("Pastor Auguste"). Since then, the Board of Directors of Eglise Baptiste and Defendant Aida Auguste (the widow of Pastor Auguste) have contended for the leadership of Eglise Baptiste.

26. On Sunday, September 22, 2019, a meeting of the congregation of Eglise Baptiste was convened for the purpose of approving a process for the selection and installation of a successor to the late Pastor Auguste. Despite the peacemaking efforts of a mediator assigned to Eglise Baptiste by an affiliate of the Southern Baptist Convention, the September 22, 2019, congregational meeting devolved into a pushing, shoving and punching affair between the supporters of the Board of Directors and the supporters of Auguste. The Fort Lauderdale Police Department was summoned and its officers helped to restore order.

27. Eglise Baptiste, on September 24, 2019, filed a civil action for declaratory and injunctive relief against Auguste and her supporters in the Circuit Civil Division, Seventeenth Circuit Court, Broward County, Florida, which came to be styled *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Aida Auguste, et al.*, Case No. CACE-19-19270 (4) ("Case No. 19-19270").

28. On Sunday morning, September 29, 2019, Eglise Baptiste conducted its weekly Sabbath services in the religious structure located on the Church Property. While those services were in progress, (a) the Auguste Defendants and (b) six (6) armed (with SPD-provided handguns) SemTribe police officers, who were wearing SPD-provided uniforms and using SPD-provided radio communications equipment (and who had traveled from SemTribe's reservation in two vehicles, one of them an SPD marked



squad car), without judicial or other valid authorization: (a) entered the Church Property, (b) disabled the Church Property's surveillance cameras (c) expelled from the Church Property the individual Plaintiffs, (d) changed the locks to the doors of the religious structure located on the Church Property, (e) seized the business records of Eglise Baptiste and (f) locked the gates to the Church Property. The Auguste Defendants continue to occupy the Church Property to the exclusion of the individual Plaintiffs and to control Eglise Baptiste's personal property, including Eglise Baptiste's bank accounts.

29. The judicial doctrine of tribal sovereign immunity does not insulate SemTribe from the claims which Plaintiffs have asserted against SemTribe in this civil action because: (a) the actions of SemTribe's police officers took place more than eleven (11) miles from SemTribe's Hollywood, Florida, reservation, (b) prior to September 29, 2019, Plaintiffs had not had an opportunity to negotiate with SemTribe for a waiver of SemTribe's tribal sovereign immunity; and (c) other than through this civil action, Plaintiffs have no means by which to secure monetary compensation for SemTribe's infringements of Plaintiffs' rights under Federal law. (Footnote omitted)

The District Court, on January 3, 2020, issued an Omnibus Order dismissing Applicants' First Amended Complaint and denying, as moot, all pending motions. [ECF 50] *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe of Florida*, 2020 U.S. Dist. LEXIS 617, 2020 WL 43221 (S.D. Fla. 2020, Case No. 19-CV-62591-Bloom). In that Omnibus Order, the District Court ruled that: (1) Applicants' claims against Respondent Seminole Tribe of Florida ("SemTribe") under 18 U.S.C. § 248 were barred by tribal sovereign immunity; and (b) Applicants' claims against Respondents Aida Auguste and her supporters under 18 U.S.C. § 248 were not justiciable under the "ecclesiastical question" doctrine.

On January 10, 2020, the District Court entered a Final Judgment against Appellants. [ECF 54] Appellants, on January 14, 2020, filed their Notice Of Appeal with the Clerk of the District Court, thereby initiating Eleventh Circuit Case No. 20-10173. [ECF 55]

On January 21, 2020, Appellants moved in the District Court for an injunction pending appeal to this Court. [ECF 58] The District Court, on February 24, 2020, entered an Omnibus Order denying Appellants' motion for an injunction pending appeal. [ECF 64] *Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe of Florida*, 2020 U.S. Dist. LEXIS 30838, 2020 WL 888014 (S.D. Fla., Case No. 19-CV-62591-Bloom).

Applicants' brief was filed with the Court of Appeals on February 24, 2020. Respondents Auguste and her supporters filed their brief with the Court of Appeals on March 24, 2020. The brief of Respondent SemTribe is due to be filed with the Court of Appeals on April 22, 2020.

On March 9, 2020, Applicants moved in the Court of Appeals, Case No. 20-10173, for an injunction pending appeal. Respondents Aida Auguste and her supporters, on March 18, 2020, filed their response in opposition. On March 20, 2020, Applicants filed their reply in support of their motion for an injunction pending appeal. The Court of Appeals, on April 1, 2020, entered the following order:

BY THE COURT: "Motion Of Appellants/Plaintiffs For Injunction Pending Appeal and Supporting Memorandum of Law" is DENIED because they have not made the requisite showing. *See Touchston v. McDermott*, 234 F. 3d 1130, 1132 (11<sup>th</sup> Cir. 2000).

