

No. 24-291

IN THE
Supreme Court of the United States

APACHE STRONGHOLD,

Petitioner,

v.

UNITED STATES *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF OF 52 TRIBAL NATIONS AND
ORGANIZATIONS AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

JOHN E. ECHOHAWK
Counsel of Record
MATTHEW L. CAMPBELL
BETH MARGARET WRIGHT
JASON SEARLE
NATIVE AMERICAN RIGHTS
FUND
250 Arapahoe Avenue
Boulder, CO 80302
(303) 447-8760
echohawk@narf.org

MORGAN E. SAUNDERS
NATIVE AMERICAN RIGHTS FUND
950 F Street Northwest,
Suite 1050
Washington, DC 20004

WESLEY JAMES FURLONG
NATIVE AMERICAN RIGHTS FUND
745 West Fourth Avenue,
Suite 502
Anchorage, AK 99501

Counsel for Amici Curiae
52 Tribal Nations and
Organizations

October 15, 2024

332947



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF APPENDICES	iii
TABLE OF CITED AUTHORITIES	iv
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT.....	1
ARGUMENT.....	3
I. Native American religions are land based.....	3
II. Historical policies dispossessed Native peoples of their homelands and suppressed Native religions, making the United States a gatekeeper to sacred places	7
a. Historical federal policies dispossessed Tribal Nations of their homelands and sacred places.....	7
b. The United States directly suppressed Tribal religions	12
c. Federal land management decisions directly affect Native religious practitioners’ access to sacred places and their ability to exercise their religions.....	15

Table of Contents

	<i>Page</i>
III. Access to sacred places is essential to Native religions and the health of Native people.	17
IV. This Court should grant Certiorari to ensure that religious practices on federal land are protected under RFRA.	19
a. The Ninth Circuit’s decision permits discrimination against religious practices tied to federal land.	20
b. <i>Lyng</i> ’s special exception for Free Exercise Clause claims is contrary to RFRA’s plain language and should not be extended into RFRA.	21
c. The Ninth Circuit’s decision is inconsistent with the structure of RFRA.	23
CONCLUSION	24

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX — <i>AMICI CURIAE</i> TRIBAL NATIONS AND ORGANIZATIONS	1a

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<i>Apache Stronghold v. United States</i> , 519 F. Supp. 3d 591 (D. Ariz. 2021).....	23
<i>Burwell v. Hobby Lobby Stores, Inc.</i> , 573 U.S. 682 (2014).....	22, 23, 24
<i>Employment Division, Department of Human Resources of Oregon v. Smith</i> , 494 U.S. 872 (1990).....	21
<i>Fulton v. City of Phila.</i> , 593 U.S. 522 (2021).....	22
<i>Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal</i> , 546 U.S. 418 (2006).....	24
<i>Haaland v. Brackeen</i> , 599 U.S. 255 (2023).....	15
<i>Haight v. Thompson</i> , 763 F.3d 554 (6th Cir. 2014).....	23
<i>Hualapai Indian Tribe v. Haaland</i> , No. CV-24-08154-PCT-DJH, 2024 WL 3900364 (D. Ariz. Aug. 22, 2024).....	21

Cited Authorities

	<i>Page</i>
<i>Johnson v. M'Intosh</i> , 21 U.S. 543 (1832).....	7-8
<i>La Cuna De Aztlan Sacred Sites Prot. Circle Advisory Comm. v. U.S. Dep't of Interior</i> , No. CV 11-00400 DMG (DTBx), 2013 WL 4500572 (C.D. Cal. Aug. 16, 2013)	21
<i>Lyng v. Nw. Indian Cemetery Protective Ass'n</i> , 485 U.S. 439 (1988).....	3, 7
<i>Ramirez v. Collier</i> , 595 U.S. 411 (2022).....	22-23
<i>Slockish v. U.S. Fed. Highway Admin.</i> , No. 3:08-CV-01169-YY, 2018 WL 4523135 (D. Or. Mar. 2, 2018).....	21
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 582 U.S. 449 (2017).....	22
<i>United States v. Sioux Nation of Indians</i> , 448 U.S. 371 (1980).....	9
<i>Yellowbear v. Lampert</i> , 741 F.3d 48 (10th Cir. 2014).....	23

Cited Authorities

	<i>Page</i>
STATUTES, RULES AND OTHER AUTHORITIES	
16 U.S.C. § 410ee	6
25 U.S.C. § 71	8
25 U.S.C. § 280a	10
25 U.S.C. § 566	11
25 U.S.C. § 3054(b)	16
42 U.S.C. § 1996	16
42 U.S.C. § 2000bb(a)(3)	22
42 U.S.C. § 2000bb(a)(5)	24
42 U.S.C. § 2000bb-2(4)	22
42 U.S.C. § 2000bb-3(c)	22
42 U.S.C. § 2000cc-5(7)(B)	22
54 U.S.C. § 302706(a)-(b)	16
Sup. Ct. R. 37(2)	1

Cited Authorities

	<i>Page</i>
<i>Arctic Cultural and Coastal Plain Protection Act: Hearing on H.R. 1146 Before the Subcomm. on Energy & Mineral Res. of the H. Comm. on Nat. Res.</i> , 116th Cong. 11 (2019)	18
Bernie Azure, <i>Medicine Tree Continues to Connect Today with Yesterday and Tomorrow</i> , Char-Koosta News (Oct. 4, 2018), https://www.charkoosta.com/news/medicine-tree-continues-to-connect-today-with-yesterday-and-tomorrow/article_e66fabea-c7f7-11e8-9ba9-87b513f1f80c.html	5
Stephanie Hall Barclay & Michalyn Steele, <i>Rethinking Protections for Indigenous Sacred Sites</i> , 134 Harv. L. Rev. 1294 (2021)	3, 7, 20-21
Ned Blackhawk, <i>The Rediscovery of America</i> 230 (2023)	7, 8, 10
<i>Bureau of Indian Affairs Records: Termination</i> , Nat'l Archives, https://www.archives.gov/research/native-americans/bia/termination (last reviewed Sept. 9, 2024)	11
Kristen A. Carpenter, <i>A Property Rights Approach to Sacred Sites Cases: Asserting A Place for Indians as Nonowners</i> , 52 UCLA L. Rev. 1061 (2005)	4, 17

