

AMERICAN INDIAN LAW AND POLICY

10 THINGS YOU NEED TO KNOW



January 2018

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January 2018 marked the beginning of year two of the Trump Presidency and the second session of the 115th Congress. Congress came back into session on January 3 after recessing for the December holidays. With the passage of tax reform at the end of December, Congress started the year needing to come to an agreement on funding the government through September 2018. The current funding expired on January 19, which led to a three-day government shutdown that was resolved by extending the continuing resolution through February 8.

The tense negotiations during the government shutdown, along with the approach of the mid-term elections in November 2018, may complicate major legislative priorities such as infrastructure and reauthorization of the Farm Bill. Although President Trump has not formally released his infrastructure plan, a publically available version of the document suggests a strong focus on private and local infrastructure investment through grants, as well as incentives to bolster investment in rural areas. The formal plan from the administration is expected to be released in the next several weeks.

The administration has also remained focused on streamlining federal agencies and Secretary Zinke has announced his plans for reorganizing the Department of the Interior. The current plan, not yet final, does not appear to implicate the Bureau of Indian Affairs or the Bureau of Indian Education, but would impact several other bureaus relevant to tribes such as the Bureau of Land Management and the Bureau of Reclamation. The plan also proposes decentralizing some of the Department's decision-making responsibilities from headquarters in Washington, D.C. to centralized locations in the west.

In addition to these issues, key political vacancies remain, including the Assistant Secretary for Indian Affairs at the Department of the Interior and the Director of the Indian Health Service. As for Congress, Senate Democratic Committee [Memberships](#) and Senate Republican Committee [Memberships](#) were updated and released on January 9, 2018. A 2018 Congressional Calendar can be found [here](#).

Below are highlights on key issues impacting Indian Country in Congress, the administration and the courts.

1. [Appropriations, the Government Shutdown and Another Continuing Resolution](#)
2. [Tax Reform Enacted without Tribal Provisions](#)
3. [Congress Expects a Busy Schedule in 2018](#)
4. [The Opioid Crisis in Indian Country](#)
5. [Tribal Nations Begin to Focus on Reauthorization of the Farm Bill](#)
6. [Indian Child Welfare Act Challenges Continue](#)
7. [Water Related Issues in the Courts and in Congress](#)
8. [Secretary Zinke Announces Plans to Reorganize Interior Department](#)
9. [2017 Year in Review: Federal Indian Law Litigation](#)
10. [U.S. Supreme Court Update](#)

Appropriations, the Government Shutdown and Another Continuing Resolution

The majority of Congress' time this month has been focused on appropriations work. The federal government has been funded by a series of continuing resolutions since September of 2017. On January 19, the Senate failed to reach agreement on the length of the next extension and how to address immigration issues, resulting in a three-day government shutdown.

On January 22, the Senate negotiated a deal that would keep the government funded through February 8, in exchange for a promise from Majority Leader Mitch McConnell to consider legislation on the Deferred Action for Childhood Arrivals (DACA) program. Based on these agreements, the Senate passed a continuing resolution by a [vote of 81-18](#), and the House of Representatives followed with a [vote of 266-150](#). President Trump signed the

legislation into law the same day.

The continuing resolution also included a six-year funding renewal for the Children's Health Insurance Program (CHIP).

Aside from current government funding, Congress must also reach an agreement on the budget caps for the remainder of fiscal year 2018 that ends September 30, which limits the amount of federal spending on defense and domestic programs. Any final spending bill will have to be within these spending limits or sequestration will be triggered, resulting in across-the-board cuts to spending, which would have a significant impact on programs that benefit tribal governments.

After fiscal year 2018 appropriations are resolved, the focus will quickly turn to fiscal year 2019 appropriations. In a normal budget cycle the President's proposed budget is due to Congress the first Monday of February, which would be February 5. Given the extension of the continuing resolution through February 8, it is anticipated that the President's 2019 budget will be released later in February. The fiscal year 2019 budget is expected to contain pay freezes for federal employees, along with budgetary requests to support federal agency reorganizations.

[Back to top](#)

Tax Reform Enacted Without Tribal Provisions

President Trump signed the Tax Cuts and Jobs Act into law on December 22, 2017, officially titled [H.R. 1. An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018](#), Public Law No. 115-97. The House and Senate conferenced to reconcile the two versions of the tax legislation before Congress adjourned for the holiday recess. During the early morning of December 20, the final version of the tax bill passed the Senate 51-49, and later that day, the House passed the bill by a vote of 224-201. The final legislation failed to include any tribal-specific tax provision, except one relating to Alaska Native Corporations and Alaska Native Settlement Trusts, championed by Sen. Lisa Murkowski (R-AK).

