TRIBAL SUPREME COURT PROJECT

MEMORANDUM UPDATE
OF SELECTED CASES DURING THE OCTOBER TERM 2026

October 30, 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.

The Court did not hear and decide any Indian law cases on the merits during either its October Term 2025 or its October Term 2024. The last time the Court went two consecutive terms without an Indian law case was before 1970. October 5, 2026 was the first day of the Court's October Term 2026. Among pending petitions, the project currently is monitoring closely *Teck Metals Ltd v. Confederated Tribes of the Colville Reservation*, 26-130 (Comprehensive Environmental Response, Compensations, and Liability Act) and *Flaherty v. KalshiEX, LLC*, 26-299 (prediction markets sports event contracts regulation). These two selected cases and others are detailed further 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: Oral argument scheduled for December 8, 2026
Upcoming Activity: Oral argument December 8, 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.

SELECTED PETITIONS PENDING

AUBOL V. ANDEAVOR LOGISTICS, L.P. (26-388)

Petitioners: Individual Indians
Petition Filed: September 10, 2026
Subject Matter: Federal law cause of action for trespass
Lower Court: U.S. Court of Appeals for the Eighth Circuit
Recent Activity: Amicus brief in support of **p**etition filed October 22, 2026
Upcoming Activity: Response due December 8, 2026.

Petitioners, 48 individual Indian allottees on the Mandan, Hidatsa, and Arikara Tribes' Fort Berthold Reservation in North Dakota, filed a putative class action against Andeavor Logistics, L.P., a non-Indian owner of a pipeline that transports oil across the Reservation, including across their trust allotments, alleging, *inter alia*, federal common law trespass. The Tribes renewed Andeavor's right-of-way agreement in 2017, but the allottees did not. The federal district court ultimately dismissed, holding that petitioners lack a cause of action for federal common law trespass. On appeal, a majority of a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit affirmed and rehearing *en banc* was denied.

FLAHERTY V. KALSHIEX, LLC (26-299)

Petitioners: State Officials
Petition Filed: September 2, 2026
Subject Matter: Federal preemption of state regulation of sports bets

Lower Court: U.S. Court of Appeals for the Third Circuit
Recent Activity: Extension of time to respond requested October 29, 2026
Upcoming Activity: Response to petition.

Prediction market companies sued New Jersey state gaming enforcement officials in federal district court to enjoin state sports gambling laws, arguing that the 2010 Dodd-Frank Act preempts state regulation of event contracts offered on markets registered with the Commodity Futures Trading Commission. The district court granted the injunction, and a majority of a three-judge panel of the U.S. Court of Appeals for the Third Circuit affirmed. Eleven amicus briefs were filed in support of the petition, including one led by the Indian Gaming Association, the National Congress of American Indians, and the Washington Indian Gaming Association.

NORTH AMERICAN DERIVATIVES EXCHANGE, INC. DBA CRYPTO.COM V. NEVADA (26-344)

Petitioner: Non-Indian company
Petition Filed: September 11, 2026
Subject Matter: Federal preemption of state regulation of sports-event contracts traded on a designated contract market
Lower Court: U.S. Court of Appeals for the Ninth Circuit
Recent Activity: Extension of time to respond granted
Upcoming Activity: Response due November 16, 2026.

North American Derivatives Exchange, Inc., a financial services company, sued the State of Nevada in federal district court seeking declaratory and injunctive relief on the ground that its sports-event contracts traded on a designated contract market may be regulated only by the Commodities Futures Trading Commission (CFTC) and not by state officials. The district court ultimately denied a preliminary injunction and the U.S. Court of Appeals for the Ninth Circuit affirmed. The Ninth Circuit held that sports-events contracts are gambling bets not subject to CFTC jurisdiction to regulate.

ROBINHOOD DERIVATIVES, LLC V. DREITZER (26-338)

Petitioner: Non-Indian company
Petition Filed: September 10, 2026
Subject Matter: Federal preemption of the application of state gaming laws to sports-related event contracts traded on a federally regulated contracts market
Lower Court: U.S. Court of Appeals for the Ninth Circuit
Recent Activity: Extension of time to respond granted
Upcoming Activity: Response due November 13, 2026.

Robinhood Derivatives LLC, a futures commission merchant, sued the Nevada Gaming Control Board and Gaming Commission in federal district court seeking to enjoin Nevada's enforcement of state gaming laws to its sports and election related event contracts on the ground that federal law preempts the State's laws. The district court denied a preliminary injunction and the U.S. Court of Appeals for the Ninth Circuit affirmed. The Ninth Circuit held that sports-events contracts are gambling bets not subject to CFTC jurisdiction to regulate.

J.R. SIMPLOT COMPANY, LLC V. SHOSHONE-BANNOCK TRIBES OF THE FORT HALL RESERVATION (26-109)

Petitioner: Non-Indian company
Petition Filed: September 14, 2026
Subject Matter: Federal Land Policy and Management Act
Lower Court: U.S. Court of Appeals for the Ninth Circuit
Recent Activity: Response filed October 21, 2026
Upcoming Activity: Distribution for conference.

J.R. Simplot, an agricultural business that operates a phosphate-fertilizer plant near the Shoshone-Bannock Tribes' Reservation in Idaho, needed more land to store phosphogypsum, a toxic by-product. The U.S. Department of the Interior approved under the Federal Land Policy and Management Act (FLPMA) an exchange of federal land for Simplot land. The Tribes sued in federal district court alleging, *inter alia*, that Interior could not dispose of the federal land under FLPMA due to a 1900 Allotment and Cession Act of Congress by which the U.S. had acquired the land from the Tribes. Simplot intervened to defend the exchange. The district court ruled for 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 with seven judges dissenting from the denial of *en banc* review.

