

No. 24-349

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IN THE  
**Supreme Court of the United States**

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SAN CARLOS APACHE TRIBE,

*Petitioner,*

*v.*

ARIZONA, *et al.*,

*Respondents.*

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ON PETITION FOR A WRIT OF CERTIORARI  
TO THE SUPREME COURT OF ARIZONA

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**AMICUS CURIAE BRIEF OF  
MAYCON KRENAK, ONE OF THE CHIEFS OF  
THE KRENAK INDIGENOUS COMMUNITY OF  
RESPLENDOR, IN MINAS GERAIS, BRAZIL  
IN SUPPORT OF PETITIONER**

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**INTEREST OF *AMICUS CURIAE*'**

*Amicus*, Maycon Krenak, is one of the chiefs of the Krenak indigenous community of Resplendor, in Minas Gerais, Brazil which lives along the *Rio Doce* river.

The Krenak people suffered devastation when, on 5 November 2015, the Fundão dam operated by a joint venture entered into by mining giants BHP and Vale collapsed, releasing toxic mining waste into the *Rio Doce* river. The disastrous effects of the dam collapse are still felt by the Krenak people today.

In the years that have passed since, *Amicus* has witnessed how drastically the Krenak way of life, health, and traditions have changed as a result of the Fundão dam collapse.

*Amicus* urges this Court to take the opportunity to provide guidance on how public authorities should interpret legislation that would not only serve to benefit the public at large by protecting the environment generally, but that could have significant positive implications for indigenous groups in the United States, specifically. *Amicus* submits this brief to demonstrate how resource extraction operations such as the Resolution Mine can have unique negative impacts on indigenous groups and their traditions and cultures. This is because indigenous peoples' cultures

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1. Pursuant to Rule 37.6, *amicus* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amicus*, its members, or its counsel made any monetary contributions intended to fund the preparation or submission of this brief. All parties have been timely notified of the filing of this brief.

and traditions are oftentimes closely connected with the natural environment. Public authorities should interpret and apply definitions in environmental regulations, such as the requirements set out in the Clean Water Act at issue in this case, in a manner to give effect to their purpose of shielding the natural environment from pollution. Safeguarding the natural environment upon which indigenous cultures depend is a key step to preserving and protecting indigenous groups' traditions and cultures.

### **SUMMARY OF THE ARGUMENT**

Environmental regulation plays a vital role in preserving indigenous cultures and traditions such as those of the Krenak people and San Carlos Apache Tribe. Those cultures and traditions are deeply embedded in indigenous communities' connection to nature. As a result, the protection of the natural environment is intrinsic to the safeguarding and preservation of indigenous cultures and traditions. Clear guidance regarding the interpretation of environmental regulations, such as the guidance sought in the petition for certiorari in this case, is vital to protecting those cultures and traditions.

### **ARGUMENT**

Extraction processes endanger indigenous traditions and cultures by contaminating the natural resources that are the foundation of indigenous lifeways. These activities disrupt traditional practices, desecrate culturally significant sites, and force changes that threaten the transmission and continuity of Indigenous knowledge and cultural identity.

In April 2022, at the 21st session of the Permanent Forum on Indigenous Issues, indigenous representatives around the world highlighted the “irreparable harm” that extractive operations cause to their livelihoods, cultures, languages, and lives.<sup>2</sup>

The impacts of environmental pollution on indigenous groups around the world go beyond health impacts. Indigenous peoples are disproportionately affected by documented environmental conflicts worldwide, and mining has been identified as a prevailing source of such conflicts.<sup>3</sup>

Academics have highlighted that a healthy ecosystem is essential for indigenous groups’ sociocultural wellbeing as the presence of pollution in wildlife or water has forced indigenous peoples to shift away from traditional lifestyles.<sup>4</sup> Indeed, it has been recognized that drastic changes to indigenous lands can lead to intergenerational erosion of language, identity, traditional practices, and knowledge systems.<sup>5</sup>

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2. United Nations, *Extractive projects cause irreparable harm to indigenous cultures, languages, lives, speakers tell Permanent Forum*, available at <Extractive projects cause irreparable harm to indigenous cultures, languages, lives, speakers tell Permanent Forum | UN News> last accessed October 16, 2024.

