TRIBAL SUPREME COURT PROJECT MEMORANDUM

UPDATE OF RECENT CASES

JULY 12, 2022

The Tribal Supreme Court Project (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 purposes of the Project are to promote greater coordination and 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 efforts to coordinate resources, develop strategy, and prepare briefs, especially when considering a 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 (http://sct.narf.org).

Since the last update, the Court has decided three cases: *Denezpi v. United States* (20-7622) (Double jeopardy), *Ysleta del Sur Pueblo v. Texas* (20-493) (Indian gaming), and *Oklahoma v. Castro-Huerta* (21-429) (State criminal jurisdiction in Indian country). We expect that *Haaland v. Brackeen* (21-376) (Indian Child Welfare Act), will be argued during the Court's October 2022 term. These cases are detailed further below.

INDIAN LAW CASES DECIDED BY THE SUPREME COURT

The Court decided three cases in the October 2021 term:

DENEZPI V. UNITED STATES (20-7622)

Petitioner: Merle Denezpi, an individual Indian
Subject Matter: Double jeopardy
Lower Court Decision: The federal district court denied dismissal of a criminal conviction and the U.S. Court of Appeals for the Tenth Circuit affirmed
Decided: June 13, 2022

This decision allows successive criminal prosecutions of a tribal citizen arising from a single act that violates both tribal law and federal law. The tribal law offense was prosecuted in a Code of Federal Regulations (CFR) Court (also known historically as a Court of Indian Offenses) and the federal law offense was prosecuted in a federal district court. A six-member majority of the Court refused to hold that the U.S. Constitution's Double Jeopardy Clause barred these successive prosecutions. The majority opinion was written by Justice Barrett and joined by Chief Justice Roberts and Justices Thomas, Breyer, Alito, and Kavanaugh.

Justice Gorsuch wrote a dissenting opinion joined in part by Justices Sotomayor and Kagan.

Merle Denzepi is a citizen of the Navajo Nation. As a result of a visit to the Ute Mountain Ute Reservation with a Navajo citizen companion, he was charged by the Bureau of Indian Affairs with assault and battery under the Ute Mountain Ute Tribe's legal code based on an act occurring within the Reservation. The Ute Mountain Ute Tribe does not have a court system; it uses the Southwest Region CFR Court. In the CFR Court, Denzepi pleaded guilty and was sentenced to 140 days imprisonment.

Six months later, a federal grand jury indicted Denzepi on a charge of aggravated sexual abuse in Indian country under the Major Crimes Act, 18 U.S.C. §§ 2241(a)(1), (a)(2), 1153(a). Denzepi moved to dismiss the indictment, arguing that the CFR Court was a federal instrumentality and therefore the Double Jeopardy Clause barred the consecutive prosecution. The district court denied the motion, finding that the CRF Court's power emanated from the sovereignty of the Tribe, not the federal government. After a trial, a jury convicted Denzepi, and he was sentenced to 360 months imprisonment.

Denzepi appealed to the U.S. Court of Appeals for the Tenth Circuit, again arguing that the CFR Court was a federal instrumentality and, consequently, that he was unconstitutionally being subject to Double Jeopardy. The Court of Appeals affirmed, also holding that "ultimate source" of the prosecution in the CFR Court was the Tribe's inherent sovereignty. Like the district court, the Court of Appeals then relied on the "dual sovereignty doctrine." That doctrine holds that a person can be prosecuted successively by separate sovereigns without running afoul of the Double Jeopardy Clause.

The Court granted Denzepi's request to review the case. In ruling against Denzepi, the Court majority agreed with the lower courts that the Double Jeopardy Clause did not bar his subsequent prosecution, but the Court's reasoning differed from that of the courts below. The majority declined to decide whether Denzepi's prosecutions were both federal, or whether one was federal and one was tribal. Indeed, the majority viewed the identity of the prosecutor as largely irrelevant to the Double Jeopardy Clause analysis in this instance.

The Court instead focused on the text of the Double Jeopardy Clause which provides that "No person shall … be subject for the same offence to be twice put in jeopardy of life or limb." The majority held that the offenses for which Denzepi was charged stemmed from two different sources of law: one tribal and the other federal. "Denzepi's single act transgressed two laws: the Ute Mountain Ute's Code's assault and battery ordinance and the United States Code's proscription of aggravated sexual abuse in Indian country….The two laws, defined by separate sovereigns, therefore proscribe separate offenses. Because Denzepi's second prosecution did not place him in jeopardy again 'for the same offence," that prosecution did not violate the Double Jeopardy Clause."

Justice Gorsuch began his dissent by reiterating his opinion that the U.S. Constitution does not require or support the dual sovereignty doctrine. He nevertheless opined that the existence of the doctrine compelled a decision in Denzepi's favor.

In the first part of the dissent, which Justices Sotomayor and Kagan joined, Justice Gorsuch described the CFR Courts as being federal, not tribal, entities. For this he relied on the administrative creation of CFR Courts by the Department of the Interior in the 1880s. He also noted that currently, CFR Courts remain controlled largely by Interior Department regulations.

In the second part of his dissent in which Justices Sotomayor and Kagan did not join, Justice Gorsuch expressed concern for the rights of individuals subject to prosecutions in CFR Courts, which he believes lack needed congressional authorization and constitutional protections. He disagreed with the majority that the sources of the laws in this case were different; he thought both offenses were federal. The prosecution in the CFR Court "was for the violation of federal regulations that assimilated tribal law into federal law." This is a prosecution "for a federal [regulatory] crime, not a tribal one." Justice Gorsuch also disagreed with the majority's conclusion that the identity of the prosecutors was irrelevant to determining this case.

In the third part of the dissent, joined by Justices Sotomayor and Kagan, Justice Gorsuch circled back to the dual sovereignty doctrine. He held that, because the doctrine exists as a rule of law, it should be construed to preclude the consecutive prosecution in this case because, regardless of the source of the law, both prosecutions were federal.

YSLETA DEL SUR PUEBLO V. TEXAS (20-493)

Petitioner: Ysleta del Sur Pueblo
Subject Matter: Indian gaming
Lower Court Decision: The federal district court granted summary judgment in favor of Texas and the U.S. Court of Appeals for the Fifth Circuit affirmed.
Decided: June 15, 2022

Writing for a 5-4 Court, Justice Gorsuch (joined by Justices Breyer, Sotomayor, Kagan, and Barrett) ruled for the Ysleta del Sur Tribe in this case by adopting a reading of the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act, 101 Stat. 666 (1987) (Restoration Act or statute), that limits that statute's prohibition against gaming to only those activities prohibited, rather than regulated, by the State of Texas. Chief Justice Roberts dissented and was joined by Justices Thomas, Alito, and Kavanaugh.

This case arises out of the particular terms of the Restoration Act that acknowledged the Tribes and returned their trust relationship to the federal government from Texas. Texas has disputed the Ysleta del Sur Tribe's authority to offer gaming on its reservation since the 1990s. In 1994, the U.S. Court of Appeals for the Fifth Circuit held that the Restoration Act, and not the Indian Gaming Regulatory Act (IGRA), governed gaming on the Tribe's lands. *Ysleta del Sur Pueblo v. Texas*, 36 F.3d 1325 (5th Cir. 1994) (*Ysleta I*).

In 2016, the Tribe began offering electronic bingo on its reservation. Per the IGRA, bingo is permitted on reservations if a state permits it in other circumstances. 25 U.S.C. § 2710(b)(1)(A). Texas permits bingo for charitable purposes, subject to other regulations. Citing these restrictions and the Restoration Act, Texas sought to stop the Tribe's electronic

bingo operations under *Ysleta I*. The Court of Appeals agreed with Texas, reaffirmed *Ysleta I*, and found the Tribe's bingo operations were impermissible. The Tribe filed a petition for certiorari with the U.S. Supreme Court, and the Court requested the views of the Solicitor General, who supported the Tribe's petition. The Court then granted the Tribe's petition.

The Opinion focuses on the text of the Restoration Act, particularly on the Act's "dichotomy" between "prohibition" and "regulation." The Court held "prohibit" to mean forbid, prevent, or effectively stop an activity, whereas "regulate" means to "fix the time, amount, degree, or rate" of an activity. The Court also notes this plain language reading is consistent with *California v. Cabazon Band of Mission* Indians, 480 U.S. 202 (1987), which held that if a state merely regulates a game's availability, Public Law 280 does not permit a state to enforce its rule on tribal lands.

