



TRIBAL SUPREME
COURT PROJECT



TRIBAL SUPREME COURT PROJECT MEMORANDUM

UPDATE OF SELECTED RECENT CASES AND SPECIAL UPDATE ON THE PROJECT'S 25TH ANNIVERSARY

APRIL 23, 2026

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 U.S. Supreme Court cases that negatively affected tribal sovereignty. This Memorandum Update has a special section on the project's 25th Anniversary this year, 2026.

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 selected cases that we monitor on the redesigned project website, sct.narf.org.

The Court did not grant any petitions in Indian law cases during its October Term 2024, and at this point in its October Term 2025, also has not granted any petitions. The last time that there were two consecutive terms without an Indian law case was before 1970. Among pending petitions, the project currently is monitoring closely *Turtle Mountain Band of Chippewa Indians v. Howe* (25-253) (voting rights) and *United States v. Hopson* (25-1039) (criminal jurisdiction). These two selected cases and others are detailed further below.

SELECTED PETITIONS GRANTED

NONE AT THIS TIME

SELECTED PETITIONS PENDING

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS V. HOWE (25-253)

Petitioners: Indian Tribe and Indian individuals

Petition Filed: September 2, 2025

Subject Matter: Voting Rights Act

Lower Court: U.S. Court of Appeals for the Eighth Circuit

Recent Activity: Petition relisted for Conference of November 21, 2025

Upcoming Activity: Formal action on petition.

The Turtle Mountain Band of Chippewa Indians and three individual Indians (Plaintiffs) sued the North Dakota Secretary of State in federal district court under 42 U.S.C. § 1983 and Section 2 of the Voting Rights Act of 1965 (VRA) alleging that the State's redistricting violated the VRA Section 2, which bans voting discrimination on the basis of race, color, or language-minority membership. After a four-day bench trial, the district court ruled for Plaintiffs. A majority of a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit reversed, holding that Section 2 is not enforceable by private plaintiffs suing under Section 1983, and its holding in an earlier decision that Section 2 is not privately enforceable through an implied right of action.

UNITED STATES V. HOPSON (25-1039)

Petitioner: United States

Petition Filed: March 3, 2026

Subject Matter: Major Crimes Act and lesser included offenses

Lower Court: U.S. Court of Appeals for the Tenth Circuit

Recent Activity: Petition filed March 3, 2026

Upcoming Activity: Responses due May 4, 2026.

Jason Hopson and Robert Johnston are Indians who were charged under the Major Crimes Act, 18 U.S.C. § 1153(a), with felony assaults in Indian Country. The federal district court in jury trials in each of their cases instructed the jury that it could find them guilty of the lesser offense of simple assault. Each jury did so. On appeal to the U.S. Court of Appeals for the Tenth Circuit, the Court of Appeals reasoned that even if the Major Crimes Act entitles a defendant to ask a jury to find him guilty of a lesser included offense not listed in the Act, the Act deprives the district court of the ability enter a conviction if the jury so finds. Hence, district courts must instruct juries that they can find Indian defendants guilty of lesser offenses, but when juries do so, the courts must treat the verdicts as nullities and set the defendants free because they lack power to sentence after a guilty verdict on a lesser included offense is returned. The United States' petition for rehearing *en banc* was denied.

WINNEMUCCA INDIAN COLONY V. UNITED STATES (25-1170)

Petitioner: Indian Tribe

Petition Filed: April 8, 2026

Subject Matter: Water rights and breach of trust

Lower Court: U.S. Court of Appeals for the Federal Circuit

Recent Activity: Petition filed April 8, 2026
Upcoming Activity: Response due May 13, 2026.

The Winnemucca Indian Colony (Tribe) sued the United States (U.S.) in the U.S. Court of Federal Claims (CFC) for money damages alleging that the U.S. failed to protect the Tribe's water on tribal trust land. The CFC dismissed for lack of jurisdiction, and the U.S. Court of Appeals for the Federal Circuit affirmed, finding that the Tribe failed to identify a money-mandating treaty, statute or regulation imposing the alleged water rights duties on the U.S. The Tribe's petition for rehearing *en banc* was denied.

SELECTED PETITIONS DENIED

ALASKA V. UNITED STATES (25-320)

Petitioner: State of Alaska
Petition Filed: September 15, 2025
Subject Matter: Alaska National Interest Lands Conservation Act
Lower Court: U.S. Court of Appeals for the Ninth Circuit
Recent Activity: Petition denied January 12, 2026.