The quick timing of the introduction and movement of the tax legislation reportedly made it difficult for Congress to ensure a number of tax extenders, including the tribal extender provisions, were included in the broader tax legislation. In an effort to remedy this, Senate Finance Chairman Orrin Hatch (R-UT) introduced [S. 2256. Tax Extender Act of 2017](#) on December 20, 2017, which would revive a variety of tax extenders that expired at the end of 2016 and would make a number of other extenders permanent or else extend them. If S. 2256 is enacted, three Indian provisions would be extended through December 31, 2018: (1) Indian Employment Tax Credit (2) Accelerated Depreciation for Business Property on an Indian Reservation and (3) Production Credit for Indian Coal Facilities.

[Back to top](#)

Congress Expects a Busy Schedule in 2018

Only one tribal bill was enacted into law in 2017. H.R. 228, the Indian Employment, Training and Related Services Consolidation Act of 2017, was signed into law by President Trump on December 18, 2017 (Public Law No. 115-93). The bill was introduced and championed by Congressman Don Young (R-AK) in the House of Representatives and Sen. Lisa Murkowski (R-AK) in the Senate. The bill amends a program commonly known as the 477 Program, which was initially created by Congress in 1992. The 477 Program allows tribes to coordinate and integrate employment and training programs administered by the departments of Labor, Interior, Education and Health and Human Services. A primary purpose of the program was to increase the effectiveness of employment and training programs by reducing redundant, unnecessary and burdensome federal bureaucracy through the consolidation of budgeting, reporting and auditing systems. The provisions of H.R. 228 primarily provide clarifying and technical amendments to the 477 Program, and also make the Program permanent and expand it to include the departments of Justice, Agriculture, Commerce, Education, Energy, Health and Human Services, Homeland Security, Housing and Urban Development, Labor, Transportation, and Veterans Affairs. The final language of the new law can be found [here](#).

The year 2018 has been busy for Congress. Two tribal bills have already been passed by Congress. H.R. 1306, the Western Oregon Tribal Fairness Act, was signed into law on January 8 (Public Law No. 115-103). The bill takes lands into trust for the Cow Creek Band of Umpqua Tribe of Indians and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. The bill also amends the Coquille Restoration Act to remove the requirement that the Department of the Interior must manage the Coquille Forest. H.R. 984, the Thomasina E. Jordan Indian Tribes of Virginia Federal Recognition Act, was passed by Congress and was presented to President Trump for his signature on January 17. The bill grants federal recognition to six tribal nations located in Virginia.

Given that this year is an election year, Congress will be looking to pass as many bills as possible before its planned recess in October leading up to the November mid-term elections. Bills with the best chance of passage will be those that are parochial in nature and have the support of the local governments. Examples include bills

that take lands into trust for tribal nations; transfer jurisdiction over certain activities; amend existing laws that are specific to certain tribes, such as settlement acts; direct that studies be performed; or exchange lands with the federal government. A list of the bills currently pending in Congress that directly impact tribal nations can be found [here](#).

In addition, Congress will look to try and reauthorize the Violence Against Women Act, which includes tribal provisions; reauthorize and expand the Tribal Law and Order Act; establish a set aside of funding for tribal nations in the Victims of Crime Act; reauthorize the Native American Housing and Self-Determination Act; develop tribal provisions for a larger national infrastructure initiative; reauthorize the Farm Bill with tribal provisions included; expand broadband in Indian Country; and continue looking at ways in which to improve the tribal health care system.

[Back to top](#)

The Opioid Crisis in Indian Country

According to data from the Center for Disease Control and Prevention (CDC), more than 42,000 Americans died from an opioid overdose in 2016. This total is five times higher than the number of opioid-related deaths reported in 1999. Other data from the CDC reveals that Native Americans experienced the highest rates of opioid-related deaths in 2014. The opioid epidemic affects the entire country, and tribal communities are no exception.

President Trump declared a public health emergency in response to the opioid epidemic on October 26, 2017. In advance of the declaration's expiration of January 23, 2018, 11 United States Democratic Senators wrote a [letter](#) to the President requesting an immediate extension of the opioid public health emergency declaration and a push for substantial federal funding to substantively address the crisis. On January 19, the Secretary of the Department of Health and Human Services extended the 90-day declaration, which will now expire on Thursday, April 19, 2018.