3. Scheidel et al., *Sci. Adv.* 9, eade9557 (2023) 7 June 2023 at 1.

4. Integrated Environmental Assessment and Management—Volume 16, Number 3—pp. 324–341 at 325

5. *One Earth* 6, 1032–1049 (August 18, 2023), at 1035.

US courts have also recognized and highlighted the importance of preserving and protecting territories which have significant cultural meaning for indigenous Native American tribes. *See Nat'l Mining Ass'n v. Zinke*, 877 F.3d 845, 869 (9th Cir. 2017) (noting that many local tribes considered the territory in question “as sacred and regard any drilling and mining as inflicting irreparable harm.”) The court in *Nat'l Mining Ass'n* held that the Secretary of the Department of Interior had appropriately included a certain parcel of land at issue in a withdrawal area from uranium mining claims “after considering all relevant environmental and **cultural impacts.**” *Id.* (Emphasis added.)

The Queen Creek is sacred to members of the San Carlos Apache Tribe. Indeed, pollution from mining operations to date have already interfered with traditional Apache religious beliefs.<sup>6</sup>

*Amicus* has experienced first-hand the catastrophic impact of mining operations on indigenous practices and culture, including, as Petitioners have, interference to their traditional religious beliefs.

The *Rio Doce* river, and the environmental resources that it supported, are central to the Krenak people's identities and lives.

The *Rio Doce* river is sacred to the Krenaks. Much like the relationship the San Carlos Apache Tribe have with the Queen Creek, the Krenaks have an intimate spiritual, cultural, and psychological connection with the river.

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6. *Petition for Writ of Certiorari* at i.

Prior to the Fundão dam collapse, the Krenak people performed traditional religious and cultural rituals in and around the *Rio Doce*, which they call *Uatu*. These rituals included an indigenous baptism ritual that involved the immersion of each child in the *Rio Doce* at a very young age. This was a fundamental part of the cycle of life for the Krenaks.

As a result of the Fundão dam collapse, the section of *Rio Doce* that borders the Krenak Reservation, and the Reservation itself, suffered severe environmental damage, which in turn had a devastating impact on the Krenaks.<sup>7</sup>

The Krenaks consider that the *Rio Doce* is no longer the home of *Marét* spirits, and that the divine protection afforded to them has weakened. They believe that God speaks to them in many ways through the water and that it had the power to take their sorrow away in times of sadness or disease. Without a home for the *Marét* spirits, they have lost their guidance and protection. This has caused distress to the extent that some of the members of the Krenak community have died prematurely.

The Krenak people no longer perform rituals that involve the river, including the Krenak baptism. As a result of this, the younger members of the Krenak community are less likely to have knowledge of, or interest in, these elements of Krenak culture. They no longer speak their troubles to the *Uatu*, because they understand it to be dead.

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7. See also, *From the muddy banks of the Watu: The Krenak and the Rio Doce mining disaster in Brazil*, Current Directions in Water Scarcity Research, Volume 4, 145-165 at 162.



The Krenaks' ability to exercise and pass on their traditions, practices, customs, and heritage has accordingly been severely impacted as a result of the Fundão dam collapse and consequent environmental damage. The Krenaks observe, and fear, that their social organization is being disrupted and that they are losing the 'family circle', in particular because their way of life, including fishing and hunting, are no longer being passed on to their children. Without direct and safe contact with the river, the Krenak people's spiritual and cultural connection with *Uatu*, and with each other, has been disrupted and they are at risk of loss of their cultural heritage.

Protecting the natural environment is fundamental to the preservation of indigenous cultures and traditions given the profound interconnectedness between the two.

While environmental regulations should operate as important tools to securing protection of the natural environment upon which indigenous cultures and traditions depend, clear guidance on interpreting the same is key to ensuring that those provisions can be given effect such to prevent the type of catastrophic impacts on indigenous traditions like those suffered by the Krenak people.

**CONCLUSION**

*Amicus* submits that this Court should grant certiorari and provide necessary guidance on interpreting environmental regulations which should serve as a tool to mitigate the risk of negative implications on indigenous groups' culture and traditions.

Respectfully submitted,

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