

# Exhibit A



on August 17, 1822. The Lipan Apache also signed the Live Oak Treaty with President Sam Houston and the Republic of Texas on January 8, 1838. My tribe is formally recognized by the State of Texas, but despite petitions for federal recognition filed in 2009 and 2012, we are not recognized by the federal government.

4. I have been an American Indian dancer for 55 years—since I was 8 years old. I became a feather dancer in 1967 and have continued as a feather dancer for the last 48 years. I have danced in 46 states, 17 countries, and four continents, and I have won numerous awards. Dancing is an important way that I preserve my native culture. But more importantly, it is a deeply religious experience and an essential means by which I connect with the Creator.

5. I am the founder and pastor of the McAllen Grace Brethren Church, Son Tree Native Path, the Native American New Life Center, the San Antonio Indian Fellowship (now called the Chief of Chiefs Christian Church), and My Rock Native Fellowship. I am also the co-founder of The American Indian Christian Circle.

6. The McAllen Grace Brethren Church is a 501(c)(3) religious organization incorporated under the laws of Texas and headquartered in McAllen, Texas. For 26 years, it has been part of the Fellowship of Grace Brethren Churches, which is a network of over 260 Christian churches in the United States and Canada. The church seeks to share the gospel of Jesus Christ through the traditional American Indian culture that God has given us. We believe that the gospel of Jesus Christ does not demand a change of culture, but a change of heart through the

receiving of Christ's forgiveness and the work of the Holy Spirit. The church currently has an average of 15-20 attendees, most of whom are American Indians. We also have several "contextual" ministries designed to allow American Indians to worship God from within their traditional native culture using traditional cultural expressions.

7. One of these contextual ministries is called Son Tree Native Path, which began in 2000. Son Tree Native Path is a traveling ministry that spreads the gospel of Jesus Christ through traditional religious dance. We have danced all over the world, including at powwows and other American Indian gatherings.

8. Another contextual ministry of the McAllen Grace Brethren Church is the Native American New Life Center, which was founded in McAllen in 1995. The New Life Center holds contextual worship services with traditional drumming, dancing, smudging, and prayer. It meets weekly with about 10-15 attendees. Together with Son Tree Native Path, the New Life Center has developed traditional religious music that is now used by American Indian churches across the country.

9. I am also the co-founder of the San Antonio Indian Fellowship—now called the Chief of Chiefs Christian Church. Chief of Chiefs is a religious ministry of McAllen Grace Brethren Church that was founded in San Antonio, Texas, in 2006. It holds contextual worship services with traditional drumming, dancing, smudging, and prayer. It meets monthly with about 20-40 attendees.

10. I am also the founder of My Rock Native Fellowship, which is a religious ministry of McAllen Grace Brethren Church that was founded in

Brownsville, Texas, in 2011. It holds contextual worship services with traditional drumming, dancing, smudging, and prayer. It meets monthly with about 15-30 attendees.

11. I am also the co-founder of The American Indian Christian Circle, which is a religious ministry that was founded in Thonotosassa, Florida, in 2005. It is directed by Dock Green Silverhawk, a Cherokee Indian. It holds contextual worship services averaging about 60-70 attendees.

12. I am also an officer of the South Texas Indian Dancers Association. The South Texas Indian Dancers Association was started by my family in 1972 and became an official organization in 1977. It is an intertribal organization open to anyone who is of American Indian descent or who would like to learn more about American Indian heritage. Its primary focus is cultural preservation, including the preservation of traditional music, dance, and spirituality. It organizes one of the oldest powwows in the State of Texas and helped start six other powwows in Texas, including the annual powwow in Austin, which is the largest one-day powwow in the United States. It also offers cultural and educational programs for schools and universities.

13. The South Texas Indian Dancers Association has been recognized by the City of McAllen, the City of Falfurrias, and the Senate of Texas for its contribution to the preservation of American Indian culture. In particular, in the 1960s, almost all American Indian powwows were closed events, attended by invitation only. Many American Indians were afraid that if they held powwows

publicly, they would be punished by the government. In 1978, Congress passed a joint resolution called the American Indian Religious Freedom Act, declaring that it would be the policy of the United States to protect American Indian religious freedom. The Act encouraged some American Indians to bring their religious practices into the open. My family, through the South Texas Indian Dancers Association, began holding powwows publicly, which played a significant role in making powwows and traditional American Indian religious practices more publicly visible.

### **B. Religious beliefs and practices**

14. I am a Christian who believes in the gospel of Jesus Christ. But I also walk in traditional American Indian ways. My belief in Jesus Christ is expressed “contextually,” through traditional Native American practices. This is not uncommon among American Indians.

