

Apache Stronghold v. United States Temporary Injunction Appeal hearing scheduled for October 22 in Ninth Circuit Court

Since before recorded history, Western Apaches have lived, worshipped on, and cared for Oak Flat and surrounding lands. Apaches believe that the Creator gives life to all things, including air, water, and the earth itself. Their religious and cultural identity is inextricably tied to the land, and Oak Flat has paramount significance for prayer and sacred ceremonies. Many of their most important religious practices must take place there, such as the coming-of-age Sunrise Ceremony for Apache women; sweat lodge ceremonies; gathering of sacred medicine plants, animals, and minerals; and the use of sacred waters. It is considered the direct corridor to Apache religion—recognized in the National Register of Historic Places and sometimes compared to Mount Sinai for Jews.

Unfortunately, the U.S. government has a sordid history of destroying Apaches' lives and land for the sake of mining interests. In the 1870s, the federal government forced the Apache people onto the San Carlos Apache Indian Reservation and authorized miners

to take Apache land. And although Oak Flat has been expressly protected from mining since the Eisenhower administration, mining companies still covet Oak Flat for a large copper deposit 7,000 feet below the surface.

Mining companies have long lobbied Congress to give them control of the land. One sponsor of a land-transfer bill was even convicted of soliciting a bribe from a mining company in exchange for his support. For many years, Congress refused, protecting the site from exploitation the same way it would preserve a historic, centuries-old church, mosque or synagogue. But in 2014, a last-minute rider was attached to a must-pass defense bill, ordering the land to be transferred to a foreign-owned mining company, Resolution Copper. The government admits the mine will destroy Oak Flat forever—obliterating the sacred ground in a nearly 2-mile-wide, 1,100-foot-deep crater, and making the Apaches' religious practices impossible.

Seeking Justice

Apache Stronghold—a coalition of Apaches, other Native peoples, and non-Native allies dedicated to preserving Oak Flat—sued the government in federal court. They argued that the destruction of their sacred site violates the Religious Freedom Restoration Act (RFRA) and an 1852 treaty promising that the United States would protect their land and "secure the permanent prosperity and happiness" of the Apaches. After the trial court declined to halt the land transfer, Becket filed an emergency appeal to the Ninth Circuit Court of Appeals. Just six hours before the government's response was due, the government announced that it would withdraw the environmental impact statement that triggered the land transfer, delaying the transfer for several months. The Ninth Circuit Court of Appeals then denied emergency relief to Apache Stronghold, but with Oak Flat still at risk, the Court scheduled the appeal for an expedited hearing—with Judgeumatay stating that the destruction of Oak Flat is "an obvious substantial burden"



on Apache Stronghold, and "this is not a difficult case." Becket filed Apache Stronghold's opening brief on March 18, 2021, and the Ninth Circuit will hear argument later in October 22, 2021.

In addition to Becket, Apache Stronghold is represented by attorneys Michael Nixon and Bill Carpenter.

Importance to Religious Liberty:

Individual Freedom: The government cannot take actions

that prevent or burden the expression or pursuit of religious beliefs. Because each human has an individual right to follow the unique dictates of his conscience, religious freedom cannot be confined to the four walls of a church building. Individuals should be free to pursue their faith at all times without fear of government discrimination or penalty. Religious liberty for Native Americans: Whether they are directly targeted or indirectly affected by government actions, minority religious groups are particularly vul-

nerable to government violations of their religious liberty. Actively defending religious liberty for Native Americans strengthens religious liberty for people of all faiths. Religious Freedom Restoration Act: Passed by a bipartisan coalition in 1993, this legislation protects religious groups by requiring the government to show a compelling interest and use the least restrictive means possible when its actions would pose a substantial burden on religious exercise.