



TRIBAL SUPREME
COURT PROJECT



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MEMORANDUM UPDATE OF SELECTED CASES DURING THE OCTOBER TERM 2025

August 1, 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.

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 Court accepting a case for review. Copies of briefs and opinions on the selected cases that we monitor are available on the project website, sct.narf.org.

During its October Term 2025 the Court did not hear and decide any Indian law cases on the merits nor did it do so during its October Term 2024. The last time the Court went two consecutive terms without an Indian law case was before 1970. Of the selected cases that the project was tracking during the October Term 2025, the Court denied petitions in ten cases. About half of those left intact lower court decisions that were favorable to tribal interests. At the close of the October Term 2025, there are seven selected petitions pending. The project is monitoring closely three of these where the Court has called for a response: *N.R. v. Ellison*, 25-1287 (Indian Child Welfare Act); *Perez v. City of San Antonio*, 26-15 (First Amendment Religion Clauses); and *Winnemucca Indian Colony v. United States*, 25-1170 (breach of trust and water rights). The selected Indian law and American Indian or Alaska Native party cases from the October Term 2025 are detailed below. In addition, this Memorandum Update has a special section on the project's 25th Anniversary this year, 2026.

SELECTED PETITIONS GRANTED

REPUBLICAN NATIONAL COMMITTEE V. MI FAMILIA VOTA (25-1017)

Petitioner: Non-Indian organization

Petition Filed: February 19, 2026

Subject Matter: National Voter Registration Act

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

Recent Activity: Petitioner's time to file merits briefs extended to and including August 28, 2026. Respondents' briefs due October 13, 2026.

Plaintiffs, including Indian tribes, sued in federal district court challenging Arizona's election integrity law as violative of, *inter alia*, the National Voter Registration Act (NVRA), 52 U.S.C. §§20506(a)(6)(A)(ii), 20508(b)(1), and 20507(c)(2)(a). The district court enjoined the state from requiring proof of U.S. citizenship from voter-registration applicants and ruled that the NVRA prohibits the state from cancelling systemically voter registrations of non-U.S. citizens within 90 days before a federal election. A majority of a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit affirmed. Rehearing *en banc* was denied.

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 granted, judgment vacated and case remanded for further consideration in light of *Louisiana v. Callais* (2026).

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.

Louisiana v. Callais held that Louisiana's congressional map—which created a second majority-Black district to comply with the VRA Section 2—was an unconstitutional racial gerrymander. The Court found that the VRA did not require the new district, meaning there was no compelling interest to justify using race to draw the lines.

SELECTED PETITIONS PENDING

N. R. V. ELLISON (25-1287)

Petitioners: Non-Indians

Petition Filed: May 4, 2026

Subject Matter: Indian Child Welfare Act and Minnesota Indian Family Preservation Act

Lower Court: Supreme Court of Minnesota

Recent Activity: Motion to extend time to response granted July 10, 2026

Upcoming Activity: Response due August 26, 2026.

Twin Indian children eligible for membership in the Red Lake Nation were born with severe medical problems. A county placed them in emergency care with petitioners, non-Indian foster parents. The county then placed the children with an Indian relative per the Nation's preference. The Minnesota district court denied petitioners' requests for permissive intervention in the placement proceeding and third-party custody of the children. The Minnesota court of appeals affirmed and rejected petitioners' constitutional challenges to the Indian Child Welfare Act (ICWA) and the Minnesota Indian Family Preservation Act (MIFPA) as violative of the U.S. Constitution Fifth and Fourteenth Amendments' guarantees of equal protection. The Minnesota Supreme Court affirmed the district court rulings on permissive intervention and third-party custody. The Minnesota Supreme Court also vacated the court of appeals' decision regarding ICWA and MIFPA, holding that because petitioners were not parties to the placement proceedings, it was inappropriate and unnecessary for the court of appeals to address their constitutionality. Petitioners seek U.S. Supreme Court review of ICWA's and MIFPA's constitutionality.

PEREZ V. CITY OF SAN ANTONIO (26-15)

Petitioners : Indians

Petition Filed: June 26, 2026

Subject Matter: U.S. Constitution First Amendment Religion Clauses

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

Recent Activity: Response requested July 30, 2026

Upcoming Activity: Response due August 31, 2026.

Two Native American church members sued the City of San Antonio in federal district court to enjoin the City's planned park expansion which would destroy a sacred site by cutting down trees and driving away nesting cormorants along the San Antonio River as violative of, *inter alia*, their First Amendment Free Exercise rights. The district court held that the members religious beliefs were sincere but denied the requested tree and bird habitat protection relief. A majority of a three-judge panel of the U.S. Court of Appeals for the Fifth Circuit affirmed. Rehearing *en banc* was denied.

