



The Obama Administration and Indian Law —

A Pledge To Build a True Nation-to-Nation Relationship

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The historic words “I am President Barack Black Eagle” resonated throughout Indian Country.¹ Never had a president of the United States embraced the trust relationship in such a bold manner. Yet, from his initial 2008 visit to the Crow Nation in Montana, then-candidate Sen. Barack Obama understood the power of the pulpit and imagery. On May 19, before a crowd of 4,000 people, Obama was smudged with cedar smoke with the aid of a bald eagle fan and given his Native American name, *Awe Kooda Bilaxpak Kuxshish*, which translates as “He who helps those throughout the land.” The adoption of Barack Black Eagle into the Whistling Water Clan of the Crow Nation sealed in history his unique relationship with Indian Country. The widely displayed imagery on the Internet of candidate Obama campaigning on an Indian reservation personified for Native people the campaign slogan “Change we can believe in.” Given this historic presidency and the fact that it is coming to an end in a few months, this article examines the administration’s record in Indian Country over the past eight years.

Obama Administration (2009–16)

Many election experts conclude that a presidential election is not between the two candidates nominated but is instead a referendum on the performance of the administration currently in power. Ergo, voters will really be voting on Obama’s record, not the Democratic and Republican candidates running in 2016. If that is the case, what is the Obama administration’s record for Indian law and policy issues? Does the record demonstrate a strengthening of the nation-to-nation relationship?

Fortunately, we have a breadth of information to explore for answers as the Obama administration has heeded the maxim “History goes to those who write it.” In the new digital age,² his administration has been the first to capitalize on the use of the Internet and social media to memorialize their Indian law and policy record. For example, during his years in office, Obama has hosted an annual White House Tribal Nations Conference. Subsequently, a White House Conference Report was then published online that outlines and summarizes the administration’s accomplishments and policies actions

in Indian affairs.³ In fact, every federal department and agency has routinely published online its account of Obama's undertakings with Indian nations—a real-time historical accounting of the promises made and kept to Indian country.

In addition, Obama's initial personal connections with Indian Country changed the landscape. His experiences on the campaign trail helped foster the inclusion of Native American appointees and new policy directives that opened the door for reconciliation of the past historical wrongs.⁴ There have been a few missteps, such as the use of slogan "Geronimo E.K.I.A." ⁵ during the raid on Osama bin Laden and the failure to highlight the "apology"⁶ to Indian Country. Yet, overall, Obama has acknowledged that Native stereotypes, derogatory images, and disruptive policies damage our democracy and affect our future generation of leaders. He affirmatively denounced the use of the Redskins as a mascot for sports teams saying, "If I were the owner of the team and I knew that there was a name of my team—even if it had a storied history — that was offending a sizeable group of people, I'd think about changing it." ⁷ Indeed, Obama was "forging a new and better future together."⁸

Power of Appointments to Move a Political Agenda

Elections matter. The President in a winner-takes-all victory is offered the opportunity to advance his policy platforms and turn them into reality. As political appointees typically share the ideology of the president who appoints them, their role is to essentially extend the president's influence governmentwide. In Indian affairs, the placement of political appointees in positions of influence to drive an agenda can result in significant law and policy changes. This is largely due to the unique trust relationship between the federal government and the Indian tribes.⁹

From the very beginning, Obama sought to include Native Americans in high-level positions in the administration. He appointed and nominated a number of tribal citizens to the "usual" positions, such as the assistant secretary for Indian Affairs for the Department of the Interior and the director of the Indian Health Service¹⁰—indeed, it would have been historic if they were not Native American. More important, Obama nominated individuals with Native American heritage to "nontraditional" positions, such as the solicitor of the Department of the Interior, the U.S. representative to the United Nations Human Rights Council in Geneva, a U.S. district court judge, and the deputy secretary of the Interior.¹¹ Historical barriers and glass ceilings were broken.

The President also made good on a campaign promise to create a senior policy adviser for Native American Affairs within the White House Domestic Policy Council, along with a prior position within the White House Office of Intergovernmental Affairs.¹² Together, over the course of Obama's two terms, these and other governmentwide Native political appointees created a synergy of efforts within the federal bureaucracy to build on the nation-to-nation relationship.

