



April 18, 2025

Via hand delivery and electronic filing

Scott S. Harris, Clerk
Supreme Court of the United States
One First Street, NE
Washington, DC 20543

Re: *Apache Stronghold v. United States*, No. 24-291

Dear Mr. Harris:

I write to update the Court on recent developments relevant to the pending petition in *Apache Stronghold v. United States*, No. 24-291.

Yesterday, the federal Respondents filed the attached notice in the district court stating that they are prepared to publish the Final Environmental Impact Statement (FEIS) for the planned mine at Oak Flat. The notice states that if this Court denies the pending petition for certiorari, federal Respondents expect to publish the FEIS in as little as 60 days (*i.e.*, June 16, 2025). It further states that federal Respondents “may reevaluate how to proceed” if the petition “remains pending or has been granted” by June 16—meaning Respondents may also publish the FEIS even if the petition has not been denied.

Once the FEIS is published, the federal Respondents are statutorily required to “convey all right, title, and interest” in Oak Flat to Resolution Copper. Pet.14 (quoting Pub. L. No. 113-291, § 3003(c)(10), 128 Stat. 3736-3737). The transfer may occur simultaneously with publication of the FEIS, but must occur within 60 days of publication at the latest. *Ibid.* This means that, absent this Court’s intervention, and possibly despite it, Oak Flat could be transferred to Resolution Copper as early as June 16, 2025.

This notice confirms the urgent need for this Court’s review. Until now, there may have been some doubt about the government’s intent to move forward with the transfer and destruction of Oak Flat. But this notice removes all doubt: the government intends to move forward, and to do so quickly.



Nor is there any doubt about the harms that would immediately follow. The transfer itself would “strip” Apaches of “legal protections,” “effectively exclud[ing]” them from Oak Flat. Pet.App.606a, 615a (Bumatay, J., dissenting). Resolution could immediately begin “preparatory activities that are likely to degrade” the site and “cause irreparable damage.” Pet.App.615a-616a. The government admits that the impacts of the project would be “immediate, permanent, and large in scale.” Pet.App.912a. And Ninth Circuit precedent often makes “rescind[ing] a completed land transfer” “futile.” Pet.App.616a-617a (Bumatay, J., dissenting). Thus, the only thing standing between Western Apaches and the permanent end of their age-old rituals is this Court’s intervention.

Developments in another pending case, *Mahmoud v. Taylor*, No. 24-297, also confirm the need for review. In both this case and *Mahmoud*, the lower courts relied on *Lyng v. Northwest Indian Cemetery Protective Association*, 485 U.S. 439 (1988), to hold that there is no “cognizable” “burden” on religious exercise absent specific types of “coercion.” Respondents in *Mahmoud* have now made *Lyng* a centerpiece of their argument in this Court, citing it eleven times in their response brief. *Mahmoud* Resp.Br. at 18, 20-21, 35, 38, 41, 44. That illustrates yet another reason why this Court’s review is needed: governments are using the lower courts’ “aggressive expansion of *Lyng* * * * [to] undermine[] religious liberty for all faiths.” Pet.36-38. The Court should grant review to confirm that misapplying *Lyng* in this way is just as wrong under RFRA as it is under the Free Exercise Clause.

Respectfully submitted,

/s/ Luke W. Goodrich

Luke W. Goodrich

Counsel for Petitioner

Enclosure

cc: Solicitor General D. John Sauer, Counsel for Federal Respondents
Lisa S. Blatt, Counsel for Respondent Resolution Copper Mining LLC

1 ADAM R.F. GUSTAFSON
2 Acting Assistant Attorney General
3 United States Department of Justice
4 Environment and Natural Resources Division

4 ERIKA NORMAN
5 ANGELA ELLIS
6 Trial Attorneys
7 Natural Resources Section
8 150 M St. NE, Third Floor
9 Washington, D.C. 20002
10 (202) 305-0475 (Norman)
11 Erika.norman@usdoj.gov
12 Angela.Ellis@usdoj.gov

13 *Attorneys for Federal Defendants*

14 **THE UNITED STATES DISTRICT COURT**
15 **DISTRICT OF ARIZONA**
16 **PHOENIX DIVISION**

17 Apache Stronghold,
18 Plaintiff,
19 v.
20 United States of America, *et al.*,
21 Defendants.

CIVIL NO. 2:21-cv-00050-SPL
**FEDERAL DEFENDANTS' SIXTY-
DAY NOTICE OF PUBLICATION
OF FINAL ENVIRONMENTAL
IMPACT STATEMENT**

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1 In accordance with the Court’s Order of May 12, 2021 (Dkt. 81), Federal
2 Defendants hereby provide notice that they intend to publish a Notice of Availability of
3 the Final Environmental Impact Statement (“FEIS”) and Draft Record of Decision
4 (“DROD”) for the subject Land Exchange and Project in the Federal Register no earlier
5 than 60 days from the date of filing this notice. Pursuant to the Court’s order, Federal
6 Defendants will coordinate with Plaintiffs to file a joint status report within 10 days from
7 the date of filing of this notice. The Supreme Court is presently considering a petition for
8 a writ of certiorari in *Apache Stronghold v. United States*, No. 24-291. The disposition of
9 that petition may affect the timing of when Federal Defendants proceed with publication
10 of any FEIS and DROD. If the petition is denied within the 60-day period following this
11 notice, Federal Defendants anticipate proceeding with publication of the FEIS and DROD
12 consistent with this notice. If the petition remains pending or has been granted, Federal
13 Defendants may reevaluate how to proceed and will update the Court and parties as
14 appropriate. The Forest Service is also providing public notice on the agency’s website
15 at <https://www.resolutionmineeis.us/>.

16 The parties will file a joint status report within ten days of this Notice. *See* Dkt.
17 81.

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19 Submitted this 17th day of April, 2025,

20 ADAM R.F. GUSTAFSON
21 Acting Assistant Attorney General
22 U.S. Department of Justice
23 Environment & Natural Resources Division

24 /s/ Angela N. Ellis
25 ERIKA NORMAN
26 ANGELA ELLIS
27 Trial Attorneys
28 Natural Resources Section
150 M St. NE, Third Floor
Washington, D.C. 20002
(202) 305-0475 (Norman)
Erika.norman@usdoj.gov

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Angela.Ellis@usdoj.gov

Attorneys for Federal Defendants