2017-18 Term
Supreme Court Cases Related to Indian Law

CERT GRANTED

Three Indian law-related cases were decided.

CERT DENIED

Petition for certiorari was denied in twenty five Indian law-related cases.

Cert Granted

Washington v. U.S.
Briefs and Pleadings
Oral Argument Transcript
Docket No. 17-269

Questions Presented: 1. Whether the treaty "right of taking fish, at all usual and accustomed grounds and stations . . . in common with all citizens" guaranteed "that the number of fish would always be sufficient to provide a 'moderate living' to the Tribes." 2. Whether the district court erred in dismissing the State's equitable defenses against the federal government where the federal government signed these treaties in the 1850's, for decades told the State to design culverts a particular way, and then filed suit in 2001 claiming that the culvert design it provided violated the treaties it signed. 3. Whether the district court's injunction violates federalism and comity principles by requiring Washington to replace hundreds of culverts, at a cost of several billion dollars, when many of the replacements will have no impact on salmon and Plaintiffs showed no clear connection between culvert replacement and tribal fisheries.

History: Petition was filed on 8/17/17. Case was decided on 6/11/18.

Ruling Below: *United States v. State of Washington*, 864 F.3d 1017.

Related News Stories: Michigan tribes could have stronger case against Line 5 thanks to SCOTUS decision (Michigan Radio) 6/15/18, High Court tie in salmon-habitat case will cost Washington (Courthouse News Service) 6/11/18. U.S. Suprme Court oral argument preview (LII) 4/16/18. Salmon-killing roads fight is not a Supreme Court case about Native rights (Nisqually Valley News) 4/5/18, Treaty tribes stunned as Supreme Court agrees to hear salmon passage case (Indianz) 1/15/18. Treaty tribes upset with appeal in major case amid salmon disaster in Washington (Indianz) 8/29/17. Washington state urges U.S. Supreme Court to review 'culverts case' (LegalNewsLine.com) 8/22/26. Washington to restore salmon habitat blocked by culverts (High Country News) 6/5/17, Court: State must replace salmon-blocking culverts (Indian Country Today) 5/30/17, Treaty tribes celebrate after court refuses to rehear salmon dispute (Indianz) 5/22/17 (Turtle Talk Materials)

Upper Skagit Indian Tribe v. Lundgren
Briefs and Pleadings, Oral Argument Audio & Transcript
Docket No. 17-387

Question Presented: Does a court's exercise of in rem jurisdiction overcome the jurisdictional bar of tribal sovereign immunity when the tribe has not waived immunity and Congress has not unequivocally abrogated it?

RELATED NEWS

Wild ride continues as Supreme Court agrees to hear another treaty case (Indianz) 6/28/18, Supreme Court delivers bad news to tribes as term draws to a close (Indianz) 6/25/18, U.S. Supreme Court declines to hear Wind River Reservation boundary case (Casper Star Tribune) 6/25/18, Shingle Springs Band prevails in long-running gaming contract dispute (Indianz) 6/25/18, High Court takes up Native American tax case (Courthouse News Service) 6/25/18

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History: Petition was filed on 9/11/17. Petition was granted on 12/8/17. **Case decided 5/21/18.**

Ruling Below: *Lundgren v. Upper Skagit Indian Tribe*, 187 Wash.2d 857 The Supreme Court, Johnson, J., held that tribe did not have interest in disputed property, and thus, tribe's sovereign immunity presented no barrier to the in rem adverse possession proceeding. Affirmed.

Related News Stories: Justices put decision on land dispute with tribe (Courthouse News Service) 5/21/18, U.S. Supreme Court oral argument preview. (LII) 3/19/18. U.S. Supreme Court case could impact Cayuga Nation and Cayuga County municipalities (Auburn Pub) 3/3/18, Tribes see continued challenges as more cases head to highest court (Indianz) 2/21/18, Justices agree to settle issue of tribal sovereignty in property cases (Courthouse News) 12/11/17. Supreme Court shakes up docket by accepting sovereignty case at request of tribe. (Indianz) 12/11/17, Washington Supreme Court rejects sovereign immunity defense in quiet title action (National Law Review) 3/21/17.

Patchak v. Zinke
Oral Argument Transcript (11/7/17)
Briefs and Pleadings
Docket No. 16-498

Questions Presented: 1. Does a statute directing the federal courts to "promptly dismiss" a pending lawsuit following substantive determinations by the courts (including this Court's determination that the "suit may proceed")—without amending underlying substantive or procedural laws—violate the Constitution's separation of powers principles? 2. Does a statute which does not amend any generally applicable substantive or procedural laws, but deprives Petitioner of the right to pursue his pending lawsuit, violate the Due Process Clause of the Fifth Amendment?