Their marching orders were outlined in the campaign platform, various directives, consultations, and Executive Orders¹³ and culminated with the order to establish the White House Council on Native American Affairs. The newly formed council was authorized to coordinate the various federal programs across executive departments, agencies, and offices and to direct the use of resources available to tribal communities to increase efforts governmentwide to support tribal self-governance and improve the quality of life for Native Americans.¹⁴

Legacy of Reconciliation Litigation: To Settle or Not To Settle

In 2010, the Obama administration began a new era in Indian policy and law by advancing a reconciliation pathway with Indian Country. In a series of landmark monetary settlements dealing with racial discrimination—mismanagement of trust lands and assets, water, and administrative fee shortfalls—the administration committed to resolve long-standing legal disputes. This sea change is arguably the most significant decision and long-term historic legacy of the Obama administration's record in Indian affairs.

There is an old saying that the only winners in lawsuits are the lawyers. That is especially true in protracted civil proceedings, whether the parties decide to settle or go to trial. That fact is unlikely to change. Yet, the risk of litigating until the very end could result in a loss, whereas the benefit of settling can lead to a conclusion that is beneficial to both parties. The task is always more difficult in Indian affairs when the agreed upon settlement may require congressional approval. Regardless, in a historical turnabout, the Obama administration resolved "to settle."

Cobell case

On June 10, 1996, Elouise Cobell, a Blackfoot Indian, filed a lawsuit against the United States asserting that the government breached its trust duties to Indian beneficiaries. In 2010, after four different secretary of Interior defendants¹⁵ and years of contentious litigation, the Obama administration resolved to settle the class-action lawsuit.

The class-action suit revolved around the historical land allotments policy and other similar laws that resulted in the federal government managing more than 300,000 individual American Indian trust accounts. The government as the trustee was charged to collect and disburse the revenues from the trust lands to those Indian beneficiaries. Cobell sought an accounting of those trust monies. The government's failure to provide accurate records resulted in a lawsuit and the litigation stalemate. That the Obama administration decided to settle was a sea change. An agreement was reached, and the parties turned to the Congress to pass the historic settlement.

In December 2010, Obama signed the Claims Resolution Act¹⁶ that ratified the \$3.4 billion award, making right years of neglect by the Department of the Interior and leading to the establishment of the land buy-back program to consolidate Indian lands and restore them to tribal trust lands and the creation of the Commission on Indian Trust Administration and Reform.¹⁷ In addition, the Claims Resolution Act included more than \$1 billion for four water rights settlements meant to benefit seven tribes in Arizona, Montana, and New Mexico.

Keepseagle case

The *Keepseagle*¹⁸ class-action lawsuit was filed on the eve of Thanksgiving 1999. The plaintiffs alleged that since 1981, Native American farmers and ranchers nationwide were denied the same opportunities as white farmers to obtain low interest rate loans and loan servicing from U.S. Department of Agriculture (USDA), causing hundreds of millions of dollars in economic losses. The lawsuit was led by three farm and ranch families: Marilyn Keepseagle and her husband, George, who live on the Standing Rock Reservation in North Dakota; Claryca Mandan and her family of the Fort Berthold Reservation, also in North Dakota; and Porter Holder of Soper, Oklahoma.

In October 2010, the administration reached a \$760 million settlement with Native American farmers and ranchers in the *Keepseagle* case. Under the agreement, USDA agreed to pay \$680 million in

damages and to forgive \$80 million of outstanding farm loan debt. The settlement also included the creation of a new Federal Advisory Council for Indian farmers and ranchers and an ombudsman position to address farm program issues relating to Indian farmers. The USDA was also required to offer Indian farmers financial and technical assistance. The *Keepseagle* settlement did not require approval of the Congress; rather, it was paid from the Federal Judgment Fund administered by the Department of Treasury.

