TRIBAL SUPREME COURT PROJECT MEMORANDUM

JUNE 15, 2016
UPDATE OF RECENT CASES

The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). The Project was formed in 2001 in response to a series of U.S. Supreme Court cases that negatively affected tribal sovereignty. The purpose of the Project is to promote greater coordination and to improve strategy on litigation that may affect the rights of all Indian tribes. We encourage Indian tribes and their attorneys to contact the Project in our effort to coordinate resources, develop strategy and prepare briefs, especially at the time of the petition for a writ of certiorari, prior to the Supreme Court accepting a case for review. You can find copies of briefs and opinions on the major cases we track on the NARF website (www.narf.org/sct/index.html).

In an important victory for Indian country, on June 13, 2016, the Court issued a unanimous (8-0) opinion in *U.S. v. Bryant* and reversed the decision of the U.S. Court of Appeals for the Ninth Circuit, which had held (in direct conflict with the Eighth and Tenth Circuits) that it is constitutionally impermissible (violation of Sixth Amendment right to counsel) to use uncounseled tribal court convictions to establish an element of the offense as a habitual domestic violence offender in a subsequent federal prosecution under 18 U.S.C. § 117(a). Justice Ginsberg, writing for the Court, disagreed and held that "[b]ecause Bryant's tribal-court convictions occurred in proceedings that complied with ICRA and were therefore valid when entered, use of those convictions as predicate offenses in a §117(a) prosecution does not violate the Constitution."

However, in a disturbing development, Justice Thomas issued two concurring opinions in the past week to express his continuing "concerns about [the Court's] precedents regarding Indian law." Last week, in *Puerto Rico v. Sancho Valle*, a divided Supreme Court rejected the argument that, similar to Indian tribes in the *Lara* case, Puerto Rico has independent "sovereign" authority to prosecute a crime that has already been charged in federal court, thus no violation of the Double Jeopardy Clause. After expressing his concerns regarding Indian law, Justice Thomas stated: "I cannot join the portions of the opinion concerning the application of the Double Jeopardy Clause to successive prosecutions involving Indian tribes." In *U.S. v. Bryant*, Justice Thomas made clear that he questions both the source of inherent tribal sovereign authority and the constitutional basis for Congress's plenary authority over Indian affairs:

> Until the Court ceases treating Indian tribes as an undifferentiated mass, our case law will remain bedeviled by amorphous and ahistorical assumptions about the scope of tribal sovereignty. And, until the Court rejects the fiction that Congress possesses plenary power over Indian affairs, our precedents will continue to be based on the paternalistic theory that Congress must assume all encompassing control over the "remnants of a race" for its own good. [citing *United States v. Kagama*].

The Court has still not issued a decision in *Dollar General v. Mississippi Band of Choctaw Indians*, although we do anticipate a decision by the end of this month. To date, the Court has not granted review in any new Indian law cases for consideration next term, but there are five Indian law cert petitions in the final conference (June 23), including the NLRB cases involving challenges by the Little River Band and

the Saginaw Chippewa to the application of the National Labor Relations Act to Indian tribes (see below). With the Court operating with eight Justices, only a handful of petitions have been granted review next term, and the issuance of opinions has remained slow with mainly unanimous opinions being announced. There is no doubt that Justice Scalia's absence has affected many of the major cases currently pending before the Court, including *Dollar General*. By way of reminder, if a tie vote (4-4) occurs among the Chief Justice and the other seven remaining justices, there are several potential outcomes: (1) an evenly divided Court results in affirmance of the lower court decision with no opinion issued by the Court; (2) the Court could schedule the case for re-argument next term; or (3) the Court could issue a decision on narrow or procedural grounds to avoid setting precedent.

