

No. 23-50746

**In the United States Court of Appeals
for the Fifth Circuit**

GARY PEREZ AND MATILDE TORRES,
Plaintiffs-Appellants,

v.

CITY OF SAN ANTONIO,
Defendant-Appellee.

Appeal from the United States District Court
for the Western District of Texas
Honorable Fred Biery
(5:23-cv-00977-FB)

**UNOPPOSED MOTION OF THE INTERNATIONAL COUNCIL OF
THIRTEEN INDIGENOUS GRANDMOTHERS AND CAROL
LOGAN TO FILE *AMICUS CURIAE* BRIEF
IN SUPPORT OF APPELLANTS**

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Rule 28.2.1 have an interest in the outcome of this case. These representations are made in order that the judges of this court may evaluate potential disqualification or recusal.

1. Plaintiffs-Appellants Gary Perez and Maltide Torres
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Pursuant to Federal Rule of Appellate Procedure 26.1, the proposed *amici* state that they have no parent corporation and no stock.

/s/ John A. Meiser

*Attorney of Record for Proposed Amici
Curiae International Council of
Thirteen Indigenous Grandmothers
and Carol Logan*

**UNOPPOSED MOTION FOR
LEAVE TO FILE *AMICUS CURIAE* BRIEF**

Pursuant to Federal Rule of Appellate Procedure 29(a)(3) and Fifth Circuit Rule 27.4, the International Council of Thirteen Indigenous Grandmothers and Carol Logan respectfully move for leave to file a brief as *amici curiae* in support of Plaintiffs-Appellants Gary Perez and Maltide Torres. A copy of the proposed brief is attached to this motion.¹

Proposed *amici* have consulted with counsel for the parties concerning this motion. Plaintiffs-Appellants consent to the movants' participation as *amici*. Counsel for Defendant-Appellee stated that it does not oppose the movants' participation as *amici*.

I. The proposed *amici curiae* have substantial interests in this case of significant concern to Indigenous people.

This appeal concerns actions by the City of San Antonio that stand to desecrate a sacred Indigenous site and potentially destroy centuries-old religious and spiritual practices that take place there. These issues are of grave concern to Indigenous people and, in particular, to proposed

¹ This brief was not authored in whole or in part by a party or counsel to a party. No person other than *amici curiae*, their members, and their counsel contributed money that was intended to fund preparing or submitting this brief. *See* Fed. R. App. P. 29.

amici, who advocate to end the long and troubling history of governmental destruction of Indigenous sacred lands.

The International Council of Thirteen Indigenous Grandmothers is a global alliance of Indigenous elders who come together in prayer, education, and healing for Mother Earth. The members come together to protect Indigenous ways of life and to preserve the lands where Indigenous peoples live and upon which their cultures depend.

Carol Logan is an elder from the Confederated Tribes of Grande Ronde and a lineal descendant of the Clackamas People. She advocated to prevent the federal government's seizure of Indigenous sacred land in *Slockish v. U.S. Dep't of Transp.*, 2021 WL 5507413 (9th Cir. Nov. 24, 2021) (No. 21-35220). Only after the government seized and destroyed sacred sites there did it concede that the destruction was unnecessary. See Proposed *Amicus* Br. Pt. II. Ms. Logan hopes to prevent similar needless destruction here.

II. The proposed brief will aid this Court in the disposition of this case.

This Court “should welcome amicus briefs for one simple reason: It is for the honour of a court of justice to avoid error in their judgments.” *Lefebure v. D’Aquila*, 15 F.4th 670, 675 (5th Cir. 2021) (quotation

omitted). “Courts enjoy broad discretion to grant or deny leave to amici under Rule 29.” *Id.* at 673. This Court is “well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted.” *Id.* at 676 (quoting *Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 133 (3d Cir. 2002)).

The proposed *amicus* brief is both desirable and relevant to this appeal. Fed. R. App. P. 29(a)(3)(B). As directed by this Court’s rules, the proposed *amicus* brief presents arguments and insights that are not found in the appellants’ brief. *See* 5th Cir. R. 29.2. The proposed brief brings a broader cultural view of the significance of the history of destruction of Native American sacred sites, the toll that destruction has taken on Native Americans, and how the matters at issue in this case fit into that history. The brief also discusses the substantial-burden analysis under the Texas Religious Freedom Restoration Act and why the actions like those in this case impose substantial burdens on the religious exercise of Indigenous peoples. This discussion demonstrates, in particular, why the cramped interpretation of “substantial burden” that has been suggested by the City should be rejected. The resolution of this

case would be aided by full consideration of these matters, and the proposed *amici* are well-positioned to address them.

Finally, participation by proposed *amici* will not delay the briefing or argument in this case. Proposed *amici* have filed this motion and brief within the time allowed by Federal Rule of Appellate Procedure 29(a)(6).

CONCLUSION

Because the brief will assist this Court, the International Council of Thirteen Indigenous Grandmothers and Carol Logan respectfully request that the Court grant them leave to appear as *amici curiae* and to file the attached brief.

Dated: November 15, 2023

Respectfully submitted,

/s/ John A. Meiser

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CERTIFICATE OF COMPLIANCE

This Motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the typestyle requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman. It complies with the limits of Fed. R. App. P. 27(d)(2) and Fifth Cir. R. 27.4 because it contains 706 words.

Dated: November 15, 2023

/s/ John A. Meiser

John A. Meiser

Counsel for Proposed Amici Curiae

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2023, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the Fifth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: November 15, 2023

/s/ John A. Meiser
John A. Meiser