Mismanagement of Trust Funds Cases

On April 11, 2011, at a White House ceremony with Attorney General Eric Holder, Secretary of the Interior Ken Salazar, Senior Adviser to the President Valerie Jarrett, and other senior advisers and tribal representatives, the government announced a settlement of 41 long-standing disputes, some more than 100 years old, with Indian tribal governments¹⁹ over the federal mismanagement of trust funds and resources. Beyond the monetary awards, the settlements also set forth a framework for promoting tribal sovereignty and improving nation-to-nation federal-tribal relations while trying to avoid future litigation through improved communication. Importantly, the settlements did not have to be approved by Congress; instead the money came from the Federal Judgment Fund administered by the Department of Treasury.

The statement by Hilary Tompkins, solicitor of the Interior, reflected the Obama administration's sea change to settle cases rather than litigate: "May we walk together toward a brighter future, built on trust, and not acrimony, and when I say the word trust, I don't mean the legal definition of that word, I mean the dictionary's definition of that word—assured reliance on the integrity, veracity, justice, friendship, or other sound principle of a person or thing." Similarly, Sec. Ken Salazar echoed her remarks, stating that the settlements were "deliverance" of the campaign promises and that "advocates" within the administration decided that a settlement was the better and right route.²⁰

Later, in October 2011, the Obama administration also reached a \$380 million settlement with the Osage Nation over the tribe's long-standing lawsuit involving the federal government's mismanagement of trust funds and trust resources.

More recently, on Sept. 26, 2014, Attorney General Eric Holder and Interior Department Secretary Sally Jewell announced the \$554 million settlement of a lawsuit filed by the Navajo Nation regarding the U.S. government's management of funds and natural resources that it holds in trust for the Navajo Nation.

Contract Support Cases

Since 1975, the Indian Self-Determination Act has authorized Indian tribes to opt into federal contracts for federal programs meant to fulfill the government's trust obligations to Native Americans established through treaties and other agreements. The self-determination policy ended an era of broad federal oversight on reservations and gave control of critical programs to tribes. Yet, since its passage, the tribes have argued that their federal contracts left them to face significant shortfalls. The underfunded self-determination contracts directly impacted tribal efforts to meet critical needs in their communities, ranging from health services to housing. A contract-dispute lawsuit was filed on behalf of more than 600 tribes and tribal agencies, and in 2012, the U.S. Supreme Court ruled in favor of the tribes.²¹

The Obama administration reacted to the decision and agreed

to settle the outstanding disputes. In 2015, the Interior Department announced the proposed \$940 million agreement along with leaders from the Oglala Sioux tribe, Zuni Pueblo, and Ramah Chapter of the Navajo Nation. They were among the lead plaintiffs in a contract dispute lawsuit.

Unlike the \$3.4 billion *Cobell* settlement, Congress will not need to approve the contract support settlement. Instead, the money will again come from the Federal Judgment Fund administered by the Department of Treasury. Jewell said she expected the case would be fully settled in 2016.

The Impact of the Supreme Court on the Obama Administration

The Obama administration's transformation of the judicial body will be a lasting legacy. To date, Obama has changed about a third of the judiciary with his appointments in the federal courts,²² including the appointment of the first Native female judge to the U.S. district court in Arizona. Obama's two female Supreme Court appointees, Sonia Sotomayor and Elena Kagan, will continue to serve long after he leaves office. They will be Obama's legacy, as the current Supreme Court nominee opportunity during his final year will be dead on arrival in the current Republican-controlled Senate, with the looming 2016 presidential election.

In Indian affairs, aside from the judicial appointments, the Obama administration will also be remembered for its reaction to two recent Supreme Court decisions: *Carcieri v. Salazar*²³ and *Match-E-B-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*.²⁴

Carcieri case

In February 2009, only Obama's second month in office, his administration was handed a disturbing case that reversed the 70-year-old interpretation of the Indian Reorganization Act of 1934 (IRA). *Carcieri v. Kempthorne* was argued on Nov. 8, 2008, near the end of President George W. Bush's second term. The case addressed the authority of the Interior secretary to take land into trust for the benefit of the Narragansett Indian tribe in Rhode Island. The decision that followed sent shock waves through the Interior Department. The case became known as *Carcieri v. Salazar*. In limiting the power of the Interior secretary, the Court held that the term "now" in the phrase "now under Federal jurisdiction" in the definition of "Indian" is unambiguous and limited the land-into-trust acquisitions authority to Indian tribes that were under federal jurisdiction in June 1934, the date the IRA was enacted.

