

No. 25A1008

In the Supreme Court of the United States

GOUYEN BROWN LOPEZ, *et al.*,

Applicants,

v.

UNITED STATES OF AMERICA, *et al.*,

Respondents,

and

RESOLUTION COPPER MINING, LLC,

Intervenor-Respondent.

On Emergency Application for Injunction Pending Appeal

**BRIEF OF NATIONAL CONGRESS OF AMERICAN INDIANS
AND NATIONAL ASSOCIATION OF TRIBAL HISTORIC
PRESERVATION OFFICERS AS *AMICI CURIAE* IN SUPPORT
OF APPLICANTS**

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March 17, 2026

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INTEREST OF *AMICI CURIAE*¹

Amicus Curiae National Congress of American Indians (“NCAI”), founded in 1944 and based in Washington, D.C., is the oldest and largest national organization comprised of American Indian and Alaska Native governments and their citizens. NCAI advises and educates the public, state governments, and the federal government on a broad range of issues involving Tribal sovereignty, self-government, treaty rights, and policies affecting Tribal Nations. NCAI’s primary focus is protecting the inherent sovereign legal rights of Tribal Nations through positions directed by consensus-based resolutions. These resolutions are promulgated at NCAI national conventions by the organization’s entire membership. NCAI’s membership is comprised of approximately 300 Tribal Nations and is renewed annually.

Amicus Curiae National Association of Tribal Historic Preservation Officers (“NATHPO”) is the only national organization devoted to supporting Tribal Historic Preservation Officers and Tribal Historic

¹ Pursuant to Supreme Court Rule 37.6, none of the Parties’ counsel authored this brief in whole or in part, and no other person, including the Parties’ counsel—other than *Amici Curiae*, their members, and their counsel—contributed money that was intended to fund the preparation of this brief.

Preservation Programs. NATHPO is a non-profit membership organization founded in 1998. Its membership is comprised of Tribal governmental officials who implement federal and Tribal cultural resource and historic preservation laws and policies. NATHPO empowers Tribal preservation officials and leaders protecting culturally important places that perpetuate Native identity, resilience, and cultural endurance. Connections to cultural heritage sustain the health and vitality of Native peoples. NATHPO also advises Congress, the courts, and federal agencies on Tribal culture, religion, and history; the importance of Tribal consultation; and the proper implementation of federal cultural resource and historic preservation laws and policies.

Amici Curiae NCAI and NATHPO submit this brief in support of Applicants Gouyen Brown Lopez, Sinetta Lopez, Nomie Brown, and Angela Kinsey and their efforts to protect Chi'chil Bildagoteel (Oak Flat) from total destruction.

SUMMARY OF ARGUMENT

To the Western Apache and individual Apache including Applicants, Chi'chil Bildagoteel is “a sacred place of creation where the spirit world becomes physically manifest.” Br. of *Amici Curiae* San Carlos

Apache Tribe *et al.* at 5, *Apache Stronghold v. United States*, 145 S. Ct. 1480 (2025) (No. 24-291), https://sct.narf.org/documents/apache_stronghold_v_us/amicus_san_carlos_apache_tribe.pdf. The United States intends to transfer Chi'chil Bildagoteel to Intervenor-Respondent Resolution Copper Mining, LLC, to operate a copper mine that would turn Chi'chil Bildagoteel into a two-mile-wide, 1,000-foot-deep crater. As Justice Gorsuch recently observed, "It is undisputed' that the government's plan will permanently 'destroy the Apaches' historical place of worship, preventing them from ever again engaging in religious exercise.'" *Apache Stronghold v. United States*, 145 S. Ct. 1480, 1480 (2025) (Gorsuch, J., dissenting) (citation omitted). This Court's immediate intervention is needed to prevent this irreversible harm.