Some policymakers are acting to address the opioid crisis in Indian Country. The bipartisan Indian Health Service (IHS) Task Force, co-chaired by Reps. Markwayne Mullin (R-OK-2) and Raul Ruiz (D-CA-36) is currently working on proposals to address the opioid crisis in Indian Country. Additionally, in December 2017, Sen. Daines (R-MT) introduced bi-partisan legislation, S. 2270, Mitigating the Methamphetamine Epidemic and Promoting Tribal Health Act (Mitigating METH Act), that would make tribes eligible for grants awarded for prevention and treatment of opioid addiction that are currently only available to states. The legislation not only creates parity between tribal governments and states, but would also provide tribes with access to necessary funds to combat the opioid epidemic in their communities. The bill has been referred to the Senate Committee on Health, Education, Labor, and Pensions. The text of the bill is available [here](#).

Some tribes are taking action through litigation against opioid manufacturers and wholesale distributors for their actions that they allege injured, and continue to injure, their communities. Tribes in Wisconsin, the Dakotas and North Carolina have asked federal district courts for relief from various opioid industry groups. The St. Croix Chippewa Indians of Wisconsin filed their complaint on December 6, 2017, in the Western District of Wisconsin. On January 4, 2018, the Eastern Band of Cherokee Indians filed their complaint in the Western District of North Carolina. Most recently, on January 8, 2018, the Rosebud Sioux Tribe, Flandreau Santee Sioux Tribe and the Sisseton Wahpeton Oyate filed their complaint in the District of South Dakota.

The first tribal suit against opioid manufacturers and wholesale distributors was brought by the Cherokee Nation in April 2017. The Cherokee Nation brought suit in tribal court. On January 9, 2018, a federal court judge in Oklahoma granted an injunction to stop the tribal court proceeding and ruled that the tribal court does not have jurisdiction to hear the Cherokee Nation's claims.

The opioid crisis in Indian Country is expected to be a topic of major discussion at the United South and Eastern Tribes (USET) session on February 5-8, 2018, and the National Congress of American Indians (NCAI) Executive Council Winter Session on February 12-15, 2018.

[Back to top](#)

Tribal Nations Begin to Focus on Reauthorization of the Farm Bill

The Farm Bill is one of the major pieces of domestic legislation and covers agriculture, rural development, telecommunications, conservation, forestry, nutrition and food programs. It was last passed in 2014 and expires towards the end of this year. Congress spent most of 2017 holding more than a dozen hearings related to the programs in the last Farm Bill, but none of these hearings focused on how the Farm Bill impacts tribal communities.

This year, there has already been action on the Farm Bill in both Congress and the administration. The Senate Committee on Indian Affairs held the first [hearing](#) related to the Farm Bill on January 17 titled, "Breaking New Ground in Agribusiness Opportunities in Indian Country." The Agriculture Committee in the House of

Representatives is expected to release its draft version of the bill in the coming weeks with the hope of having a bill approved by the Committee in the Spring. The Agriculture Committee in the Senate is expected to release their draft bill soon after. Congressional leaders say that their goal is to have a final bill enacted into law by the end of September.

On Wednesday, January 24, the USDA released its 2018 Farm Bill and Legislative Principles List, which focused on legislative priorities to support: farm production and conservation; trade and foreign agricultural affairs; food, nutrition and consumer services; marketing and regulatory programs; food safety and inspection services; research, education and economics; rural development; natural resources and environment and management.

In an effort to increase the potential impact of the Farm Bill on tribal communities, the Shakopee Mdewakanton Sioux Community commissioned the development of a report entitled, "Regaining Our Future: An Assessment of Risks and Opportunities for Native Communities in the 2018 Farm Bill." The report was issued in June 2017 and can be found [here](#). Additionally, the Shakopee Mdewakanton Sioux Community worked with the Intertribal Agriculture Council, the National Congress of American Indians, and the Intertribal Food and Agriculture Initiative to form the [Native Farm Bill Coalition](#). The initial legislative proposals from the Coalition focus on implementing the recommendations described in the Regaining Our Future report, with a particular emphasis on providing tribal governments with the same access to Farm Bill programs that State and local governments receive, and authorizing tribal governments to manage certain Farm Bill programs in the same manner as they do Bureau of Indian Affairs programs through Public Law 93-638.