The Tribal Supreme Court Project²⁵ had long advocated that Indian tribes should seek to keep all litigation out of the Supreme Court, as the legal victories in the Supreme Court had grown increasingly bleak in the Chief Justice John G. Roberts Court.²⁶ In fact, in the past six terms of the Roberts Court, Indian tribes have witnessed their winning percentage plummet to 0 percent—losing all seven cases argued on the merits.²⁷ Unfortunately, the *Carcieri* ruling would become the albatross around the neck of the Obama administration, and it continues to destabilize relations with the Indian tribes.

The Supreme Court's new interpretation of the IRA ignored subsequent congressional action that made clear Congress' intent that all tribes should be treated equally under the law, regardless of the date on which the tribe was recognized. By calling into question the scope of the authority of the Interior secretary, the Court's ruling threatened the validity of tribal business organizations, subsequent

contracts and loans, tribal reservations and lands, jurisdictional issues, public safety, and provision of services on reservations across the country.

The Obama administration reacted by routinely expressing support for a “clean legislative fix” in the President’s annual budget request²⁸ submitted to the Congress. Similarly, the Interior Department routinely issued supportive testimony in a series of legislative hearings held over the last seven years, but the partisan stalemate in the Congress has failed to produce a legislative fix. Faced with the continued inaction of the Congress, the Interior Department’s workload grew as each land-into-trust application was challenged with the prospect of litigation or delayed to develop additional background information to address the “under jurisdiction in 1934” question.

In response, the Department of the Interior was forced to create administrative solutions. In Obama’s first term, Salazar issued a directive to the Bureau of Indian Affairs to examine the overall land-into-trust policy. As a result, despite the negative ramifications of the *Carcieri* decision, the department has continued to place land into trust by utilizing key administrative reforms and streamlining the review process of the “1934” issues. Further, the land-into-trust statistics improved as ongoing litigation produced favorable decisions that validated the department’s land-into-trust reforms and streamlined “1934” review process. But another Supreme Court case also threatened to slow down the land-into-trust process.

Patchak case

On May 10, 2010, David Patchak filed a lawsuit to challenge the land-into-trust decision by the Interior secretary on behalf of the recently federally recognized Match-E-Be-Nash-She-Wish tribe (Gun Lake tribe).²⁹ On Jan. 30, 2009, the secretary took the Bradley Tract into trust for Gun Lake, which enabled the tribe to operate a gaming facility. Three weeks later, on Feb. 24, the Supreme Court issued its opinion in the *Carcieri* case.

Despite *Carcieri*, the secretary urged the district court to dismiss Patchak’s suit. He argued that the Quiet Title Act, 28 U.S.C. § 2409a, precluded any person from seeking to divest the United States of title to Indian trust lands. In other words, the Quiet Title Act deprived the Court of jurisdiction. The Court rejected the arguments. The Court affirmed that the secretary had not demonstrated that the recently federally recognized Gun Lake tribe was “under federal jurisdiction in 1934” as required under the *Carcieri* decision. Moreover, the Court instructed that the statute of limitations had not run out. Now, trust land acquisitions will be subject to judicial challenge under the Administrative Procedure Act’s six-year statute of limitations—not the 30-day period provided for under the land-into-trust regulations.

In 2013, to address the *Patchak* case, the department amended the land-into-trust regulations to provide greater certainty to tribes to address statute of limitations constraint. The final rule addresses the changes resulting from the *Patchak* case. Now, trust acquisition decisions made by government officials take immediate effect and require that a challenging party, like *Patchak*, seek review of the department’s decision within the administrative appeals period. This revision creates more certainty to trust acquisitions, allowing tribes to put their newly acquired trust lands to productive use as soon as possible for housing, schools, and economic development. In addition, the Interior Department’s Solicitor’s Office issued an “M-Opinion”³⁰ in March 2014 to clarify and bind the legal contours of

the secretary’s trust land acquisition authority in the wake of both the *Carcieri* and *Patchak* cases.