The Court considered and rejected each of Texas' arguments for interpreting the Restoration Act in the State's favor; it noted that Texas' interpretation would assign "prohibit" a meaning so broad it would relegate the statute's section concerning regulation to more surplusage and would ignore the Court's usual presumption that Congress is aware of Supreme Court precedent, like that of *Cabazon*. The majority devoted significant analysis to the timing of the Restoration Act's enactment shortly after *Cabazon*, finding that Congress's use of the same terminology could not be coincidental: "We do not see how we might fairly read the terms of the Restoration Act except in the same light."

The Court held that Congress's adoption in the Restoration Act of the same terms used in *Cabazon* supported the conclusion that Congress intended *Cabazon*'s prohibitory/regulatory framework to apply to the Tribe. Here, Texas's law is a regulation, not a prohibition, because Texas concedes it does not forbid bingo, but rather allows the game subject to fixed rules. Thus, bingo is not prohibited on tribal lands in Texas. As further support for this reading, the Court contrasted the Restoration Act with statutes that expressly applied state regulatory laws to the Wampanoag Tribe of Gay Head (Aquinnah) and the Catawba Indian Nation. "That Congress chose to use the language of *Cabazon* in different ways in three statutes closely related in time and subject matter seems to us too much to ignore." Although at oral argument the Court spent some time discussing the potential application of the Indian canon of construction that statutes enacted for the benefit of Indian should be liberally construed, the Court in a footnote stated that the meaning of the Restoration Act is so clear as to make it unnecessary to resort to the Indian canon.

The majority expressed skepticism of Texas's public policy arguments that lower courts—which remain the arbiters of disputes between the Tribe and State—would struggle to distinguish between "prohibitions" and "regulations." "It is not [the Court's] place to question whether Congress adopted the wisest or most workable policy, only to discern and apply the policy it did adopt." Additionally, the Court noted, the current scheme defended by Texas had also led to "a quarter century of confusion and dispute."

Based on its interpretation of the Restoration Act, the Court vacated the Court of Appeal's judgment and remanded the case for further proceedings consistent with the opinion.

The dissent would read the Restoration Act to allow Texas to apply all of its gaming rules to the Tribe's reservation, highlighting the statute's use of "*All* gaming activities" and "*any* violation," and rejecting the majority's textual interpretation arguments. The dissent noted the text of the relevant Restoration Act section differs from the statutory language of Public Law 280, calling into question whether the use of the same terms is meaningful.

Chief Justice Roberts relied on his understanding that the Tribe obtained federal trust status only by agreeing that Texas's gambling laws would apply on its reservation. Specifically, the statute refers to the Tribe's "request" in Tribal Resolution No. TC-02-86 (Mar. 12, 1986) (Resolution), which stated the Tribe had "[n]o interest in conducting high stakes bingo or other gambling operations on its reservation." The dissent asserted that Congress passed the Restoration Act in reliance on this Resolution and, therefore, the Act cannot be read now to permit gaming.

The majority rejected this argument, noting Congress knows how to adopt the terms of another resolution when it wishes to, and highlighting the fact that the Resolution was adopted pre-*Cabazon*. Post-*Cabazon*, the majority suggests, the Tribe was in a different bargaining position, rendering the dissent's reliance on the Resolution questionable. The dissent dismissed this as an unfounded hypothetical, and cited legislative history it claimed offered support to its interpretation—that the Tribe traded gaming for federal recognition. Overall, the dispute between the majority and dissent hinged on their textual readings of the Restoration Act, with the majority of the Court siding with the Tribe's interpretation.

OKLAHOMA V. CASTRO-HUERTA (21-429)

Petitioner: State of Oklahoma
Subject Matter: State criminal jurisdiction in Indian country
Lower Court Decision: A state court conviction of a non-Indian for a crime committed in Indian country against an Indian was reversed by the Oklahoma Court of Criminal Appeals for lack of jurisdiction
Decided: June 29, 2022

This case for the first time holds that the federal government and states have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. Writing for a 5-4 Court, Justice Kavanaugh (joined by Chief Justice Roberts and Justices Thomas, Alito, and Barrett) based this holding on a reading of the U.S. Constitution that allows states to exercise jurisdiction in Indian country unless explicitly preempted by Congress and an application of the balancing test from *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980). Justice Gorsuch dissented joined by Justices Breyer, Sotomayor, and Kagan.

In 2015, Victor Manuel Castro-Huerta, a non-Indian, was convicted by the State of Oklahoma of neglecting his stepdaughter, a Cherokee citizen. Following the U.S. Supreme Court's decision in *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020), Castro-Huerta challenged his conviction on appeal, asserting that Oklahoma did not have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. The Oklahoma Court of Criminal Appeals agreed and vacated his conviction. Oklahoma appealed

this decision to the U.S. Supreme Court, and also asked the Court to revisit its ruling in *McGirt*.

The Court expressly declined to revisit *McGirt* but agreed to consider whether Oklahoma possesses concurrent criminal jurisdiction. In ruling for Oklahoma, the Court stated the petition was granted following "the sudden significance of this jurisdictional question for public safety and the criminal justice system in Oklahoma."

The majority opinion starts from the premise that "the Constitution allows a State to exercise jurisdiction in Indian country. Indian country is part of the State, not separate from the State." Relying on the Tenth Amendment to the U.S. Constitution, the majority held state jurisdiction may be preempted by federal law, but, unless explicitly preempted, state jurisdiction in Indian country is inherent to state sovereignty. In so doing, the opinion explicitly rejected the holding of *Worcester v. Georgia*, 31 U.S. 515 (1832) that the "Cherokee Nation 'is a distinct community occupying its own territory'" noting that "general notion" has "yielded to closer analysis," citing *Organized Village of Kake v. Egan*, 369 U.S. 60, 72 (1965). Instead, the Court stated, "[s]ince the latter half of the 1800s, the Court has consistently and explicitly held that Indian reservations are "part of the surrounding state" and therefore are subject to the State's jurisdiction.

Based on this premise, the Court analyzed whether federal law preempted Oklahoma's jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country. The Court concluded that neither the General Crimes Act, 18 U.S.C. § 1162, nor Public Law 280, 67 Stat. 588, preempt "preexisting or otherwise lawfully assumed state authority[.]" The General Crimes Act, the Court reasoned, extends federal law to Indian country but leaves "untouched the background principle of state jurisdiction over crimes committed within the State[.]" According to the majority, although the General Crimes Act extends federal law into Indian country similar to its application in a federal enclave, it does not equate Indian country to a federal enclave for *jurisdictional* purposes, and therefore Indian country is subject to concurrent federal and state jurisdiction in this context.

The majority rejected Castro-Huerta's arguments analogizing the text of the General Crimes Act to the Major Crimes Act, 18 U.S.C. § 1153, which grants the federal government exclusive jurisdiction to prosecute certain crimes, pointing to differences in the text of the two statutes. Castro-Huerta also argued Congress implicitly intended the General Crimes Act to preempt state law because when the original versions of the Act were passed, Indian country was separate from the states. The Court declined this reading relying in part on its reading of *Worcester* and *United States v. McBratney*, 105 U.S. 621 (1882)—that after the 1800s Indian country became part of the relevant State's territory. The Court noted that Congress did not thereafter alter the General Crimes Act to make federal criminal jurisdiction exclusive. In addition, the Court rejected Castro-Huerta's argument that Congress ratified dicta regarding state jurisdiction in *Williams v. United States*, 327 U.S. 711 (1946) because the ratification canon does not apply to dicta and cannot override clear statutory language.

Castro-Huerta also argued that state jurisdiction was preempted by Public Law 280; but the majority disagreed, relying in part on text from *Three Affiliated Tribes of Fort Berthold*

Reservation v. Wold Engineering, P.C., 467 U.S. 138, 150 (1984): "Nothing in the language or legislative history of Pub. L. 280 indicates that it was meant to divest States of pre-existing and otherwise lawfully assumed jurisdiction." Castro-Huerta further argued that if states had concurrent jurisdiction, Public Law 280 in its entirety would be surplusage; but the Court rejected that argument reasoning that Public Law 280 provided states broad criminal jurisdiction over crimes committed by Indians in Indian country.

