No. 08-1214

In the Supreme Court of the United States

GRANITE ROCK COMPANY,
Petitioner,
v.
INTERNATIONAL BROTHERHOOD OF TEAMSTERS & TEAMSTERS LOCAL 287,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

AMICUS BRIEF OF THE ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC. IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

The Associated General Contractors of America, Inc. ("AGC") is among the largest and oldest of the trade associations in the construction industry and by far the most diverse. It was founded in 1918 at the express request of President Woodrow Wilson, and today it has 95 chapters and more than 33,000 members across the country. Among its members are more than 7,500 general construction contractors, 12,500 specialty contractors, and 13,000 material suppliers and service providers. Its members undertake a great variety of construction projects, including commercial buildings, apartment buildings, condominiums, factories, warehouses, highways, bridges, airports, waterworks facilities, waste treatment facilities, dams, water conservation projects and defense facilities. AGC members also install utilities and otherwise prepare sites for the construction of single-family homes. Most

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[1] Pursuant to Rule 37.2, counsel for the amicus certifies that counsel of record for all parties received timely notice of the amicus's intention to file an amicus curiae brief in support of the Petitioner at least ten days prior to the due date for the amicus curiae brief. Letters reflecting the parties' consent to the filing of this amicus curiae brief are being lodged with the Clerk of the Court. Pursuant to Rule 37.6, counsel for the amicus states that no counsel for a party authored this brief in whole or in part and that no person other than the amicus, its members, and its counsel made a monetary contribution to the preparation or submission of this brief.

AGC members are closely held and remain small, but others are publicly traded and among the nation's largest corporations.

AGC spans the entire spectrum of labor-management relations in the construction industry. While many AGC members are open shop, others are union firms that—either individually or as members of multi-employer bargaining units—negotiate and work under collective bargaining agreements with local and international unions representing carpenters, laborers, ironworkers, cement masons, operating engineers, and other trades, including the teamsters.

Most of AGC's chapters and all of the union contractors among AGC's members have a direct and immediate interest in the nature and scope of the federal common law remedies available to them under § 301(a) of the Labor Management Relations Act ("LMRA").

The negotiation of a collective bargaining agreement often involves multiple parties, including parties (like the international union in this case) that have a significant interest in the agreement but that are not formal signatories to the agreement and that do not hold specific rights or obligations under the agreement. Likewise, the performance of a collective bargaining agreement often is shaped by both the signatories to the agreement and non-signatories who have an interest in the agreement and the power to cause a violation of the terms of the agreement.

Like *all* union contractors, AGC members who negotiate and work under labor agreements rely upon them and have a strong interest in ensuring that both signatories and non-signatories are accountable for culpable conduct that causes a violation of signatories' contractual rights. AGC contends that § 301(a) provides federal courts with jurisdiction and authority to decide a claim against a non-signatory under the facts of this case, where the non-signatory is alleged to have: (1) actively participated in the negotiation of a collective bargaining agreement; (2) possessed the power to cause a violation of that agreement; (3) exercised that power and actually caused a violation of the agreement; and (4) acted in order to coerce a signatory into granting additional express rights that would benefit the non-signatory directly.

On many prior occasions, AGC has sought to help both the courts and the National Labor Relations Board shape the unique body of federal labor law relating to the construction industry. As an amicus curiae, AGC participated in *Connell Constr. Co., Inc. v. Plumbers & Steamfitters Local Union No. 100*, 421 U.S. 616 (1975); *John Deklewa & Sons*, 282 NLRB 1375 (1987), *enforced sub nom., International Ass'n of Bridge, Structural and Ornamental Iron Workers Local 3 v. NLRB*, 843 F.2d 770 (3d Cir. 1988); *Brannan Sand & Gravel Co.*, 289 NLRB 977 (1988); *Mesa Verde Constr. Co. v. Northern California Dist. Council of Laborers*, 861 F.2d 1124 (9th Cir. 1988); *Steiny & Co., Inc.*, 308 NLRB 1323 (1992); *Building & Constr. Trades Council v. Associated Builders & Contractors of*

Mass./R.I., Inc., 507 U.S. 218 (1993); *NLRB v. Town & Country Elec., Inc.*, 516 U.S. 85 (1995); *New York State Chapter, Inc., AGC v. New York State Thruway Authority*, 666 N.E.2d 185 (N.Y. 1996); *Brown v. Pro Football, Inc.*, 518 U.S. 231 (1996); *Associated General Contractors of America v. Metropolitan Water Dist. of S. California*, 159 F.3d 1178 (9th Cir. 1998); *Granite Construction Co.*, 330 NLRB 205 (1999), and *Glens Falls Building & Construction Trades Council*, 350 NLRB 417 (2007). As in the aforementioned cases, AGC is in a unique position to assist this Court with its consideration of the pending Petition.