Cited Authorities

	<i>Page</i>
Kristen A. Carpenter et al., <i>In Defense of Property</i> , 118 Yale L. J. 1022 (2009)	12
Kristen A. Carpenter, <i>Living the Sacred: Indigenous Peoples and Religions Freedom</i> , 134 Harv. L. Rev. 2103 (2021)	4, 12
Bill Chappell, <i>The Vatican Repudiates ‘Doctrine of Discovery’ Which Was Used to Justify Colonialism</i> , Nat’l Pub. Radio (Mar. 30, 2023), https://www.npr.org/2023/03/30/1167056438/vatican-doctrine-of-discovery-colonialism-indigenous	8
Cohen’s Handbook of Federal Indian Law § 1.02[2] (2023)	8
Cohen’s Handbook of Federal Indian Law § 1.04 (2023)	10
Cohen’s Handbook of Federal Indian Law § 1.06 (2023)	11
Vine Deloria, <i>God Is Red: A Native View of Religion</i> 110 (4th ed. 2023)	3, 4, 6, 7
Dep’t of Interior, Rules Governing the Court of Indian Offenses 4 (1883)	14

Cited Authorities

	<i>Page</i>
Douglas Deur, <i>A Most Sacred Place: The Significance of Crater Lake Among the Indians of Southern Oregon</i> , 103 Or. Hist. Q. 18 (2002)	18
Allison M. Dussias, <i>Ghost Dance and Holy Ghost: The Echoes of Nineteenth-Century Christianization Policy in Twentieth-Century Native American Free Exercise Cases</i> , 49 Stan. L. Rev. 773 (1997)	13
Allison M. Dussias, <i>Room for a (Sacred) View? American Indian Tribes Confront Visual Desecration Caused by Wind Energy Projects</i> , 38 Am. Indian L. Rev. 333 (2014)	16
Walter R. Echo-Hawk, <i>In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided</i> 332 (2010)	4, 5, 6
Justin Farrell et al., <i>Effects of Land Dispossession and Forced Migration on Indigenous Peoples in North America</i> , 347 Sci. 578 (2021)	12
<i>Forgotten Voices: The Inadequate Review and Improper Alteration of Our National Monuments: Hearing Before the H. Comm. on Nat. Res.</i> , 116th Cong. 1 (2019)	5
Carole Goldberg, <i>Acknowledging the Repatriation Claims of Unacknowledged California Tribes</i> , 21 Am. Indian Culture & Res. J. 183 (1997)	8

Cited Authorities

	<i>Page</i>
<i>Governor Newsom Announces Historic Land Return Effort on the 5th Anniversary of California’s Apology to Native Americans</i> , Gov. Gavin Newsom (June 18, 2024), https://www.gov.ca.gov/2024/06/18/governor-newsom-announces-historic-land-return-effort-on-the-5th-anniversary-of-californias-apology-to-native-americans/	8-9
Hillary Hoffman & Monte Mills, <i>A Third Way: Decolonizing the Laws of Indigenous Cultural Protection</i> 49-50 (2020)	5, 17
<i>Joint Statement of the Dicasteries for Culture and Education and for Promoting Integral Human Development on the “Doctrine of Discovery,”</i> Summary of Bulletin, Holy See Press Office (Mar. 30, 2023), https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/03/30/230330b.html	7-8
Robert H. Keller, <i>American Protestantism and United States Indian Policy</i> 1869-82 (1983) . . .	12, 13
Letter from Bryan Newland, Assistant Sec’y of Indian Affs., to Deb Haaland, Sec’y of Interior (Apr. 1, 2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf	15

Cited Authorities

	<i>Page</i>
Claudia (We-La-La) Long et al., <i>Assessing Cultural Life Skills of American Indian Youth</i> , 35 Child Youth Care F. 289 (2006)	18
Michael D. McNally, <i>The Sacred and the Profaned: Protection of Native American Sacred Places That Have Been Desecrated</i> , 111 Calif. L. Rev. 395 (2023)	6, 11
Monte Mills & Martin Nie, <i>Bridges to A New Era: A Report on the Past, Present, and Potential Future of Tribal Co-Management on Federal Public Lands</i> , 44 Pub. Land & Resources L. Rev. 49 (2021)	11
Melody E. Morton Ninomiya et al., <i>Indigenous Communities and the Mental Health Impacts of Land Dispossession Related to Industrial Resource Development: A Systematic Review</i> , 7 Lancet Planetary Health e501 (2023)	18
<i>Our History</i> , The Klamath Tribes, https://klamathtribes.org/history/ (last visited October 10, 2024)	11
Press Release, Dep’t of Interior, <i>Final Oil and Gas Lease to be Relinquished in Montana’s Badger-Two Medicine Area</i> (Sept. 1, 2023), https://www.doi.gov/pressreleases/final-oil-and-gas-lease-be-relinquished-montanas-badger-two-medicine-area	17

Cited Authorities

	<i>Page</i>
Francis Paul Prucha, <i>American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900</i> (1976)	13
Francis Paul Prucha, <i>The Great Father: The United States Government and the American Indians</i> 151 (1984)	12, 13, 14
Lauren Redniss, <i>Oak Flat: A Fight for Sacred Land in the American West</i> 224 (2020)	13, 15
Patrick E. Reidy, <i>Sacred Easements</i> , 110 Va. L. Rev. 833 (2024)	5, 6
Michael Sainato, <i>We Were Not Consulted: Native Americans Fight Lithium Mine on Site of 1865 Massacre</i> , Guardian (Oct. 13, 2023), https://www.theguardian.com/us-news/2023/oct/13/native-americans-1865-massacre-lithium-mine-thacker-pass	16
Moneca Sinclair et al., <i>Promoting Health and Wellness Through Indigenous Sacred Sites, Ceremony Grounds, and Land-Based Learning; A Scoping Review</i> , 20 AlterNative: An Int'l J. Indigenous Peoples 560 (2024)	19
Steve Talbot, <i>Spiritual Genocide: The Denial of American Indian Religious Freedom, from Conquest to 1934</i> , 12 Wicazo Sa Review 7 (2006) 10, 14	