Many Native American religions and cultural practices, like those of the Western Apache and Applicants, are land based. Chi'chil Bildagoteel, like so many Native American sacred places, is located on federal lands today only because of federal policies designed to systematically dispossess Tribal Nations of their homelands and territories and directly suppress Tribal religions. As a result, Tribal

sacred places and religious and cultural practices are disproportionately and uniquely burdened by federal land management decisions.

Despite—and, in part, because of—this history, this Court has long recognized that the United States “has charged itself with moral obligations of the highest responsibility and trust” to Tribal Nations and Native Americans. *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942). This includes a specific trust duty to protect Tribal religions. See 42 U.S.C. § 1996. Applicants’ claims and the transfer of Chi’chil Bildagoteel must be understood within the context of this history and the United States’s trust responsibility. These policies of suppression and erasure of Native religions and destruction and taking of sacred places informs how contemporary federal actions uniquely burden Native religious practitioners.

ARGUMENT

I. Native American religions and cultures are land based.

Tribal Nations and Indigenous communities across the United States have their “own unique history, culture, and religious traditions.” Joel West Williams & Emily deLisle, *An “Unfulfilled, Hollow Promise”*: Lyng, Navajo Nation, and the Substantial Burden on Native American

Religious Practice, 48 Ecology L.Q. 809, 814 (2021) (footnote omitted). While it is inappropriate to generalize across all Native religions, practices, and beliefs, common elements exist. See Stephanie Hall Barclay & Michalyn Steele, *Rethinking Protections for Indigenous Sacred Sites*, 134 Harv. L. Rev. 1294, 1304 (2021). One such element is the central importance of actual physical places to Native religions. See Vine Deloria, *God is Red: A Native View of Religion* 110 (4th ed. 2023) (“Sacred places are the foundation of all other beliefs and practices because they represent the presence of the sacred in our lives.”).

In his seminal work on Native religion, *God Is Red*, Vine Deloria, Jr., observed that Tribal Nations’ traditional homelands are associated with “a multitude of stories that recount migrations, revelations, and particular historical incidences that cumulatively produced the tribe in its current condition.” *Id.* For many Tribal Nations, these places form a “sacred geography” within which their religions are practiced. *Id.* These places are holy and irreplaceable, and without them, “many tribal religions cannot exist.” Kristen A. Carpenter, *A Property Rights Approach to Sacred Sites Cases: Asserting A Place for Indians as Nonowners*, 52 UCLA L. Rev. 1061, 1068–69 (2005).

Sacred places may be specific sites associated with teachings and creation stories; pilgrimage routes; locations for gathering medicines, sacraments, and other plants; shrines, alters, and ruins; burial grounds and massacre sites; vision questing sites and places of prayer, meditation, and communication with the spirit world; as well as “the great American sacred centers where many spirits and divine beings live. . . . These are special places of profound power that combine many of the qualities that form the other categories all in one.” Walter R. Echo-Hawk, *In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided* 332 (2010). These places, and the plants and animals in them, are imbued with spiritual power. See Deloria, *supra*, at 139.

The sacredness and centrality of place is not unique to Native religions. Echo-Hawk, *supra*, at 849–50 (“[A]ll world religions have holy places.”). Many of the predominate religions practiced in the United States recognize sacred, or holy, lands. See Br. of 52 Tribal Nations & Orgs. as *Amici Curiae* at 5–6, *Apache Stronghold v. United States*, 145 S. Ct. 1480 (2025) (No. 24-291), 2024 WL 5399334, at *5–6. Yet, for many Native religions and cultures, certain religious and cultural practices can only be performed at specific places and cannot be performed or observed

elsewhere. See Barclay & Steele, *supra*, at 1305; Deloria, *supra*, at 141. As Justice Brennan observed in *Lyng v. Northwest Indian Cemetery Protective Association*, “[t]he site-specific nature of Indian religious practices derives from the Native American perception that land is itself a sacred, living being.” 485 U.S. 439, 461 (1988) (Brennan, J., dissenting).