SUMMARY OF ARGUMENT

The second question that the Petition presents to this Court is more than sufficient to justify a grant of certiorari. That question is a recurring one critically important to the development of a uniform body of federal common law under § 301(a) of the LMRA. The courts of appeals are irreconcilably divided over the scope of § 301(a) and the federal common law that § 301(a) calls upon the federal courts to develop.

In keeping with this Court's precedents broadly construing § 301(a) as a congressional mandate to fashion a body of federal common law to deter and redress violations of labor agreements, the Third Circuit has held that a signatory to a labor agreement may bring a claim under § 301(a) against a defendant who did not sign the agreement or assume any rights or obligations under it, but who nevertheless

caused a violation of the agreement. Other circuits, however, have held that federal common law remedies under § 301(a) are much narrower in scope and have held that federal common law remedies under § 301(a) are limited to suits against a defendant who either was a formal signatory to a labor agreement or assumed specific rights or obligations expressly created by a labor agreement.

Because this conflict is well-developed, produces inconsistent results in similar cases, and engenders considerable confusion and uncertainty in labor-management relations, the Court should grant certiorari and resolve the conflict. If the Court does not grant certiorari with respect to the second question and reverse the ruling below, it is likely that employers and unions will face increased interference in labor agreements in the future.

ARGUMENT[2]

I. The Second Question Presented In The Petition Describes A Conflict Concerning The Scope Of § 301(a) Of The Labor Management Relations Act That Is Well-Developed And In Need Of Resolution By This Court.

The second question presented by the Petition is an important one that directly implicates this Court's precedents construing § 301(a) of the LMRA and reveals a well-developed conflict among the courts of appeals. This Court's review and resolution of that conflict is needed to ensure that the statute and the Court's precedents are followed uniformly and correctly.

A. The Text Of § 301(a) And This Court's Precedents Mandate Federal Jurisdiction Over All "Suits For Violation Of Contracts Between An Employer And A Labor Organization."

Section 301(a) of the LMRA provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry

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[2] AGC agrees with and relies upon the Statement of the Case set forth in the Petition.

> affecting commerce . . . or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a). By its terms, § 301(a) provides federal courts with subject-matter jurisdiction over *all* "[s]uits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce." *Id.*

This Court's precedents make it clear, however, that § 301(a) also does much more than simply provide for federal subject matter jurisdiction. In *Textile Workers Union of America v. Lincoln Mills*, 353 U.S. 448 (1957), the Court found that § 301(a) also directs the federal courts to "fashion" a body of federal common law to address and remedy disputes arising out of labor contracts. *Id.* at 456; *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985) (citing *Lincoln Mills*).

Building on *Lincoln Mills*, in *Teamsters v. Lucas Flour Co.*, 369 U.S. 95, 103 (1962), this Court held that a labor agreement between an employer and a union *must* be construed and enforced according to principles of federal common law developed under § 301(a), not state rules of decision. Accordingly, the Court concluded § 301(a) preempts any state law that would purport to govern the construction and

enforcement of agreements between an employer and a labor union. *Id.* at 103-04.

That same year, in *Atkinson v. Sinclair Refining Co.*, 370 U.S. 238, 247 (1962), the Court reviewed an action that an employer had brought against members of a union with which the employer had a collective bargaining agreement, asserting a state law claim of tortious interference with that employer's contractual relationship with the union. The Court held that the state law tortious interference claim was preempted by § 301(a) and had to be dismissed. *Id.* Without dwelling on whether individual defendants were signatories to the labor agreement at issue, *Atkinson* held that the plaintiff's claim of tortious interference against them was one governed "by the national labor relations law which Congress commanded this Court to fashion under § 301(a)." 370 U.S. at 247.