Cited Authorities

	<i>Page</i>
<i>The Shrine Today</i> , Shrine of Mariapoch, https://parma.org/shrine-of-mariapoch (last visited Oct. 9, 2024).....	6
<i>Tribes: Wind Farm Would Harm Sacred Rituals</i> , Associated Press (Nov. 2, 2009), https://www.nbcnews.com/id/wbna33585078	16
U.S. Dep’t of Interior, <i>Federal Indian Boarding School Initiative Investigative Report Volume II</i> (July 2024).....	10
Gerald Vizenor, <i>Aesthetics of Survivance: Literary Theory and Practice</i> , in <i>Survivance: Narratives of Native Presence 1</i> (Gerald Vizenor ed., 2008) . . .	19
Joel West Williams & Emily deLisle, <i>An “Unfulfilled, Hollow Promise”</i> : Lyng, Navajo Nation, and <i>the Substantial Burden on Native American Religious Practice</i> , 48 <i>Ecology L.Q.</i> 809 (2021). .3, 21	
<i>Why the Sioux are Refusing \$1.3 Billion</i> , PBS News (Aug. 24, 2011), https://www.pbs.org/newshour/ arts/north_america-july-dec11-blackhills_08-23	9

INTEREST OF *AMICI CURIAE*¹

Amici Curiae are 44 federally recognized Tribal Nations, *see* 89 Fed. Reg. 944 (Jan. 8, 2024), and 8 national and regional Tribal and Native organizations. A complete list of *Amici* is included in the Appendix. Tribal Nation *Amici* are separate and distinct governments, possessing the sovereign authority to protect their members, religions, cultures, and traditions. Tribal and Native Organization *Amici* are dedicated to the rights of Tribal Nations and Native peoples and share a commitment to protecting the religious freedom of Native religious practitioners.

The vital protections promised by the Religious Freedom Restoration Act (“RFRA”) to Tribal Nations and Native religious practitioners are of significant importance to *Amici* and their members. The Ninth Circuit Court of Appeals has unduly constrained the broad protections of RFRA for Native religious practices tied to federal lands. *Amici* have immediate and significant interests in the outcome of this case and the correct interpretation of RFRA.

SUMMARY OF ARGUMENT

Native religious practitioners are uniquely situated within the United States as their beliefs are often

1. Pursuant to Supreme Court Rule 37(2), Counsel for *Amici* timely notified counsel of record for the parties of the intent to file this brief on October 1, 2024. No counsel for either party authored this brief in whole or in part, and no person or entity other than *Amici* and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

inextricably linked to their homelands. Whether it is the footprints of ancient villages and migration routes found within the Bears Ears National Monument, the spiritual center of the Sioux Nation in the Black Hills, or Chí'chil Bıldagoteel (Oak Flat) for the Apache, many Native religious practices are tied to sacred places now under federal control. For much of the Nation's early history, federal policy was set on dispossessing Tribal Nations of their homelands, seizing control over sacred places, and "civilizing" Native peoples by destroying their religions, cultures, languages, and traditions. These policies included allotting land, funding religious indoctrination through boarding schools, withholding treaty-guaranteed rations, and prosecuting individuals for practicing their Native religions. As a result, many Native religious practices were driven underground.

While some Native religious beliefs and practices were lost, many survived. For these religious practices to continue, Native people need access to their sacred places. Under the Ninth Circuit's decision, however, federal land management activities that burden religious practices are categorically exempt from RFRA. In effect, the Ninth Circuit's decision not only makes way for the destruction of Chí'chil Bıldagoteel, but it denies RFRA's protections for every religion with practices and beliefs tied to federal land.

This should not be the rule. RFRA was enacted to provide religious freedom protection well beyond the First Amendment. It provides a claim against *any* governmental action that substantially burdens sincere religious exercise. And it sets forth guardrails that strike a sensible balance between religious liberty and governmental

interests. The Ninth Circuit’s decision is contrary to the plain language and structure of RFRA and conflicts with other circuits’ interpretations. It also inadvertently perpetuates the suppression of Native religions and opens the door for the government to discriminate against all religions tied to federal land. Given the impact of this decision, this Court should grant the Petition for Writ of Certiorari.

ARGUMENT

I. Native American religions are land based.

Tribal Nations and Indigenous communities across the United States each 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, there are common elements. 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 place 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.”); *Lyng v. Nw. Indian Cemetery Protective Ass’n*, 485 U.S. 439, 460-61 (1988) (Brennan, J., dissenting).

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.” Deloria, *supra*, at 110. For many Tribal Nations, these places form a “sacred geography” within which their religions are practiced. *Id.*; see also Kristen A. Carpenter, *Living the Sacred: Indigenous Peoples and Religions Freedom*, 134 Harv. L. Rev. 2103, 2113 (2021) (“Carpenter, *Living the Sacred*”) (Native religions have “inextricable connection[s] among place, belief, and practice[.]”). 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) (“Carpenter, *Property Rights*”).

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.