After concluding that preexisting state jurisdiction had not been preempted by federal law, the Court turned to its application of the *Bracker* balancing test because preemption "may still occur if the exercise of state jurisdiction would unlawfully infringe upon tribal self-government." Under this test, the Court considered tribal interests, federal interests, and state interests, concluding that the three weighed against preemption. The Court reasoned: (1) tribal self-governance was not implicated because tribes generally lack criminal jurisdiction to prosecute crimes committed by non-Indians even when those crimes are committed in Indian country; (2) federal interests were not harmed because federal jurisdiction is not being ousted under the scheme; and (3) the State has a strong sovereign interest in protecting all crime victims and to find otherwise would be to relegate Indian victims to second-class citizen status. Accordingly, the Court reversed the judgment of the Oklahoma Court of Criminal Appeals and remanded the case for further proceedings.

Justice Gorsuch in dissent disagreed with the majority's characterization of the historical background and its reading of the relevant statutes asserting, "[t]ruly, a more ahistorical and mistaken statement of Indian law would be hard to fathom." In assessing the majority's interpretation of the General Crimes Act and Public Law 280, the dissent asserts, "[t]he Court's suggestion that Oklahoma enjoys 'inherent' authority to try crimes against Native Americans within the Cherokee Reservation makes a mockery of all of Congress's work from 1834 to 1968."

The dissent begins its reasoning with *Worcester*, which the dissent would read as having "established a foundational rule that would persist for over 200 years: Native American Tribes retain their sovereignty unless and until Congress ordains otherwise." Based on this backdrop, the dissent starts from an opposite premise, that—until granted jurisdiction by Congress—states do not have inherent jurisdiction to prosecute crimes by or against Indians in Indian country. Therefore, Justice Gorsuch would read *Williams v. Lee*, 358 U.S. 217 (1959), and other Supreme Court precedent, including *Denezpi v. United States*, 596 U.S.__ (2022), to stand for the proposition that states have no authority to prosecute crimes by or against Indians on Indian lands until they are explicitly granted that authority.

Tracing the history of the Cherokee, the dissent points out that before, and as held in *Worcester*, only the federal government possessed the power to manage relations with the Tribe, and that the General Crimes Act of 1834 was enacted in that context. Justice Gorsuch would read the Act in light of the dissent's proposed starting point, that states lack jurisdiction, and would find the Act did nothing to confer jurisdiction on states.

Further, the dissent would read the Treaty of New Echota to prohibit state jurisdiction over tribal members. In line with that Treaty, per the dissent, the Oklahoma Enabling Act of 1906

required Oklahoma to "forever disclaim all right and title in or to" all of Indian country within its borders. 34 Stat. 270.

Justice Gorsuch criticizes Oklahoma's use of this case as an effort to skirt the requirements of Public Law 280, including the need to obtain tribal consent as well as the need to remove state-law barriers to jurisdiction. The dissent would view Public Law 280 as a mechanism for states to obtain jurisdiction in Indian country, not that any state jurisdiction predated Public Law 280. The dissent's position is that "Congress has authorized the application of state criminal law on tribal lands for offenses committed by or against Native Americans only in very limited circumstances."

With regard to the *Bracker* balancing test, Justice Gorsuch rejected its application in this context, because in *Bracker* the Court began from the presumption that the state did not have jurisdiction. "[I]f Arizona [in *Bracker*] could not overcome that backdrop rule because it could not point to clear federal statutory language authorizing its comparatively minor civil tax, it is unfathomable how Oklahoma might overcome that rule here." Even if the *Bracker* balancing test applied, the dissent would weigh the state, federal, and tribal interests differently and therefore rule in favor of Castro-Huerta. The dissent suggested the majority's holding was motivated by the alleged problems created by *McGirt* and pushed back on this narrative by citing federal officials' statements that the tribal, state, and federal governments have responded to the changed jurisdictional landscape.

In assessing the import of the majority opinion, the dissent suggested that Oklahoma's Constitution, state statutes, and judicial decisions "may stand as independent barriers to the assumption of state jurisdiction[.]" Justice Gorsuch also notes that the decision does not upset the rule that states cannot prosecute crimes by Indians on tribal lands without clear congressional authorization.

The dissent further suggests that the outcome of the *Bracker* balancing test may be different for different Tribes based in part on their separate treaties. Finally, the dissent calls on Congress to consider a legislative fix to "remind" the states that, unless they comply with the requirements of Public Law 280, they lack criminal jurisdiction over crimes by or against Indians in Indian country.

PETITIONS RELATED TO OKLAHOMA V. CASTRO-HUERTA

Petitioner: State of Oklahoma
Petitions Filed: August 21, 2021 – January 26, 2022
Subject Matter: State criminal jurisdiction in Indian country
Lower Court Decisions: The Oklahoma Court of Criminal Appeals applied *McGirt* to vacate all of the respondents' criminal convictions
Recent Activity: Lead case, *Oklahoma v. Castro-Huerta*, certiorari granted

After the Court decided *McGirt v. Oklahoma* (18-9526) in 2020, Oklahoma filed more than sixty petitions seeking review of Oklahoma Court of Criminal Appeals decisions vacating convictions of people convicted of crimes in state court that were subject to federal jurisdiction under either the Major Crimes Act or the Indian Country Crimes Act. All early petitions

urged the court to reverse *McGirt* and many petitions argued that the State had various criminal jurisdiction in Indian country. The sixty-three petitions related to *McGirt* that the Court denied are listed at the end of this report.

In granting certiorari in *Oklahoma v. Castro-Huerta*, the Court expressly declined to revisit *McGirt* but agreed to consider whether the State had criminal jurisdiction over non-Indians who commit crimes against Indians in Indian country. The eleven petitions filed after the granting of certiorari in *Castro-Huerta* raised only the state criminal jurisdiction issue.

On June 30, 2022, the day after it issued its *Castro-Huerta* decision, the Court granted certiorari in these cases, vacated and remanded the cases to the Oklahoma Court of Criminal Appeals for reconsideration in light of *Castro-Huerta*: *Oklahoma v. Williams* (21-265), *Oklahoma v. Jones* (21-451), *Oklahoma v. McDaniel* (21-485), *Oklahoma v. Miller* (21-643), *Oklahoma v. Coffman* (21-772), *Oklahoma v. Roth* (21-914), *Oklahoma v. Purdom* (21-959), *Oklahoma v. White* (21-1058), *Oklahoma v. Mize* (21-274), *Oklahoma v. Bailey* ((21-960), and *Oklahoma v. Bragg* (21-1009).

PETITIONS FOR A WRIT OF CERTIORARI GRANTED

BRACKEEN V. HAALAND (21-380); TEXAS V. HAALAND (21-378); CHEROKEE NATION V. BRACKEEN (21-377); HAALAND V. BRACKEEN (21-376)

Petitioners: Individual non-Indians, State of Texas, United States, and four Indian tribes
Petitions Filed: September 3, 2021
Subject Matter: Indian Child Welfare Act
Lower Court Decision: The U.S. Court of Appeals for the Fifth Circuit affirmed in part, and reversed in part, the district court's conclusions that the Indian Child Welfare Act is unconstitutional.
Recent Activity: Petitions granted February 28, 2022; Opening Briefs filed May 26, 2022
Upcoming Activity: Response Briefs due August 5, 2022

A Texas couple wishing to adopt an Indian child, and the State of Texas, filed suit in federal court against the United States and several federal agencies and officers claiming that the Indian Child Welfare Act ("ICWA") is unconstitutional. They were joined by additional individual plaintiffs and the States of Louisiana and Indiana. The Cherokee Nation, Oneida Nation, Quinault Indian Nation, and Morongo Band of Mission Indians (the Four Tribes) intervened as defendants, and the Navajo Nation intervened at the appellate stage. The federal district court held that much of ICWA was unconstitutional, but the U.S. Court of Appeals for the Fifth Circuit, en banc, reversed much of that decision. However, the Court of Appeals did affirm the district court on some holdings that specific sections of ICWA violated the U.S. Constitution's Fifth Amendment's equal protection guarantee and the Tenth Amendment's anti-commandeering principle. Specifically, the Court of Appeals by an equally divided court affirmed the district court's holding that ICWA's preference for placing Indian children with "other Indian families" (ICWA's third adoptive preference, after family

placement and placement with the child's tribe) and the foster care preference for licensed Indian foster homes violated equal protection. The Court of Appeals also concluded that the Tenth Amendment's anti-commandeering principle was violated by ICWA's "active efforts," "qualified expert witness," and record keeping requirements, and an equally divided court affirmed the district court's holdings that placement preferences and notice requirements would violate the anti-commandeering principle if applied to state agencies. Finally, the Court of Appeals held that certain provisions of the ICWA Final Rule, specifically those provisions that the district court had found to be unconstitutional, violated the Administrative Procedure Act (APA).