INDIAN LAW CASES DECIDED BY THE SUPREME COURT

UNITED STATES V. BRYANT (NO. 15-420) – On June 13, 2016, the Court issued a unanimous (8-0) opinion in *U.S. v. Bryant* and reversed the decision of the U.S. Court of Appeals for the Ninth Circuit, which had held (in direct conflict with the Eighth and Tenth Circuits) that it is constitutionally impermissible (violation of Sixth Amendment right to counsel) to use uncounseled tribal court convictions to establish an element of the offense as a habitual domestic violence offender in a subsequent federal prosecution under 18 U.S.C. § 117(a). Justice Ginsberg, writing for the Court, disagreed and held that "[b]ecause Bryant's tribal-court convictions occurred in proceedings that complied with ICRA and were therefore valid when entered, use of those convictions as predicate offenses in a §117(a) prosecution does not violate the Constitution." However, in his concurring opinion, Justice Thomas made clear that he has ongoing concerns regarding the Court's precedents in Indian law. Justice Thomas appears to question both the source of inherent tribal sovereign authority and the constitutional basis for Congress's plenary authority over Indian affairs, stating:

> Until the Court ceases treating Indian tribes as an undifferentiated mass, our case law will remain bedeviled by amorphous and ahistorical assumptions about the scope of tribal sovereignty. And, until the Court rejects the fiction that Congress possesses plenary power over Indian affairs, our precedents will continue to be based on the paternalistic theory that Congress must assume all encompassing control over the "remnants of a race" for its own good. [citing *United States v. Kagama*].

This is an important victory for Indian country, and was the result of an effective coordinated strategy. The Project worked with the Solicitor General's office and prepared three amicus briefs in support of the United States: (1) Amicus Brief of the National Congress of American Indians on discussing the reliability of tribal court decisions and deference to Congress; (2) Amicus Brief of the National Indigenous Women's Resource Center focused on the severe problem of escalation of repeat domestic violence offenders; and (3) Amicus Brief of former U.S. Attorneys supporting the need for the habitual domestic violence statute as an important prosecutorial tool to protect Indian women and children within Indian country.

NEBRASKA V. PARKER (NO. 14-1406) – On March 22, 2016, the Court issued a unanimous (8-0) opinion written by Justice Thomas which affirmed the decisions of the U.S. Court of Appeals for the Eighth Circuit and the U.S. District Court for the District of Nebraska which had held that an 1882 Act of Congress did not diminish the Omaha Indian Reservation. The State of Nebraska and the Village of Pender had challenged whether the establishments in Pender which serve alcoholic beverages are subject

to the Omaha Tribe's liquor licensing and tax regulations. The Court declined the invitation of the State and Village to depart from its long-standing *Solem* test to evaluate whether a surplus land act diminished a federal Indian reservation and to adopt a test of *de facto* diminishment based on whether an area has lost its "Indian character." The Court reiterated the first prong of the *Solem* test that only Congress can diminish the boundaries of an Indian reservation and that its intent to do so must be clear from the statutory text and history. In this case, the Court found that the 1882 Act bore none of the textual "hallmarks of diminishment" and the history surrounding its passage does not unequivocally support a finding of diminishment. However, at the conclusion of the opinion, the Court cited to *City of Sherrill* and stated: "Because petitioners have raised only the single question of diminishment, we express no view about whether equitable considerations of laches and acquiescence may curtail the Tribe's power to tax the retailers of Pender in light of the Tribe's century-long absence from the disputed lands."

The Project worked closely with the attorneys for the Omaha Tribe and prepared two amicus briefs in support: (1) Amicus Brief of the National Congress of American Indians (joined by two intertribal organizations and twenty Indian tribes) focused on the negative impacts of a *de facto* diminishment rule; and (2) Amicus Brief of Historical and Legal Scholars clarifying the legal and historical circumstances surrounding treaty-making and allotment statutes.

STURGEON V. MASICA (NO. 14-1209) – On March 22, 2016, the Court issued a unanimous (8-0) opinion written by Chief Justice Roberts which vacated an Indian-law related decision of the U.S. Court of Appeals for the Ninth Circuit which had held that the Alaska National Interest Lands Conservation Act of 1980 (ANILCA) did not prevent the National Park Service from imposing its generally applicable regulations on non-federal lands within conservation system units in Alaska. The Court held that the Ninth Circuit's interpretation was inconsistent with both the text and context of ANILCA, but the Court declined to provide its own interpretation and remanded the case back to the lower courts for consideration of whether (1) the Nation River qualifies as "public land" for purposes of ANILCA; (2) whether the Park Service has authority under ANILCA over both "public" and "non-public" lands within the boundaries of conservation system units in Alaska.