In September 2014, Obama signed the Gun Lake Trust Land Reaffirmation Act into law. Due to the *Patchak* case impacts, the Act addressed the Gun Lake quiet title issues and affirmed the secretary’s authority to take land into trust for the tribe. The Act’s clarification allowed the tribe’s new casino to continue to operate on the Bradley tract. Unfortunately, the Act did not remedy the issue for all tribes, as it was specifically tailored to address the Gun Lake Tribe’s dilemma.

In summary, both the *Carcieri* and *Patchak* decisions continue to seriously undermine a primary goal of the Indian Reorganization Act to support the right of tribes to secure a land base on which to live and prosper as sovereign nations.

A True Nation-to-Nation Relationship

At the first Tribal Nations Conference in 2009, Obama aptly described his intentions: “Today’s summit is not lip service. We’re not going to go through the motions and pay tribute to one another, and then furl up the flags and go our separate ways. Today’s sessions are part of a lasting conversation that’s crucial to our shared future.”³¹ He was inspired to strengthen the nation-to-nation relationship.

True to his word, Obama’s seven-year record demonstrates that Native people have received more than lip service.³² In fact, Obama has visited Indian country more than any other sitting President. Now, as the Obama administration winds down, much more will be written on his Indian law and policy record, such as the President’s

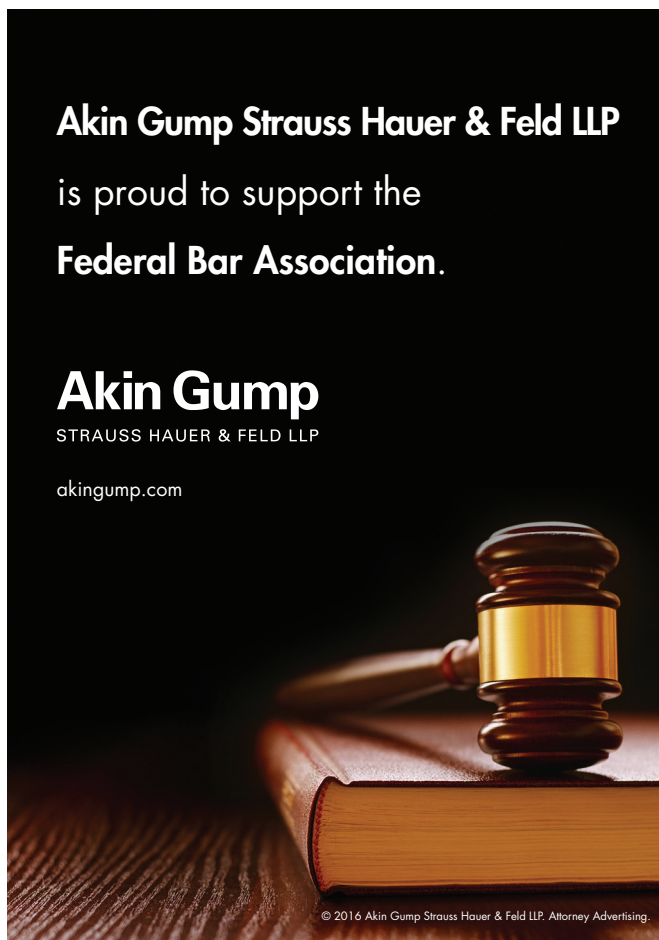
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signature on the Tribal Law and Order Act of 2010 and the Violence Against Women Reauthorization Act of 2013.

Similarly, there is much to be said about the administrative rule-making undertaken by the various federal agencies over the last seven years. Two worthy undertakings deserve mention: the Interior Department's efforts to clarify the authority of the secretary to take land into trust in Alaska and the effort to chart a regulatory pathway for the recognition of a Native Hawaiian governmental entity. Today, the final outcome of both regulatory efforts is unknown, but the Obama administration was bold in its execution: no lip service.