15. As part of my religious tradition, and in common with many American Indians across the country, I hold eagles, including bald and golden eagles, to be deeply sacred. I believe that eagles have a special closeness to the Creator, special spiritual attributes, and a special ability to carry prayers to God.

16. I believe that all feathers and bird parts are sacred gifts from the Creator, and that wearing, holding, and attaching bird parts to sacred objects is essential to communicate with the Creator. Thus, eagle feathers and other eagle parts play a central role in many of my religious practices, as they do for many other American Indians.

17. For example, eagles feathers are critical to the process of smudging. Smudging is a cleansing ritual that takes place in a variety of settings, such as wedding ceremonies, naming ceremonies, sweat lodge ceremonies, healing ceremonies, rites of passage ceremonies, and funeral ceremonies. To engage in smudging, I, like other practitioners, burn a mixture of sacred plants to generate a cleansing smoke. The burning is aided by waving an eagle feather or group of feathers over the flame. The smoke is then fanned on the ceremony participants using the eagle feathers, and the participants are brushed or touched by the eagle feathers. Eagle feathers are central to the practice because they possess unique spiritual attributes of the Creator.

18. Eagle feathers are also a central element of traditional religious dances. I believe that traditional dances are a form of prayer to the Creator. Wearing eagle feathers during the dance is essential for communicating my prayers to the Creator. The feathers are so central that if, in the course of a dance, one feather falls from a dancer's regalia, the entire event must come to a halt and a ceremony must be performed for the cleansing and restoration of the feather.

19. The use of eagle feathers for communicating messages to the Creator, and the central role that they play in my religion, is like the Christian use of the rosary or Bible. And the use of eagle feathers for spiritual cleansing can be compared to the use of holy water for baptism or (in Protestant churches) the use of bread and wine for Holy Communion.

20. I also give eagle feathers as religious gifts on deeply meaningful occasions—such as birth, coming of age, marriage, deployment for combat, or death. I believe that the feathers imbue the recipient with the divine qualities of the Creator, such as strength, courage, wisdom, power, and freedom. I have also received eagle feathers as gifts on numerous occasions.

21. Because of my deep reverence for eagles, I would never harm or kill any eagle to obtain feathers or bird parts. That would be a sacrilege. Instead, I desire to use eagle parts that I receive through religiously acceptable means. These include eagle parts received from ancestors as gifts; found naturally in the wild; received from other tribal members as gifts; exchanged with other tribal members through trade; borrowed from other tribal members on loan; obtained from zoos or aviaries by permit; or obtained from the National Eagle Repository by permit. I have personally received eagle feathers in all of these ways, except from zoos, aviaries, or the National Repository.

22. The feathers that the federal government took from me and Michael Russell in 2006 are illustrative. In 1971, I received a matching pair of golden eagle wings from a tribal elder. He gave them to me when I was 19 years old because he wanted to honor me for my dancing. They had been passed down to him from a rancher near El Paso, Texas, who found the eagle dead on his property, apparently from unintentional poisoning. I carefully cleansed the feathers, trimmed them, and fashioned them into a fancy dancing bustle—my first sacred bustle, which I danced with for about ten years, until they could no longer be used for my form of dancing.



In the early 2000s, I loaned these feathers to Michael Russell, who is my brother-in-law and is an American Indian of Creek and Shawnee descent. He did not have any eagle feathers of his own. And I wanted to honor him and encourage him in the faith as my family member, fellow dancer, and fellow member of my congregation. Michael carefully trimmed the feathers and modified the bustle so that it could be used as a traditional feather bustle. He was wearing the bustle in 2006 when the federal government confiscated it.

23. The government also confiscated two bald eagle feathers from Michael. These feathers had been given to Michael by an American Indian who was being deployed for the Iraq War. The soldier gave the feathers to Michael because of their deep friendship and as a way of honoring Michael. By wearing those feathers in his dancing, Michael prayed for that soldier throughout his time in Iraq.

24. The government also confiscated two golden eagle feathers from my ceremonial headdress and two golden eagle feathers from Michael. I had received these feathers from an elderly Pawnee woman in the early 1990s. The woman was dying of cancer, and her daughter asked me to visit her. So I came to her 2-3 times a week to pray with her and encourage her. I also brought her to a powwow where she was able to sing with traditional Indian drummers that she had given Indian names to when they were youths. I was with her when she died. After she died, her daughter gave me ten of her mother's golden eagle feathers because her mother said that I deserved them. These feathers are very special to me.