History: Petition was filed on 10/11/2016. Petition was granted on 5/1/17. **Case was decided 2/27/18.**

Rulings Below: *Patchak v. Jewell*., U.S. Court of Appeal, District of Columbia Circuit 828 F.3d 995. The Court of Appeals, Wilkins, Circuit Judge, held that:
1) the Gun Lake Act did not encroach upon Article III judicial power of the courts to decide cases and controversies in violation of separation of powers doctrine;
2) the Act did not violate resident's First Amendment right to petition;
3) the Act did not violate resident's right to due process, even if he had a protected property right in his cause of action; and
4) the Act was not an unconstitutional bill of attainder. Affirmed.

Related News Stories: Gun Lake tribe seeks more trust land after victory at Supreme Court (Indianz) 3/19/18, Supreme Court holds Congress may retroactively take property into trust for Native American tribes (Jurist) 2/27/18, Supreme Court brings bad news to tribes by taking up land case (Indianz) 5/1/17.

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Cert Denied

Northern Arapaho Tribe, et al. v. Wyoming
Briefs and Pleadings
Docket No. 17-1159

Questions Presented: Whether Congress evinced a clear and plain intent in the 1905 Act to diminish the Wind River Reservation by nearly two-thirds simply by using language of cession.

History: Petition was filed on 2/16/18. Petition was denied on 6/25/18.

Ruling below: *State of Wyoming v. United States Environmental Protection Agency.* 849 F.3d 861.The Court of Appeals, Tymkovich, Chief Judge, held that Congress diminished boundaries of Wind River Indian Reservation through 1905 legislative Act.
Petition granted.

Related News Stories: Supreme Court delivers bad news to tribes as term draws to a close (Indianz) 6/25/18, U.S. Supreme Court declines to hear Wind River Reservation boundary case (Casper Star Tribune) 6/25/18, Tribes ready case on reservation border issue (Casper Star Tribune) 2/21/18. Federal court won't re-hear tribal border case (Casper Star Tribune) 11/8/17. Northern Arapaho, feds move to settle in Wind River lawsuit (Casper Star Tribune) 3/21/17. Feds fear Wind River injunction that requires them to negotiate with both tribes, appeal states (Casper Star-Tribune) 3/5/17, Appellate Court rules against EPA in reservation dispute; split decision highlights poor treatment of

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Indians (K2 Radio) 2/22/17. Court rules Riverton not part of Indian Country (U.S. News) 2/22/17. Wyoming tribes lose major ruling in reservation boundary case (Indianz) 2/22/17.

Eastern Shoshone Tribe v. Wyoming, et al.
Briefs and Pleadings
Docket No. 17-1164

Questions Presented: Whether Congress clearly intended in 1905 to diminish the Wind River Reservation in Wyoming, home to the Eastern Shoshone Tribe.

History: Petition was filed on 2/16/18. Petition was denied on 6/25/18.

Ruling below: *State of Wyoming v. United States Environmental Protection Agency*, 849 F.3d 861. The Court of Appeals, Tymkovich, Chief Judge, held that Congress diminished boundaries of Wind River Indian Reservation through 1905 legislative Act. Petition granted.

Related News Stories: Supreme Court delivers bad news to tribes as term draws to a close (Indianz) 6/25/18, U.S. Supreme Court declines to hear Wind River Reservation boundary case (Casper Star Tribune) 6/25/18, Tribes ready case on reservation border issue (Casper Star Tribune) 2/21/18. Federal court won't re-hear tribal border case (Casper Star Tribune) 11/8/17. Northern Arapaho, feds move to settle in Wind River lawsuit (Casper Star Tribune) 3/21/17. Feds fear Wind River injunction that requires them to negotiate with both tribes, appeal states (Casper Star-Tribune) 3/5/17, Appellate Court rules against EPA in reservation dispute; split decision highlights poor treatment of Indians (K2 Radio) 2/22/17. Court rules Riverton not part of Indian Country (U.S. News) 2/22/17. Wyoming tribes lose major ruling in reservation boundary case (Indianz) 2/22/17.

Sharp Image Gaming, Inc. v. Shingle Springs Band of Miwok Indians
Briefs and Pleadings
Docket No. 17-1330

Question Presented: Whether a collateral agreement to a management contract for an Indian gaming operation is subject to approval by the National Indian Gaming Commission only if the collateral agreement itself provides for management of all or part of the operation.

History: Petition was filed on 3/19/18. Petition was denied on 6/25/18.