For example, for the Hopi, Bears Ears in southern Utah is a spiritually occupied landscape manifested by the

“footprints” of ancient villages, sacred springs, migration routes, pilgrimage trails, artifacts, and petroglyphs. *Forgotten Voices: The Inadequate Review and Improper Alteration of Our National Monuments: Hearing Before the H. Comm. on Nat. Res.*, 116th Cong. 1, 2 (2019) (statement of Clark Tenakhongva, Vice Chairman, Hopi Tribe). It is also home to buried Hisatsinom, the “People of Long Ago.” *Id.* These were intentionally left to mark the land as proof that Hopi people have fulfilled their Covenant with the Creator. *Id.* Similarly, for the Yurok, Karuk, and *Amicus Curiae* Tolowa Dee-ni’ Nation, the High Country, a remote part of the Cascade Range in California “is the holiest place in their religion. . . . [It] was established by the Creator as the sacred source of religious powers and is the only location in which to engage in direct communion with the Creator.” Hillary Hoffman & Monte Mills, *A Third Way: Decolonizing the Laws of Indigenous Cultural Protection* 49-50 (2020). For *Amicus Curiae* Confederated Salish and Kootenai Tribes in Montana, the Medicine Tree, an ancient ponderosa pine, “is a vital chapter in the Creation stories of the Bitterroot Salish.” Bernie Azure, *Medicine Tree Continues to Connect Today with Yesterday and Tomorrow*, Char-Koosta News (Oct. 4, 2018), https://www.charkoosta.com/news/medicine-tree-continues-to-connect-today-with-yesterday-and-tomorrow/article_e66fabea-c7f7-11e8-9ba9-87b513f1f80c.html.

The sacredness and centrality of place is not unique to Native religions. Patrick E. Reidy, *Sacred Easements*, 110 Va. L. Rev. 833, 849-50 (2024); Echo-Hawk, *supra*, at 329 (“[A]ll world religions have holy places.”). The most predominant religions practiced in the United States all recognize sacred, or holy, lands and places. For

example, Mount Sinai, where G-d gave Moses the Ten Commandments, is the “revelatory center of the world” in Judaism, and Christianity and Islam to follow. Echo-Hawk, *supra*, at 325. For Jews, the Western Wall of the Temple Mount in Jerusalem is “a holy site, a place of pilgrimage and prayer.” Michael D. McNally, *The Sacred and the Profaned: Protection of Native American Sacred Places That Have Been Desecrated*, 111 Calif. L. Rev. 395, 401 (2023) (footnote omitted). For Christians, the Church of the Holy Sepulchre, where Jesus was crucified, buried, and resurrected, is a place of profound reverence. Reidy, *supra*, at 850 n.70. And in Islam, Muslims make an annual pilgrimage to Mecca to pray at the Ka’aba. Echo-Hawk, *supra*, at 330.

While many of these holy lands are thousands of miles away, it is not only Native religions that have sacred places within the United States. For example, the Shrine of Our Lady of Mariapoch in Ohio is a place that draws worshipers from all over the country. *The Shrine Today*, Shrine of Mariapoch, <https://parma.org/shrine-of-mariapoch> (last visited Oct. 9, 2024). For Mormons, the Sacred Grove in Palmyra, New York, is revered as the place of the “First Vision.” *Sacred Grove*, Church of Jesus Christ of Latter-day Saints, <https://www.churchofjesuschrist.org/learn/locations/sacred-grove> (last updated May 1, 2023). Congress has also established four famous Catholic mission churches as a National Historic Park. *See* 16 U.S.C. § 410ee.

Unlike the religions discussed above, for many Native religions, certain religious practices can only be performed at specific places within their “sacred geography[,]” Deloria, *supra*, at 110, and cannot be performed in

churches, temples, synagogues, and mosques far-removed from those places. See Barclay & Steele, *supra*, at 1305; Deloria, *supra*, at 141. As Justice Brennan observed in *Lyng*, “[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. at 461 (Brennan, J., dissenting). The continued protection of, access to, and use of these places is therefore essential to the continued existence of many Native religions.

II. Historical policies dispossessed Native peoples of their homelands and suppressed Native religions, making the United States a gatekeeper to sacred places.

a. Historical federal policies dispossessed Tribal Nations of their homelands and sacred places.

Beginning with first contact, the United States dispossessed Tribal Nations of their homelands in numerous ways. This 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 result remained the same: the United States’s control over Tribal Nations’ lands and sacred places.

The United States’s early acquisitions of Tribal land were typically effectuated through war and cessions by treaties. Ned Blackhawk, *The Rediscovery of America* 230 (2023). To justify these takings, the United States relied on the religious doctrine of discovery.² See *Johnson*

2. This doctrine has since been repudiated by the Catholic Church. *Joint Statement of the Dicasteries for Culture and*

v. McIntosh, 21 U.S. 543, 572-73 (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.

As one illustration, during the Treaty Era,³ Tribal Nations in California signed eighteen treaties that removed them from their homelands. Carole Goldberg, *Acknowledging the Repatriation Claims of Unacknowledged California Tribes*, 21 Am. Indian Culture & Res. J. 183, 184 (1997). By the terms of the treaties, these Tribal Nations believed they would be moved onto eight million acres of reservation lands. *Id.* at 184. But these treaties were a bait-and-switch; Congress refused to ratify the treaties, took these ceded lands, and failed to provide the Tribal Nations their rightful homelands. *Id.* at 184-85. These Tribal Nations are still working to regain their land. *See Governor Newsom Announces Historic Land Return Effort on the 5th Anniversary of California’s Apology to Native Americans*, Gov. Gavin Newsom (June 18, 2024), <https://>

Education and for Promoting Integral Human Development on the “Doctrine of Discovery,” Summary of Bulletin, Holy See Press Office (Mar. 30, 2023), <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2023/03/30/230330b.html>; Bill Chappell, *The Vatican Repudiates ‘Doctrine of Discovery’ Which Was Used to Justify Colonialism*, Nat’l Pub. Radio (Mar. 30, 2023), <https://www.npr.org/2023/03/30/1167056438/vatican-doctrine-of-discovery-colonialism-indigenous>.

3. The Treaty Era started prior to the formation of the Union, *see* Cohen’s Handbook of Federal Indian Law § 1.02[2], at 18 (2023), and ended in 1871, when Congress unilaterally modified the method of making agreements with Tribal Nations. *See* 25 U.S.C. § 71.

www.gov.ca.gov/2024/06/18/governor-newsom-announces-historic-land-return-effort-on-the-5th-anniversary-of-californias-apology-to-native-americans/.