The United States, the Four Tribes, Texas, and the non-Indian indiviudals each filed petitions for certiorari. The United States and the Four Tribes seek review of the Court of Appeal's finding of unconstitutionality based on Equal Protection and anti-commandeering and the corresponding findings of APA violation, and assert that the individual plaintiffs lack standing. In its petition, Texas asserts that Congress acted beyond its Indian Commerce Clause power in enacting ICWA and that it creates a race-based child custody system in violation of the Equal Protection Clause. Texas claims that ICWA violates the anti-commandeering principle and ICWA's implementing regulations violate the nondelegation doctrine by allowing individual tribes to alter the placement preferences enacted by Congress. The individual plaintiffs focus their petition more narrowly on equal protection and anti-commandeering claims.

PETITIONS FOR A WRIT OF CERTIORARI PENDING

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:

ACRES V. MARSTON (21-1480)

Petitioner: James Acres, a non-Indian individual
Petition Filed: May 20, 2022
Subject Matter: Tribal official personal immunity from suit
Lower Court Decision: Court of Appeal of California held that attorneys and their staff working on behalf of a tribal casino were entitled to personal immunity from suit for various civil claims
Recent Activity: Waivers of response submitted June 30, 2022
Upcoming Activity:

James Acres was sued in the Tribal Court of the Blue Lake Rancheria by the Blue Lake Casino, a commercial enterprise of the Rancheria. Acres took issue with the fact that the Tribal Court judge also worked with a private law firm that served as attorneys for the Casino. After Acres sued in federal court to enjoin the tribal court proceedings, the Tribal Court judge recused himself and was replaced. The replacement judge granted summary judgment to Acres. Acres then sued the tribal attorneys and their staff in state court alleging wrongful use of civil proceedings and breach of fiduciary duty. The California Court of Appeal held that the tribal attorneys and their staff were entitled to absolute personal immunity from the claims arising from their work on behalf of the Casino.

ARIZONA V. NAVAJO NATION (21-1484)

Petitioners: State of Arizona, State of Nevada, State of Colorado, and the Metropolitan Water District of California
Petition Filed: May 17, 2022
Subject Matter: Water rights
Lower Court Decision: The U.S. Court of Appeals for the Ninth Circuit
Recent Activity: Waivers of response by Navajo Nation and Arizona Power Authority
Upcoming Activity: Briefs in opposition due July 25, 2022

The Navajo Nation (Tribe) sued the federal government alleging violations of the National Environmental Policy Act (NEPA), 42 U.S.C. Sec. 4321, et seq. and breach of trust regarding management of the Colorado River. The district court dismissed the Tribe's NEPA claims for lack of standing and the breach of trust claims based on sovereign immunity from suit. The U.S. Court of Appeals for the Ninth Circuit affirmed the dismissal of the NEPA claims but reversed the breach of trust dismissal and remanded to the district court. The Tribe sought to amend its complaint but the district court denied the motion to amend and dismissed the action for lack of jurisdiction. The Ninth Circuit reversed, holding that the Tribe's proposed amended complaint properly states a breach of trust claim for water mismanagement.

BECKER V. UTE INDIAN TRIBE OF THE UINTAH AND OURAY RESERVATION (21-1340)

Petitioner: Lynn Becker, a non-Indian individual
Petition Filed: April 6, 2022
Subject Matter: Tribal court exhaustion and jurisdiction; tribal sovereign immunity from suit
Lower Court Decision: The U.S. Court of Appeals for the Tenth Circuit
Recent Activity: Brief in Opposition filed June 10, 2022; Reply Brief filed June 28, 2022
Upcoming Activity: Distributed for Conference of September 28, 2022

This long running case arises from a payment dispute under a contract that Lynn Becker had with the Uintah and Ouray Tribe to develop and market the Tribe's oil and natural gas resources. Becker filed claims against the Tribe in federal court and in state court, arguing that in the contract the Tribe waived tribal exhaustion, tribal jurisdiction, and tribal immunity from suit over claims under the contract. That federal court action was dismissed for lack of jurisdiction. The Tribe filed a federal court action to enjoin 3-jduge the state action, and the state court action was stayed. The Tribe then filed an action in Tribal Court, and Becker sued in federal court to enjoin the tribal court action. In Becker's federal action, the federal district court held that the Tribe had waived exhaustion and consented to state court jurisdiction but the U.S. Court of Appeals for the Tenth Circuit reversed and held that tribal exhaustion was required. In the Tribe's federal action, a majority of a different 3-judge panel of the Tenth Circuit held that regardless of the contract, state court jurisdiction over the dispute was improper because the Tribe had never consented to general state jurisdiction under Public Law 280, 25 U.S.C. Secs. 1332 and 1336.

HALVORSON V. HENNEPIN COUNTY CHILDREN'S SERVICES DEPARTMENT (21-1471)
Petitioner: Denise and Henry Halvorson, non-Indian individuals
Petition Filed: March 30, 2022
Subject Matter: Indian Child Welfare Act; state court transfers of foster care proceedings to tribal court
Lower Court Decision: Court of Appeals of Minnesota
Recent Activity: Waivers of response submitted June 2, 2022, and June 22, 2022
Upcoming Activity:

Denise and Henry Halvorson were the foster-adoptive parents to an Indian child. A state district court ultimately determined that under the Indian Child Welfare Act, the child's placement determination should be determined in tribal court and transferred the case to a tribal court. The Minnesota Court of Appeals affirmed.

LOPEZ V. QUAEMPTS (21-1544)
Petitioner: Cynthia Lopez, a non-Indian individual
Petition Filed: June 7, 2022
Subject Matter: Tribal sovereign immunity from suit in tort actions
Lower Court Decision: Court of Appeal of California
Recent Activity:
Upcoming Activity: Briefs in opposition due April 14, 2022

A non-Indian individual employed by the Confederated Tribes of the Umatilla Indian Reservation sued the Tribes and tribal employees for fraud, negligence, and unfair business practices. The California Court of Appeal affirmed that tribal sovereign immunity barred these claims and that neither Congress nor the Tribes had waived the Tribes' immunity from the claims. The individual argues that the Tribes waived their immunity from suit because they ratified the alleged misconduct of the tribal employees and the Tribes therefore are vicariously liable for the employees' actions.

MILL BAY MEMBERS ASSOCIATION V. UNITED STATES (21-1542)
Petitioners: Mill Bay Members Association, a Washington State non-profit corporation, Paul Grondal, and Wapato Heritage, LLC, a Washington State limited liability company
Petition Filed: June 7, 2022
Subject Matter: Equitable estoppel against the federal government as trustee for Indian lands; Trust status of allotted land at the Confederated Tribes of the Colville Reservation
Lower Court Decision: The U.S. Court of Appeals for the Ninth Circuit held that the land was held in trust and that when the federal government as trustee sues for trespass to the land the government is immune from the equitable estoppel doctrine
Recent Activity: Waiver of right to respond filed by United States July 5, 2022
Upcoming Activity:

The Bureau of Indian Affairs (BIA) sued entities and individuals who developed and occupied a Recreational Vehicle Park on allotted land under a lease for trespass after the lease expired and was not renewed. A district court trial resulted in a $1.4 million judgment against the entities and individuals. The Court of Appeals affirmed that the land was held in trust, the

BIA could sue for trespass to and ejectment from the land, and the defense of equitable estoppel is not available against the federal government when the government sues as trustee for Indian lands.

OKLAHOMA V. SAM (21-1214)

Petitioner: State of Oklahoma
Petition Filed: March 2, 2022
Subject Matter: Determination of Indian under the Major Crimes Act, 18 U.S.C. Sec. 1153
Lower Court Decision: Court of Criminal Appeals of Oklahoma affirmed the dismissal of an individual's convictions by the State of Oklahoma on the grounds that the individual was an Indian not subject to state criminal jurisdiction.
Recent Activity: Brief in Opposition filed May 10, 2022; Reply Brief filed May 25, 2022
Upcoming Activity: To be rescheduled for Conference

Emmitt Sam was convicted in state court of first-degree murder and robbery with a firearm and was sentenced to life imprisonment for the murder and two sentences of seven years imprisonment for the robbery convictions. Post-conviction, the issue arose whether Sam was an Indian, at least for purposes of the Major Crimes Act, 18 U.S.C. Sec. 1153. The state district court ultimately determined that he was an Indian and dismissed the convictions, and the Court of Criminal Appeals affirmed.