MENOMINEE INDIAN TRIBE OF WISCONSIN V. UNITED STATES (NO. 14-510) – On January 25, 2016, the Court issued its decision in *Menominee Indian Tribe v. United States* to resolve a conflict between the U.S. Courts of Appeals for the DC Circuit and the Federal Circuit regarding the appropriate standard for obtaining equitable tolling of the statute of limitations for filing claims against the Indian Health Service for unpaid contract support costs. In a unanimous (9-0) opinion written by Justice Alito, the Court held that equitable tolling is not available to preserve contract claims that were not timely presented to a federal contracting officer because there were no extraordinary circumstances beyond the tribe's control.

Background: On June 30, 2015, following the recommendation of the United States to grant cert, the Court granted review of a decision by the U.S. Court of Appeals for the District of Colombia which held that the Tribe did not establish the necessary grounds for obtaining equitable tolling of the statute of limitations for filing claims against the Indian Health Service for unpaid contract support costs. The Tribe maintains that this decision is in direct conflict with the Federal Circuit's 2012 decision in *Arctic Slope Native Ass'n Ltd. v. Sebelius (ASNA).* In its response, the United States recommended that the Court grant cert to address "the uncertainty created by the Federal Circuit's erroneous decision in *ASNA*—and the increasing volume of untimely claims inspired by it—[which] have con-founded the government's attempts to achieve orderly resolution of the ongoing litigation over tribal contract support costs. . . . This Court's review is warranted to resolve that conflict, as well as to ensure that the proper equitable tolling framework is applied to Contract Disputes Act claims generally."

PETITIONS GRANTED

DOLLAR GENERAL CORPORATION V. MISSISSIPPI BAND OF CHOCTAW INDIANS (NO. 13-1496) – On December 7, 2015, the Court heard oral argument in *Dollar General v Mississippi Band of Choctaw Indians* which challenges Tribal Court jurisdiction over tort claims brought by a tribal member against a non-Indian corporation doing business on trust lands leased from the Tribe. The Question Presented is: "Whether Indian tribal courts have jurisdiction to adjudicate civil tort claims against nonmembers, including as a means of regulating the conduct of nonmembers who enter into consensual relationships with a tribe or its members." During argument, the scope of tribal inherent sovereign authority over non-Indians and the source of Congress' authority over Indian affairs were taken up by the Court where at least four Justices openly questioned the protections in place for non-Indians in tribal courts, and the source of Congress' authority in these matters under the U.S. Constitution. It is difficult to discern from oral argument how the Justices may vote and ultimately decide this case, but the outcome has significant implications for all of Indian country.

Background: On June 15, 2015, contrary to the recommendation of the U.S. Solicitor General to deny cert, the Court granted review. The Dollar General store is located on tribal trust land within the reservation. The store agreed to participate in a youth job training program operated by the Tribe. A tribal member who participated in the youth program and his parents brought an action in Tribal court alleging that the young man was sexually assaulted by the store's manager. The Supreme Court of the Mississippi Band of Choctaw Indians, the U.S. Federal District Court for the Southern District of Mississippi, and the U.S. Court of Appeals for the Fifth Circuit had all upheld the Tribal Court's jurisdiction over the tort claims against Dollar General.

Petitioner Dollar General filed its opening brief on August 31, 2015. Four amicus briefs were filed in support of Dollar General: (1) Amicus Brief of the State of Oklahoma (joined by Wyoming, Utah, Michigan, Arizona and Alabama); (2) Amicus Brief of the Association of American Railroads; (3) Amicus Brief of the Retail Litigation Center, Inc.; and (4) Amicus Brief of the South Dakota Bankers' Association. Dollar General and its amici aggressively attack the fairness of tribal courts and tribal law to non-Indians and are asking the Court to ignore its precedent, reverse the lower courts, and establish either: (i) an *Oliphant*-style civil jurisdiction rule (*i.e.*, no tribal civil jurisdiction over non-Indians); or (ii) a rule that Tribes have no civil jurisdiction over torts committed by non-Indians; or (iii) a rule requiring "express and unequivocal" consent by a non-Indian to the jurisdiction of the Tribal court or Congressional authorization of such jurisdiction.