Six months later, in *Smith v. Evening News Assn.*, 371 U.S. 195, 200-01 (1962), the Court held that an individual union member could bring an action against his employer under § 301(a) for breach of a collective bargaining agreement, even though the individual was not a signatory to the agreement at issue. In reaching this conclusion, the Court rejected a narrow construction of § 301(a) that would have limited the statute's grant of federal jurisdiction and federal common law remedies to only those suits "between" the employer and the labor union that had signed the agreement at issue. *Id.* The Court reasoned that the term "between" in § 301(a) refers only to "contracts," not "suits." According

to the Court, neither the "language" nor the "structure," nor the "legislative" history of § 301(a) supported a restrictive reading of the statute based on a litigant's status as a signatory to the agreement at issue. *Id.* Indeed, such a restrictive reading would "frustrate rather than serve the congressional policy expressed in that section." *Id.*

This Court's more recent decisions have continued to read § 301(a) to provide federal courts with a broad grant of jurisdiction to decide "suits" predicated upon an alleged violation of a labor agreement. For example, in *Allis-Chalmers Corp. v. Lueck,* 471 U.S. 202, 209-13, 220-21 (1985), the Court found that § 301(a) preempted a state law tort action that an employee had brought against his employer and the third-party administrator of an insurance plan included in a collective bargaining agreement. The employee alleged the employer and the administrator had acted in bad faith when handling his insurance claim. Although the employee's action sounded in tort under state law and it was asserted against a third-party administrator (not a signatory to the collective bargaining agreement between the employer and the employee's union), the Court had no difficulty concluding that the employee's state law claim must be treated *either* as a § 301(a) claim *or* dismissed altogether as preempted by federal labor law under § 301(a). *Id.* at 220-21.

In the words of the Court, "[i]f the policies that animate § 301 are to be given their proper range, ... the pre-emptive effect of § 301 must

extend beyond suits alleging contract violations.... Any other result would elevate form over substance and allow parties to evade the requirements of § 301." *Id.* at 210-11 (noting that the employee's claim had to be dismissed, even if treated as a claim under § 301(a), because the employee had failed to follow requisite grievance procedures).

"[W]hen resolution of a state-law [tort] claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract, that claim must either be treated as a § 301 claim ... or dismissed as pre-empted by federal labor-contract law." *Id.* at 220. "The requirements of § 301 as understood in *Lucas Flour* cannot vary with the name appended to a particular cause of action." *Id.* "Unless federal law governs that [tort] claim, the meaning of the health and disability-benefit provisions of the labor agreement would be subject to varying interpretations, and the congressional goal of a unified federal body of labor-contract law would be subverted." *Id. See also Wooddell v. International Brotherhood of Electrical Workers, Local 71*, 502 U.S. 93, 99-100 (1991) (extending *Smith v. Evening News Assn.* to an action that a union member brought against his local union and its officers, alleging violations of the union constitution, notwithstanding that neither the plaintiff nor the named officer defendants were signatories to the constitution); *Textron Lycoming Reciprocating Engine Div., Avco Corp. v. United Automobile, Aerospace, Agricultural Implement Workers of America, Intern. Union*, 523 U.S.

653, 657-58 (1998) (§ 301(a) provides a "gateway" to federal court for any action filed "*because a contract has been violated*," and does not restrict the legal landscape the parties may traverse once in federal court) (emphasis in original).

Read individually and together, this Court's precedents underscore that § 301(a): (1) must be construed broadly to effectuate congressionally mandated labor policies; (2) provides federal courts with unique authority and responsibility to develop a federal common law concerning violations of labor agreements; (3) preempts state laws and causes of action that would govern the construction and enforcement of such agreements, including tortious interference claims that would require the construction of a labor agreement; and (4) provides a federal forum and remedies for all suits charging a violation of a labor agreement, without regard to the status of the litigants as signatories to the agreement at issue, and without regard to the characterization of the claim as "contract" or "tort."

B. The Third Circuit Has Held That § 301(a) Provides Federal Courts With Jurisdiction Over Suits Such As This One By A Signatory To A Labor Agreement Against A Defendant Who Did Not Sign The Agreement Or Have Any Formal Obligation Under It, But Who Nevertheless Caused A Violation Of The Agreement.