II. Colonial era and post-Colonial era policies dispossessing Natives Americans of their homelands have left the United States as gatekeeper to their sacred places.

From the earliest days of the Nation, the United States has employed numerous policies to dispossess Tribal Nations of their homelands. This has included violence and forced removal, claiming land in treaties, and seizing land through executive orders and legislation. While the means to effectuate land dispossession evolved, the results remained the same: the United States’s control over Tribal Nations’ lands and sacred places.

The United States’s early acquisitions of Tribal lands were typically effectuated through war and cessions contained in treaties. See Ned Blackhawk, *The Rediscovery of America* 230 (2023). To justify these takings, the United States relied on the doctrine of discovery. See *Johnson v. M’Intosh*, 21 U.S. 543 (1832). From its founding until 1924,

the United States “seized hundreds of millions of acres of land from Native nations in more than three hundred treaties.” Blackhawk, *supra*, at 2–3. While treaties between Tribal Nations and the United States are essentially contracts between two sovereigns Nations, *see Washington v. Wash. State Com. Passenger Fishing Vessel Ass’n*, 443 U.S. 658, 675 (1979), the United States often exercised unequal and coercive bargaining power in their negotiation and drafting. *See Wash. State Dep’t of Licensing v. Cougar Den, Inc.*, 586 U.S. 347, 368 (2019) (Gorsuch, J. concurring).

For example, during the Treaty Era,² Tribal Nations in California signed eighteen treaties with the United States that removed them from their traditional homelands. Carole Goldberg, *Acknowledging the Repatriation Claims of Unacknowledged California Tribes*, 21 Am. Indian Culture & Res. J. 183, 184 (1997). By the terms of these treaties, the Tribal Nations believed they would be moved onto eight million acres of reservation lands in exchange for ceding their homelands to the United States. *Id.* But these treaties were a bait-and-switch; Congress refused

² The Treaty Era began before the formation of the Union and ended in 1871 when Congress prohibited the negotiation of new treaties. *See* 25 U.S.C. § 71.

to ratify the treaties, took the ceded lands, and failed to provide the Tribal Nations with their bargained-for reservations. *Id.* at 184–85.

Recognizing the threat removal posed to their traditions, some Tribal Nations bargained in their treaties to ensure access to their most sacred places. For example, the Navajo Nation negotiated for the inclusion of Canyon de Chelly, a place of immense religious importance, to be included within its reservation. *See* Treaty with the Navajo, June 1, 1868, 15 Stat. 667; Emma Blake, *Tribal Co-Management: A Monumental Undertaking?*, 48 Ecology L.Q. 249, 249 (2021) (Canyon de Chelly features in Navajo creation stories, which maintain that spiritual figures and deities like Spider Woman still reside there). Likewise, the Blackfeet Nation retained the right to access the Badger-Two Medicine, the place of creation and vision questing, in an agreement ceding a portion of its reservation. *See* Agreement with the Indians of the Blackfeet Indian Reservation in Montana, Act of June 10, 1896, 29 Stat. 353; *Solenex LLC v. Bernhardt*, 962 F.3d 520, 522 (D.C. Cir. 2020) (“The [Badger-]Two Medicine Area has long held a special place in the cultural history and religious life of the Blackfeet Tribe.”).

Too often, however, the United States failed to honor the promises it made in treaties. In the 1861 Fort Laramie Treaty, the Sioux Nation reserved the Black Hills for its exclusive use. Fort Laramie Treaty of April 29, 1868, 15 Stat. 636. Bowing to pressure to exploit gold discovered in this territory, the United States reneged on its promises and took the Black Hills from the Sioux Nation, breaching the treaty. *See United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980).