Ruling below: *Sharp Image Gaming INC. v. Shingle Springs Band of Miwok Indians*, 15 Cal.App.5th 391. The Court of Appeal, Murray, J., held that:
1) court was required to determine threshold question of whether agreements were management contracts or collateral agreements to a management contract subject to the Indian Gaming Regulatory Act (IGRA); 2) agreements were "management agreements" within meaning of IGRA such that IGRA state court action; and 3) promissory note was a collateral agreement to a management contract within meaning of IGRA such that preemption applied.
Reversed and remanded with directions.

Related News Stories: Shingle Springs Band prevails in long-running gaming contract dispute (Indianz) 6/25/18, Shingle Springs Band wins reversal of $30 million judgment in gaming dispute (Indianz) 9/18/17

Public Service Company of New Mexico v. Barboan, et al.
Briefs and Pleadings
Docket No. 17-756

Questions Presented: Does 25 U.S.C. § 357 authorize a condemnation action against a parcel of allotted land in which an Indian tribe has a fractional beneficial interest, especially where (a) the the tribe holds less than a majority interest, (b) the purpose of condemnation is to maintain a long-standing right-of-way for a public utility, and (c) the statute was not "passed for the benefit of dependent Indian tribes." Alaska Pacific Fisheries v. United States, 248 U.S. 78, 89 (1918)? If 25 U.S.C. § 357 authorizes such a condemnation action, may the action move forward if the Indian tribe invokes sovereign immunity and cannot be joined as a party to the action?

History: Petition was filed on 11/20/17. Petition was denied on 4/30/18.

Ruling below: Public Service Company of New Mexico v. Barboan, 857 F.3d 1101. The Court of Appeals, Phillips, Circuit Judge, held that: 1) as a matter of first impression, Indian General Allotment Act did not allow condemnation of allotted lands owned in any part by tribe, and 2) oil pipeline company was not entitled to intervene on appeal. Affirmed.

Mandan v. Perdue
Briefs and Pleadings
Docket No. 17-897

Question Presented: Is it a violation of the Appropriations Clause of the United States Constitution and the separation of powers doctrine, for the Executive Branch to pay, and for the Judicial Branch to approve the payment of, over $300,000,000 from the Judgment Fund appropriation to uninjured

non-parties with no claims against the United States? Can a structural constitutional challenge to Executive and Judicial Branch actions be waived or forfeited when those actions violate the Appropriations Clause and separation of powers doctrine?

History: Petition was filed on 12/19/17. Petition was denied on 3/26/18.

Ruling below: Keepseagle v. Perdue, 856 F.3d 1039. The Court of Appeals, Edwards, Senior Circuit Judge, held that:
1) consent decree did not require unanimous consent of class representatives for modification; 2) district court did not abuse its discretion in approving modification; 3) class member waived his challenges to validity of cy-près provision; 4) class member forfeited his challenges to validity of cy-près provision; and 5) class counsel did not breach its fiduciary duty by seeking modification. Affirmed.

Related News Stories: Fate of Keepseagle settlement funds in hands of Supreme Court (Indianz) 3/19/18.

R.K.B. et al., v. E.T.
Briefs and Pleadings
Docket No. 17-942

Question Presented: The Indian Child Welfare Act of 1978, 25 U.S.C. 1901–1963, applies to state custody proceedings involving an Indian child. State courts of last resort are divided on the following critical question, a question that likely affects thousands of adoption proceedings each year, and on which this court granted certiorari but did not reach in Adoptive Couple v. Baby Girl, 133 S. Ct. 2552, 2560 (2013): Does the Indian Child Welfare Act define "parent" in 25 U.S.C. 1903(9) to include an unwed biological father who has not complied with state law rules to attain legal status as a parent?

History: Petition was filed on 12/29/17. Petition was denied on 3/26/17.

Ruling below: *In the Matter of the Adoption of B.B.* 2017 WL 3821741 Supreme Court of Utah. The Supreme Court, Himonas, J., held that: 1) birth father was a parent under the Indian Child Welfare Act (ICWA) and had right to notice and to intervene in the adoption proceedings; 2) birth father had custody of child under the ICWA; 3) adoption proceedings were involuntary, not voluntary, as to birth father; and in an opinion by Lee, Associate C.J., 4) trial court's order accepting birth mother's consent to child's adoption under the ICWA and terminating her parental rights was not properly presented to the Supreme Court for review; and 5) any defect in the timing of birth mother's consent to adoption of child did not deprive trial court of subject-matter jurisdiction. Reversed and remanded.