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

Petitioner: U.S. Department of the Interior
Petition Filed: September 14, 2026
Subject Matter: Federal Land Policy and Management Act
Lower Court: U.S. Court of Appeals for the Ninth Circuit
Recent Activity: Response filed October 21, 2026
Upcoming Activity: Distribution for conference.

J.R. Simplot, an agricultural business that operates a phosphate-fertilizer plant near the Shoshone-Bannock Tribes' Reservation in Idaho, needed more land to store phosphogypsum, a toxic by-product. The U.S. Department of the Interior approved under the Federal Land Policy and Management Act (FLPMA) an exchange of federal land for Simplot land. The Tribes sued in federal district court alleging, *inter alia*, that Interior could not dispose of the federal land under FLPMA due to a 1900 Allotment and Cession Act of Congress by which the U.S. had acquired the land from the Tribes. Simplot intervened to defend the exchange. The district court ruled for 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 with seven judges dissenting from the denial of *en banc* review.

KING V. UNITED STATES OF AMERICA (26-5700)

Petitioner: Individual
Petition Filed: September 24, 2026
Subject Matter: Federal prosecutions in Indian Country
Lower Court: U.S. Court of Appeals for the Tenth Circuit
Recent Activity: Distributed for conference of November 6, 2026
Upcoming Activity: Conference November 6, 2026.

Adam Joseph King was charged by the United States in federal district court both under 18 U.S.C. § 1152 as a non-Indian for crimes allegedly against an Indian and under 18 U.S.C. § 1153 as an Indian for the same crimes. The district court denied Mr. King's motion to dismiss concluding that any prejudice from the multiplicitous charges could be cured by jury instructions. During trial, the Indian status of the victim was disputed, but Mr. King was convicted of the charges as a non-Indian for crimes against an Indian under Section 1152. On appeal, Mr. King challenged the sufficiency of evidence to support his non-Indian status and the victim's Indian status, and the denial of his motion to dismiss for multiplicity. The U.S. Court of Appeals for the Tenth Circuit affirmed his convictions and rehearing *en banc* was denied.

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 filed October 30, 2026
Upcoming Activity: Distribution for conference.

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)

Petitioner: 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: Call for the views of the Solicitor General
Upcoming Activity: Solicitor General filing.

Teck Metals, a Canadian mining company, 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, 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 Tribes alleged a separate natural resource damage claim based on a loss of cultural connection to the resources. The district court ruled for the Tribes and the state on the joint claims but denied the Tribes' separate claim. The U.S. Court of Appeals for the Ninth Circuit reversed on the Tribes' separate claim, holding that CERLCA did not limit the types of recoverable natural resource damages.

WAHPEKECHE V. ROGERS (26-5447)

Petitioner: Indian individual
Petition Filed: August 26, 2026
Subject Matter: State criminal jurisdiction and Indian country
Lower Court: U.S. Court of Appeals for the Tenth Circuit
Recent Activity: Distributed for conference of November 6, 2026
Upcoming Activity: Conference November 6, 2026.

Thomas Roye Wahpekche, an Indian, was convicted by the State of Oklahoma for crimes committed on land within the original boundaries of the Citizen Potawatomie Nation Reservation. Mr. Wahpekeche argued that the state lacks jurisdiction over him because he is an Indian and the crimes occurred in Indian country. The state courts rejected his Indian country argument and in habeas corpus proceedings the federal district court also rejected the argument on the ground that the Reservation has been held by the U.S. Court of Appeals for the Tenth Circuit to have been disestablished. On appeal, the Tenth Circuit affirmed and rehearing was denied.

SELECTED PETITIONS DENIED

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: Petition denied October 5, 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.

NEW MEXICO TRAPPERS ASSOCIATION V. TORREZ (26-361)

Petitioners: Non-Indian associations
Petition Filed: September 11, 2026
Subject Matter: State public land trapping prohibition
Lower Court: U.S. Court of Appeals for the Tenth Circuit
Recent Activity: Petition denied October 23, 2026.

The New Mexico Trappers Association, a non-profit association, sued State officials in federal district court for declaratory and injunctive relief regarding New Mexico statutes that make a public land trapping prohibition inapplicable to tribe members when trapping is conducted solely for religious or ceremonial purposes, asserting that the statutes violate the Equal Protection and Establishment Clauses of the U.S. and New Mexico Constitutions and the New Mexico Civil Rights Act. The district court dismissed the federal and state constitutional claims without prejudice for lack of standing (no redressable injuries and no judicially cognizable harm) and because it viewed the claims as not ripe because no implementing rules had been promulgated under the statutes. The U.S. Court of Appeals for the Tenth Circuit affirmed.

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: Petition denied October 5, 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 TRLO 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.

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: Petition denied October 5, 2026.

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.

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

Petitioner: Indian Tribe
Petition Filed: April 8, 2026
Subject Matter: Breach of trust and water rights
Lower Court: U.S. Court of Appeals for the Federal Circuit
Recent Activity: Petition denied October 5, 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.

TWENTY-FIFTH ANNIVERSARY IN 2026

The TSCP turned 25 years in September 2026. The project logo and 25th Anniversary logo were released in February 2026. The 25th Anniversary report was released in March 2026 and is available at sct.narf.org/updatememos/tscp-25-year-report.pdf. The 25th Anniversary video series was released in September 2026 and is available at https://www.youtube.com/playlist?list=PLOy4FqQKFpR7-XfTotF923DpMo3V03xvJ . Limited edition 25th Anniversary merchandise also is available at 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 were 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. The TSCP thanks the sponsors, speakers, performers, board members, staff, partners, vendors and attendees who made these activities and events successful.