Recognizing the threat of removal to their traditions, some Tribal Nations bargained in their treaties to ensure access to their most sacred places. For example, *Amicus Curiae* Navajo Nation negotiated for Canyon de Chelly, a place of immense religious importance, to be included within its reservation. Treaty Between the United States of America and the Navajo Tribe of Indians, June 1, 1868, art. II, 15 Stat. 668; see Emma Blake, *Tribal Co-Management: A Monumental Undertaking?*, 48 Ecology L.Q. 249, 294 (2021) (Canyon de Chelly features in Navajo creation stories, which maintain that deities like Spider Woman still reside there). Too often, however, the United States failed to honor its promises. In the Fort Laramie Treaty of 1868, the Sioux Nation reserved the Black Hills for their exclusive use. Treaty of Fort Laramie, April 29, 1868, 15 Stat. 635. Bowing to pressure to exploit gold, the United States reneged on its promise and took the Black Hills from the Sioux Nation, breaching the treaty. See *United States v. Sioux Nation of Indians*, 448 U.S. 371, 374-84 (1980). As a result, the United States was ordered to pay millions in compensation. *Why the Sioux are Refusing \$1.3 Billion*, PBS News (Aug. 24, 2011), https://www.pbs.org/newshour/arts/north_america-july-dec11-blackhills_08-23. The Sioux Nation has rejected the compensation, now worth over \$1 billion, asserting there is no replacement for the “the spiritual center of the Sioux [N]ation.” *Id.*

Dispossession did not just occur through conquest and treaties. The United States also used legislation

to dispossess Tribal Nations of their land. The Indian Removal Act of 1830 authorized the forced removal of Tribal Nations from the east coast to west of the Mississippi River. *See* 4 Stat. 411 (1830). The United States also developed the allotment policy to strip Tribal Nations of even more land. *See* General Allotment Act, 24 Stat. 388 (1887) (“Allotment Act”). Allotment, one step in assimilation, sought to change Tribal Nations’ relationship to their lands by shifting land from collective to private ownership. *See* Blackhawk, *supra*, at 334; *see* Cohen’s Handbook of Federal Indian Law § 1.04, at 71-79 (2023). Under the Allotment Act, reservations were broken up and “surplus lands” conveyed to non-Indians. Blackhawk, *supra*, at 334. This resulted in the reduction of Tribal landholdings “from 138 million acres of lands in 1887” to “48 million acres in 1934.” *Id.*

The United States also conveyed Tribal land to religious entities for missionary work on reservations. *See* Steve Talbot, *Spiritual Genocide: The Denial of American Indian Religious Freedom, from Conquest to 1934*, 12 *Wicazo Sa Review* 7, 13-14 (2006). In the early 1900s, Congress authorized land patents to religious institutions engaged in missionary work on reservations and in the Territory of Alaska. *See* U.S. Dep’t of Interior, *Federal Indian Boarding School Initiative Investigative Report Volume II*, at 48 (July 2024) (“Boarding Sch. Rep. Vol. II”); 25 U.S.C. § 280a. The Indian Appropriation Acts of 1909 and 1922 similarly authorized patents to religious organizations to use land for missionary purposes. *See* March 3, 1909, ch. 263, 35 Stat. 781, 814 (1909); September 21, 1922, ch. 367 § 3, 42 Stat. 994, 995 (1922).

In the 1950s, termination further reduced Tribal landholdings. Termination rescinded federal recognition of certain Tribal Nations and ended federal trusteeship over their landholdings. *Bureau of Indian Affairs Records: Termination*, Nat'l Archives, <https://www.archives.gov/research/native-americans/bia/termination> (last reviewed Sept. 9, 2024). As a result, “[m]ost terminated tribes ultimately relinquished or lost their land.” Cohen’s Handbook, *supra*, § 1.06, at 91. For instance, after the United States allotted *Amicus Curiae* Klamath Tribes’ reservation, Congress passed the Klamath Termination Act. Pub. L. No. 83-587, 68 Stat. 718 (1954). Under the 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). The Klamath Tribes, whose federal recognition was restored in 1986, 25 U.S.C. § 566, have lived in the Klamath Basin since time immemorial and their belief system is tied to their land. “In the old times we believed everything we needed to live was provided for us by our Creator in this rich land east of the Cascades. We still believe this.” *Our History*, The Klamath Tribes, <https://klamathtribes.org/history/> (last visited October 10, 2024).

For Tribal Nations around the country, removal from their traditional lands and sacred places had, and continues to have, a direct impact on Tribal identity, religious and spiritual practices, and subsistence. *See* McNally, *supra*, at 406-07. In litigation involving a sacred place, Cherokee religious practitioners 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) (footnotes omitted).

Overall, through federal land dispossession policies and forced removal, Tribal Nations lost 93.9% of the total geographic area they once occupied. Justin Farrell et al., *Effects of Land Dispossession and Forced Migration on Indigenous Peoples in North America*, 347 Sci. 578, at 3 (2021). Much of this land is now federal public lands. See Carpenter, *Living the Sacred*, *supra*, at 2116. The loss of traditional homelands and sacred places created a barrier to religious practice that persists today.

b. The United States directly suppressed Tribal religions.

The campaign to dispossess Tribal Nations of their lands was supported by the effort to destroy Tribal religions through “civilization.” These policies often took the form of direct religious suppression and the use of religious institutions to assimilate Native peoples.

In 1819, for example, Congress enacted the permanent Civilization Fund. Francis Paul Prucha, *The Great Father: The United States Government and the American Indians* 151 (1984) (“Prucha, *Great Father*”). The Fund appropriated \$10,000 annually towards so-called “education” and “civilization” efforts and marked the first time the United States allocated consistent funding to religious missionaries. Robert H. Keller, *American Protestantism and United States Indian Policy 1869-82*,

at 6 (1983). This money went to religious institutions with established schools for the “civilization” of Indian children. Prucha, *Great Father, supra*, at 151.