*Eglise Baptiste Bethanie De Ft. Lauderdale, Inc. v. Seminole Tribe of Florida*, 2020 U.S. App. LEXIS 10306 (11<sup>th</sup> Cir. 2020, Case No. 20-10173).

B. Argument

In *Securities and Exchange Commission v. Carriba Air, Inc.*, 681 F.2d 1318 (11<sup>th</sup> Cir. 1982), the Court of Appeals held that the four (4) traditional criteria for the extension of injunctive relief<sup>3</sup> do not apply to situations, such as the one underlying this litigation, in which the defendants have committed, and are continuing to commit, a crime. Judge Clark's opinion for the Eleventh Circuit in *Carriba Air, Inc.*, *supra*, observed:

Second, another preliminary point must be dealt with. The district court in the instant case has essentially enjoined a crime. Early in the development of the common law, equity did enjoin criminal activity. This function was taken over by the Star Chamber until its abolition by the Parliamentarians during the reign of Charles I. After the tragic and tumultuous events of the 1640s. The Chancellor withdrew from the business of enjoining criminal activity. Thus, the famous maxim "equity will not enjoin a crime" came into being.

To the present day, "equity will not enjoin a crime" is one of the principles of Anglo-American jurisprudence. It is not, however, an ironclad rule. During the eighteenth century, an exception was established for public nuisances that were also crimes. *See, e.g., Attorney Gen. v. Richards*, 145 Eng. Rep. 980 (1794).

In enacting 15 U.S.C. § 77t, Congress specifically authorized an injunction to issue to prohibit the violation of the securities laws. This was no dramatic departure from

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<sup>3</sup> Substantial likelihood of prevailing on the merits; risk of irreparable harm to the applicants; no substantial harm to other interested persons; and no harm to the public interest.

previous doctrinal development. Violations of the securities laws are analogous to public nuisances. Thus, under 15 U.S.C. § 77t, criminal activity may be enjoined by the district court.

The appellants claim that the district court committed reversible error in failing to require positive proof that there was a likelihood of future violations of the securities laws by Winograde and Carriba. We are required by *Securities and Exchange Commission v. Blatt*, 583 F. 2d 1325 (5<sup>th</sup> Cir. 1978), to consider several factors in determining whether the injunction was properly issued:

Such factors include the egregiousness of the defendant's actions, the isolated or recurrent nature of the infraction, the degree of scienter involved, the sincerity of the defendant's assurances against future violations, the defendant's recognition of the wrongful nature of his conduct, and the likelihood that the defendant's occupation will present opportunities for future violations.

583 F. 2d at 1334, n. 29. The standard of review on this point is that of abuse of discretion...

We conclude that the trial court did not abuse its discretion in issuing the injunction. The SEC had demonstrated a pattern of past and present questionable business practices. Blatant and inexcusable violations of the securities laws occurred. The appellants knowingly made material misrepresentations and at least recklessly made material omissions on documents submitted to the SEC. The appellants took no action to correct these misrepresentations and omissions. Indeed, the public offer was withdrawn only after the SEC launched its investigation. It is further likely that the appellants will remain in a position where opportunities for future violations of the securities laws will be abundant. Therefore, the factors enunciated in *Blatt*, *supra*, are virtually all present in the instant case. (Footnotes and citations omitted)

681 F. 2d at 1321-1322.

In this case, Applicants have alleged (and SemTribe and Auguste and her supporters have not disputed) that SemTribe and Auguste and her supporters have violated a *criminal* statute, 18 U.S.C. § 248, by threatening force to seize control of the Church Property.

Section 248, Title 18, United States Code, (a) criminalizes the September 29, 2020, conduct of which Semtribe, Auguste and her supporters have by Applicants been accused (and which SemTribe, Auguste and her supporters have not contested) and (b) authorizes the issuance of injunctive relief to halt the continuing criminal conduct of SemTribe, Auguste and her supporters.

#### CONCLUSION

The District Court and the Court of Appeals erroneously denied Applicants' motions for the injunctive relief authorized by 18 U.S.C. § 248(c)(1)(B). Applicants respectfully request that this Court vindicate the intent of Congress by granting this application for injunctive relief pending the disposition of their appeal to the U.S. Court of Appeals for the Eleventh Circuit, Case No. 20-10173.

Respectfully submitted,

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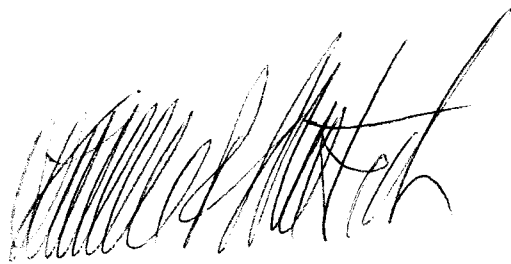
## CERTIFICATE OF SERVICE

I hereby certify that true copies of the foregoing application have been electronically served this 7<sup>th</sup> day of April, 2020, on:

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