OKLAHOMA V. SIMS (21-1102)

Petitioner: State of Oklahoma
Petition Filed: February 4, 2022
Subject Matter: State criminal jurisdiction over non-Indians who commit crimes against a corpse in Indian country
Lower Court Decision: Court of Criminal Appeals of Oklahoma reversed an non-Indian's convictions by the State of Oklahoma on the grounds that the victim was an Indian.
Recent Activity: Brief in Opposition filed April 25, 2022
Upcoming Activity: Distributed for Conference of September 28, 2022.

Shaynna Sims, a non-Indian, was convicted in state court of knowingly concealing stolen property, first-degree burglary, unauthorized dissection, disturbing or interrupting a funeral and unlawful removal of a body part from a deceased. She was sentenced to seven years imprisonment. Post-conviction, an issue arose whether the victim was an Indian. The State argued that the crimes were against a corpse and a corpse is not an Indian. The Oklahoma Court of Criminal Appeals disagreed, holding that a crime against a corpse is not a victimless crime, and reversing Sims' convictions.

OKLAHOMA V. WADKINS (21-1193)

Petitioner: State of Oklahoma
Petition Filed: February 25, 2022
Subject Matter: Determination of Indian under the Major Crimes Act, 18 U.S.C. Sec. 1153
Lower Court Decision: Court of Criminal Appeals of Oklahoma reversed an individual's convictions by the State of Oklahoma on the grounds that the individual was an Indian not subject to state criminal jurisdiction.

Recent Activity: Brief in Opposition filed May 10, 2022; Reply Brief filed May 25, 2022
Upcoming Activity: To be rescheduled for Conference

Robert Wadkins was convicted in state court of first-degree rape and of kidnapping. He was sentenced to forty years imprisonment. Post-conviction, the issue arose whether Wadkins was an Indian, at least for purposes of the Major Crimes Act, 18 U.S.C. Sec. 1153. The state district court ultimately determined that he was not an Indian. The Oklahoma Court of Criminal Appeals reversed and held that Wadkins was an Indian, at least for purposes of the Major Crimes Act, 18 U.S.C. Sec. 1153.

PETITIONS FOR A WRIT OF CERTIORARI DENIED

ACRES BONUSING, INC. V. MARSTON (21-1255)

Petitioner: Acres Bonusing, Inc., a non-Indian company
Petition Filed: March 14, 2022
Subject Matter: Judicial immunity from suit
Lower Court Decision: The federal district court ruled for the Tribal parties and the U.S. Court of Appeals for the Ninth Circuit affirmed
Recent Activity: Petition denied on June 21, 2022

Acres Bonusing, Inc., a non-Indian company was sued in the Tribal Court of the Blue Lake Rancheria by the Blue Lake Casino, a commercial enterprise of the Rancheria. Acres Bonusing took issue with the fact that the Tribal Court judge also worked with a private law firm that served as attorneys for the Casino. After Acres sued in federal court to enjoin the tribal court proceedings, the Tribal Court judge recused himself and was replaced. The replacement judge granted summary judgment to Acres. Acres Bonusing then brought another action in federal court alleging various claims against the original Tribal Court judge and the judge's staff. The federal district court held that the claims were barred by sovereign and judicial immunity from suit. The U.S. Court of Appeals for the Ninth Circuit reversed on the sovereign immunity from suit defense but upheld the judicial immunity from suit defense.

ADAMS V. DODGE (21-1451)

Petitioner: Elile Adams, a non-member Indian
Petition Filed: May 13, 2022
Subject Matter: Indian Civil Rights Act habeas corpus
Lower Court Decision: The federal district court dismissed the habeas corpus petition and the U.S. Court of Appeals for the Ninth Circuit affirmed
Recent Activity: Petition denied on June 21, 2022

Elile Adams, a non-member Indian, was charged with criminal custodial interference by the Nooksack Tribal Police. She then was arrested and imprisoned for failing to appear before the Tribal Court. Adams filed a federal court petition for a writ of habeas corpus, which the federal court dismissed. The U.S. Court of Appeals for the Ninth Circuit affirmed the dismissal on the ground that tribal remedies must be but had not been exhausted.

ALEXANDER V. GWITCHYAA ZHEE CORP. (21-1393)

Petitioners: Clarence and Demetrie Alexander
Petition Filed: April 29, 2022
Subject Matter: Alaska Native Claims Settlement Act
Lower Court Decision: The federal district court granted summary judgment in favor of the Alaska Native Village Corporation and tribal government and the U.S. Court of Appeals for the Ninth Circuit affirmed
Recent Activity: Petition denied on June 27, 2022

This case concerns land conveyed to a Gwitchyaa Zhee Village Corporation (Village Corporation) pursuant to the Alaska Native Claims Settlement Act (Act). To comply with the Act's Section 14(c)(1) reconveyance obligations, the Village Corporation prepared survey drawings and maps. Clarence and Demetrie Alexander (the Alexanders) are Alaska Natives who have approved reconveyance claims. The Alexanders contend that the survey prepared by the Village Corporation improperly conveys portions of their parcels to the Gwitchyaa Zhee Tribe (Tribe). The Village Corporation and Tribe sued to eject the Alexanders from the disputed areas. The federal district court concluded that the Alexanders had no legal estate in the disputed areas because any challenges to the boundaries were barred by the statute of limitations, and the Alexanders did not have a valid adverse possession claim. The U.S. Court of Appeals for the Ninth Circuit affirmed.

ALBRECHT V. RIVERSIDE COUNTY (21-1298)

Petitioners: Non-Indian lessees of tribal and Indian trust land
Petition Filed: March 28, 2022
Subject Matter: State taxation in Indian country
Lower Court Decision: The state trial court ruled for the County and the Court of Appeal of California affirmed
Recent Activity: Petition denied on May 16, 2022

Several non-Indian lessees of tribal and individual Indian trust lands challenged the validity of possessory interest taxes imposed by a local county government. After a bench trial, the state trial court ruled for the County. The California Court of Appeal affirmed, concluding that the taxes were not expressly preempted by the Indian Reorganization Act, nor were they impliedly preempted under tests developed in *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136 (1980), and *Williams v. Lee*, 358 U.S. 217 (1959).

BIG SANDY RANCHERIA ENTERPRISES V. BONTA (21-678)

Petitioner: Big Sandy Rancheria Enterprises, a tribally-owned company
Petition Filed: November 8, 2021
Subject Matter: Preemption of state regulation
Lower Court Decision: The federal district court dismissed the suit and the U.S> Court of Appeals for the Ninth Circuit affirmed
Recent Activity: Petition denied on February 22, 2022

Big Sandy Rancheria Enterprises, an Indian Reorganization Act Section 17 corporation owned by the Big Sandy Rancheria of Western Mono Indians (Tribe), sued the State of

California, seeking a declaration that California's Complementary Statute, Licensing Act, and Cigarette Tax Law were preempted by federal law and tribal sovereignty, and an injunction preventing the State from enforcing those laws against it. The federal district court dismissed for failure to state a claim and for lack of subject matter jurisdiction. The U.S. Court of Appeals for the Ninth Circuit affirmed, holding that the Tribe's corporation was not an "Indian tribe or band" within the meaning of the exception to Tax Injunction Act conferring federal jurisdiction over claims brought by an Indian tribe and that California was not preempted from regulating the tribal corporation's off-reservation cigarette sales. It also concluded that the Indian Trader Statutes did not preempt the State from regulating the corporation's off-reservation cigarette sales.

CABALLERO V. UNITED STATES (21-1048)

Petitioner: Cesar Caballero
Petition Filed: January 27, 2022
Subject Matter: Federal recognition
Lower Court Decision: The federal district court dismissed counter-claims against a Tribe and the U.S. Court of Appeals for the Ninth Circuit affirmed.
Recent Activity: Petition denied on March 28, 2022

The Shingle Springs Band of Miwok Indians (Tribe) sued Cesar Caballero, alleging misappropriation of the Tribe's name in violation of the Lanham Act. Mr. Caballero made counter-claims premised on the assertion that the Tribe's federal recognition was improper. The federal district court dismissed these counter-claims as raising non-justiciable political questions. The U.S. Court of Appeals for the Ninth Circuit affirmed.