### **C. The 2006 Powwow**

25. On March 11, 2006, I attended an American Indian religious ceremony called a “powwow.” I had helped organize the powwow, along with my wife and my sister (Betty Russell). A powwow is a sacred gathering involving drumming, dancing, and traditional dress. Another name for a powwow is “the circle.” The circle is considered a sacred space—much like a church building—and there are numerous protocols governing behavior in the circle. By way of rough analogy, the circle can be compared to the ancient Israelite Temple. The entire Temple compound was considered to be holy, but it became increasingly holy as one moves toward the center of the Temple. So also with the circle. The entire grounds of the circle are considered sacred, but there is also an inner circle where no one is permitted without an invitation. At the center of the circle is the drum, which is the heartbeat of the powwow. And within the circle, our most important religious ceremonies take place.

26. On March 11, 2006, we had an informal educational program before the powwow started. Then we had gourd dancers, which is a form of warrior dance. We had a grand entry, which is when the dancers enter. And we also had an intertribal dance. I had participated in all of these dances. Michael Russell had participated in the grand entry.

27. During a break in between dances, I became hungry and left the inner circle to get some food. I then noticed my brother-in-law, Michael Russell, cornered by someone in a hallway outside the circle. Michael appeared to be nervous, so I went to see what was happening.

28. The man who had cornered Michael then approached me, said that he was an agent with the Fish and Wildlife Service, and ordered me to hand over the two sacred eagle feathers I was wearing in my headdress. I told the agent that I was American Indian and that he was violating my freedom of religion and the freedom of religion of the other participants in the powwow by harassing us during our sacred gathering. I told him he had no right to come into our powwow and asked him several times to show me his credentials.

29. After multiple requests, the agent finally produced his credentials. He said that because we had advertised our powwow in the local newspaper, and because there was an exchange of money (as in vending booths, raffles, cake walks, and honoring veterans by putting money at their feet), it was no longer a sacred event, and he had the right to enter our religious ceremony and investigate. He threatened me and Michael with arrest if we did not cooperate with him and relinquish our feathers, and he threatened that he and other Fish and Wildlife agents would invade every powwow in Texas to make sure that no one participating in the powwows wore sacred eagle feathers without the government's permission.

30. The agent ordered me to get my tribal ID card. He wrote down all of my information and told me he would not be seizing my two golden eagle feathers but would be investigating further. He then confiscated all of the feathers that Michael had been wearing—the ceremonial bustle containing 36 golden eagle feathers, two sacred golden eagle roach feathers, and two sacred bald eagle feathers—and issued him a violation notice charging him with possessing eagle

feathers without a permit and ordering him to pay a \$500 fine and \$25 processing fee. In the course of confiscating the feathers, he treated them extremely disrespectfully, including by allowing them to drag along the ground and by stuffing them into a black garbage bag.

31. The agent then entered the circle and confronted Michael Cleveland, who was present at a vending booth. Our tribal secretary and I again asked the agent to leave our sacred circle. He said that he could enter the powwow because it had been advertised to the public and involved an exchange of money, and he threatened us with arrest if we did not cooperate with his investigation. After seizing several feathers from Mr. Cleveland—consisting of dove and duck feathers that Mr. Cleveland found near his home—the agent left the circle.

32. A few days later, the agent contacted me to arrange a meeting. He informed me that because the Lipan Apache Tribe of Texas was not a federally recognized tribe, my possession at the powwow of the two golden eagle roach feathers was illegal. On March 23, Michael Russell and I, along with several members of my family and tribe, met with the agent at my attorney's law office. I brought the two golden eagle feathers that I had not yet surrendered. Under the threat of serious penalties, we signed forms abandoning our feathers, and Michael agreed to pay the \$500 fine. We mourned the loss of our feathers through song and tears.

#### **D. The Effects of the Government's Conduct**

33. The undercover raid, seizure of property, and threat of criminal and civil liability has had a severe impact on me and my religious community. Many of the American Indians I know already have a significant fear and distrust of the federal government after all that the federal government has done to our people. And it is difficult to overstate how much that fear is intensified by having an undercover federal agent invade our sacred religious gathering and threaten our people with arrest, fines, and imprisonment.

34. When I met with the undercover agent to relinquish my feathers on March 23, 2006, he brought a file-folder and a video tape prominently labeled "Operation Powwow." He placed them in a visible location and told us that the Fish and Wildlife Service would be watching us.

35. To make matters worse, we soon found out that we had been informed upon by one of our own people. Specifically, the agent disclosed that he was acting in response to a tip by an American Indian who was employed by the Fish and Wildlife Service. This Indian had been befriended by members of my congregation and had been invited to several of our religious gatherings, including our powwows. That Indian later called the agent and told him that he saw a non-Indian wearing eagle feathers at a powwow. Thus, this entire incident started with a Fish and Wildlife Service employee posing as a participant in our religious services.