Will there be more settlements to come? To date, the *Cobell* settlement remains the largest government settlement in U.S. history, while the \$554 million settlement with the Navajo Nation is the largest agreement of its kind with a single tribe. On that score, the Obama administration's record of landmark settlement is historic, true justice never to be repeated. ☉

Endnotes

¹President Barack Obama at the Seventh Annual White House Tribal Nations Conference, Nov. 2015, Washington, D.C.

²Facebook (2004), Twitter (2006), Instagram (2010); *see also*, "The Obama Administration's Commitment to Open Government: A Status Report," 2011 (p. 23 notes the President's daily schedule being made public).

³White House Tribal Nations Conference Report, 2009, 2010, 2011, 2012, 2013, 2014, *available at* www.whitehouse.gov (last accessed Dec. 11, 2015).

⁴Remarks by the President during the opening of the Tribal Nations Conference and Interactive Discussion with Tribal Leaders, Nov. 5, 2009, Washington, D.C., *available at* www.whitehouse.gov/blog/2009/11/05/white-house-tribal-nations-conference (last accessed Dec. 11, 2015) ("I know you've often heard grand promises that sound good but rarely materialize. And each time, you're told this time will be different. But over the last few years, I've had a chance to speak with Native American leaders across the country about the challenges you face, and those conversations have been deeply important to me").

⁵The code-name Geronimo controversy came about after media reports that the May 2, 2011, U.S. operation to kill Osama bin Laden used the code name "Geronimo" to refer to either the overall operation, to fugitive bin Laden himself, or to the act of killing or capturing bin Laden. Many Native Americans objected to the use of the name Geronimo EKIA (Enemy Killed In Action). Questions to the White House about the code name were referred to the Defense Department, which stated no disrespect was meant and that code names are generally chosen at random. On May 8, 2011, in an interview with *60 Minutes*, Obama said, "There was a point before folks had left, before we had gotten everybody back on the helicopter and were flying back to base, where they said Geronimo has been killed, and Geronimo was the code name for bin Laden."

⁶Lise Balk King, *A Tree Fell in the Forest: The U.S. Apologized to Native Americans and No One Heard a Sound*, INDIAN COUNTRY TODAY MEDIA NETWORK, Dec. 3, 2011.

⁷Theresa Vargas and Annys Shin, *President Obama Says, 'I'd Think About Changing' Name of Washington Redskins*, WASHINGTON POST, Oct. 5, 2013; *see also* remarks by President Obama at the Tribal Nations Conference, Nov. 5, 2015, Washington, D.C., *available at* www.whitehouse.gov/the-press-office/2015/11/05/remarks-president-trib-

[al-nations-conference](http://www.whitehouse.gov/the-press-office/2015/11/05/remarks-president-trib-) (last accessed Dec. 14, 2015) (Obama said the presence of "Indian" mascots in schools affects American Indian and Alaska Native youth. Studies have confirmed the negative impacts of stereotypical images, symbols, and logos on a population that already faces cultural, economic, and societal pressures. "If you're living in a society that devalues your culture, or perpetuates stereotypes, you may be devaluing yourself," Obama told tribal leaders and Native youth who gathered in Washington, D.C., for the event. "We have to preserve those bonds, break stereotypes. I believe that includes our sports teams—because we all need to do more to make sure that our young people feel supported and respected.").

⁸The title of the 2010 White House Tribal Nation Conference Report.

⁹The United States recognizes a unique legal and political relationship with federally recognized tribes. This relationship is set forth in the U.S. Constitution, Article I, § 8, clause 3; treaties; statutes; Executive Orders; administrative rules and regulations; and judicial decisions.

¹⁰Larry Echo Hawk of the Pawnee Nation as assistant secretary for Indian Affairs for the Department of the Interior (2009), Dr. Yvette Roubideaux of the Rosebud Sioux tribe as the director of the Indian Health Service (2009), and Kevin Washburn of the Chickasaw Nation as assistant secretary for Indian Affairs (2012).