Tavares v. Whitehouse
Briefs and Pleadings
Docket No. 17-429

Question Presented: Should the "detention" requirement for habeas review under the ICRA be construed "more narrowly than" the "custody" showing required under other federal habeas statutes?

History: Petition was filed on 9/21/17. Petition was denied on 3/26/18.

Ruling Below: *Tavares v. Whitehouse*, 851 F.3d 863 The Court of Appeals, M. Margaret McKeown, Circuit Judge, held that: 1) any disputes about per capita payments from an Indian tribe to a tribal member must be brought in a tribal forum, not through federal habeas proceedings; 2) temporary exclusion from Indian tribal land is not tantamount to a "detention," for purpose of detention requirement of habeas corpus provision of ICRA; and 3) exclusion of petitioners was not a "detention" within meaning of habeas provision of ICRA, as required for district court jurisdiction. Affirmed.

Tingle v. Purdue
Briefs and Pleadings
Docket No. 17-807

Questions Presented: Whether the application of *cy pres* to this class action settlement is inappropriate because the class members have not been adequately compensated and whether this adequate compensation is best accomplished by awarding all settlement funds to the class. 2. Whether the district court failed to meet its obligation pursuant to FRCP 23(e)(1)(C) by ensuring a fair, reasonable, and adequate distribution to the class members. 3. Whether the class representatives and the class counsel engaged in self-dealing, collusion, and fraud; as well as, breaches of fiduciary duty to the class and whether those breaches should result

History: Petition was filed on 12/1/17. Petition was denied on 3/26/18.

Ruling below: Keepseagle v. Perdue, 856 F.3d. 1039. The Court of Appeals, Edwards, Senior Circuit Judge, held that: 1) consent decree did not require unanimous consent of class representatives for modification; 2) district court did not abuse its discretion in approving modification; 3) class member waived his challenges to validity of cy-près provision; 4) class member forfeited his challenges to validity of cy-près provision; and 5) class counsel did not breach its fiduciary duty by seeking modification. Affirmed.

Related News Stories: Fate of Keepseagle settlement funds in hands of Supreme Court (Indianz) 3/19/18, Leftover Indian farmer settlement money plan left alone (The Washington Post) 10/2/17, Court decision supports release of $380M in Keepseagle settlement funds (Indianz) 5/16/17.

Renteria, et al. v. Superior Court of California, Tulare County, et al.
Briefs and Pleadings
Docket No. 17-789

Question Presented: The questions presented are: 1) Does ICWA apply as a statutory matter to a case that is not a "child custody proceeding," does not involve removal of an Indian child from a parent, or placement in a foster or adoptive home, or any public or private agency—and, if so, 2) Is it constitutional to apply ICWA's separate, less-protective rules to this case based solely on the race or national origin of the children or the adults?

History: Petition was filed on 11/27/17. Petition was denied on 2/20/18.

Related News Stories: Supreme Court turns away another conservative attack on Indian Child Welfare Act (Indianz) 2/21/18.

Norton, et al. v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al.
Briefs and Pleadings
Docket No. 17-855

Question Presented: In light of the clear precedent of Nevada v. Hicks, 533 U.S. 353 (2001), which holds that state law enforcement officers are not subject to suit in a tribal court for claims arising out of the performance of their duties on tribal lands, did the Tenth Circuit Court of Appeals err in requiring Petitioners to exhaust their remedies in the Ute Tribal Court in order to determine whether that Court has jurisdiction to hear a trespass claim arising out of Petitioners' performance of their official duties that the Ute Indian Tribe brought against them in the Ute Tribal Court?

History: Petition was filed on 12/12/17. Petition was denied on 2/20/18.

Ruling below: *Norton v. Ute Indian Tribe of the Uintah and Ouray Reservation*, 2017 WL 295226 The Court of Appeals, Lucero, Circuit Judge, held that: 1) tribe's trespass claim fell within jurisdiction of tribal court under Montana v. United States exception to principle that tribe generally lacked authority to regulate nonmember conduct; 2) tribe's trespass claim fairly could be called catastrophic for tribal self-government, as required to fall within jurisdiction of tribal court under Montana v. United States exception; 3) tribal exhaustion was not required for claims against nonmember police officers alleging false imprisonment, false arrest, assault and battery, wrongful death, spoliation of evidence, and conspiracy; 4) state interest was not implicated by nonmember state police officers pursuing Indian tribe member on tribal land for on-reservation offense, and thus tribal jurisdiction was not barred over trespass claim against officers; 5) bad faith exception from exhaustion of available tribal court remedies was not available as to trespass claim against nonmember police officers; 6) Ex parte Young exception to sovereign immunity applied to tribal official, sued in his official capacity, in suit seeking to halt allegedly unlawful exercise of tribal court jurisdiction; and 7) tribe, its business committee, and tribal court were not subject to Ex parte Young exception, and thus were entitled to tribal sovereign immunity. Vacated and remanded.