CLAY V. COMMISSIONER OF INTERNAL REVENUE (21-237)

Petitioners: James Clay and Audrey Osceola, tribal citizens
Petition Filed: August 13, 2021
Subject Matter: Federal income tax
Lower Court Decision: The U.S. Tax Court ruled against the taxpayers and the U.S. Court of Appeals for the Eleventh Circuit affirmed
Recent Activity: Petition denied on October 12, 2021

James Clay and Audrey Osceola are citizens of the Miccosukee Tribe of Indians of Florida (Tribe). They received per capita payments from the Tribe and did not include the amounts of those payments in their gross income for federal income tax purposes. The Internal Revenue Service audited them and issued notices of deficiency for several tax years. Clay and Osceola challenged the notices in the U.S. Tax Court, claiming that the Miccosukee Settlement Act exempted the payments from their gross income, or, alternatively, that income derived from tribal lands is tax exempt. The Tax Court rejected these arguments. The U.S. Court of Appeals for the Eleventh Circuit affirmed, concluding that the income at issue was derived from the Tribe's gaming revenue and not from land leases. It also held that the Settlement Act did not exempt income derived from gaming revenue, but only income derived from the specific transactions addressed by the Settlement Act.

DAKOTA ACCESS V. STANDING ROCK SIOUX TRIBE (21-560)

Petitioner: Dakota Access, a non-Indian corporation
Petition Filed: September 20, 2021
Subject Matter: National Environmental Policy Act; Treaty rights
Lower Court Decision: The federal district court ruled for the Tribes and the U.S. Court of Appeals for the District of Columbia largely affirmed
Recent Activity: Petition denied on February 22, 2022

This case arises from the U.S. Army Corps of Engineers' granting of an easement to construct a section of the Dakota Access Pipeline under Lake Oahe, which was created by damming the Missouri River upstream from the Standing Rock Sioux Reservation. Four tribes challenged the decision, asserting, among other things, that the Army Corps violated the National Environmental Policy Act by not preparing and environmental impact statement (EIS) prior to granting the easement. The federal district court held that the Corps' analysis of the oil spill risk was inadequate and required the Corps to prepare an EIS. The district court also held that this error necessitated vacating the easement issued by the Corps notwithstanding the fact that by this time the pipeline had been installed beneath the Lake and was operating. The U.S. Court of Appeals affirmed these holdings but reversed the district court's order to drain the pipeline of oil, instead remanding for consideration of whether certain factors necessitating injunctive relief were present.

GRAND RIVER ENTERPRISES SIX NATIONS V. BOUGHTON (21-279)

Petitioner: Canadian corporation owned by Canadian First Nations members
Petition Filed: August 23, 2021
Subject Matter: Constitutional law
Lower Court Decision: The federal district court dismissed the suit and the U.S. Court of Appeals for the Second Circuit affirmed
Recent Activity: Petition denied on January 10, 2022

Grand River Enterprises Six Nations ("GRE") is a Canadian corporation owned by Canadian First Nations members. GRE sued the Commissioner of the Connecticut Department of Revenue Services, claiming that the reporting requirements it imposes on certain tobacco manufacturers violates the U.S. Constitution's Commerce Clause, the Supremacy Clause, and the Due Process Clause. The federal district court granted the State's motion to dismiss, and the U.S. Court of Appeals for the Second Circuit affirmed.

HAGGERTY V. UNITED STATES (21-516)

Petitioner: Justin Haggerty
Petition Filed: October 4, 2021
Subject Matter: Federal criminal jurisdiction
Lower Court Decision: An individual was convicted in federal district court and the U.S. Court of Appeals for the Fifth Circuit affirmed the conviction
Recent Activity: Petition denied on January 10, 2022

Pursuant to 18 U.S.C. Sec. 1152, Justin Haggerty was convicted in federal court of

vandalizing tribal property on the Tigua Indian Reservation. Section 1152 extends federal criminal jurisdiction into Indian country, except for those crimes where there is both an Indian perpetrator and Indian victim. He pled not guilty and moved to dismiss the indictment. When his motion was denied, he stipulated to facts that later became the basis of his conviction. Neither the indictment nor the stipulation alleged any facts about whether or not he was Indian. Mr. Haggerty argued that under Section 1152, the government must plead and prove that both the perpetrator and victim are Indians. The U.S. Court of Appeals for the Fifth Circuit rejected this argument and held that this is an affirmative defense, which must be proven by the defendant.

HAWKINS V. HAALAND (21-520)

Petitioners: Several private landowners
Petition Filed: October 8, 2021
Subject Matter: Water rights
Lower Court Decision: The federal district court dismissed the suit and the U.S. Court of Appeals for the District of Columbia affirmed
Recent Activity: Petition denied on March 21, 2022

The landowners are ranchers who use water from the upper Klamath River basin in Oregon, where the Klamath Tribes (Tribes) possess superior water rights to support their hunting, fishing, trapping and gathering rights reserved to them under an 1864 Treaty with the United States. The Tribes entered into a Protocol Agreement with the United States regarding how and when water calls will be made. The landowners challenged the Agreement's validity, asserting that it unlawfully delegates to the Tribes' the United States' ability, as the Tribes' trustee, to make water calls. The federal district court dismissed the suit. On appeal, the U.S. Court of Appeals for the District of Columbia held that the Agreement does not delegate federal authority but recognizes the Tribes' own authority to control their water rights. Further, because federal law does not require the United States to concur in the Tribes' enforcement of their water rights, the Court of Appeals determined that invalidating the Agreement would not remedy any of the landowners' alleged injuries and consequently, the landowners failed to establish standing to bring the suit.

KLICKITAT COUNTY V. CONFEDERATED TRIBES OF THE YAKAMA NATION (21-906)

Petitioner: Klickitat County, Washington
Petition Filed: December 20, 2021
Subject Matter: Reservation boundaries
Lower Court Decision: The federal district court issued declaratory judgment in favor of the Tribes and the U.S. Court of Appeals for the Ninth Circuit affirmed
Recent Activity: Petition denied on April 18, 2022

The Confederated Tribes and Bands of the Yakama Nation (Tribes) sued Klickitat County (County) and County officials for declaratory and injunctive relief, alleging that the County lacked jurisdiction to prosecute a juvenile for an incident that took place allegedly within the Tribes' reservation. The federal district court issued declaratory judgment in favor of the Tribes, and the County appealed. The U.S. Court of Appeals for the Ninth Circuit affirmed, holding that the tract in question was within the Tribes' reservation created by Treaty, and

that Congress did not subsequently express its intent to abrogate the Treaty and exclude the tract.

LEDFORD V. EASTERN BAND OF CHEROKEE INDIANS (20-8455)

Petitioner: April Ledford, a non-tribe-member
Petition Filed: June 30, 2021
Subject Matter: Indian Civil Rights Act, Tribal sovereign immunity from suit
Lower Court Decision: The federal district court dismissed the complaint and the U.S. Court of Appeals for the Fourth Circuit affirmed
Recent Activity: Petition denied on October 4, 2021

April Ledford, a non-tribe-member, sued the Eastern Band of Cherokee Indians (Tribe) in federal district court, claiming that the Tribe violated the Indian Civil Rights Act by terminating a life estate she held in a parcel of on-reservation property. The federal district court dismissed the complaint based on the Tribe's sovereign immunity from suit. The U.S. Court of Appeals for the Fourth Circuit affirmed and modified the district court's order to require that the complaint be dismissed with prejudice.

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS V. WHITMER (21-769)

Petitioner: Little Traverse Bay Bands of Odawa Indians
Petition Filed: November 23, 2021
Subject Matter: Reservation status
Lower Court Decision: The federal district court issued summary judgment in favor of the State and the U.S. Court of Appeals for the Sixth Circuit affirmed
Recent Activity: Petition denied on February 28, 2022

The Little Traverse Bay Bands of Odawa Indians (Tribe) sued the State of Michigan, seeking a declaration that the Treaty of 1855 created a reservation and for injunctive relief preventing the State from taking action inconsistent with that reservation status. The district court issued summary judgment in favor of the State, concluding that the Treaty did not create a reservation. The U.S. Court of Appeals for the Sixth Circuit affirmed, holding that the relevant Treaty did not create "federal superintendence" sufficient to create a reservation.

JAMESTOWN S'KLALLAM TRIBE V. LUMMI NATION (21-913)

Petitioner: Jamestown S'Klallam Tribe
Petition Filed: December 21, 2021
Subject Matter: Treaty fishing rights at Usual and Accustomed fishing places
Lower Court Decision: The federal district court ruled in part for the Lummi Nation and the U.S. Court of Appeals for the Ninth Circuit reversed and remanded for a broader ruling in favor of the Lummi Nation
Recent Activity: Petition denied February 22, 2022

This is a dispute between the Jamestown S'Klallam Tribe and the Lummi Nation over usual and accustomed fishing places in the Strait of Juan de Fuca. The federal district court ruled that the Lummi Nation possessed a right to fish in some portion of the contested area. The

U.S. Court of Appeals for the Ninth Circuit reversed and remanded for an entry of judgement declaring that Lummi Nation's usual and accustomed fishing area includes the entire contested area.

