No. _____

In the Supreme Court of the United States

APACHE STRONGHOLD,

Applicant,

v.

UNITED STATES OF AMERICA, ET AL.,

Respondents.

APPLICATION TO THE HONORABLE ELENA KAGAN FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MICHAEL V. NIXON
101 SW Madison Street
#9325
Portland, OR 97207
(503) 522-4257

CLIFFORD LEVENSON
5119 North 19th Avenue
Suite K
Phoenix, AZ 85015
(602) 258-8989

LUKE W. GOODRICH
Counsel of Record
DIANA VERM THOMSON
JOSEPH C. DAVIS
DANIEL L. CHEN
AMANDA L. SALZ
AMANDA G. DIXON
THE BECKET FUND FOR
RELIGIOUS LIBERTY
1919 Pennsylvania Ave. NW
Suite 400
Washington, D.C. 20006
(202) 955-0095
lgoodrich@becketlaw.org

Counsel for Applicant

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, the undersigned counsel of record certifies that Applicant does not have a parent corporation and does not issue stock.

/s/ Luke W. Goodrich

APPLICATION

To the Honorable Elena Kagan, Associate Justice of the Supreme Court of the United States and Circuit Justice for the Ninth Circuit:

Pursuant to Supreme Court Rule 13(5), Apache Stronghold respectfully requests an extension of thirty days to and including Wednesday, September 11, 2024, for the filing of a petition for a writ of certiorari in this matter. The Ninth Circuit issued its en banc opinion on March 1, 2024. Plaintiffs filed a petition for rehearing by the full court on April 15, 2022. The court denied the rehearing petition and issued an amended opinion on May 14, 2024. App.2, 11-13. Absent an extension, Applicant's deadline for the filing of the petition would be August 12, 2024. This application is submitted more than ten days prior to the filing deadline.

BACKGROUND

For at least a millennium, Western Apaches have centered their worship on a small sacred site called Chi'chil Biłdagoteel, or Oak Flat, where they perform essential religious practices that cannot take place elsewhere. App.17. The United States, however, has agreed to transfer Oak Flat to a mining company, Resolution Copper, to turn the site into a copper mine. App.20. The government admits the mine will destroy Oak Flat, causing it to "subside" into a massive crater nearly two miles wide and 1,100 feet deep. App.23. It "is undisputed that this subsidence will destroy the Apaches' historical place of worship, preventing them from ever again engaging in religious exercise at their sacred site." App.186.

Plaintiff Apache Stronghold challenged the transfer and destruction of Oak Flat under the Religious Freedom Restoration Act (RFRA), which requires strict scrutiny of government actions that "substantially burden" religious exercise. 42 U.S.C. § 2000bb-1. It also asserted a claim under the Free Exercise Clause, which requires strict scrutiny of government actions that are not neutral and generally applicable toward religion.

After an emergency motion panel and merits panel both split 2-1, the Ninth Circuit reheard the case en banc. On rehearing, the court split 6-5, issuing seven opinions across 246 pages. The majority acknowledged that the destruction of Oak Flat would qualify as a "substantial burden" under RFRA's plain meaning. App.14, 111-12 ("ordinary meaning"), 199-200. However, the majority held that RFRA's plain meaning doesn't apply to "a disposition of government real property." App.14. In such cases alone, the majority held that RFRA "subsumes" the pre-RFRA decision in *Lyng* v. *Northwest Indian Cemetery Protective Ass'n*, 485 U.S. 439 (1988), which the majority construed as broadly holding that destroying Native American sacred sites doesn't substantially burden religious exercise even when it "literally prevent[s]" religious exercise from occurring. App.14, 33. The majority also held that *Lyng* foreclosed Applicant's free exercise claim, even though it conceded that the government's act of singling out Oak Flat was not generally applicable. App.35-39. Five dissenters explained that the majority "tragically err[ed]" by rejecting "RFRA's plain text" and this Court's precedent, which "firmly establish[]" that "preventing people from engaging in religious exercise impermissibly burdens that exercise." App.187, 219, 245.

REASONS FOR GRANTING AN EXTENSION OF TIME

In support of this request, Applicant states as follows:

1. This case presents important issues under RFRA and the Free Exercise Clause that warrant a carefully prepared certiorari petition. The Ninth Circuit has already divided over these issues three times—in a 2-1 emergency motion decision, a 2-1 panel decision, and a 6-5 en banc decision. In its latest decision, spanning seven opinions and 246 pages, the en banc majority declined to apply RFRA's plain meaning, instead adopting a novel interpretation of "substantial burden" not briefed or argued by the parties or adopted by any other court. That interpretation conflicts with RFRA's text, this Court's decisions, and decisions of other circuits.

2. Applicant's counsel need additional time to prepare their petition in this case. Applicant's counsel have had substantial briefing and argument obligations from May through July of this year, including another certiorari petition in this Court, *Young Israel of Tampa, Inc. v. Hillsborough Area Regional Transport Authority*, No. 23-1276 (U.S.) (June 3); a complaint and preliminary injunction briefing in the Central District of California, *Frankel v. Regents of The University of California*, No. 2:24-cv-4702 (C.D. Cal.) (complaint June 5; preliminary injunction motion June 24, reply July 15); preliminary injunction briefing and a hearing in the District of Columbia, *Fellowship of Christian Athletes v. District of Columbia*, No. 1:24-cv-1332 (D.D.C.) (preliminary injunction reply June 18; hearing June 26); a complaint and preliminary injunction briefing in the Western District of Michigan, *Catholic Charities v. Whitmer*, No. 1:24-cv-718 (W.D. Mich.) (complaint July 12; preliminary injunction motion July 19); and depositions in the Southern District of New York, *Belya v. Kapral*, No. 1:20-cv-6597 (SDNY) (July 17-19).

3. Applicant's counsel also have several upcoming case-related obligations, including a preliminary injunction hearing in the Central District of California, *Frankel v. Regents of The University of California*, No. 2:24-cv-4702 (C.D. Cal.) (July 29); an opening brief in the Ninth Circuit, *World Vision, Inc. v. McMahon*, No. 24-3259 (9th Cir.) (July 31); summary judgment motion and briefing in the Southern District of New York, *Belya v. Kapral*, No. 1:20-cv-6597 (SDNY) (Aug. 5); and a reply in support of certiorari, *Young Israel of Tampa, Inc. v. Hillsborough Area Regional Transport Authority*, No. 23-1276 (U.S.) (Aug. 9).

4. Applicant's counsel also have several personal circumstances contributing to the need for an extension, including recently concluded paternity leave for one attorney and imminent maternity leave for another.

5. For these reasons, Applicant respectfully requests a thirty-day extension of time to and including September 11, 2024, for counsel to prepare a petition that fully addresses the important issues raised by the decision below.

Respectfully submitted.

MICHAEL V. NIXON
101 SW Madison Street #9325
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JULY 26, 2024