36. Similarly, just a few weeks after the 2006 raid, I attended another powwow in Texas where I was the Head Man Dancer. Although there were many

empty seats around the circle, a well-dressed Indian dancer sat down directly behind me and appeared to be watching me closely. Because I didn't recognize him, I went up and introduced myself. When I asked him what he did for a living, he told me he was an officer in the U.S. Fish and Wildlife Service. I saw this same officer in attendance at another powwow in Texas as recently as 2015.

37. The ongoing surveillance, undercover raid, and confiscation of our property has severely curtailed our religious practices. Many members of the church simply stopped attending religious ceremonies due to fear of the federal government. Before the raid, we regularly had 40-50 attendees at our weekly services at McAllen Grace Brethren Church, and we were growing. The church had recently voted to start paying me a regular salary, even though I had not received a regular paycheck since 2000. But immediately after the raid, attendance dropped by 40%—to about 15-20 people per week—and has remained there ever since. Several people specifically told me that they are afraid to come to our religious gatherings because of the eagle feather issue. Ever since the raid, the church has been unable to pay me a regular salary. My home nearly went into foreclosure several times, and I have taken early Social Security benefits to make ends meet. I had significant heart problems, and my doctor told me that they might have been caused by the stress associated with the raid and confiscation of my feathers. The lack of attendance has also severely curtailed our religious ministry, making it impossible to raise the funds needed for the number of ministry trips we took in the past.

38. In the wake of the raids, other members of my church got rid of their feathers and stopped using them for religious ceremonies. For about six months, I personally stopped wearing eagle feathers in any public setting. But dancing without eagle feathers was a betrayal of my beliefs. It felt like I was living a lie.

39. Because of the government's threats, we also began to treat every visitor with suspicion. We started forbidding pictures at our religious gatherings. And we started holding more of our religious gatherings in secret. Several American Indians have told me that the government's raid has set back the climate surrounding powwows by decades. That climate now resembles the days before the American Indian Religious Freedom Act of 1978.

40. Since the Fifth Circuit's decision, I have been repeatedly asked by American Indians at multiple powwows: "Can we bring our feathers back?" This confirms that many Indians have gotten rid of their feathers or placed them in hiding, and are afraid to resume their religious practices until they are protected by a court.

41. On February 17, 2015—shortly after the Fifth Circuit ruled against the government—the government offered to return the 42 feathers it confiscated from me and Michael Russell at the March 11, 2006 powwow. I appreciate the offer and look forward to the return of my feathers. But the government fundamentally misunderstands my religious practices. My religious practices are not limited to the 42 feathers that have been confiscated. In fact, 36 of those feathers consist of a traditional bustle that I can no longer use for my own religious purposes. As noted

above, when I received those feathers in 1971, I trimmed them and fashioned them into a fancy dancing bustle, which I used for about ten years, until they could no longer be used for my form of dancing. In the early 2000s, I loaned these feathers to my brother-in-law, Michael Russell, who was a member of my congregation. Michael trimmed the feathers even further and modified the bustle so that it could be used as a bustle in Northern Traditional Dancing. The feathers have now been trimmed in a way that they can only be used in Northern Traditional Dancing—a form of dancing I do not do. Thus, the only way that I can use those feathers in the practice of my religion is by giving them to a fellow member of my congregation to use them for his dancing. But the government has told me that Michael and I will be subject to penalty if I loan him my feathers again.

42. Beyond the 42 feathers that the government is offering to return, I have used other feathers for my religious practices in the past, and I will use other feathers for my religious practices in the future. The 42 feathers are important to me, but I still cannot exercise my religion if I am not permitted to use and possess other eagle feathers. And since the raid, I have had numerous opportunities to receive eagle feathers as gifts, to pick up feathers found naturally in the wild, to exchange feathers at powwows with other tribal members, and to borrow feathers from other tribal members. But I am very afraid of what might happen if I do so. On three occasions, I have turned down a gift of feathers from American Indians,



because I did not know the person well, and I was afraid that I would get in trouble. Of course, they were American Indians; but I have been turned in by an American Indian before.

43. I believe that the government has treated me worse because of my religion and because I am not a member of a federally recognized tribe. I hope that the government will someday allow me and the other members of my congregation to keep eagle feathers for religious purposes and will give our religious practices the same respect that it gives to the practices of federally recognized tribes.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on Monday, March 9, 2015 in McAllen, Texas.



Robert Soto