In keeping with the plain meaning of § 301(a), this Court's precedents, and the well-settled policies embedded in the statute, the Third Circuit has held that § 301(a) extends to lawsuits, like this one, that a signatory to a labor agreement brings against a non-signatory who is alleged to be culpable for a violation of the terms of the agreement. *See Wilkes-Barre Pub. Co. v. Newspaper Guild of Wilkes-Barre, Local 120*, 647 F.2d 372, 377, 379-81 (3d Cir. 1981), *cert. denied*, 454 U.S. 1143 (1982).

In *Wilkes-Barre*, a newspaper publisher brought an action against a local union, an international union, individual union members, and a competitor-publication created by the collective bargaining representatives of its employees. The publisher asserted: (1) a claim against the local union for breach of its collective bargaining agreement with the publisher; and (2) a claim against the international union and the remaining defendants for causing the local union to violate the agreement. In relevant part, the Third Circuit held that the publisher had

stated a valid claim under § 301(a) against the international union and the competitor publication for violation of a labor agreement, notwithstanding that the international union and the competitor publication had not signed the agreement. *Id.*[3]

The Third Circuit began its analysis of the issue by referring, first, to the text of § 301(a) and, second, to this Court's decision in *Atkinson v. Sinclair Refining Co.* *Id.* The court noted that, in *Atkinson*, the Court had ruled that a state law tortious interference claim was preempted by § 301(a) and governed completely "by the national labor relations law which Congress commanded this Court to fashion under § 301(a)." *Id.* at 377 (quoting *Atkinson*, 370 U.S. at 247).

With "those general principles in mind," the court turned to two prior Third Circuit decisions, as well as this Court's decision in *Smith v. Evening News Assn.*, 371 U.S. at 200-01. *See* 647 F.2d at 377-81. Following the broad construction given to § 301(a) in *Atkinson*, *Smith*, and numerous other cases, the Third Circuit held that § 301(a) provides federal subject matter jurisdiction over any suit that seeks remedies for

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[3] The court affirmed the district court order dismissing the publisher's claims against individual union members, holding that these individual defendants were entitled to statutory immunity from suit under the LMRA and other statutes. *Id.*

a violation of an agreement between an employer and a labor union. *Id.*

As the court explained in its opinion, *nothing* in either the statute or this Court's jurisprudence suggests that § 301(a) jurisdiction should be limited to those suits that sound in "contract" and are brought against a signatory or other formal party to a labor agreement. *Id.* (holding that jurisdiction under § 301(a) does not turn on the status of litigants as signatories to an agreement or on the "label" attached to a cause of action). Rather, the "issue" is "whether the remedy sought may require the court ... interpret a collective bargaining agreement." *Id.* "All suits for violation of collective bargaining agreements are governed by federal law, because Congress intended that the scope of obligation in labor contracts in or affecting interstate commerce be uniform." *Id.* (citing *Lucas Flour*). "It is the need for national uniformity in determining the scope of obligation ... that determines whether a federal standard is applicable, and which determines, incidentally [whether there is] federal subject matter jurisdiction." *Id.*

Because a "violation" of the newspaper publisher's collective bargaining agreement would be an "essential element" of any action against the international union and other non-signatory defendants, the Third Circuit reasoned that the claim could not arise under state law and had to arise under federal common law developed pursuant to § 301(a). "A holding that tortious interference with a collective bargaining agreement is not a matter governed by federal

law would leave open the possibility of lack of uniformity in scope of obligation which the Court in *Lucas Flour* sought to prevent." *Id.*

Moreover, according to the Third Circuit, it was especially appropriate to hear claims for tortious interference with a collective bargaining agreement in federal court under § 301(a) because such claims involve the "protection of a property interest [in] a labor contract which has its being in and draws its vitality from the federal common law of labor contracts." *Id.* at 381.[4]

The defendants in *Wilkes-Barre* filed a petition for a writ of certiorari with this Court, and the Court denied the petition. 454 U.S. at 1143.

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[4] In *Local 472 of United Ass'n of Journeymen and Apprentices of Plumbing and Pipefitting Industry of U.S. and Canada v. Georgia Power Co.*, 684 F.2d 721, 725 & n.1 (11th Cir. 1982), the Eleventh Circuit likewise concluded that § 301(a) authorizes courts to hear a claim for violation of a labor agreement brought against a defendant who did not sign the agreement at issue but who allegedly caused its breach. However, the Eleventh Circuit appears to have abrogated *Georgia Power* without explanation in *Xaros v. U.S. Fid. and Guar. Co.*, 820 F.2d 1176, 1181 (11th Cir. 1987), where the court held § 301(a) jurisdiction did not extend to claims against non-signatories to an agreement who allegedly caused a breach.