JAMUL ACTION COMMITTEE V. SIMERMEYER (20-1559)

Petitioner: Jamul Action Committee, a non-Indian community group
Petition Filed: May 11, 2021
Subject Matter: Tribal sovereign immunity from suit
Lower Court Decision: The federal district court dismissed the suit and the U.S. Court of Appeals for the Ninth Circuit affirmed
Recent Activity: Petition denied October 4, 2021

A non-Indian citizens group sued in federal court to enjoin the construction of a casino by the Jamul Indian Village (Tribe), asserting that the Tribe was not federally recognized and that the site was not "Indian land" eligible for gaming under the Indian Gaming Regulatory Act. The federal district court dismissed the suit based on failure to join a required party and tribal sovereign immunity from suit. The U.S. Court of Appeals for the Ninth Circuit affirmed, holding that the Tribe had sovereign immunity from suit, it was the real party in interest, and it was a required party that could not be joined due to its immunity from suit.

PENOBSCOT NATION V. FREY (21-838); UNITED STATES V. FREY (21-840)

Petitioners: Penobscot Nation and the United States
Petition Filed: December 7, 2021
Subject Matter: Reservation status; Treaty fishing rights
Lower Court Decision: The federal district court held that the Tribe's reservation included certain islands, but not waters or submerged lands, and the U.S. Court of Appeals for the First Circuit affirmed
Recent Activity: Petition denied on April 18, 2022

Penobscot Nation (Tribe) sued the State of Maine, seeking declaratory judgment regarding the boundaries of the Tribe's reservation and tribal fishing rights on the Penobscot River. The United States intervened as a plaintiff, and municipalities and others intervened as defendants. The federal district court held that the Tribe's reservation included the River's islands but not its waters, and that the Tribe had fishing rights in the River. A panel of the U.S. Court of Appeals for the First Circuit affirmed in part and vacated in part. The Court of Appeals then granted en banc review and held that the Tribe's reservation did not include the main stem of the River, nor its submerged lands.

PERKINS V. COMMISSIONER OF INTERNAL REVENUE (20-1388)

Petitioner: Alice Perkins, an individual Indian
Petition Filed: March 31, 2021
Subject Matter: Federal taxation
Lower Court Decision: The U.S. Tax Court granted summary judgment to the Internal Revenue Service and the U.S. Court of Appeals for the Second Circuit Revenue.
Recent Activity: Petition denied on October 4, 2021

Alice Perkins, a member of the Seneca Nation (Tribe), and her husband mined gravel on land owned by the Tribe and allotted by the Tribe to another tribal member. They did not pay federal income taxes on revenues from the gravel mining operation, asserting that the 1794 Treaty of Canandaigua and the 1842 Treaty with the Seneca exempted from federal taxation income derived directly from land owned by the Tribe. The U.S. Tax Court disagreed. The U.S. Court of Appeals for the Second Circuit affirmed, concluding that provisions in the Treaty of Canandaigua guaranteeing "free use and enjoyment" of certain lands did not prevent the United States from imposing taxes on individual income derived directly from those lands. And while the Court of Appeals acknowledged that 1842 Treaty with the Seneca contained an agreement "to protect such of the lands of the Seneca ... from all taxes," the Court of Appeals nevertheless concluded that the broader purpose and context of that provision was to prevent specific taxes by the State of New York, not the United States.

SAMISH INDIAN NATION V. WASHINGTON (21-1127)
Petitioner: Samish Indian Nation
Petition Filed: February 10, 2022
Subject Matter: Res judicata, Tribal hunting and gathering rights
Lower Court Decision: The federal district court dismissed the suit and the U.S. Court of Appeals for the Ninth Circuit affirmed
Recent Activity: Petition denied on March 21, 2022

The Snoqualmie Indian Tribe sued the State of Washington, and other agencies and officials, seeking a declaration that it was signatory to the Treaty of Point Elliott and that it possesses off-reservation hunting and gathering rights. The federal district court dismissed action, concluding that the question had been settled in the negative in prior litigation. The U.S Court of Appeals for the Ninth Circuit affirmed. The Samish Indian Nation intervened on appeal and sought review of questions relating to the district court's jurisdiction when sovereign immunity from suit is asserted and whether a dismissal based on issue preclusion is a "merits" dismissal. A separate petition for certiorari filed by the Snoqualmie Indian Tribe, *Snoqualmie Indian Tribe v. Washington* (21-1248), was denied on April 25, 2022.

SCUDERO V. ALASKA (21-1293)
Petitioner: John Scudero, Jr.
Petition Filed: January 19, 2022
Subject Matter: Alaska Native fishing rights; State criminal jurisdiction
Lower Court Decision: The Alaska Supreme Court upheld the conviction of an Alaska Native for commercial fishing violations occurring in state waters.
Recent Activity: Petition denied on April 25, 2022

John Scudero, Jr, an Alaska Native (Metlakatla Indian Community) was convicted in state court of several commercial fishing violations occurring in state waters. He appealed his conviction and the Alaska Court of Appeals asked the Alaska Supreme Court to take jurisdiction of the appeal because of the important threshold issue of whether his aboriginal and treaty-based fishing rights exempted him from state commercial fishing regulations. The Alaska Supreme Court held that the State had the authority to regulate fishing in state waters in the interests of conservation regardless of Scudero's claimed fishing rights.

SELF V. CHER-AE HEIGHTS INDIAN COMMUNITY OF THE TRINIDAD RANCHERIA (21-477)

Petitioners: Jason Self and Thomas Lindquist, individual non-Indians
Petition Filed: September 29, 2021
Subject Matter: Tribal sovereign immunity from suit
Lower Court Decision: The state court dismissed the suit and the California Court of Appeals affirmed
Recent Activity: Petition denied on February 22, 2022

The Cher-Ae Heights Indian Community of the Trinidad Rancheria (Tribe) owns a parcel of coastal property in fee simple. Two individual non-Indians who use the beach for recreation and a kayaking business sued the Tribe in California state court, claiming that the Tribe might illegally block their beach access in the future. The Tribe had formally requested that the Department of the Interior take the land into trust for the benefit of the Tribe. Because it was coastal property, the land-into-trust process required a review under the Coastal Zone Management Act to ensure, among other things, that beach access was preserved consistent with state law. The Bureau of Indian Affairs determined that it was, and California's Coastal Commission concurred. Based on the Tribe's sovereign immunity, the state trial court quashed the service of process and dismissed the complaint with prejudice. The California Court of Appeals affirmed, holding that the real property exception to common law sovereign immunity does not apply.

SNOQUALMIE INDIAN TRIBE V. WASHINGTON (21-1248)

Petitioner: Snoqualmie Indian Tribe
Petition Filed: March 15, 2022
Subject Matter: Res judicata, Tribal hunting and gathering rights
Lower Court Decision: The federal district court dismissed the suit and the U.S. Court of Appeals for the Ninth Circuit affirmed
Recent Activity: Petition denied on April 25, 2022

The Snoqualmie Indian Tribe sued the State of Washington, and other agencies and officials, seeking a declaration that it was signatory to Treaty of Point Elliott and that it possesses off-reservation hunting and gathering rights. The federal district court dismissed action, concluding that the question had been settled in the negative in prior litigation. The U.S. Court of Appeals for the Ninth Circuit affirmed. The Samish Indian Nation intervened on appeal, and its separate petition for certiorari, *Samish Indian Nation v. Washington* (21-1127), was denied on March 21, 2022.

STAND UP FOR CALIFORNIA V. DEPARTMENT OF THE INTERIOR (21-696)

Petitioner: Stand Up For California!, a nonprofit organization
Petition Filed: November 10, 2021
Subject Matter: Federal recognition, land-into-trust
Lower Court Decision: The United States District Court for the District of Columbia issued summary judgment in favor of the Department of the Interior and the Ninth Circuit affirmed.
Recent Activity: Petition denied on January 10, 2022

Nonprofit organization and individuals challenged the Department of the Interior's decision to take land into trust for the benefit of Wilton Rancheria, alleging that it lacked authority to do so because the federal government once terminated its relationship with the Tribe – notwithstanding that the relationship was later re-established. The United States District Court for the District of Columbia granted summary judgment in favor of ("DOI"), and the D.C. Circuit affirmed.