The Project worked closely with the attorneys for the Tribe to develop and coordinate a robust amicus brief strategy in support of Tribal court jurisdiction. The Tribe filed its response brief on October 15, 2015, and eight amicus briefs in support of the Tribe were filed on October 22, 2015: (1) Amicus Brief of the United States; (2) Amicus Brief of the State of Mississippi (joined by Colorado, New Mexico, North Dakota, Oregon and Washington); (3) Amicus Brief of NCAI (joined by USET, ITAA, CTAG, and 58 federally-recognized Indian tribes); (4) Amicus Brief of National American Indian Court Judges Association (joined by numerous Tribal and Inter-tribal Court Systems); (5) Amicus Brief of the Oklahoma Tribes; (6) Amicus Brief of the National Indigenous Women's Resource Center (joined by over 100 Domestic Violence and Sexual Assault Organizations); (7) Amicus Brief of Historical and Legal Scholars; (8) Amicus Brief of the American Civil Liberties Union. Each amicus brief is focused on its own unique message, with an overall presentation to the Court of the inherent nature of Tribal sovereignty

and the scope of Tribal governing authority over non-Indians within the reservation. Copies of the briefs are available on the Project webpage (http://sct.narf.org/caseindexes/dollar_general_v_choctaw.html).

PETITIONS FOR A WRIT OF CERTIORARI PENDING

Currently, the following petitions for a writ of certiorari have been filed in Indian law and Indian law-related cases and are pending before the Court:

PRO-FOOTBALL, INC. V. BLACKHORSE (NO. 15-1311) – On April 25, 2016, in response to a petition filed by the United States in *Lee v. Tam*, (No. 15-1293), seeking review of an en banc decision of the U.S. Court of Appeals for the Federal Circuit which held that the disparagement clause in § 2(a) of the Lanham Act is facially invalid under the free speech clause of the First Amendment, Pro-Football, Inc. filed a petition for writ of certiorari before judgment (by the Fourth Circuit) asking that if the Court grants review in *Tam*, then the Court should also grant review in *Pro-Football, Inc. v. Blackhorse* as "a necessary and ideal companion to *Tam.*" The response briefs of Amanda Blackhorse and the United States are due on June 27, 2016.

PAUMA BAND OF LUISENO MISSION INDIANS V. CALIFORNIA (NO. 15-1291) – On April 18, 2016, the Pauma Band filed a petition seeking review of a decision by the U.S. Court of Appeals for the Ninth Circuit which rescinded the state-tribal gaming compact (based on the State's misrepresentation of a material fact), awarded restitution to the tribe in the amount of $36.2 million, but held that the tribe could not pursue a claim for latent bad faith negotiation against the State which would allow the parties to negotiate a successor compact under court supervision. The State's response brief was filed on May 20, 2016, and the petition is scheduled for conference on June 23, 2016.

SHINNECOCK INDIAN NATION V. NEW YORK (NO. 15-1215) – On March 25, 2016, the Shinnecock Indian Nation filed a petition seeking review of a decision by the U.S. Court of Appeals for the Second Circuit which held that, under the *Cayuga* "laches" defense, the Tribe's Indian Non-Intercourse Act land claims must be dismissed by the district court *ab initio.* The questions presented are: (1) "Whether at the outset of litigation a court may apply "laches" to foreclose an Indian tribe from bringing its federal statutory and common-law claims, including one for money damages, if brought within the statute of limitations established by Congress"; and (2) "Whether a court violates the Fifth Amendment's Due Process and Takings Clauses when it retroactively applies a new, judicially-formulated rule to dismiss an Indian tribe's viable claims *ab initio*, thereby extinguishing established property rights." The State filed its brief in opposition May 31, 2016, and the petition is scheduled for conference on June 23, 2016.

CALIFORNIA V. PAUMA BAND OF LUISENO MISSION INDIANS (NO. 15-1185) – On March 17, 2016, the State of California filed a petition seeking review of a decision by the U.S. Court of Appeals for the Ninth Circuit which found that the State had misrepresented a material fact in negotiating a state-tribal gaming compact and held that the Tribe was entitled to restitution in the amount of $36.2 million as an equitable remedy which fell within the waiver of sovereign immunity under the compact. The question presented is: "Whether . . . the language of the limited waiver—which expressly excludes claims for 'monetary damages' and references only injunctive relief, specific performance, and declaratory relief—waived the State's sovereign immunity with respect to the district court's monetary award." The Tribe's brief in opposition was filed on May 20, 2016, and the petition is scheduled for conference on June 23, 2016.