C. Other Circuits, Including The Ninth Circuit In This Case, Have Reached The Opposite Conclusion Based On A Narrow Reading Of § 301(a) That Is Not Well-Founded In This Court's Precedents.

Other courts of appeals, including the Ninth Circuit in this case, have ruled that § 301(a) does not provide a federal cause of action against a non-signatory who allegedly causes a violation of the terms of a labor agreement.[5] While these circuit courts have analyzed the issue in a number of different ways, two broad and distinct lines of authority have emerged.

The first line of authority is based on the premise that a suit brought against a non-signatory simply "cannot" be considered a suit "*for*" a "violation" of a labor agreement within the meaning of § 301(a). *Covenant Coal*, 977

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[5] *See Int'l Union, United Mine Workers of America v. Covenant Coal Corp.*, 977 F.2d 895, 897 (4th Cir. 1992); *United Food & Com. Workers Union, Local No. 1564 v. Quality Plus Stores, Inc.*, 961 F.2d 904, 906 (10th Cir. 1992); *Xaros v. U.S. Fid. and Guar. Co.*, 820 F.2d 1176, 1181 (11th Cir. 1987); *Serv., Hosp., Nursing Home & Public Employees Union, Local No. 47 v. Commercial Prop. Servs., Inc.*, 755 F.2d 499, 506 (6th Cir. 1985)); *Loss v. Blankenship*, 673 F.2d 942, 948 (7th Cir. 1982); *Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc.*, 690 F.2d 489, 501 (5th Cir. 1982); *Bowers v. Ulpiano Casal, Inc.*, 393 F.2d 421, 423 (1st Cir. 1968).

F.2d at 898 (emphasis added) ("It is axiomatic that only a party to a contract can violate that contract"). Under this line of authority, § 301(a) jurisdiction is inherently narrow and depends on whether (1) the plaintiff's claim can be characterized as one that sounds in "contract" under state law and (2) the litigants are formal parties to the agreement at issue.[6]

The second line of authority is slightly more nuanced. Cases decided under this line of authority recognize that a federal court may hear a suit against a non-signatory under § 301(a) under circumstances where the non-signatory is alleged to have breached a specific right or obligation *assumed by it* under the agreement at issue; however, they refuse to recognize a federal common law cause of action under § 301(a) against a non-signatory in the

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[6] *See also Quality Plus Stores, Inc.*, 961 F.2d at 906 (action under § 301(a) dismissed because "[t]here is no collective bargaining agreement between the parties to the action"); *Xaros*, 820 F.2d at 1180-81 ("a Section 301 suit may be brought for violation of a labor contract only *against* those who are parties to the contract in issue") (emphasis in original); *Servs. Hosp.*, 755 F.2d at 506 (noting opinions applying a "much narrower" interpretation of § 301(a) jurisdiction); *Loss*, 673 F.2d at 946 (a § 301(a) action may only be brought against those who are parties to the contract at issue); *Pratt-Farnsworth*, 690 F.2d at 500-02 (same); *Bowers*, 393 F.2d at 423 (refusing to extend *Smith* to actions against non-signatories).

absence of express contractual terms directly benefiting or binding the non-signatory.

For example, in *Whelan v. Colgan*, 602 F.2d 1060, 1061-62 (2d Cir. 1979), the Second Circuit held that § 301(a) provided federal jurisdiction over a suit against individual trustees of a welfare fund created by a labor agreement. Section 301(a) provided federal jurisdiction and a federal common law remedy for the individual trustees' alleged misconduct, even though the individual trustees were not signatories to the agreement because the individual trustees allegedly breached a duty created by the labor agreement. *Id.* However, in *Greenblatt v. Delta Plumbing & Heating Corp.*, 68 F.3d 561, 572-73 (2d Cir. 1995), the same circuit ruled that the federal district court had no jurisdiction under § 301(a) to hear a claim brought by a plumbing industry board against the surety of an employer, in the aftermath of the employer's default on its obligations to make benefits payments under a collective bargaining agreement. According to *Greenblatt,* § 301(a) did not provide subject matter jurisdiction for the suit because the surety had "no duty arising under the collective bargaining agreement or any other labor contract," notwithstanding the fact that the surety's conduct vitiated a provision in the agreement providing for a bond in the event of the employer's default. *Id.* (distinguishing *Whelan*).