The United States sued the State of Alaska in federal district court seeking declaratory and injunctive relief regarding the State's orders restricting all fishing (except limited subsistence fishing) in the Kuskokwim River due to a projected low supply of Chinook salmon. The United States argued that the State's orders interfered with federal orders under the Alaska National Interest Lands Conservation Act of 1980 (ANILCA). The Kuskokwim River Inter-Tribal Fish Commission, the Association of Village Council Presidents, Ahtna, Inc., the Alaska Federation of Natives, and several individuals were allowed to intervene as Plaintiffs. The district court granted summary judgment to the United States and the intervenors, concluding that the Kuskokwim River was "public land" under ANILCA and prior U.S. Court of Appeals for the Ninth Circuit precedent. The Ninth Circuit affirmed.

CHINOOK INDIAN NATION V. BURGUM (25-313)

Petitioner: Indian Tribe
Petition Filed: September 12, 2025
Subject Matter: Federal Recognition
Lower Court: U.S. Court of Appeals for the Ninth Circuit
Recent Activity: Petition denied March 23, 2026.

The Chinook Indian Nation (Nation) sued the U.S. Department of the Interior (Interior) in federal district court for federal recognition. The district court granted Interior's motion to dismiss on the ground that federal recognition of an Indian tribe is a non-justiciable political question. The U.S. Court of Appeals for the Ninth Circuit affirmed.

FLINTCO, LLC V. CHOCTAW NATION OF OKLAHOMA (25-764)

Petitioner: Non-Indian business
Petition Filed: December 18, 2025
Subject Matter: Contractual dispute resolution clause
Lower Court: Oklahoma Court of Civil Appeals
Recent Activity: Petition denied February 23, 2026.

Flintco and the Choctaw Nation had a construction contract with a dispute resolution clause. The Nation sued Flintco in Oklahoma state court for fraud relating to certain construction projects performed pursuant to the contract. Flintco sought arbitration pursuant to the dispute resolution clause. The state district court denied arbitration, finding that the contract clause did not include fraud claims. The Oklahoma Court of Civil Appeals affirmed, and the Oklahoma Supreme Court denied review.

FLYING T RANCH, INC. V. STILLAGUAMISH TRIBE OF INDIANS (25-987)

Petitioner: Non-Indian business
Petition Filed: February 17, 2026
Subject Matter: Tribal sovereign immunity from suit
Lower Court: Supreme Court of the State of Washington
Recent Activity: Petition denied March 30, 2026.

The Stillaguamish Tribe purchased off-reservation private property adjacent to the Flying T Ranch's property. The Tribe holds the property in fee simple. Flying T Ranch filed a quiet title suit in Washington state court alleging that it owned a fenced area of the property through adverse possession. The state trial court granted the Tribe's motion to dismiss on the ground of sovereign immunity from suit and the state court of appeals affirmed. The state supreme court granted review and also affirmed, holding that state courts lack subject matter jurisdiction to hear quiet title cases against tribes absent a waiver of immunity from suit by Congress or the tribe. The state supreme court rejected the argument that the common law immovable-property rule prevents a tribe from asserting sovereign immunity from suit over a dispute to real property on non-reservation land.

M.G.J. V. OREGON DEPARTMENT OF HUMAN SERVICES (25-6586)

Petitioner: Indian individual
Petition Filed: December 22, 2025
Subject Matter: Oregon Indian Child Welfare Act
Lower Court: Oregon Supreme Court
Recent Activity: Petition denied March 23, 2026.

M.G.J. and her two children are members of the Pit River Tribe. Under the Oregon Indian Child Welfare Act (ORICWA), the Oregon juvenile court asserted dependency jurisdiction over the children. The juvenile court ordered the children's permanency placement plan, proposed by the Oregon Department of Human Services with the Tribe's support, to be done according to tribal customary adoption. The Tribe then enacted a customary adoption resolution, terminated M.G.J.'s parental rights, and placed the children with relatives. The Oregon juvenile court ruled

that this complied with the ORICWA, entered adoption judgments and dismissed the action. The Oregon Court of Appeals affirmed and, after granting review, so did the Oregon Supreme Court.

LOPEZ V. UNITED STATES (25A1008)

Petitioner: Indian individuals

Application Filed: March 14, 2026

Subject Matter: Religious Freedom

Lower Court: U.S. Court of Appeals for the Ninth Circuit

Recent Activity: Application denied March 19, 2026.