TECK METALS LTD. V. CONFEDERATED TRIBES OF THE COLVILLE RESERVATION (26-130)

Petitioners: Non-Indian company

Petition Filed: July 24, 2026

Subject Matter: Comprehensive Environmental Response, Compensation, and Liability Act

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

Recent Activity: Petition filed July 24, 2026

Upcoming Activity: Response due August 28, 2026.

Teck Metals is a Canadian mining company that operates on the banks of the Columbia River in British Columbia just north of the U.S.-Canada border. Teck's slag and effluent discharge into the river. The Confederated Tribes of the Colville Reservation (Tribe), joined by the State of Washington, sued Teck Metals in federal district court under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. §§ 9601 *et seq.*, to establish liability and recover the costs of investigating the condition of the Upper Columbia River and natural resources damages. The Tribe alleged a separate natural resource damage claim based on a loss of cultural connection to the resources. The district court ruled for the Tribe and the state on the joint claims but denied the Tribe's separate claim. The U.S. Court of Appeals for the Ninth Circuit reversed on the Tribe's separate claim, holding that CERCLA did not limit the types of recoverable natural resource damages.

WILTON RANCHERIA V. UNITE HERE INTERNATIONAL UNION (26-39)

Petitioner: Indian tribe

Petition Filed: July 7, 2026

Subject Matter: Arbitration and tribal law

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

Recent Activity: Distributed for conference of September 28, 2026

Upcoming Activity: Conference of September 28, 2026.

Unite Here International Union (Union) sued Wilton Rancheria (Tribe) in federal district court to compel arbitration regarding a collective bargaining representative election pursuant to the procedure set forth in a Memorandum of Agreement (MOA) entered into between the Union and the Tribe in 2017. The Tribe argued that the proper procedure was the one in its Tribal Labor Relations Ordinance (TLRO) of 2019. The arbitrator issued an award, ruling that the MOA procedure, not the TLRO procedure, was the proper one. The district court upheld the arbitrator's decision for the Union and the U.S. Court of Appeals for the Ninth Circuit affirmed.

UNITED STATES DEPARTMENT OF THE INTERIOR V. SHOSHONE-BANNOCK TRIBES OF THE FORT HALL RESERVATION (26-96)

Petitioner: United States

Petition Filed: July 20, 2026

Subject Matter: Federal Land Policy and Management Act

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

Recent Activity: Petition filed July 20, 2026

Upcoming Activity: Response due August 20, 2026.

The Shoshone-Bannock Tribes (Tribes) sued the U.S. Department of the Interior (Interior) in federal district court alleging that a land exchange between Interior and a private company near the Tribes' reservation violated, *inter alia*, the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. §§ 1701 *et seq.*, and the 1900 act of Congress by which the United States acquired from the Tribes the land it sought to exchange. The private company would produce and store phosphate fertilizer on the land. The district court granted summary judgment to the Tribes, and a majority of a three-judge panel of the U.S. Court of Appeals for the Ninth Circuit affirmed. Rehearing *en banc* was denied.

WINCKLER V. SOUTH DAKOTA (25-7600)

Petitioner: Indian individual

Petition Filed: June 15, 2026

Subject Matter: State criminal jurisdiction and Indian country

Lower Court: Supreme Court of South Dakota

Recent Activity: Response filed July 22, 2026

Upcoming Activity: Optional reply brief; distribution for conference.

Hazen Hunter Winckler, an enrolled member of the Yankton Sioux Tribe, was convicted of a state law criminal offense. The lower state court rejected his argument that the state lacked jurisdiction over him, finding that the offense did not occur in Indian country under 18 U.S.C. § 1151. The South Dakota Supreme Court affirmed, holding that the county courthouse and jail, located within the Tribe's reservation, are not Section 1151 Indian country. Winckler seeks review of the issue of whether his offenses occurred on Indian country under Section 1151, thereby depriving the state of jurisdiction to prosecute him.

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: Extension to and including August 20, 2026 to file response granted

Upcoming Activity: Response due August 20, 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.

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 denied June 8, 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.

TWENTY-FIFTH ANNIVERSARY IN 2026

The TSCP will turn 25 years in September 2026. The 25th Anniversary report was released in March 2026 and is available on the website at sct.narf.org/updatememos/tscp-25-year-report.pdf.

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/.

Special in-person activities and events included 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 DC hotel on September 18, 2026. Tentative agendas and tickets for these events are available on the website at <https://sct.narf.org/25years.html>. Both events will feature a short educational video series about the project's history, work, and future.