The case law in the Ninth Circuit concerning the scope of § 301(a) follows a similar pattern. In *Painting and Decorating Contractors Ass'n v. Painters and Decorators Joint Comm., Inc.*, 707

F.2d 1067, 1071 (9th Cir. 1983), the Ninth Circuit held that § 301(a) provided the federal district court with authority to decide a suit brought against a joint committee that a collective bargaining agreement had called for the parties to establish, notwithstanding that the joint committee was not a signatory to the agreement at issue. The court reasoned that jurisdiction was proper under § 301(a) because the agreement provided for the creation of the joint committee, gave the committee certain rights and obligations, and would have to be construed to litigate the dispute by the plaintiff against the committee. *Id.*

The Ninth Circuit, however, reached a different result in this case. Here, it held that Granite Rock Co., as an employer and the beneficiary of a no-strike clause included in a collective bargaining agreement, could not assert a claim under § 301(a) against the International Brotherhood of Teamsters ("IBT") for contractual damages that the IBT's action had allegedly caused. For the purpose of reviewing the district court's order dismissing Granite Rock's claims against the IBT, the Ninth Circuit accepted as true (1) that the IBT actively participated in the negotiation of the agreement at issue, (2) that, shortly after the ratification of that agreement, the IBT caused the local union and its members to violate a no-strike clause included in the

agreement,[7] (3) that the IBT took this action for the purpose of coercing Granite Rock to grant it express rights of indemnification in a side agreement, if not an amendment to the ratified agreement, and (4) that the IBT sought such rights for its own benefit, and not for the benefit of the local union that had ratified the agreement for the benefit of its members. However, the Ninth Circuit held such allegations were insufficient to state a claim against IBT under § 301(a). Much like the Second Circuit in *Greenblatt*, the Ninth Circuit ruled that § 301(a) did not provide a federal remedy against the IBT because the IBT had no express rights or duties under the ratified agreement. Pet. App. 5-12.[8]

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[7] According to the Complaint, the resulting strike lasted more than two months and inflicted substantial financial damage on Granite Rock.

[8] In a similar fashion, courts have held that § 301(a) provides a federal remedy against non-signatories to enforce arbitration subpoenas but not against other non-signatories whose misconduct has caused a violation of contractual rights under an agreement. *Compare Teamsters Nat. Automotive Transporters Industry Negotiating Committee v. Troha*, 328 F.3d 325, 329 (7th Cir. 2003) (upholding an action under § 301(a) to enforce an arbitration subpoena) *and American Federation of Television and Radio Artists, AFL-CIO v. WJBK-TV (New World Communications of Detroit, Inc.)*, 164 F.3d 1004, 1007-09 (6th Cir. 1999) (same) *with Loss*, 673 F.2d at 948 (complaint of interference with a collective bargaining agreement is not actionable under § 301(a)) *and Serv.,*

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While cases like *Greenblatt* and this one acknowledge that federal jurisdiction and remedies under § 301(a) do not strictly depend on the formal status of a defendant as a signatory to an agreement, they continue to read § 301(a) in a narrow fashion and to find federal jurisdiction and federal common law remedies only for claims that "sound" in contract. Under these precedents, a party to a collective bargaining agreement simply cannot bring an action in federal court under § 301(a) against a defendant for causing the violation of an agreement, unless the defendant is a signatory of the agreement or is otherwise covered by a provision in the agreement expressly benefiting or binding the defendant.

II. Resolution Of The Second Question Presented Is Critically Important To The Development Of A Uniform Body Of Federal Common Law Under § 301(a) That Adequately Deters And Remedies Violations Of Labor Agreements.

Resolution of the conflict among the federal circuits is critically important to the development of a uniform body of federal common law under § 301(a). The aforementioned cases show that: (1) parties frequently litigate

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Hosp., Nursing Home & Public Employees Union, Local No. 47, 755 F.2d at 506 (same).

the scope of federal jurisdiction and whether it authorizes federal remedies for claims against non-signatories to a labor agreement; (2) the courts of appeals currently are divided over the plain meaning of § 301(a) as well as this Court's precedents construing that statute; and (3) this conflict is producing inconsistent results and engendering considerable confusion and uncertainty in litigation regarding labor agreements. This conflict should not be allowed to continue. The nature and scope of the federal common law remedies available under § 301(a) should not vary depending on the circuit in which a dispute is litigated, but that is exactly what is happening now, and will continue to happen as long as the current circuit split remains unresolved.

