

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

Gary Perez and Matilde Torres,

Plaintiffs,

v.

City of San Antonio,

Defendant.

Case No. 23-cv-977

**DECLARATION OF GARY PEREZ IN SUPPORT OF PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

I, Gary Perez, state and declare as follows:

1. My name is Gary Perez. My address is 1801 Santa Barbara, San Antonio, Texas, 78201. I am over 18 years of age, of sound mind, and capable of making this declaration. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. I am a descendant of the indigenous people of North America, resident of the City of San Antonio (the "City"), and member of the Lipan-Apache Native American Church ("Native American Church"). I have worshipped and led religious ceremonies in Brackenridge Park (the "Park") for at least 25 years.

3. I submit this declaration in support of Plaintiffs' Motion for a Temporary Restraining Order and Preliminary Injunction (the "Motion"). Through the Motion, we seek a preliminary injunction and temporary order restraining the City from:

(1) preventing Plaintiffs from holding a religious ceremony in the Park at the Sacred Area on August 12, 2023 and from accessing the Sacred Area at other times for religious services;

(2) engaging in activities to deter the double-crested cormorant bird from nesting within the Park; and

(3) removing trees and other habitat from the Park.

I. The Religious Significance of Brackenridge Park

4. The Park serves as the site for worship, critical religious ceremonies, and pilgrimages for Native American Church members and other indigenous religious groups.

5. According to my beliefs, the creation of life in the area near San Antonio began at a spring, now called Blue Hole spring, that sits just north of the Park. A spirit in the form of a blue panther lived in Blue Hole spring. Another spirit in the form of a double-crested cormorant flew into the Blue Hole spring and was chased away by the blue panther. As the cormorant fled from the spring, its tail feathers scattered life-giving water across the San Antonio River Valley, including the lands that comprise the Park, giving rise to life in this region.

6. I believe that three reference points establish sacred space: underworld, middle world, and upper world. The underworld is seen in water, night, and darkness. The middle world surrounds us as we walk about the earth. The upper world is seen in the sky and stars. All three worlds are connected and experienced together through ceremonies performed in the Park. The presence and connection of the three worlds establishes a “spiritual ecology” that enables me to identify myself in the physical world and commune with the spiritual world.

7. The sanctity of the Park is intimately connected to its “spiritual ecology” and the connection points that are the river, trees, and birds. According to my faith, harming any one of the connection points disturbs the sanctity of the Park and its capacity to function as a sacred space for my religious practice.

8. An area in the Park called Lambert Beach juts out into the San Antonio River along Brackenridge Drive and north of Tuleta Drive. The shape of the riverbend at Lambert Beach

mirrors, and I believe is spiritually connected to, a constellation of stars known as Eridanus. I have been taught and I believe that this connection between the riverbend and the constellation enables a bridge to open in the Park between the physical and the spiritual worlds. As a member of the Native American Church, I believe this riverbend is an especially sacred area within the Park and is where certain ceremonies must be performed because it faces to the North.

9. Members of my church and other indigenous groups have long revered and visited the lands within the Park to worship, experience the spiritual ecology that exists there, and perform religious rites. Archeological evidence that I helped decipher, such as the White Shaman Mural near the Lower Pecos River, shows that indigenous peoples have honored the San Antonio River and the springs that feed it for millennia. We require general access to the Park and the Sacred Area for ceremonies, prayer, fellowship, and religious education, which are critical and compelled by our beliefs.

10. Today, peyote pilgrims stop at four springs along the San Antonio River. The Park is the final stop on this route. Pilgrims visit each of the four springs and perform a religious ceremony before continuing on their journey south to the peyote gardens.

II. The Bond Project

11. Because of the Park's significance to me and my faith and as a long-time resident of the City of San Antonio, I have paid close attention to the City's efforts in recent years to renovate the Park. On May 6, 2017, San Antonio voters approved a bond package to fund public improvements throughout the City. As part of that bond package, voters approved Proposition 3, which proposed to raise money to fix up parks and even contemplated funds to improve the Park.

12. That proposition made no mention of the religious interests at stake involving the San Antonio River or the Park. Nor did it specify the destruction of heritage trees or the double-crested cormorant's habitat.

13. I attended many public meetings related to what now has become known as the Brackenridge Park 2017 Bond Project (the “Bond Project”). As the Bond Project developed, I grew concerned about how the City’s plans to renovate the Park would impact the sacred ecology within it. So on July 29, 2022, I presented to the San Antonio Department of Parks and Recreation about my religious beliefs and practices and expressed concerns about how the Bond Project would interfere with my religion.

14. While the Bond Project was under review, the City began driving migratory birds from the Park by removing them, placing obstructions in trees to prevent nesting, shooting blanks from firearms, placing a car alarm in their nesting area, and otherwise making the Park uninhabitable for them.

15. When it became clear to me that City was not taking my concerns seriously, on May 23, 2023, I sent the City a detailed demand letter, asking the City to not remove sacred trees or deter the nesting of cormorant birds that are critical to my religious practices. Despite my attempts to educate the City, it approved a contract on August 3, 2023—with work set to begin the summer of 2023—that failed to address the religious harms present in the prior plan. It made no effort to preserve trees or other habitat, to cease bird nesting deterrence efforts, or to enable access to the Park for me and my fellow members of the Native American Church.

16. The City’s proposals for the Bond Project has faced intense public opposition from other people in San Antonio based on a number of important disagreements, including whether the City would cut down significant numbers of trees in the Park. Citizens have also objected to the City’s treatment of wildlife in the Park, especially the birds, which the City began driving out of the Park.

