TAKE BACK THE COURT

The Supreme Court is Poised to Eliminate Protections for Native Children and Infringe Upon Indigenous Rights

In four cases consolidated under *Haaland v. Brackeen*, the Supreme Court could eliminate nearly half a century of legal protections for Native children. Here, the Court has positioned itself to infringe on tribal sovereignty and rip Native children away from their extended families, tribes, and cultures in adoption and custody proceedings.

The case falls into a broad, insidious pattern of the Court issuing decisions and taking up cases that frame protections for marginalized groups as *discriminating against white people*. In *Brackeen*, the Court may strip the Indian Child Welfare Act (ICWA) of its teeth, with even broader, devastating consequences for tribal sovereignty — including tribes' ability to govern their own citizens and manage their own affairs and lands. ICWA gives tribes jurisdiction over custody, foster care and adoption proceedings for children living on reservations and concurrent jurisdiction for non-reservation Native children. Before ICWA was enacted, as many as 25-35% of Native children were removed from their homes and tribes, often forcibly, and taken to abusive boarding schools or adopted by predominantly white families.

In addition to devastating consequences for Native children, an adverse ruling in this case will infringe upon tribal sovereignty and have broad consequences in other areas of federal Indian law, including the citizenship classifications that help ensure tribes' jurisdiction over their own affairs. The classification of "American Indian" children under ICWA is not one of race, but one of citizenship — Native children are citizens of sovereign Native tribes. Under the Indian Commerce Clause of the U.S. Constitution, Congress determines how the U.S. recognizes a sovereign tribe's jurisdiction over its citizens, and therefore, the care and education of indigenous children through ICWA are well within Congress' constitutional powers. If the Supreme Court issues an adverse ruling and denies that "American Indian" is a political status, it will have devastating consequences for the Indian Commerce Clause, tribes' rightful jurisdictions over their own citizens, the fates of Native children, and even for the status of indigenous lands.

For more information on *Haaland v. Brackeen*, see the following resources:

- *Brackeen* Headed to the U.S. Supreme Court, *Native American Rights Fund Legal Review*, Vol. 47.1 (2022)
- Amanda L. White Eagle, On Indigenous Peoples' Day, Reflections on Tribal Sovereignty in *Haaland v. Brackeen*, *Just Security* (Oct. 10, 2022)
- Jessica Lambert, This Supreme Court Case Threatens the Future of Tribal Lands, *The Nation* (Oct. 5, 2022)
- Ian Millhiser, How a new Supreme Court case endangers the New Deal, the Great Society, and Obamacare, *Vox* (Mar. 2, 2022)
- Brief of 497 Indian Tribes And 62 Tribal And Indian Organizations As *Amici Curiae* In Support of Federal And Tribal Defendants, Nos. 21-376, 21-377, 21-378 & 21-380

- Brief of *Amici Curiae* American Historical Association and Organization of American Historians in Support of Federal and Indian Plaintiffs, Nos. 21-376, 21-377, 21-378, 21-380