This case provides the Court with an excellent opportunity to resolve the conflict over § 301(a) and ensure that § 301(a) and this Court's precedents are construed in a uniform manner consistent with Congress' mandate to "fashion" a body of federal common law to address and remedy disputes arising out of labor contracts. *Lincoln Mills,* 353 U.S. at 456; *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 209 (1985) (citing *Lincoln Mills*).

The Court should grant certiorari with respect to the second question presented and reverse the judgment of the court of appeals to ensure that labor agreements are construed in a uniform manner based on substantive rules of federal common law and further ensure that federal common law provides an appropriate remedy for misconduct by culpable non-

signatories (like the international union here) who have participated in labor-management negotiations and then use their power over signatories to cause a violation of the resulting agreement to serve their own interests.

Indeed, if this Court does not grant certiorari with respect to the second question presented and reverse the court of appeals' ruling, that ruling is likely to leave employers and unions without a legal cause of action to deter or remedy interference with labor agreements by a non-signatory—a practical "no-man's land" in federal labor law—exactly what this Court's precedents clearly indicate should not occur. Following this Court's decisions in *Lincoln Mills* and *Atkinson*, the courts of appeals repeatedly have held that § 301(a) preempts the vast majority of state law claims for tortious interference with a labor agreement.[9] However, the narrow construction of § 301(a) adopted in this case means that employers and unions also will be precluded from bringing an action under § 301(a) to deter and redress such misconduct by

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9 *See, e.g.*, *Anderson v. Aset Corp.*, 416 F.3d 170 (2d Cir. 2005) (§ 301(a) preempted state law claim against nonsignatory defendant for tortious interference); *Bartholomew v. AGL Resources, Inc.*, 361 F.3d 1333 (11th Cir. 2004); *Mattis v. Massman*, 355 F.3d 902 (6th Cir. 2004) (same); *Sprewell v. Golden State Warriors*, 266 F.3d 979 (9th Cir. 2001) (same); *Steinbach v. Dillon Companies, Inc.*, 253 F.3d 538 (10th Cir. 2001) (same); *Oberkramer v. IBEW-NECA Service Center, Inc.*, 151 F.3d 752 (8th Cir. 1998) (same).

a non-signatory. The court of appeals' ruling, thus, creates a gap in federal labor law that will lead to an increase in interference by non-signatories in settled labor agreements. Although the Ninth Circuit suggested that it was Congress' job to fill in this "gap," Congress did that more than sixty years ago when it enacted § 301(a). In construing that statutory mandate from Congress, *Lincoln Mills* makes clear that this Court has a unique responsibility to "fashion" a federal common law that adequately addresses and remedies conduct that results in a violations of a labor agreement. *Lincoln Mills*, 353 U.S. at 103-04. Congress has not suggested otherwise, and its silence supports the Court's role as the author and arbiter of federal common law under § 301(a). Certiorari should be granted so that the Court can fulfill that Congressional mandate.[10]

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[10] In the Ninth Circuit, the IBT argued that any arguable gap in federal labor law was covered by two other sections of the LMRA—§ 8(b)(4)(B), 29 U.S.C. § 158(b)(4)(B), and § 303, 29 U.S.C. § 187—which regulate unfair labor practices under the National Labor Relations Act. However, the IBT also maintained that §8(b)(4)(B) does not encompass the activity alleged here—a position which demonstrates very clearly that the gap described above is real and material. Moreover, that the International Union's conduct arguably constituted an unfair labor practice begs the question of whether this Court has jurisdiction under § 301(a). This Court has specifically held that claims which are alleged as an unfair labor practice but also constitute a violation of the labor agreement do not oust federal courts of jurisdiction

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CONCLUSION

For the foregoing reasons, as well as those set forth in the Petition, certiorari should be granted with respect to the second question presented.

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under § 301(a). *Smith v. Evening News Assn.*, 371 U.S. at 198-200. In any event, uncertainty and confusion concerning federal remedies available under § 301(a) and other provisions of the LMRA only further show why this Court's review is needed.