SOARING EAGLE CASINO RESORT V. NLRB (NO. 15-1034) – On February 12, 2016, the Saginaw Chippewa Tribe filed a petition seeking review of a decision of the U.S. Court of Appeals for the Sixth Circuit, issued twenty-two days after a different panel's decision in *Little River Band*, which concluded that even though it disagreed with the result in *Little River Band* it was bound by circuit precedent and affirmed the NLRB's jurisdiction over the Casino. The two questions presented are: "(1) Does the National Labor Relations Act abrogate the inherent sovereignty of Indian tribes and thus apply to tribal operations on Indian lands? (2) Does the National Labor Relations Act abrogate the treaty-protected rights of Indian tribes to make their own laws and establish the rules under which they permit outsiders to enter Indian lands?" A total of five amicus briefs in support of the Tribe were filed: (1) NCAI and NIGA; (2) USET; (3) CNIGA; (4) Ute Mountain Ute Tribe and The State of Colorado; and (5) State of Michigan. The United States filed its brief in opposition on May 24, 2016, and the petition is scheduled for conference on June 23, 2016.

LITTLE RIVER BAND OF OTTAWA INDIANS V. NLRB (NO. 15-1024) – On February 12, 2016, the Little River Band filed a petition seeking review of a 2-1 decision by the U.S. Court of Appeals for the Sixth Circuit which adopted the *Tuscarora-Coeur d'Alene* framework, held that the National Labor Relations Act applies to the Tribe's casino, and upheld the NLRB's order for the Tribe to rescind its labor laws. The question presented is "Whether the National Labor Relations Board exceeded its authority by ordering an Indian tribe not to enforce a tribal labor law that governs the organizing and collective bargaining activities of tribal government employees working on tribal trust lands. A total of six amicus briefs in support of the Tribe were filed: (1) NCAI and NIGA; (2) USET; (3) CNIGA; (4) Ute Mountain Ute Tribe and The State of Colorado; (5) State of Michigan; and (6) National Right to Work Legal Defense Foundation. The United States filed its brief in opposition on May 24, 2016, and the petition is scheduled for conference on June 23, 2016.

JENSEN V EXC INC. (NO. 15-64) – On July 13, 2015, the Jensen/Johnson family, all enrolled members of the Navajo Nation, filed a petition seeking review of the a decision by the U.S. Court of Appeals for the Ninth Circuit which held that, under *Strate v. A-1 Contractors*, the Navajo Nation Tribal Courts may not exercise adjudicatory jurisdiction over a highway accident that occurred on an Arizona state highway within the exterior boundaries of the Navajo Reservation. On July 21, 2015, EXC Inc. filed a waiver of its response, and the petition was scheduled for conference on September 28, 2015. However, on August 10, 2015, the Court requested a response from EXC, Inc. which was filed on October 7, 2015. The petition was scheduled for conference on November 6, 2015, but no action was taken by the Court. The petition is likely being held over by the Court as it considers *Dollar General v. Mississippi Band of Choctaw Indians.*

PETITIONS FOR WRIT OF CERTIORARI DENIED/DISMISSED

The Court has denied or dismissed the following petitions for writ of certiorari in Indian law cases.

SEMINOLE TRIBE V. STRANBURG (NO. 15-1064) – On June 13, 2016, the Court denied review of a petition filed by the Seminole Tribe which sought review of a decision by the U.S. Court of Appeals for the Eleventh Circuit which held that, although the Tribe is not subject to Florida's Rental Tax, the Tribe is subject to Florida's Utility Tax since the legal incidence of the tax does not fall directly on the Tribe and the Tribe failed to demonstrate that the tax is pre-empted by federal law.