Confining Tribal Nations to reservations aided the United States in its direct religious suppression and land seizure efforts. President Grant’s Peace Policy allied the government and Christian religious institutions and effectively placed many Indian reservations under church control. Keller, *supra*, at 1-2. The San Carlos Apache Reservation, for example, was placed under the control of the Dutch Reformed Church. Lauren Redniss, *Oak Flat: A Fight for Sacred Land in the American West* 224 (2020). The Peace Policy also aimed to implement “the comforts and benefits of a Christian civilization” to prepare the Native Americans “to assume the duties and privileges of citizenship.” Francis Paul Prucha, *American Indian Policy in Crisis: Christian Reformers and the Indian, 1865-1900*, at 31-32 (1976). It established the Board of Indian Commissioners, intentionally comprised of solely 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, *Great Father, supra*, at 509-10. Neither these religious groups nor the federal government were concerned with “the Indians’ 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. Talbot, *supra*, at 15-16. 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, approximately two-thirds of the Indian reservation agencies had these courts. Prucha, *Great Father, supra*, at 648.

Indian agents enforced these draconian laws against Tribal religious practitioners, including by withholding treaty guaranteed rations from those who participated in religious dances. Dep’t of Interior, Rules Governing the Court of Indian Offenses 4 (1883); *see, e.g.*, 1883 Ann. Rep. Comm’r of Indian Affs., at XIV-XV (hereinafter 1883 Ann. Rep.) (describing religious dances as “repugnant to common decency and morality” and calling for efforts to “put a stop to” these “heathenish rites”). They also destroyed Tribal property required for religious practices. 1883 Ann. Rep., *supra*, at 22. Indian agents also used the threat of the military violence to prevent religious practices. 1889 Ann. Rep. Comm’r of Indian Affs., at 191.

The federal Indian boarding school system was another tool used 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. Boarding Sch. Rep. Vol. II, *supra*, at 19. The schools were designed to

break up Native families, erase Native languages, and to ultimately destroy Native religions and cultures. *See Haaland v. Brackeen*, 599 U.S. 255, 300 (2023) (Gorsuch, J., concurring). The United States’s own investigations confirm that the federal Indian boarding school system prohibited Native “languages or cultural or religious practices through punishment, including corporal punishment.” Boarding Sch. Rep. Vol. II, *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, Assistant Sec’y of Indian Affs., to Deb Haaland, Sec’y of Interior (Apr. 1, 2022), https://www.bia.gov/sites/default/files/dup/inline-files/bsi_investigative_report_may_2022_508.pdf.

Despite these historical policies, many Native communities continue to rely on sacred places as a center of their religious practices.

c. Federal land management decisions directly affect Native religious practitioners’ access to sacred places and their ability to exercise their religions.

The proposed land transfer leading to Chí’chil Bildagoteel’s destruction demonstrates how federal land management decisions can have disproportionately negative impacts on Native religious practitioners. For the Apache, the historical removal to reservations to make way for mining caused the loss of “some six million acres of their traditional homeland.” Redniss, *supra*, at 36-37, 43. The United States’s authorization of the Resolution Copper Mine, knowing it would destroy Chí’chil

Bildagoteel and devastate Apache religious practices, continues this legacy. Unfortunately, Chí'chil Bildagoteel is not the only example.

Plans for resource extraction, green energy, and other development jeopardize sacred places and the ability of Native practitioners to pray or conduct ceremonies. Wind development projects are recent examples that have threatened sacred places and ceremonies for Tribal Nations. See Allison M. Dussias, *Room for a (Sacred) View? American Indian Tribes Confront Visual Desecration Caused by Wind Energy Projects*, 38 Am. Indian L. Rev. 333, 358, 371 (2014); *Tribes: Wind Farm Would Harm Sacred Rituals*, Associated Press (Nov. 2, 2009), <https://www.nbcnews.com/id/wbna33585078>. Proposed lithium mining poses similar threats to Tribal religious practices. See Michael Sainato, *We Were Not Consulted: Native Americans Fight Lithium Mine on Site of 1865 Massacre*, Guardian (Oct. 13, 2023), <https://www.theguardian.com/us-news/2023/oct/13/native-americans-1865-massacre-lithium-mine-thacker-pass>.

But federal land management need not be inconsistent with Native practitioners' use of sacred places. Indeed, federal policy is supposed to protect Native sacred places and religious practices. See, e.g., 42 U.S.C. § 1996 (federal policy "to protect and preserve" Native religious freedom); 54 U.S.C. § 302706(a)-(b) (requiring consultation with Tribal Nations on effects to places of religious importance); 25 U.S.C. § 3054(b) (authorizing National Forest closures to protect privacy of Tribal religious activities); Exec. Order No. 13,007, 61 Fed. Reg. 26,771 (May 29, 1996) (requiring agencies to protect Tribal sacred places). Consistent with these policies, the federal

government has settled lawsuits to protect sacred places such as Badger-Two Medicine in Montana, a place of profound religious significance and creation to *Amicus Curiae* Blackfeet Nation. See Press Release, Dep't of Interior, *Final Oil and Gas Lease to be Relinquished in Montana's Badger-Two Medicine Area* (Sept. 1, 2023), <https://www.doi.gov/pressreleases/final-oil-and-gas-lease-be-relinquished-montanas-badger-two-medicine-area>. And some Tribal Nations have partnered with the United States to incorporate traditional knowledge into land management. See, e.g., Proclamation No. 10285, 86 Fed. Reg. 57,321, 57,332 (Oct. 8, 2021) (re-establishing Bears Ears Commission to incorporate traditional knowledge into Monument management).

Land management decisions continue to impact Native religious practices. When the government fails to protect such practices on an equal footing with other religious practices, it is crucial that the judiciary step in to enforce federal law.

III. 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 Hoffman & Mills, *supra*, at 41. In testimony to Congress, Galen Gilbert, former First Chief of Arctic Village Council, 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 & Mineral Res. of the H. Comm. on Nat. Res.*, 116th Cong. 11 (2019).

Dispossession of Tribal Nations’ homelands, and consequential loss of access to sacred places, has had 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 these negative effects and historical policies. They are a foundation of Tribal Nations’ current religious practices as well as those of the next 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 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 Mountain range where young 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 in Bears Ears where Elders utilize the sites to teach younger generations where they come from and who they are, see 86 *Fed. Reg.* at 57,323, 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 makes Indigenous communities healthier. *See* Gerald Vizenor, *Aesthetics of Survivance: Literary Theory and Practice*, in *Survivance: Narratives of Native Presence 1* (Gerald Vizenor ed., 2008); 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 access it is impossible to maintain Native worldviews and lifeways.