TANNER V. CAYUGA NATION (21-749)
Petitioner: Howard Tanner, a municipal government official
Petition Filed: November 19, 2021
Subject Matter: Indian Gaming Regulatory Act; Indian lands
Lower Court Decision: The federal district court ruled for the Tribe and the U.S. Court of Appeals for the Second Circuit affirmed
Recent Activity: Petition denied on January 10, 2022

The Cayuga Nation (Tribe) filed suit, seeking a declaratory judgment that the Indian Gaming Regulatory Act ("IGRA") preempted application of a municipality's gaming ordinance to tribal gaming operations. The federal district court entered summary judgment in favor of the Tribe. The U.S. Court of Appeals for the Second Circuit affirmed, holding that the parcel in question was "Indian land," and, therefore, IGRA preempted application of the municipality's gaming ordinance.

TREPPA V. HENGLE (21-1138)
Petitioner: Sherry Treppa, Chairperson of the Habematolel Pomo of Upper Lake Executive Council
Petition Filed: February 16, 2022
Subject Matter: Tribal sovereign immunity from suit; arbitration
Lower Court Decision: The federal district court denied a motion to dismiss the suit and the U.S. Court of Appeals for the Fourth Circuit affirmed
Recent Activity: Petition dismissed per Rule 46 on May 18, 2022

Individuals received short-term loans from online lenders owned by the Habematolel Pomo of Upper Lake (Tribe). The borrowers defaulted and brought a class action suit against the lender and others, including Tribal officials in their official capacity, claiming that they were not obligated to repay the loans because they violated Virginia usury laws. The defendants moved to compel arbitration under the terms of the loan agreements and to dismiss the complaint, among other reasons, based on tribal sovereign immunity. The federal district court held that the arbitration provisions were unenforceable because they were a prospective waiver of the borrowers' federal rights, and that sovereign immunity did not apply. The U.S. Court of Appeals for the Fourth Circuit affirmed, holding that arbitration agreements were unenforceable and that tribal sovereign immunity does not bar a claim against tribal officials for prospective injunctive relief, for violations of state law occurring off-reservation.

DENIED PETITIONS RELATED TO MCGIRT V. OKLAHOMA

OKLAHOMA V. FOSTER (21-868)
Petition Filed: December 10, 2021
Recent Activity: Petition denied March 21, 2022

OKLAHOMA V. OLIVE (21-961)
Petition Filed: December 30, 2021
Recent Activity: Petition denied March 7, 2022

OKLAHOMA V. VINEYARD (21-798)
Petition Filed: November 30, 2021
Recent Activity: Petition denied February 28, 2022

OKLAHOMA V. MCCURTAIN (21-773)
Petition Filed: November 24, 2021
Recent Activity: Petition denied February 28, 2022

CANNON V. OKLAHOMA (21-6680)
Petition Filed: December 20, 2021
Recent Activity: Petition denied February 22, 2022

HARVELL V. OKLAHOMA (21-6650)
Petition Filed: December 17, 2021
Recent Activity: Petition denied February 22, 2022

BRUNER V. OKLAHOMA (21-6610)
Petition Filed: December 14, 2021
Recent Activity: Petition denied February 22, 2022

LAY V. OKLAHOMA (21-6549)
Petition Filed: December 7, 2021
Recent Activity: Petition denied February 22, 2022

JENKINS V. OKLAHOMA (21-6529)
Petition Filed: December 6, 2021
Recent Activity: Petition denied February 22, 2022

LEON V. OKLAHOMA (21-6528)
Petition Filed: December 6, 2021
Recent Activity: Petition denied February 22, 2022

BROWN V. OKLAHOMA (21-6507)
Petition Filed: December 3, 2021
Recent Activity: Petition denied February 22, 2022

COLE V. OKLAHOMA (21-6494)
Petition Filed: December 2, 2021
Recent Activity: Petition denied February 22, 2022

HANSON V. OKLAHOMA (21-6464)
Petition Filed: December 1, 2021
Recent Activity: Petition denied February 22, 2022

GOODE V. OKLAHOMA (21-6462)
Petition Filed: December 1, 2021
Recent Activity: Petition denied February 22, 2022

RYDER V. OKLAHOMA (21-6432)
Petition Filed: November 29, 2021
Recent Activity: Petition denied February 22, 2022

OKLAHOMA V. SHRIVER (21-985)
Petition Filed: January 11, 2022
Recent Activity: Petition denied February 22, 2022

PACHECO V. OKLAHOMA (21-923)
Petition Filed: December 22, 2021
Recent Activity: Petition denied February 22, 2022

GORE V. OKLAHOMA (21-883)
Petition Filed: December 15, 2021
Recent Activity: Petition denied February 22, 2022

OKLAHOMA V. LITTLE (21-734)
Petition Filed: November 17, 2021
Recent Activity: Petition denied February 22, 2022

OKLAHOMA V. YARGEE (21-705)
Petition Filed: November 15, 2021
Recent Activity: Petition denied February 22, 2022

OKLAHOMA V. PERALES (21-704)
Petition Filed: November 15, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. LEATHERS (21-646)
Petition Filed: November 2, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. BALL (21-644)
Petition Filed: November 2, 2021

Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. MARTIN (21-608)
Petition Filed: October 26, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. COTTINGHAM (21-502)
Petition Filed: October 5, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. FOX (21-488)
Petition Filed: October 5, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. MARTIN (21-487)
Petition Filed: October 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. SHRIVER (21-486)
Petition Filed: October 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. MCCOMBS (21-484)
Petition Filed: October 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. BECK (21-373)
Petition Filed: September 8, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. COOPER (21-372)
Petition Filed: September 8, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. JONES (21-371)
Petition Filed: September 8, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. STEWART (21-370)
Petition Filed: September 8, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. EPPERSON (21-369)
Petition Filed: September 8, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. BECK (21-373)
Petition Filed: September 8, 2021
Recent Activity: Petition denied on January 24, 2022

OKLAHOMA V. BALL (21-327)
Petition Filed: September 1, 2021
Recent Activity: Petition denied on January 24, 2022

OKLAHOMA V. SIZEMORE (21-326)
Petition Filed: September 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. JANSON (21-325)
Petition Filed: September 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. SPEARS (21-323)
Petition Filed: September 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. JOHNSON (21-321)
Petition Filed: September 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. PERRY (21-320)
Petition Filed: September 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. BALL (21-327)
Petition Filed: September 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. GRAYSON (21-324)
Petition Filed: August 23, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. HARJO (21-322)
Petition Filed: September 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. BAIN (21-319)
Petition Filed: September 1, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. HOWELL (21-259)
Petition Filed: August 23, 2021

Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. DAVIS (21-258)
Petition Filed: August 23, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. STARR (21-257)
Petition Filed: August 23, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. JACKSON (21-255)
Petition Filed: August 20, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. MITCHELL (21-254)
Petition Filed: August 20, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. HATHCOAT (21-253)
Petition Filed: August 20, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. KEPLER (21-252)
Petition Filed: August 20, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. BROWN (21-251)
Petition Filed: August 20, 2021
Recent Activity: Petition denied January 24, 2022

OKLAHOMA V. NED (21-645)
Petition Filed: November 2, 2021
Recent Activity: Petition denied January 24, 2022

WHITE V. OKLAHOMA (21-6331)
Petition Filed: November 18, 2021
Recent Activity: Petition denied January 18, 2022

BENTLEY V. OKLAHOMA (21-6301)
Petition Filed: November 16, 2021
Recent Activity: Petition denied January 18, 2022

DAVIS V. OKLAHOMA (21-6030)
Petition Filed: October 20, 2021
Recent Activity: Petition denied January 10, 2022

COMPELLEEBEE V. OKLAHOMA (21-6018)
Petition Filed: October 19, 2021
Recent Activity: Petition denied January 10, 2022
PARISH V. OKLAHOMA (21-467)
Petition Filed: September 29, 2021
Recent Activity: Petition denied January 10, 2022

CANNON V. OKLAHOMA (21-6440)
Petition Filed: November 18, 2021
Recent Activity: Petition dismissed (Joint stipulation to dismiss the petition) December 9, 2021

JOHNSON V. OKLAHOMA (21-5681)
Petition Filed: September 15, 2021
Recent Activity: Petition denied November 10. 2021

CHRISTIAN V. OKLAHOMA (20-8335)
Petition Filed: June 16, 2021
Recent Activity: Petition denied October 18, 2021

OKLAHOMA V. BOSSE (21-186)
Petition Filed: August 10, 2021
Recent Activity: Petition dismissed (Joint stipulation to dismiss the petition) September 10, 2021