LA CUNA DE AZTLAN V. UNITED STATES DEPARTMENT OF THE INTERIOR (NO. 15-826) – On June 6, 2016, the Court denied review of petition filed by La Cuna De Aztlan Sacred Sites Protection Circle Advisory Committee which sought review of a decision by the U.S. Court of Appeals for the Ninth Circuit which affirmed the district court and dismissed their claim under Religious Freedom Restoration Act. The petitioners' lawsuit challenged the federal government's actions in connection with a major solar-electricity generation project located on federal public lands in California. The Ninth Circuit held that the petitioners failed to demonstrate that denial of access to the site "substantially burdens" the exercise of their religion.

CITIZENS AGAINST CASINO GAMBLING V. CHAUDHURAI (NO. 15-780) – On May 31, 2016, the Court denied review of a petition filed by Citizens Against Casino Gambling in Erie County (New York) who sought review of a decision of the U.S. Court of Appeals for the Second Circuit which affirmed the district court dismissal of their complaint. The Second Circuit held that under the Seneca Nation Settlement Act, Congress intended the Buffalo Parcel to be subject to tribal jurisdiction, and upheld the decision of the Department of the Interior and the National Indian Gaming Commission that the Buffalo Parcel is eligible for class III gaming under the Indian Gaming Regulatory Act.

KNIGHT V. THOMPSON (NO. 15-999) – On May 2, 2016, the Court denied review of a petition filed by a group of Native American inmates seeking review a decision of the U.S. Court of Appeals for the Eleventh Circuit which, on remand, simply affirmed its prior decision in favor of prison officials in Alabama who refused to grant a religious exemption from their restrictive grooming policy to allow Native Americans to wear long hair consistent with their Native religious beliefs. Last term, the Court had issued a "GVR" (petition granted, judgment vacated and case remanded) in *Knight* for further consideration in light of its unanimous decision in *Holt v. Hobbs* (Arkansas violated the Religious Land Use and Institutionalized Persons Act where its grooming policy did not allow beards and it refused to grant a religious exemption to an inmate whose Muslim religion required him to wear a beard).

ZEPEDA V. UNITED STATES (NO. 15-675) – On April 25, 2016, the Court denied review of a petition filed by Damien Zepeda, a criminal defendant, who sought an en banc opinion of the U.S. Court of Appeals for the Ninth Circuit which held that under the Indian Major Crimes Act, the federal government must prove Indian status by demonstrating that the defendant: (1) has some quantum of Indian blood; and (2) is a member of, or is affiliated with, a federally recognized tribe. The Ninth Circuit held further that a defendant must have been an Indian at the time of the charged conduct, and that, under the second prong, a tribe's federally recognized status is a question of law to be determined by the trial judge.

CROW ALLOTTEES V. UNITED STATES (NO. 15-779) – On April 25, 2016, the Court denied a petition filed by Crow Indian Allottees who sought review of a decision by the Montana Supreme Court dismissing their objections to the Crow Water Compact and denying their motion to stay proceeding pending federal court review of the federal questions raised by the individual Allottees.

ALASKA V. ORGANIZED VILLAGE OF KAKE (NO. 15-467) – On March 28, 2016, the Court denied the petition filed by the State of Alaska seeking review of an Indian law-related en banc decision by U.S. Court of Appeals for the Ninth Circuit which held that, under the Administrative Procedures Act, the U.S. Department of Agriculture must provide a reasoned explanation for its 2003 decision to reverse its earlier determination that exempting the Tongass National Forest from the 2001 Roadless Rule (limiting road construction and timber harvesting in national forests) "would risk the loss of important roadless area [ecological] values."

WASATCH COUNTY V. UTE INDIAN TRIBE (NO. 15-640); UINTAH COUNTY V. UTE INDIAN TRIBE (NO. 15-641) – On March 21, 2016, the Court denied review of petitions filed by Wasatch County and Uintah County seeking review of a decision by U.S. Court of Appeals for the Tenth Circuit which reversed the district court and held that the Tribe is entitled to a preliminary injunction to enjoin county officials from prosecuting tribal members for crimes committed within the undiminished portions of the reservation in conformity with the Supreme Court's 1994 decision in *Hagen v. Utah*.