¹¹Hilary Tompkins of the Navajo Nation as the solicitor of the Department of the Interior (2009), Keith Harper of the Cherokee Nation as U.S. representative to the United Nations Human Rights Council in Geneva (2014), Diane Humetewa of the Hopi tribe as the U.S. district court judge in Arizona (2014), and Mike Connor with Taos Pueblo Heritage as deputy secretary of the Interior (2014).

¹²Kimberly Teehee of the Cherokee Nation as senior policy adviser for Native American Affairs for the White House Domestic Policy Council (2009), Jodi Gillette of the Standing Rock Sioux tribe as deputy associate director for the White House Office of Intergovernmental Affairs and Public Engagement (2009), Charlie Galbraith of the Navajo Nation as deputy associate director of Intergovernmental Affairs and Public Engagement (2011), Raina Thiele of the Dena'ina Athabascan and Yup'ik as associate director of Intergovernmental Affairs and Public Engagement (2014), Alison Grigonis of the Pokagon Band of Potawatomi as senior director of the Office of Cabinet Affairs (2015), Jodi Gillette as senior policy adviser for Native American Affairs for the White House Domestic Policy Council (2012), and Karen Diver of the Fond du Lac Band of Lake Superior Chippewa as the senior policy adviser for the White House Domestic Policy Council (2015).

¹³Presidential Memorandum on Tribal Consultation, (Nov. 5, 2009); Exec. Order No.13592, 76 Fed. Reg. 76,603 (Dec. 8,

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2011) (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities).

¹⁴Exec. Order No. 13647, 78 Fed. Reg. 39,539 (July 1, 2013). In 2014, under Interior Department Secretary Sally Jewell's leadership, the council created four interagency subgroups: economic development and infrastructure, education, energy, and environment and climate change. A new subgroup on health was added in direct response to tribal feedback and in fulfillment of the goals of the council.

¹⁵*Cobell v. Jewell*, 802 F.3d 12 (D.C. Cir. 2015). Previously *Cobell v. Salazar*; *Cobell v. Kempthorne*, *Cobell v. Norton*, and *Cobell v. Babbitt*.

¹⁶The Claims Resolution Act of 2010, P.L. 111-291, H.R. 4783 is a federal law enacted by the 111th Congress and signed into law by President Obama on Dec. 8, 2010.

¹⁷Interior Secretary Jewell issued Secretarial Order 3335 on Aug. 20, 2014. The Secretarial Order responds to recommendations of the Secretarial Commission on Indian Trust Administration.

¹⁸*Keepseagle v. Vilsack*, No. 99-03119 (D.D.C. filed Nov. 24, 1999).

¹⁹The Tribes affected by the settlements, as listed by the White House, are: Assiniboine and Sioux Tribes of the Fort Peck Reservation, Bad River Band of Lake Superior Chippewa Indians, Blackfeet tribe, Bois Forte Band of Chippewa Indians, Cachil Dehe Band of Wintun Indians of Colusa Rancheria, Coeur d'Alene tribe, Chippewa Cree Tribe of the Rocky Boy's Reservation, Confederated Tribes of the Colville Reservation, Confederated Salish and Kootenai tribes, Confederated Tribes of the Siletz Reservation, Hualapai tribe, Kaibab Band of Paiute Indians of Arizona, Kickapoo Tribe of Kansas, Lac du Flambeau Band of Lake Superior Chippewa Indians, Leech Lake Band of Ojibwe Indians, Makah Tribe of the Makah Reservation, Mescalero Apache Nation, Minnesota Chippewa tribe, Nez Perce Tribe, Nooksack tribe, Northern Cheyenne Tribe, Passamaquoddy Tribe of Maine, Pawnee Nation, Pueblo of Zia, Quechan Indian Tribe of the Fort Yuma Reservation, Rincon Luiseño Band of Indians, Round Valley Tribes, Salt River Pima-Maricopa Indian Community, Santee Sioux Tribe, Shoshone-Bannock Tribes of the Fort Hall Reservation, Soboba Band of

Luiseño Indians, Spirit Lake Dakota Nation, Spokane tribe, Standing Rock Sioux Tribe of the Fort Yates Reservation, Swinomish Tribal Indian Community, Te-Moak tribe of Western Shoshone Indians, Tohono O'odham Nation, Tulalip Tribe, Tule River Tribe, Ute Mountain Ute Tribe, and Ute Tribe of the Uintah and Ouray Reservation.