17. Based on the City's latest proposal for the Bond Project, the City plans to continue bird deterrence efforts throughout the Park and to destroy or relocate 98 trees. According to my beliefs, these plans would devastate the Park's spiritual ecology by driving away birds and cutting down mature trees so that the City can repair secular historic features, including: a colonial canal, a pump house, a limestone wall along the riverbank, and a sculpture garden.

III. The City Prevents Access to Sacred Areas in the Park

18. From approximately February 3, 2023, to the present, the City has prevented me and my fellow members of the Native American Church from accessing the sacred areas within the Park to engage in communal or individual worship. I am unable to enter sacred locations within the Park to perform religious ceremonies or connect with the Park's spiritual ecology.

19. In addition, given their importance as pilgrimage sites, I regularly act as a religious leader and guide to individuals who have traveled to the Park, often unannounced. My inability to minister to those pilgrims while the sacred locations are fenced off prevents me from exercising my religion. I am also often presented with requests from local adherents, such as a birthday blessing, that I am unable to perform at the desired location of the sacred riverbend.

20. If I am denied access to the Park or its spiritual ecology is damaged, then I will be unable to practice the religious ceremonies that must occur at this site.

21. On August 12, 2023, I plan to participated in a water offering ceremony at the Sacred Area in the Park with about 15-20 other members of the Native American Church. The ceremony is supposed to begin at 5:30 am and last for 20–30 minutes. As part of the ceremony, the sun begins to rise with the constellation Leo on the horizon to symbolize the blue panther chasing the double-crested cormorant from the Blue Hole spring. The Perseids meteor shower in the night sky—that is at its apex during this time period—symbolizes the sprinkling of water from

the cormorant's feathers. I am performing the ceremony, in part, to atone for the harm being done to the double-crested cormorants in the Park.

22. On July 26, 2023, through my lawyers, I asked the City to grant me and my fellow members of the Native American Church access to the Sacred Area in the Park, which is currently blockaded by the City with temporary fencing, to perform the August 12, 2023 water offering.

23. The City initially responded on August 3, 2023, stating that it could accommodate my request. But I soon saw that their accommodation did not permit me to access the specific area of the Park where I believe the religious ceremony needs to occur. Instead, the City offered me access to a different part (the wrong part) of the Park that was already open to the public. I reiterated that I wished to access my sacred area within the Park, which is currently not accessible to the public. The City refused to grant my request on August 9, 2023.

24. When the City denied my request to access the Park on August 9, 2023, it said that the "interest of protecting the health, safety and welfare of visitors" was the reason for denying my request. In particular, the City claimed that the retaining walls in this sacred spot are collapsing and that there's a safety risk from trees that may fall.

25. I do not believe that to be true. I have visited this area for the past 25 years. I visited this area again on August 8, 2023, and took pictures of the area from the north side of the San Antonio River. True and accurate copies of pictures I took of the retaining walls are attached as Exhibit C-F.

26. These pictures show that the retaining walls are not collapsing, that trees are not at risk of falling, and that it is safe for a group of 15-20 members of the Native American Church to gather for a brief morning ceremony on August 12, 2023. One picture—Exhibit D—shows the bird deterrence equipment erected within the sacred area.

27. Based on the City's identification of trees it plans to remove, participants in the water offering could safely access the Park without the threat of falling trees. True and accurate copies of the City's Tree Location Matrix and Planning Commission Presentation are attached as Exhibit A and B.

28. These exhibits show which trees are slated for removal and the reason for their removal. Based on these documents, the City plans to remove 10–11 trees from the Sacred Area. Only 3 of those trees have been identified for removal because they are dead or dying. The rest of the trees are designated for removal because of proximity to a cultural resource or a construction limitation.

29. I am willing to have a Parks and Recreation employee supervise us while we perform our ceremony on August 12, 2023. In my original request for access to the Park for the August 12, 2023 water offering, I, through counsel, requested that an individual from the City be present to ensure our safe passage through the fencing.

30. I, as well as other members of the Native American Church, would like to access the Sacred Area during future ceremonies, including during the autumn equinox, the Leonids meteor shower (November 17-18), and the winter solstice, in addition to ceremonies that arise without forewarning. Based on our communications with the City through counsel, we do not believe we will be given access to the sacred site for those ceremonies.

31. In denying our request for access on August 12, 2023, the City stated it plans to move "with all deliberative speed" to implement the Bond Project. I understand the City now plans to move forward with plans to remove trees, continue bird deterrence, and prevent access to the sacred area of the Park.

IV. The City's Current and Planned Action Pursuant to the Bond Project Substantially Burdens My Religious Exercise

32. The Bond Project makes it difficult or impossible to practice my religion because it authorizes destruction of flora and fauna that make the Park a sacred place for me and other members of the Native American Church. The double-crested cormorant's presence, in particular, is essential to my religious services.

33. I have participated in worship services and special ceremonies within the Park for many years. I would worship and perform important religious ceremonies in the Park now if the City would stop preventing me from entering the Sacred Area and experiencing the unique spiritual ecology that exists there.

34. I informed the City that the Bond Project infringes on my religious beliefs on multiple occasions. I spoke and gave a presentation to the Department of Parks and Recreation on July 29, 2022. Brackenridge Park Conservancy invited me to give a presentation about issues with the Bond Project at its January 10, 2023 meeting. I testified at the March 3, 2023 Texas Historical Commission meeting, the April 19, 2023 Historic Design and Review Commission hearing, and the August 3, 2023 City Council hearing.

35. Despite raising my objection at numerous hearings and meetings with the Brackenridge Park Conservancy, the City has never taken my religious objections into account when making its plans.

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

Signed on the 10 day of August, 2023
In Bexar County, Texas, United States



GARY PEREZ