IV. This Court should grant Certiorari to ensure that religious practices on federal land are protected under RFRA.

The Ninth Circuit's narrow view of what constitutes a "substantial burden" under RFRA discriminates against religious practices tied to federal lands. This narrow view has created second-class religious beliefs and practices that do not qualify for protection. This result is contrary to the language and structure of RFRA, which was intended to broaden protections for religion.

a. The Ninth Circuit’s decision permits discrimination against religious practices tied to federal land.

In *Navajo Nation v. U.S. Forest Service*, the Ninth Circuit improperly limited the scope of RFRA by extending this Court’s analysis in *Lyng* into RFRA, despite RFRA superseding *Lyng*. 535 F.3d 1058, 1071-73 (9th Cir. 2008) (“*Lyng* is consistent with the *Sherbert* standard codified in RFRA and forecloses the Plaintiffs’ RFRA claims in this case.” (internal citation omitted)). The Ninth Circuit’s decision in this case relies on this same premise. See *Apache Stronghold v. United States*, 101 F.4th 1036, 1043-44 (9th Cir. 2024) (per curiam) (“RFRA subsumes, rather than overrides, the outer limits” of *Lyng*). This premise is fatally flawed and inconsistent with several sister circuits.

In *Lyng*, this Court declined to recognize Native Free Exercise claims and apply strict scrutiny to a road project that threatened Native religious exercise. 485 U.S. at 450-52; *id.* at 459 (Brennan, J., dissenting). This Court reasoned that, “[w]hatever rights the Indians may have to the use of the area . . . those rights do not divest the Government of its right to use what is, after all, *its* land.” *Id.* at 453 (emphasis in original).⁴

The Ninth Circuit’s extension of *Lyng* into RFRA has created second-class religious beliefs and practices—those tied to federal land—that the government can discriminate against with free rein. See Barclay &

4. This Court did note, however, that a case where Native practitioners are prohibited from visiting their sacred place might raise different questions, which is exactly this case. *Id.* at 452-53.

Steele, *supra*, at 1331, 1340; Williams & deLisle, *supra*, at 819. This has resulted in religious freedom claims being denied when religious practitioners are completely denied access to religious sites, or their religious sites are entirely destroyed. *See, e.g., Slockish v. U.S. Fed. Highway Admin.*, No. 3:08-CV-01169-YY, 2018 WL 4523135, at *5 (D. Or. Mar. 2, 2018) (actual destruction of religious site and being “barred” from entering it is not a “substantial burden”); *La Cuna De Aztlan Sacred Sites Prot. Circle Advisory Comm. v. U.S. Dep’t of Interior*, No. CV 11-00400 DMG (DTBx), 2013 WL 4500572, at *10 (C.D. Cal. Aug. 16, 2013) (denial of access to Salt Song Trails does not give rise to RFRA claim).

In a cruel irony, Tribal Nations have more success protecting their sacred places from destruction when they rely on environmental statutes than when they rely on the very statute enacted by Congress to address these issues. *See, e.g., Hualapai Indian Tribe v. Haaland*, No. CV-24-08154-PCT-DJH, 2024 WL 3900364, at *6 (D. Ariz. Aug. 22, 2024). These results are inconsistent with RFRA, and other federal laws and policies aimed at ensuring Native religious practices inform federal land management decisions.

b. *Lyng*’s special exception for Free Exercise Clause claims is contrary to RFRA’s plain language and should not be extended into RFRA.

Congress enacted RFRA to expressly repudiate this Court’s decision in *Employment Division, Department of Human Resources of Oregon v. Smith*, 494 U.S. 872 (1990), *see* 42 U.S.C. § 2000bb, and to provide “very broad

protection for religious liberty[.]” going well beyond the First Amendment. *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 693 (2014). *Lyng*, like *Smith*, was decided before RFRA was enacted and concerned neutral laws of general applicability, not what constitutes a “substantial burden.” See *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 582 U.S. 449, 450 (2017) (describing *Lyng*). Indeed, *Smith* “drew support for the neutral and generally applicable standard from cases” like *Lyng*. *Fulton v. City of Phila.*, 593 U.S. 522, 536 (2021). The Ninth Circuit’s decision below improperly interpreted “substantial burden” by subsuming *Lyng* into RFRA. The dissent below, however, was correct in concluding that *Lyng* was “not carried forward[.]” *Apache Stronghold*, 101 F.4th at 1149 (Murguia, J., dissenting).

RFRA’s text confirms that Congress did not intend to provide a special exception for certain governmental actions—such as actions that deal with federal land like in *Lyng*. In fact, RFRA applies to property. *Accord* 42 U.S.C. § 2000bb-2(4); *id.* § 2000cc-5(7)(B); see *Apache Stronghold*, 101 F.4th at 1138-40 (Murguia, J., dissenting). And nothing in RFRA is to be “construed to authorize any government to burden *any* religious belief.” 42 U.S.C. § 2000bb-3(c) (emphasis added). Instead of creating a massive exception for federal land management, RFRA recognizes that “governments should not substantially burden religious exercise without compelling justification.” *Id.* § 2000bb(a)(3).

RFRA—just as with the Religious Land Use and Institutionalize Persons Act (“RLUIPA”)—aims to ensure “greater protection for religious exercise than is available under the First Amendment.” *Ramirez v. Collier*, 595 U.S.

411, 424 (2022).⁵ Accordingly, courts have interpreted “substantial burden” broadly, finding government actions that prevent or interfere with (let alone destroy) religious exercise require the government satisfy the compelling interest test. *See, e.g., Haight v. Thompson*, 763 F.3d 554, 565 (6th Cir. 2014) (denial of traditional foods “effectively barr[ed]” religious practice and constituted a substantial burden). A plain reading of “substantial burden” includes governmental action that “prevents the plaintiff from participating in an activity motivated by a sincerely held religious belief[.]” *Yellowbear v. Lampert*, 741 F.3d 48, 55 (10th Cir. 2014). This includes land management decisions. RFRA should not be read to allow the discriminatory treatment of religious practices tied to federal land.

c. The Ninth Circuit’s decision is inconsistent with the structure of RFRA.