Related News Stories: Tribes see continued challenges as more cases head to highest court (Indianz) 2/21/18.

Alaska v. Ross
Briefs and Pleadings
Docket No. 17-118

Question Presented: "When [the government] determines that a species that is not presently endangered will lose its habitat due to climate change by the end of the century, may NMFS list that species as threatened under the Endangered Species Act?"

History: Petition was filed on 7/23/17. Petition was denied on 1/22/18.

Ruling Below: *Alaska Oil and Gas Association v. Pritzker*, 840 F.3d 671. United States Court of Appeals, Ninth Circuit. The Court of Appeals, Paez, Circuit Judge, held that: 1) listing decision was not arbitrary and capricious; 2) decision to adopt new foreseeability analysis was not arbitrary or capricious; 3) NMFS was not required to provide evidence-based explanation for relationship

between habitat loss and seal's survival; and 4) NMFS satisfied obligation to provide state with written justification explaining why it did not adopt regulations consistent with state agency comments. Reversed.

Related News Stories: Supreme Court passes on climate change case that drew tribal interest. (Indianz) 1/23/18.

Lewis Tein, P.L., et al. v. Miccosukee Tribe of Indians of Florida
Briefs and Pleadings
Docket No. 17-702

Question Presented: Whether the judicial doctrine of tribal sovereign immunity bars civil claims against an Indian tribe based on its intentional torts and criminal conduct that occurred off-reservation against non-members of the tribe.

History: Petition was filed on 11/7/17. Petition was denied on 1/16/18.

Ruling below: Miccosukee Tribe of Indians of Florida v. Lewis Tein, P.L., et al. 2017 WL 3400029. District Court of Appeal of Florida. The District Court of Appeal, Third District, Luck, J., held that: 1 tribe's limited waiver of sovereign immunity in previous case did not extend beyond that case to subsequent lawsuit involving tribe's conduct over a five-year period, and 2 tribe's waiver of sovereign immunity in four prior lawsuits did not extend to subsequent lawsuit against tribe for malicious prosecution, even though the subsequent case was related and arose out of the same facts. Reversed and remanded with instructions.

Massachusetts v. Wampanoag Tribe of Gay Head
Briefs and Pleadings
Docket No. 17-215

Question Presented: Whether the Indian Gaming Regulatory Act, a statute of general application, impliedly repealed federal statutes that codify state- and tribe-specific agreements giving states regulatory authority over gaming, a question that has divided the courts of appeals.

History: Petition was filed on 8/8/17. Petition was denied on 1/8/18.

Ruling Below: *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)* , 853 F.3d. 618. The Court of Appeals, Torruella, Circuit Judge. held that: 1) tribe made necessary threshold showing that it exercised jurisdiction over the Settlement Lands at issue; 2) tribe exercised sufficient governmental power to trigger application of IGRA to Settlement Lands; and 3) IGRA effected partial repeal of Settlement Act. Reversed.

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Town of Aquinnah v. Wampanoag Tribe of Gay Head
Briefs and Pleadings
Docket No. 17-216

Question Presented: Whether the Indian Gaming Regulatory Act, a statute of general application, impliedly repealed other federal statutes that specifically subject Indian tribes to state restrictions on gaming, a question that has divided the courts of appeals.

History: Petition was filed on 8/8/17. Petition was denied on 1/8/18.

Ruling Below: *Massachusetts v. Wampanoag Tribe of Gay Head (Aquinnah)* , 853 F.3d. 618. The Court of Appeals, Torruella, Circuit Judge. held that: 1) tribe made necessary threshold showing that it exercised jurisdiction over the Settlement Lands at issue; 2) tribe exercised sufficient governmental power to trigger application of IGRA to Settlement Lands; and 3) IGRA effected partial repeal of Settlement Act. Reversed.

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Window Rock Unified School District v. Reeves
Briefs and Pleadings
Docket No. 17-447

Question Presented: Whether a tribal court has jurisdiction to adjudicate employment claims by Arizona school district employees against their Arizona school district employer that operates on the

Navajo reservation pursuant to a state constitutional mandate to provide a general and uniform public education to all Arizona children.

History: Petition was filed on 9/25/17. Petition was denied on 1/8/18.