[Back to top](#)

Indian Child Welfare Act Challenges Continue

The constitutionality of the Indian Child Welfare Act (ICWA) continues to be challenged in state and federal courts across the United States. One of the most influential pending ICWA cases right now is *Brackeen et al. v. Zinke et al.*, case number 4:17-cv-00868, in the U.S. District Court for the Northern District of Texas. In this case, Texas, Louisiana, Indiana and non-Indian foster parents have sued the federal government alleging that ICWA is unconstitutional due to race based discrimination in its application to Native American children in adoption and custody cases. This is the first time a state has challenged ICWA's constitutionality. This case involves three children: (1) a two-year old boy eligible for membership in the Navajo Nation and the Cherokee Nation (2) a twenty-month old girl eligible for membership in the Ysleta del Sur Pueblo Indian Tribe and (3) a six-year old girl eligible for membership in the White Earth Band of Ojibwe Indians. No matter the outcome, *Brackeen* is likely to be appealed to the Supreme Court of the United States. Previously on October 30, 2017, the Supreme Court of the United States denied a petition for a writ of certiorari in *S.S. v. Colorado Indian River Tribes*, which also challenged the constitutionality of ICWA.

For "standard state court" cases, [Turtle Talk reported that](#), "[t]here were 214 appealed ICWA cases" in 2017, and the top three litigated issues included: (1) Notice (2) Inquiry and (3) Placement Preferences. According to their data, only three of these cases were appealed by tribes (Navajo Nation, Nenana Native Village and the Gila River Indian Community).

[Back to top](#)

Water Related Issues in the Courts and in Congress

The United States' sovereign immunity was addressed in a recent water related case. In *Navajo Nation v. Dep't of Interior* the Ninth Circuit affirmed the lower court's dismissal of National Environmental Policy Act (NEPA) claims for lack of Article III standing, but reversed the dismissal of the Navajo Nation's breach of trust claims on sovereign immunity grounds. The Ninth Circuit concluded that the Administrative Procedures Act provided a broad waiver of the United States' sovereign immunity for all non-monetary claims, including the Navajo Nation's breach of trust claims against the United States for allegedly failing to adequately consider or protect its water rights in managing the Colorado River and approving guidelines for surplus and shortage conditions in the Lower Basin of the Colorado River. This case has been remanded to the lower court to consider the Navajo Nation's breach of trust claims. The Ninth Circuit's December 4, 2017, opinion can be found [here](#).

On January 10, 2018, the House of Representatives passed a technical amendment to the White Mountain Apache Tribe Water Rights Quantification Act of 2010, S. 140, which was previously passed in the Senate on May 8, 2017, by unanimous consent. The technical amendment clarifies that the White Mountain Apache Tribe's settlement funds can be used for cost overruns related to the Tribe's water system. Although the bill was passed by both the House and Senate chambers in January 2018 and May 2017, respectively, on January 9, 2018, the House Rules Committee amended S. 140 to include the text of H.R. 986, the Tribal Labor Sovereignty Act. As a result, the Senate will have to reconsider the amended bill. Democrats project that the bill no longer has a chance of passing the Senate, due to the addition of H.R. 986.

[Back to top](#)

On Wednesday, January 10, Department of the Interior Secretary Ryan Zinke announced plans to reorganize the Interior Department, which will impact Indian Country. Secretary Zinke outlined his vision for the Interior Department at a “Planning for the Next 100 Years Summit” held for Senior Executives in Washington D.C. In a [video message](#), Secretary Zinke explained that the purpose of the reorganization is to provide more resources to the field and allow the Interior Department “to address concerns using a system level approach to better manage important resources such as watersheds, trail systems, infrastructure requirements, recreational access and wildlife corridors.” By reshaping the current bureau regional systems, which are not aligned geographically, the Interior Department hopes to foster greater coordination and flexibility.

The exact boundaries and number of regions are not yet known, but restructuring the regions would mean impacts to current bureau headquarters, personnel staffing and budgets. In his video message, the Secretary said, “[i]t’s likely that many administrative functions such as budget, personnel, and legal will see little if any change at all, but how we operate and work together within an ecosystem will be more joint and more collaborative in approach.” The Interior Department’s new plans would seek to place more “flexibility, resources, and decision-making authority to the frontline superintendents and managers.”