The United States also used legislation to dispossess Tribal Nations of their land. The Indian Removal Act of 1830, 4 Stat. 411 (1830), for example, authorized the forced removal of Tribal Nations from the east coast to west of the Mississippi River. The United States also adopted the allotment policy to strip Tribal Nations of the little land they retained. *See* 24 Stat. 388 (1887). Allotment broke up reservations and conveyed so-called “surplus lands” to non-Indians. Blackhawk, *supra*, at 334. This resulted in the reduction of Tribal landholdings “from 138 million acres of lands in 1887” to just “48 million acres in 1934.” *Id.* Allotment, one part of the United States’s broader assimilation policies, sought to change Tribal Nations’ relationship to their lands by shifting land from collective to private ownership. *Id.*; *see also Cohen’s Handbook of Federal Indian*

Law § 1.08, at 77–103 (Nell Jessup Newton & Kevin K. Washburn, eds. 2024).

In the 1950s, termination policies further reduced Tribal landholdings. Termination rescinded federal recognition of Tribal Nations and ended federal trusteeship over Tribal lands. *Bureau of Indian Affairs Records: Termination*, Nat’l Archives, <https://www.archives.gov/research/native-americans/bia/termination> (accessed Mar. 14, 2026). As a result, “[t]ermination laws resulted in the loss of 1.3 million acres of Indian land.” *Cohen’s, supra*, § 1.10[5], at 123. For instance, after the United States allotted the Klamath Tribes’ reservation, Congress passed the Klamath Termination Act. Pub. L. No. 83-587, 68 Stat. 718 (1954). Under that act, “70% of the former reservation land ended up in federal ownership.” Monte Mills & Martin Nie, *Bridges to a New Era: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Public Lands*, 44 *Pub. Land & Resources L. Rev.* 49, 73 (2021).³

³ The Klamath Tribes’ federal recognition was restored in 1986. Pub. L. No. 99-398, 100 Stat. 849 (1986).

For Tribal Nations across the Country, removal from their traditional lands and sacred places has directly impacted Tribal identity; religious, cultural, and spiritual practices; and subsistence. See Michael D. McNally, *The Sacred and the Profaned: Protection of Native American Sacred Places that have been Desecrated*, 111 Calif. L. Rev. 395, 406 (2023). For example, in litigation involving a sacred place, Cherokee claimants explained that “[w]hen this place is destroyed, the Cherokee people cease to exist as a people.’ They may not have meant that each individual tribal member would literally die, but rather that the loss of such sacred sites would make it difficult or impossible to maintain Cherokee worldviews and lifeways.” Kristen A. Carpenter et al., *In Defense of Property*, 118 Yale L.J. 1022, 1051–52 (2009).

“American Indian cultures are not expressed only on reservations The ancestral homelands of the Indian tribes cover the entire nation.” Nat’l Park Serv., *Keepers of the Treasures: Protecting Historic Properties and Cultural Traditions on Indian Lands* 1 (1990). Due to the federal policies of systematic dispossession, today, “[s]acred and historic places critical to the continuation of cultural traditions are often not under tribal control, but rather are owned or managed by Federal, State,

[and] local governments, and other non-Indians.” *Id.* In the western United States, and particularly within the Ninth Circuit,⁴ much of the land taken from Tribal Nations is now managed by the federal government “as ‘public lands,’ including National Parks and Forests.” Kristen A. Carpenter, *Living the Sacred: Indigenous Peoples and Religious Freedom*, 134 Harv. L. Rev. 2103, 2116 (2021). Despite this history of dispossession, Tribal Nations remain committed to “preserving ancestral sites and traditional use areas on lands that they no longer control[.]” Nat’l Park Serv., *supra*, at 67.

III. The United States directly suppressed Tribal religions to assimilate and dispossess Native Americans.

The campaign to dispossess Tribal Nations of their lands was supported by efforts to destroy Tribal religion through “civilization.” The policies often used religious institutions and direct religious suppression to assimilate Native peoples.