Ruling Below: *Window Rock Unified School District v. Reeves*, 187 Wash.2d 857. The Court of Appeals, Friedland, Circuit Judge, held that districts were required to exhaust their tribal remedies before seeking relief in federal court.

Great Plains Lending, LLC, et al., v. Consumer Financial Protection Bureau
Briefs and Pleadings
Docket No. 17-184

Question Presented: Whether a generally applicable federal statute, which is silent as to its applicability to Indian Tribes, should nevertheless be presumed to apply to Tribes.

History: Petition was filed on 8/3/17. Petition was denied on 12/11/17.

Ruling Below: *Consumer Financial Protection Bureau v. Great Plains Lending, LLC*, 846 F.3d. 1049. The Court of Appeals, Rawlinson, Circuit Judge, held that CFPB did not plainly lack jurisdiction to issue demands against entities.

Related News Stories: Court enforces CFPB civil investigative demand against tribal lending entity; rejects argument that tribal sovereignty precludes such demands (JD Supra) 2/2/17, Ninth Circuit affirms CFPB authority to investigate tribal lenders (Consumer Financial Services Review) 1/26/17

Kansas v. National Indian Gaming Commission
Briefs and Pleadings
Docket No. 17-463

Question Presented: Whether NIGC legal opinions that determine whether Indian lands are eligible for gaming under IGRA are reviewable final agency actions.

History: Petition was filed on 9/25/17. Petition was denied on 12/11/17.

Ruling Below: *State of Kansas v. Zinke*, 861 F.3d 1024. The Tenth Circuit Court of Appeals, Lucero, Circuit Judge, held that: 1) NIGC Acting General Counsel's legal opinion letter was not a reviewable final agency action under Indian Gaming Regulatory Act, and 2) NIGC Acting General Counsel's legal opinion letter did not constitute a reviewable final agency action under Administrative Procedure Act. Affirmed.

Upstate Citizens for Equality v. U.S.
Briefs and Pleadings
Docket No. 16-1320

Questions Presented: 1) Can Congress in the exercise of its Article 1 powers infringe, reduce or diminish the territorial integrity of a State without its prior consent? 2) Does Congress possess plenary power over Indian affairs and if so does it expand the Indian Commerce Clause to authorize the displacement of State rights to territorial integrity? 3) Does the land acquisition in this case via the mechanism of 25 USC § 465 (now 25 USC § 5108), represent a violation of the limits inherently expressed in the Indian Commerce Clause that limit Congress' power to 'regulate' 'commerce?' 4) Does the 300,000-acre ancient Oneida Indian reservation in New York still exist?

History: Petition was filed on 4/26/17. Petition was denied on 11/27/17.

Ruling Below: *Upstate Citizens for Equality, Inc. v. United States*, United States Court of Appeals for the Second Circuit. 841 F.3d 556. The Court of Appeals, Susan L. Carney, Circuit Judge, held that: 1) organization had standing to bring action; 2) Congress's authority to legislate with respect to Indian tribes was not limited to regulation of trading activities that crossed state borders; 3) federal government's acquisition of land for Indian use pursuant to Indian Reorganization Act (IRA) was "regulation of commerce" within meaning of Indian Commerce Clause; 4) principles of state sovereignty did not impair federal government's power to acquire land on tribe's behalf; 5) Enclave Clause did not require Congress to obtain state legislature's express consent before it could take state land into trust; 6) IRA permitted United States to take land into trust for benefit of Oneida Indian Nation; and 7) Oneida Indian Nation was "tribe" within meaning of Indian Land Consolidation Act (ILCA). Affirmed.

Related News Stories: Justice Thomas attacks land-into-trust process as Oneida Nation secures victory (Indianz) 11/27/17.

Coachella Valley Water District v. Agua Caliente Band of Cahuilla Indians
Briefs and Pleadings
Docket No. 17-40

Questions Presented: Whether, when, and to what extent the federal reserved right doctrine recognized in Winters v. United States, 207 U.S. 564 (1908), preempts statelaw regulation of groundwater.

History: Petition was filed on 7/5/17. Petition was denied on 11/27/17.

Ruling Below: *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, 849 F.3d 1262. The Court of Appeals, Tallman, Circuit Judge, held that: 1) federal government impliedly reserved general water right when it established Indian reservation in desert; 2) tribe's implied general reserved water right extended to groundwater; and 3) any state water entitlements that tribe had to groundwater did not limit tribe's federal implied water right. Affirmed.

Related News Stories: Supreme Court won't hear California water agencies' appeal in tribe's goundwater case (Desert Sun.) 11/27/17. Justice Thomas attacks land-into-trust process as Oneida Nation secures victory (Indianz). 11/27/17. 10 states back California agencies in fight with tribe over groundwater (DesertSun) 8/8/17. In court battle over groundwater rights, tribe's leader demands water treatment. (DesertSun) 8/5/17.