Plans for the reorganization are not final and more specific details about the exact regional divisions are expected to be announced in President Trump’s fiscal year 2019 budget request anticipated next month. Discussions are reportedly taking place regarding potential new locations for regional headquarters and Secretary Zinke intends to negotiate a final proposal with Congressional members during the upcoming budget approval process.

[Back to top](#)

2017 Year in Review: Federal Indian Law Litigation

Here are brief descriptions of ten of the most consequential Indian law cases heard by federal courts in 2017, in case you missed them.

Supreme Court

1. *Lewis v. Clarke*: In a suit brought against a tribal employee in his individual capacity, the employee, not the tribe, is the real party in interest, and the tribe’s sovereign immunity is not implicated. Further, an indemnification provision cannot, as a matter of law, extend sovereign immunity to individual employees who would, otherwise, not fall under its protective cloak. Full opinion available [here](#).
2. *Patchak v. Zinke*: Pending decision. Find our analysis of the oral argument [here](#).

United States Courts of Appeals

3. *Massachusetts v. Wampanoag Tribe of Gay Head*, First Circuit: The Wampanoag Tribe of Gay Head exercises sufficient jurisdiction over land obtained through a settlement with the Commonwealth of Massachusetts for the Indian Gaming Regulatory Act (IGRA) to apply to the lands. IGRA impliedly repealed the Settlement Act, which provided that the lands are subject to state laws and regulations. The First Circuit opinion can be found [here](#). The Supreme Court declined to hear the case.
4. *Agua Caliente Band v. Coachella Valley Water Dist.*, Ninth Circuit: The Winters doctrine does not distinguish between surface water and groundwater. Therefore, the United States, in establishing the Agua Caliente Reservation, impliedly reserved appurtenant water sources, including groundwater for the Agua Caliente Band. The Ninth Circuit opinion is available [here](#). The Supreme Court declined to hear the case.
5. *Consumer Financial Protection Bureau v. Great Plains Lending*, Ninth Circuit: The Consumer Financial Protection Bureau has jurisdiction to issue investigative demands against tribal lending entities under the Consumer Financial Protection Act because the Consumer Financial Protection Act is a law of general applicability and Congress did not expressly exclude tribes from the Bureau’s enforcement authority. The Ninth Circuit opinion can be found [here](#). The Supreme Court declined to hear the case.
6. *Public Service Company of New Mexico v. Barboan, et al.*, Tenth Circuit: There is no statutory authorization for the condemnation of lands in which the United States holds fee title in trust for a tribe, even when the tribe has only a fractional beneficial interest in the parcel. The Tenth Circuit opinion can be found [here](#). A petition for writ of certiorari to the Supreme Court is pending in the case.
7. *Norton, et al. v. Ute Indian Tribe of the Uintah and Ouray Reservation, et al.*, Tenth Circuit: Officers must exhaust tribal remedies with respect to the Ute Indian Tribe’s trespass claim, which alleges that the officers asserted superior authority over tribal lands and barred a tribal officer from assessing the scene of a crime. The officers failed to show that the trespass claim did not at least arguably implicate the Tribe’s core sovereign rights to exclude and to self-govern. The Tenth Circuit opinion is available [here](#). A petition for writ of certiorari to the Supreme Court is pending in the case.

U.S. District Courts

8. *Standing Rock Sioux Tribe, et al. v. U.S. Army Corps of Engineers, et al.*, U.S. District Court for the District of Columbia: In June 2017, the court held that the U.S. Army Corps of Engineers failed to fully follow the National Environmental Protection Act when it determined that the pipeline would not have a significant environmental impact. The court remanded to the Corps. The June opinion is available [here](#). In October 2017, the court ordered that the pipeline could remain in operation while the Corps completes its environmental evaluation. The October opinion is available [here](#).

9. *Cherokee Nation v. Nash*, U.S. District Court for the District of Columbia: The 1866 Treaty with the Cherokee Nation guarantees a continuing right to Cherokee Nation citizenship for the extant descendants of freedmen listed on the Final Roll of Cherokee Freedmen compiled by the Dawes Commission. The opinion is available [here](#).

10. *Allergan Inc. v. Teva Pharmaceuticals USA, Inc.*, U.S. District Court for the Eastern District of Texas: Plaintiff's patents were not protected from administrative review at the Patent Trial and Appeal Board. The patents had been transferred to the Saint Regis Mohawk Tribe who then licensed the patents back to the plaintiff. Sovereign immunity was not argued in the district court. In dicta, the court indicated that tribal sovereign immunity would not insulate the patents from administrative review. The opinion can be found [here](#).