²⁰Rob Capriccioso, *Obama Moves to Settle 41 Tribal Trust Cases for \$1 Billion*, INDIAN COUNTRY TODAY MEDIA NETWORK, April 11, 2012.

²¹*Salazar v. Ramah Navajo Chapter*, 132 S. Ct. 2181 (2012), previously *Ramah Navajo Chapter v. Lujan*.

²²Jeffery Toobin, *The Obama Brief: The President Considers His Judicial Legacy*, THE NEW YORKER, Oct. 27, 2014. See also Wikipedia, "List of federal judges appointed by Barack Obama," available at en.wikipedia.org/wiki/List_of_federal_judges_appointed_by_Barack_Obama (last visited Dec. 10, 2015). As of Dec. 7, 2015, the number of Obama Article III judgeship nominees to be confirmed by the U.S. Senate is 318, including two justices to the Supreme Court, 54 judges to the courts of appeals, 260 judges to the district courts, and two judges to the Court of International Trade. Twenty-seven nominations currently are awaiting Senate action. There are currently nine vacancies on the U.S. Courts of Appeals, 52 vacancies on the district courts, four vacancies on the Court of International Trade, and 17 announced federal judicial vacancies that will occur before the end of Obama's second term. Obama has not made any recess appointments to the federal courts.

²³*Carcieri v. Salazar*, 555 U.S. 379 (2009).

²⁴*Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak*, 132 S. Ct. 2199 (2012).

²⁵The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF). The project was formed in 2001 in response to a series of U.S. Supreme Court cases that negatively affected tribal sovereignty. The purpose of the project is to promote greater coordination and to improve strategy on litigation that may affect the rights of all Indian tribes.

²⁶The Roberts Court refers to the Supreme Court since 2005, under the leadership of Chief Justice John G. Roberts.

²⁷Tribal Supreme Court Project 10-Year Report, Oct. term 2001–Oct. term 2010, p. 3 (Native American Rights Fund, Dec. 2011).

²⁸President's budget request 2012, 2013, 2014, 2015, and 2016.

²⁹In 1994, the Gun Lake tribe sought acknowledgement of its sovereign status under the modern federal acknowledgment procedures found at 25 C.F.R. Part 83. The secretary's final determination became effective Aug. 23, 1999, after administrative appeals were exhausted. 65 Fed. Reg. 13298-01 (Mar. 13, 2000).

³⁰The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, U.S. Department of the Interior, Office of the Solicitor, M-37029, (March 12, 2014), available at www.doi.gov/solicitor/opinions/M-37029.pdf; M Opinions are matters involving an interpretation of law or regulation without a specific set of facts, or for a particular case. M Opinions are signed only by the solicitor. They are important and filed by number and date of the opinion.

³¹Remarks by the president during the opening of the Tribal Nations Conference and Interactive Discussion with Tribal Leaders, Nov. 5, 2009, Washington, D.C., available at www.whitehouse.gov/blog/2009/11/05/white-house-tribal-nations-conference (last accessed Dec. 11, 2015).

³²Remarks by President Obama at the 2015 Tribal Nations Conference, Nov. 2015, Washington D.C., available at www.whitehouse.gov/the-press-office/2015/11/05/remarks-president-tribal-nations-conference (last accessed Dec. 14, 2015) ("And one of the reasons I'm so invested in your success is because I've gotten to know so many of you and we've become friends, and I've visited more Indian Country than any sitting President. Last year, Michelle and I visited the Standing Rock Sioux Nation. Then we invited many of their young people to the White House. This year, I met with young people in the Choctaw Nation of Oklahoma. In Alaska, I met with native communities and witnessed how climate change threatens their livelihoods as we speak, and I reiterated my commitment to working with tribal nations to protect your natural resources and honor your heritage, as we did with Denali.").