Desert Water Agency v. Agua Caliente Band of Cahuilla Indians
Briefs and Pleadings
Docket No. 17-42

Questions Presented: 1) Whether the Ninth Circuit's standard for determining whether a federal reserved water right impliedly exists – that the right impliedly exists if the reservation purpose "envisions" use of water – conflicts with the standard established by this Court in United States v. New Mexico, 438 U.S. 696 (1978), which the petitioners contend held that a federal reserved water right impliedly exists only if the reservation of water is "necessary" to accomplish the primary reservation purposes and prevent these purposes from being "entirely defeated." 2) Whether the reserved rights doctrine applies to groundwater. 3) Whether the Agua Caliente Band of Cahuilla Indians ("Tribe") has a reserved right in groundwater, and in particular whether the Tribe's claimed reserved right is "necessary" for primary reservation purposes under the New Mexico standard in light of the fact that the Tribe has the right to use groundwater under California law.

History: Petition was filed on 7/3/17. Petition was denied on 11/27/17.

Ruling Below: *Agua Caliente Band of Cahuilla Indians v. Coachella Valley Water District*, 849 F.3d 1262. The Court of Appeals, Tallman, Circuit Judge, held that: 1) federal government impliedly reserved general water right when it established Indian reservation in desert; 2) tribe's implied general reserved water right extended to groundwater; and 3) any state water entitlements that tribe had to groundwater did not limit tribe's federal implied water right. Affirmed.

Related News Stories: Supreme Court won't hear California water agencies' appeal in tribe's goundwater case (Desert Sun.) 11/27/17. Justice Thomas attacks land-into-trust process as Oneida Nation secures victory (Indianz) 11/27/17. 10 states back California agencies in fight with tribe over groundwater (DesertSun) 8/8/17. In court battle over groundwater rights, tribe's leader demands water treatment. (DesertSun) 8/5/17.

Town of Vernon v. U.S.
Briefs and Pleadings
Docket No. 17-8

Questions Presented: 1. Whether a tribe that opted out of the Indian Reorganization Act can have its status under the Act revived under the Indian Land Consolidation Act, 25 U.S.C. § 2202, even though the United States did not hold land in trust for that tribe at the time the tribe sought a land-in-trust acquisition. 2. Whether the land-in-trust provision of the Indian Reorganization Act, 25 U.S.C. § 5108, exceeds Congress' authority under the Indian Commerce Clause, Art. I, § 8, cl. 3. 3. Whether § 5108's standardless delegation of authority to acquire land "for Indians" is an unconstitutional delegation of legislative power. 4. Whether the federal government's control over state land must he categorically exclusive for the Enclave Clause, Art. I, § 8, cl. 17, to prohibit the removal of that land from state jurisdiction.

History: Petition was filed on 6/23/17. Petition was denied on 11/27/17.

Ruling Below: *Upstate Citizens for Equality, Inc. v. United States*, 841 F.3d 556. United States Court of Appeals, the Second Circuit. The Court of Appeals, Susan L. Carney, Circuit Judge, held that:
1) organization had standing to bring action;
2) Congress's authority to legislate with respect to Indian tribes was not limited to regulation of trading activities that crossed state borders;
3) federal government's acquisition of land for Indian use pursuant to Indian Reorganization Act (IRA) was "regulation of commerce" within meaning of Indian Commerce Clause;
4) principles of state sovereignty did not impair federal government's power to acquire land on tribe's behalf;

5) Enclave Clause did not require Congress to obtain state legislature's express consent before it could take state land into trust;
6) IRA permitted United States to take land into trust for benefit of Oneida Indian Nation; and
7) Oneida Indian Nation was "tribe" within meaning of Indian Land Consolidation Act (ILCA).
Affirmed.

Related News Stories: Justive Thomas attacks land-into-trust provess as Oneida Nation secures victory (Indianz) 11/27/17.

S.S. v. Colorado River Indian Tribes
Briefs and Pleadings
Docket No. 17-95

Questions Presented: 1) Do ICWA Sections 1912(d) and 1912(f) apply in a private severance action initiated by one birth parent against the other birth parent of an Indian child? 2) If so, does this de jure discrimination and separate- and-substandard treatment of Indian children violate the Due Process and Equal Protection guarantees of the Fifth and Fourteenth Amendments?

History: Petition was filed on 7/17/17. Petition was denied 10/30/17.