⁴ Of the nearly 640 million acres of federal public lands in the United States, nearly 458 million acres are located within the nine states that make up the Ninth Circuit. See Carol Hardy Vincent & Laura A. Hanson, *Congressional Research Service Report No. R42346: Federal Land Ownership: Overview and Data* 7–8, at Table 1 (Fed. 21, 2020).

Beginning in 1819, for example, Congress funded religious institutions with established schools to educate and “civiliz[e]” Indian children. Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* 151 (1984). Later, President Grant’s Peace Policy allied the government and Christian religious institutions, effectively placing many Indian reservations under church control. Robert H. Keller, *American Protestantism and United States Indian Policy 1869-82*, at 1–2 (1983). The Peace Policy established the Board of Indian Commissioners, intentionally comprised solely of Protestants, which was given supervisory authority over Indian affairs. Allison M. Dussias, *Ghost Dance and Holy Ghost: The Echoes of Nineteenth-Century Christianization Policy in Twentieth-Century Native American Free Exercise Cases*, 49 *Stan. L. Rev.* 773, 779 (1997). The Board’s recommendations included confining Tribal Nations to reservations, discouraging Tribal relations, establishing schools with teachers “nominated by religious bodies,” and encouraging missionary work. Prucha, *supra*, at 509–10. Neither these religious groups nor the federal government were concerned with “the Indian’s right to maintain and defend their own religion.” *Id.* at 524–25.

Federal policies also directly suppressed the exercise of Native religions. For example, the United States specifically targeted religious dances through the Courts of Indian Offenses. These Courts monitored civilization efforts and heard “complaints from missionaries” about Tribal religious practices. Steve Talbot, *Spiritual Genocide: The Denial of American Indian Religious Freedom, from Conquest to 1934*, 12 *Wicazo Sa Review* 7, 15–16 (2006). The Courts of Indian Offenses’ regulations banned Tribal religious practices such as the “‘sun dance,’ the ‘scalp dance,’ [and] the ‘war dance[.]’” Off. of Indian Affs., *Regulations of the Indian Office* § 580, at 106 (1894). By 1900, these Courts operated on approximately two-thirds of all Indian reservations. *See Prucha, supra*, at 648.

Indian agents enforced laws against Tribal religious practitioners through draconian measures, such as withholding treaty-guaranteed rations from those who participated in religious dances. Dep’t of Interior, *Rules Governing the Court of Indian Offenses* 4 (1883). Federal officials described these religious dances as “repugnant to common decency and morality” and called for efforts to “put a stop to” these “heathenish rites.” Dep’t of Interior, *Annual Report of the Commissioner of Indian Affairs*,

at XV (1883). Indian agents destroyed Tribal property required for religious practices. *Id.* at 22. Indian agents also used the threat of military violence to prevent religious practices. Dep't of Interior, *Annual Report of the Commissioner of Indian Affairs* 191 (1889).

The federal Indian boarding school system was used as another tool to suppress Tribal religions. Of the 417 federal Indian boarding schools established by the federal government, 210 were operated by religious groups relying on federal resources and money. Dep't of Interior, *Federal Indian Boarding School Initiative Investigative Report Volume II*, at 19 (2024) (“Boarding School Report”). These schools were designed to break Native families apart, erase Native languages, and, ultimately, destroy Native religions and cultures. *See Haaland v. Brackeen*, 599 U.S. 255, 300 (2023) (Gorsuch, J., concurring). The federal Indian boarding school system prohibited “languages[,] . . . cultural[,] [and] religious practices through punishment, including corporal punishment.” Boarding Sch. Rep., *supra*, at 93. The “boarding school policy was intentionally targeted at American Indian, Alaska Native, and Native Hawaiian children to assimilate them and, consequently, take their territories.” Letter from Bryan Newland, Ass. Sec’y Indian Affs., to Deb Haaland, Sec’y of Interior

1 (Apr. 1, 2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf.