[Back to top](#)

U.S. Supreme Court Update

The Supreme Court has heard only one case in the 2017-18 term that involves questions of Indian law, *Patchak v. Zinke*. The Court has agreed to hear two more Indian law cases this term, and seven cert petitions in Indian law cases are still pending.

1. *Upper Skagit Indian Tribe v. Lundgren*, cert. granted December 8, 2017

In this grant of certiorari to the Supreme Court of Washington, the question presented is whether a state court's exercise of in rem jurisdiction overcomes the jurisdictional bar of tribal sovereign immunity when the tribe has not waived immunity and Congress has not unequivocally abrogated it. In the opinion below, the Supreme Court of Washington held that the Tribe's sovereign immunity did not bar a suit to quiet title to disputed property that the Tribe purchased in 2013. It further held that legal title in the disputed property had previously vested in the plaintiffs through adverse possession, and that the Tribe never possessed a legal interest. Accordingly, the Tribe's sovereign immunity was "no barrier" to the in rem proceeding. Oral argument is set for March 21, 2018. The Supreme Court of Washington's opinion is available [here](#). The Tribe's brief is available [here](#).

2. *Washington v. U.S., et al.*, cert. granted January 12, 2018

The Ninth Circuit upheld an injunction directing the state of Washington to correct culverts that reduce fish numbers, reasoning that the culverts violate twenty-one tribes' fishing rights guaranteed under the Stevens Treaties. The Ninth Circuit rejected Washington's invocation of waiver and estoppel, distinguishing *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005). It also held that the United States has not waived its sovereign immunity to a counterclaim by Washington. The Ninth Circuit's opinion is available [here](#).

The questions presented to the Supreme Court are (1) whether the Stevens Treaties guarantee the tribes the number of fish that "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 United States and (3) whether federalism is violated by the district court's injunction requiring the State of Washington to replace hundreds of culverts at a cost of several billion dollars. The State of Washington's petition is available [here](#).

The petitions in Indian law cases still pending before the Court are:

- *Herrera v. Wyoming*: The question presented to the Court is "[w]hether Wyoming's admission to the Union or the establishment of the Bighorn National Forest abrogated the Crow Tribe of Indians' 1868 federal treaty right to hunt on the 'unoccupied lands of the United States,' thereby permitting the present-day criminal conviction of a Crow member who engaged in subsistence hunting for his family." The opinion of the Wyoming District is available from SCOTUSblog [here](#).

- *Keepseagle, et al. v. Purdue*: The questions presented in the petition are (1) "whether the application of *cy pres* to the class action settlement is inappropriate" (2) whether the district court failed to meet its obligation to ensure a "fair, reasonable, and adequate distribution to the class members" (3) "[w]hether 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 in disgorgement of fees and incentive awards" and (4) [w]hether it is time to set aside *cy pres* in class action settlement agreements." The D.C. Circuit's decision is available [here](#).

• *Norton, et al. v. Ute Indian Tribe of Uintah and Ouray Reservation, et al.*: The question posed to the court is “[i]n 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?” The Tenth Circuit’s decision is available [here](#).

• *Public Service Company of New Mexico v. Barboan*: The questions presented to the Court are (1) whether “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 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,’ and, if so, (2) whether the action may “move forward if the Indian tribe invokes sovereign immunity and cannot be joined as a party to the action.” The Tenth Circuit opinion is available [here](#).

• *Renteria, et al. v. Superior Court of California, Tulare County, et al.*: The question presented to the Court is “[d]oes 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, “is it constitutional to apply ICWA’s separate, less-protective rules to this case solely based on the race or national origin of the children or adults.” The opinions are available [here](#).

• *Tavares v. Whitehouse*: The question presented to the Court is whether “the detention requirement for habeas review under the ICRA [should] be construed more narrowly than the custody showing required under other federal habeas statutes” (internal quotation marks omitted). The opinion of the Ninth Circuit is available [here](#).

• *Washington State Dep’t of Licensing v. Cougar Den*: The question presented to the Court is “[w]hether the Yakama Treaty of 1855 creates a right for tribal members to avoid state taxes on off-reservation commercial activities that make use of public highways.” The Supreme Court of Washington’s opinion is available [here](#).

[Back to top](#)

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