Oak Flat, located on federal land in the Tonto National Forest in Arizona, is a sacred site for Western Apaches. Pursuant to a 2014 act of Congress, the federal government intends to transfer land that includes Oak Flat to Resolution Copper for a mine that will destroy Oak Flat. A suit filed in federal district court for the District of Columbia by individual Indians to enjoin the transfer was transferred to federal district court in Arizona due to previous similar litigation in that court. The Arizona district court denied injunctive relief largely based on the earlier cases which rejected the statutory and constitutional religious freedom claims against the land transfer. The U.S. Court of Appeals for the Ninth Circuit affirmed.

MARTORELLO V. WILLIAMS (25-829)

Petitioner: Non-Indian individual

Petition Filed: January 9, 2026

Subject Matter: Internet loans

Lower Court: U.S. Court of Appeals for the Fourth Circuit

Recent Activity: Petition denied February 23, 2026.

A class of Virginia borrowers challenged the legality of short-term loans they obtained via the internet from a tribal lender. Matt Martorello, a non-Indian individual, provided loan support services. The borrowers allege the loans violate Virginia law and therefore the Racketeer Influenced and Corrupt Organizations (RICO) Act, 18 U.S.C. § 1961. The borrowers argued that the loan agreement choice of law and forum selection provisions – which specified tribal law and a tribal forum – were void and unenforceable. The federal district court denied the tribal entities defenses of sovereign immunity from suit, but the U.S. Court of Appeals for the Fourth Circuit reversed, concluding that the entities were arms of their tribes and entitled to immunity from suit. On remand, the district court ruled that the loans are governed by Virginia law because online tribal lending is off-reservation conduct which can be state regulated. The district court then found Mr. Martorello liable under RICO. The Court of Appeals affirmed.

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS V. MICHIGAN (25-165)

Petitioner: Indian Tribe

Petition Filed: August 8, 2025

Subject Matter: Treaty fishing rights

Lower Court: U.S. Court of Appeals for the Sixth Circuit

Recent Activity: Petition denied January 12, 2026.

The Sault Ste. Marie Tribe of Chippewa Indians (Tribe) objected in federal district court to the court's authority to enter a proposed multi-tribe consent decree for treaty fishing rights. The district court approved the proposed decree over the Tribe's objections primarily on the ground that the proposed decree was not a consent decree but a judicial decree of a negotiated decree. The U.S. Court of Appeals for the Sixth Circuit affirmed, holding that under the law of the case doctrine the district court had continuing jurisdiction and inherent equitable power to allocate the fishing rights at issue.

STROBLE V. OKLAHOMA TAX COMMISSION (25-382)

Petitioner: Indian individual
Petition Filed: September 29, 2025
Subject Matter: State taxation of Indian income
Lower Court: Oklahoma Supreme Court
Recent Activity: Petition denied April 6, 2026.

Alicia Stroble is an enrolled citizen of the Muscogee (Creek) Nation (Nation). She works for the Nation on land owned by the Nation. She lives on privately owned fee land within the boundaries of the Nation's Reservation, as upheld in *McGirt v. Oklahoma*, 591 U.S. 894 (2020). The Oklahoma Tax Commission denied her request for exemption from state income taxation under an Oklahoma regulation on the ground that where she lived was not Indian country. Six justices of the Oklahoma Supreme Court affirmed in a per curiam opinion, with three Justices dissenting.

TWENTY-FIFTH ANNIVERSARY IN 2026

The project will turn 25 years in September 2026. Many thanks to all the Workgroup members for their time and efforts. Since the project started, the size of the Workgroup has doubled from, roughly, 150 to 300 members.

The 25th Anniversary report was released earlier this month. It is available on the website at sct.narf.org/updatememos/tscp-25-year-report.pdf. Thanks to those who contributed in any way, including via the Workgroup online survey conducted last year.

Limited edition 25th Anniversary merchandise also is available via the website, sct.narf.org/ and at www.bonfire.com/store/native-american-rights-fund-store/.

The 25th Anniversary special in-person activities and events include panel discussions at the Federal Bar Association's Annual Indian Law Conference in Salt River, Arizona in April 2026 and NCAI's Mid-Year Convention in Memphis, Tennessee in June 2026.

The culminating events in Washington, DC are an evening reception at the National Museum of the American Indian on September 17, 2026, and a one-day legal colloquium at the Eaton Hotel on September 18, 2026. These events will feature the short series of educational videos about the project's history, work, and future, and other agenda items which will be announced at or after NCAI's Mid-Year. Sponsorship information for law firms, Tribes and Native organizations for the reception and colloquium is available upon request, email tscp@narf.org.