WHITE V. REGENTS OF THE UNIVERSITY OF CALIFORNIA (NO. 15-667) – On January 25, 2016, the Court denied review of a petition filed by three scientists at the University of California seeking review of a decision by the U.S. Court of Appeals for the Ninth Circuit which dismissed their claims under the Native American Graves Protection and Repatriation Act based on their inability to join the Kumeyaay Cultural Repatriation Committee (consortium of 12 tribes) as a "required party" under Rule 19 of the Federal Rules of Civil Procedure based on the doctrine of tribal sovereign immunity.

DECKER V. UNITED STATES (NO. 15-733) – On January 11, 2016, the Court denied review of a petition filed by an Indian criminal defendant seeking review of a decision by the U.S. Court of Appeals for the Ninth Circuit which affirmed his conviction and rejected his argument that the federal prosecutor had constructively amended the grand jury indictment in violation of the Fifth Amendment.

TWO SHIELDS V. WILKINSON (NO. 15-475) – On December 14, 2015, the Court denied review of a petition filed by individual Indian allottees—victims of an alleged scheme by certain private individuals and businesses to induce the United States to approve below-market oil and gas leases—seeking review of a decision by the U.S Court of Appeals for the Eighth Circuit which dismissed their case based on their failure to join the United States as a "required party" under Rule 19 of the Federal Rules of Civil Procedure (inability to join based on sovereign immunity).

WISCONSIN V HO-CHUNK NATION (NO. 15-114) – On October 5, 2015, the Court denied review of a petition filed by the State of Wisconsin seeking review of a decision by the U.S. Court of Appeals for the Seventh Circuit which reversed the federal district court, found that the state did not criminalize non-banked poker and held that the Indian Gaming Regulatory Act does not permit the state to interfere with Class II poker on tribal land.

TORRES V. SANTA YNEZ BAND OF CHUMASH INDIANS (NO. 14-1521) – On October 5, 2015, the Court denied review of a petition filed by a non-Indian contractor seeking review of an unpublished decision by the U.S. Court of Appeals for the Ninth Circuit which affirmed the district court's finding that the bankruptcy court did not abuse its discretion in denying the contractor's motion for sanctions after concluding that the Santa Ynez Band of Chumash Indians did not act in bad faith by filing a proof of claim in his bankruptcy proceedings.

SAC AND FOX NATION V. BOROUGH OF JIM THORPE (NO. 14-1419) – On October 5, 2015, the Court denied review of a petition filed by the Sac and Fox Nation, William Thorpe and Richard Thorpe (the sons of Jim Thorpe) seeking review of a decision by the U.S. Court of Appeals for the Third Circuit which reversed the U.S. District Court for the Middle District of Pennsylvania. The Third Circuit had concluded that although the Borough of Jim Thorpe technically meets the definition of "museum" under NAGPRA, "Congress could not have intended the kind of patently absurd result that would follow from a court resolving a family dispute by applying NAGPRA to Thorpe's burial in the Borough under the circumstances here."

OKLAHOMA V. HOBIA (NO. 14-1177) – On October 5, 2015, the Court denied review of a petition filed by the State of Oklahoma seeking review of a decision by the U.S. Court of Appeals for the Tenth Circuit which held that, in light of *Bay Mills*, the State has failed to state a valid claim for relief against the Kialegee Tribal Town under IGRA and a state-tribal gaming compact. The question presented was: "Does *Michigan v. Bay Mills*, 134 S.Ct. 2024 (2014), require dismissal of a State's suit to prevent tribal officers from conducting gaming that would be unlawful under the Indian Gaming Regulatory Act and a state-tribal gaming compact when (1) the suit for declaratory and injunctive relief has been brought against tribal officials - not the tribe; (2) the gaming will occur in Indian country on the land of another tribe; and (3) the state-tribal compact's arbitration provision does not require arbitration before filing suit?"

CONTRIBUTIONS TO THE TRIBAL SUPREME COURT PROJECT

As always, NCAI and NARF welcome general contributions to the Tribal Supreme Court Project. Please send any general contributions to NCAI, attn: Sam Owl, 1516 P Street, NW, Washington, DC 20005.
Please contact us if you have any questions or if we can be of assistance: John Dossett, NCAI General Counsel, 202-255-7042 (jdossett@ncai.org), or Richard Guest, NARF Senior Staff Attorney, 202-785-4166 (richardg@narf.org).