RFRA created a burden shifting framework that the decision below ignored. Rather than create a broad exception for certain governmental actions, Congress intended for the government to satisfy its burden only after a plaintiff has established their *prima facie* case. Typically, a plaintiff first has the burden to establish that the governmental action “substantially burdens” their “sincere religious exercise.”⁶ *Hobby Lobby*, 573 U.S. at

5. This Court has described RLUIPA as RFRA’s “sister statute[.]” *Hobby Lobby*, 573 U.S. at 730.

6. No one disputes that the Apache Plaintiffs in this case have sincere religious exercises at Chí’chil Bildagoteel. Opposition to Plaintiff’s Motion for Preliminary Injunction at 4, *Apache Stronghold v. United States*, 519 F. Supp. 3d 591 (D. Ariz. 2021) (No. 2:21-cv-00050-CDB), ECF No. 18.

719; *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418, 428 (2006).

Once a plaintiff satisfies their *prima facie* case, the burden then shifts to the government to show that its action “(1) is in furtherance of a compelling governmental interest; and (2) is the least restrictive means of furthering that compelling governmental interest.” *Hobby Lobby*, 573 U.S. at 726; *Gonzales*, 546 U.S. at 424. It is only after a plaintiff makes its *prima facie* case that the government can attempt to justify its actions. The Ninth Circuit, however, has created a loophole for certain governmental actions by deeming them never to be a “substantial burden,” rather than requiring the government to satisfy its burden at the second stage of the test. This is contrary to the structure and intent of RFRA.

Congress adopted a balancing test that is “workable” for “striking [the] sensible balances between religious liberty and competing prior governmental interests.” 42 U.S.C. § 2000bb(a)(5). According to the Ninth Circuit, the government never has to meet its burden because it has been deemed exempt, even when it ultimately destroys a religious site and makes it impossible for individuals to practice their religion.

CONCLUSION

Many religious practices and beliefs are tied to sacred places of worship on federal land. For Native people, and non-Native people alike, these religious places are of critical importance. RFRA should not be interpreted to discriminate against religious beliefs tied to federal land. For the foregoing reasons, this Court should grant

Petitioner Apache Stronghold's Petition for Writ of Certiorari.

Respectfully submitted,

JOHN E. ECHOHAWK
Counsel of Record
MATTHEW L. CAMPBELL
BETH MARGARET WRIGHT
JASON SEARLE
NATIVE AMERICAN RIGHTS
FUND
250 Arapahoe Avenue
Boulder, CO 80302
(303) 447-8760
echohawk@narf.org

MORGAN E. SAUNDERS
NATIVE AMERICAN RIGHTS FUND
950 F Street Northwest,
Suite 1050
Washington, DC 20004
WESLEY JAMES FURLONG
NATIVE AMERICAN RIGHTS FUND
745 West Fourth Avenue,
Suite 502
Anchorage, AK 99501

Counsel for Amici Curiae
52 Tribal Nations and
Organizations

October 15, 2024

APPENDIX

TABLE OF APPENDICES

	<i>Page</i>
APPENDIX — <i>AMICI CURIAE</i> TRIBAL NATIONS AND ORGANIZATIONS	1a

**APPENDIX — *AMICI CURIAE* TRIBAL NATIONS
AND ORGANIZATIONS**

***Amici Curiae* Tribal Nations**

Bay Mills Indian Community

Blackfeet Nation

Cheyenne and Arapaho Tribes

Coeur d'Alene Tribe

Confederated Salish and Kootenai Tribes of the Flathead
Reservation

Confederated Tribes of Coos, Lower Umpqua and Siuslaw
Indians

Confederated Tribes of the Chehalis Reservation

Confederated Tribes of the Colville Reservation

Eastern Shoshone Tribe of the Wind River Reservation,
Wyoming

Grand Traverse Band of Ottawa and Chippewa Indians

Hopland Band of Pomo Indians

Kaibab Band of Paiute Indians

Keweenaw Bay Indian Community

Appendix

Klamath Tribes

Lac Courte Oreilles Band of Lake Superior Chippewa
Indians

Lac du Flambeau Band of Lake Superior Chippewa
Indians

Lac Vieux Desert Band of Lake Superior Chippewa
Indians

Las Vegas Paiute Tribe

Lower Elwha Klallam Tribe

Lower Sioux Indian Community in the State of Michigan

Muscogee (Creek) Nation

Native Village of Dot Lake

Navajo Nation

Nooksack Indian Tribe

Nottawaseppi Huron Band of the Potawatomi

Oglala Sioux Tribe

Oneida Nation

Pueblo de San Ildefonso

Appendix

Pueblo of Acoma

Pueblo of Jemez

Pueblo of Laguna

Red Cliff Band of Lake Superior Chippewa Indians

Rincon Band of Luiseño Indians

Saginaw Chippewa Indian Tribe of Michigan

Santa Rosa Indian Community of the Santa Rosa
Rancheria, California

Shingle Springs Band of Miwok Indians

Stockbridge Munsee Community

Suquamish Indian Tribe of the Port Madison Reservation

Swinomish Indian Tribal Community

Tohono O'odham Nation

Tolowa Dee-ni' Nation

White Earth Band of Ojibwe

Winnebago Tribe of Nebraska

Wyandotte Nation

4a

Appendix

***Amici Curiae* Tribal and Native Organization**

Affiliated Tribes of Northwest Indians

Association of American Indian Affairs

Coalition of Large Tribes

Inter Tribal Association of Arizona, Inc.

National Association of Tribal Historic Preservation
Officers

National Congress of American Indians

United South and Eastern Tribes Sovereignty Protection
Fund

Upper Snake River Tribes Foundation