Despite these historical policies, the federal government was unable to destroy Native religions, cultures, and identities. Today, Native communities continue to practice their religions, and many continue to rely on sacred places as a center of these practices.

IV. Access to sacred places is essential to Native religions and the health of Native people.

Protecting sacred places is intrinsic to Native religions and is tied to the political, social, and cultural survival of Tribal Nations. *See* Carpenter, *Property Rights, supra*, at 1068. Many Native religions are rooted in the concept of reciprocity; that is, the Earth, the plants, and the animals will care for humans, so long as humans care for them. *See* Hillary Hoffman & Monte Mills, *A Third Way: Decolonizing the Laws of Indigenous Cultural Practice* 41 (2020). In testimony to Congress, First Chief of Arctic Village Council Galen Gilbert summarized this belief: “Our way of life is based on our relationship to the land. We must care for and respect the land and animals given to us by the Creator.” *Arctic Cultural and Coastal Plain Protection Act: Hearing on H.R. 1146 Before*

the Subcomm. on Energy & Minerals Res. of the H. Comm. on Nat. Res., 116th Cong. 11 (2019).

The loss of Tribal Nations' homelands and access to sacred places has a demonstrated effect on the health of Indigenous communities. See Melody E. Morton Ninomiya et al., *Indigenous Communities and the Mental health Impacts of Land Dispossession Related to Industrial Resource Development: A Systematic Review*, 7 *Lancet Planetary Health* e501, e501 (2023). Sacred places play a critical role in overcoming the effects of colonialism. They are a foundation of Tribal Nations' current religious practices and those of the future generations. Tribal identity is "expressed as knowledge and participation with tribal heritage, history, traditions, activities and ceremonies." Claudia (We-La-La) Long et al., *Assessing Cultural Life Skills of American Indian Youth*, 35 *Child Youth Care F.* 289, 299–300 (2006).

Tribal Nations and Native people are obligated to preserve sacred places so they can pass on the customs, values, and traditions practiced at them from one generation to the next. Whether it is in the Cascade Mountains where Tribal citizens visit specific peaks "as preparation for duties as chief or shaman," Douglas Deur, *A Most Sacred Place: The*

Significance of Crater Lake Among the Indians of Southern Oregon, 103 Or. Hist. Q. 18, 24 (2002), or Bears Ears where Elders utilize sacred places to teach younger generations where they come from and who they are, Presidential Proclamation No. 10285, 86 Fed. Reg. 57,321, 57,323 (Oct. 8, 2021), sacred places are where young Tribal citizens engage in religious training necessary to become religious leaders and carry on their religious practices.

These practices help communities heal from the centuries of federal policies designed to erase Native religions. The protection of sacred places and continuation of religious practices not only serve as a repudiation of assimilation but make Indigenous communities healthier. See, e.g., Moneca Sinclair et al., *Promoting Health and Wellness Through Indigenous Sacred Sites, Ceremony Grounds, and Land-Based Learning; A Scoping Review*, 20 *AlterNative: An Int'l J. Indigenous Peoples* 560, 562 (2024).

Access to sacred places is essential to the survival of Tribal Nations and Native religious practices and beliefs. Without sacred places, it is impossible to maintain Native worldviews and lifeways.

CONCLUSION

“[P]reserving Native American culture[] . . . is fundamental to the federal government’s trust relationship with tribal Native Americans.” *Peyote Way Church of God, Inc. v. Thornburgh*, 922 F.2d 1210, 1216 (5th Cir. 1991) (footnote omitted). Yet the proposed transfer and ultimate destruction of Chi’chil Bildagoteel demonstrate acutely the lasting consequences of the United States’s colonial policies of land dispossession and suppression of Tribal religion. Appellants’ claims and the transfer of Chi’chil Bildagoteel must be understood within the context of this history and the United States’s trust responsibility.

For the foregoing reasons, the Court should grant Applicants’ requested injunction.

Respectfully Submitted,

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March 17, 2026