Ruling Below: *S.S. v. Stephanie H.*, 241 Ariz. 419. The Court of Appeals, Johnsen, J., held that: 1) Indian Child Welfare Act (ICWA) applies to a private termination of parental rights proceeding; 2) ICWA applied to private severance proceeding brought by ex-husband; and 3) evidence was sufficient to support finding that any active efforts to encourage ex-wife to address her drug issues had been successful, as required by ICWA. Affirmed.

Related News Articles: New Indian Child Welfare Act challenges on the horizon (JD Supra) 2/26/18, ICWA race-based challenge rejected by the Supreme Court (The National Law Review) 11/30/17. Supreme Court won't take up race-based challenge to Indian Child Welfare Act (Indianz) 10/30/17. U.S. Supreme Court asked to weigh Havasu lawyer's case (HavasuNews) 7/20/17.

French v. Starr
Briefs and Pleadings
Docket No. 17-197

Questions Presented: Whether federal Indian Law allows a federal court to disregard congressional statutes in a finding of tribal jurisdiction over a nonmember. Whether consideration of land status is required in the affirmation of tribal jurisdiction over a nonmember. Whether federal Indian Law allows utilization of estoppel to determine land status in a finding of tribal jurisdiction over a nonmember. Whether an Indian Tribe can have the inherent authority to exclude on land that has not been determined to be within the boundaries of their Reservation. Whether a determination of tribal jurisdiction over a nonmember can be found without a consideration of a Montana analysis. In the determination of tribal juxisdiction over a nonmember, whether regulatory authority over the activity at issue must be considered. Whether a federal court should consider a state's competing interest in the determination of tribal jurisdiction over a nonmember.

History: Petition was filed on 8/2/17. Petition was denied on 10/10/17.

Ruling Below: *French v. Starr* , 2017 WL 2377982.

Hackford v. Utah
Briefs and Pleadings
Docket No. 17-44

Questions Presented: 1) Whether the Acts of Congress, authorizing the President to set apart and reserve any reservoir site or other lands necessary to conserve and protect the water supply for the Indians or for general agricultural development, diminished the Uintah and Ouray Reservation. 2) Whether as used in 18 U.S.C. § 1151(a), the term "Indian Country" includes the National Forest land, and the right of way running through the National Forest lands where the alleged criminal conduct occurred, for purpose of federal criminal jurisdiction.

History: Petition was filed on 7/3/17. Petition was denied on 10/2/17.

Ruling Below: *Hackford v. Utah*, 845 F.3d 1325. The Court of Appeals, Seymour, Circuit Judge, held that driver's traffic offenses did not occur on tribal land. Affirmed.

Williams v. Poarch Band of Creek Indians
Briefs and Pleadings
Docket No. 16-1324

Questions Presented: 1) Who has subject matter jurisdiction over the Native American tribes (specifically Poarch Band of Creek Indians) when they are in violations of an employee's civil rights due to age discrimination amended (ADEA) disparate treatment, and 14th Amendment rights? 2) What was Congress objective by intentionally omitting abrogating tribal immunity when it affinnatively omitted the exemption from suit for Indian tribes from the definition of employer that

was borrowed from Title VII? 3) Are Native American tribes (specifically the Poarch Band of Creek Indians) considered employers, and why do they not have to abide by the rules and regulations of the Equal Employment Opportunity Commission (EEOC)? 4) If the courts do not set a precedent, who will stop this injustice by Native American tribes (specifically the Poarch Band of Creek Indians) from mistreating employees and hiding behind the cloak of Indian tribal sovereign immunity?

History: Petition was filed on 3/1/17. Petition was denied on 10/2/17.

Ruling Below: *Williams v. Poarch Band of Creek Indians*, 839 F.3d 1312. The Court of Appeals, C. Lynwood Smith, Jr., District Judge, sitting by designation, held that: 1) Congress's failure to include phrase "an Indian tribe" in list of entities excluded from ADEA's definition of "employers" did not demonstrate intent to abrogate tribal sovereign immunity as bar to suit under ADEA, and 2) even though ADEA was statute of general applicability, and tribe was generally subject to its terms, doctrine of tribal sovereign immunity protected tribe from ADEA suits. Affirmed.

Related New Stories: Indian tribe has sovereign immunity from employee's ADEA claim (CCH's Employment Law Daily) 10/21/16, Tribe immune from age-discrimination suit (Courthouse News) 10/20/16, Poarch Band of Creek Indians can't be sued for firing employee (Indianz) 10/20/16, Eleventh Circuit holds ADEA does not abrogate tribal immunity (Turtle Talk) 10/19/16.
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