



Legal Review

NATIVE AMERICAN RIGHTS FUND

CELEBRATING 25 YEARS OF THE TRIBAL SUPREME COURT PROJECT

The following is excerpted from the Tribal Supreme Court Project's 25th Anniversary Report. We also invite you to join us in Washington, DC, on September 17-18, 2026, as we celebrate 25 years of Project advocacy on behalf of Tribal interests at the highest levels of the federal judiciary. Learn more and read the full report at sct.narf.org.


The Tribal Supreme Court Project (TSCP) was established in 2001 by the National Congress of American Indians (NCAI) and the Native American Rights Fund (NARF) to address the erosion of Tribal sovereignty in the Supreme Court of the United States (SCOTUS). Since its inception, the TSCP has monitored 550 cases, supported every major federal Indian law case argued before the Court, and built a network of over 300 volunteers. These efforts have significantly improved outcomes for Tribes, with a 70% win rate in SCOTUS cases over the last decade, compared to an 80% loss rate before the Project's creation.

Key victories include *Nebraska v. Parker* (2016), *McGirt v. Oklahoma* (2020), and *Haaland v. Brackeen* (2023), which have strengthened Tribal sovereignty and shaped legal doctrine. Moving forward, the TSCP aims to expand its lower-court tracking, provide more training for Tribal attorneys, deepen jurisprudential analysis, and broaden partnerships to address emerging challenges to Tribal sovereignty.


HISTORY AND SERVICE

Since its establishment in 1790, SCOTUS has decided over 30,000 cases, with approximately 200 involving American Indian and Alaska Native (AI/AN) Tribes. Federal Indian law cases often involve


25 YEARS OF TSCP (2001-2026)



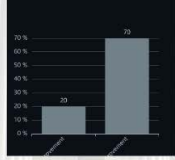
Monitored 550 AI/AN or federal Indian law cases at petition and merits stages



Supported all 36 AI/AN or federal Indian Law cases heard on the merits



Built a workgroup of over 300 volunteer practitioners, professors, and partners



Win-loss record of Tribes improved from 20-80% to 70-30%

treaties, Congressional acts, and inter-sovereign relations. SCOTUS decisions have significant impacts on Tribal rights, some affirming and others undermining them.

The TSCP was created in response to a series of detrimental SCOTUS decisions in 2001 that

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significantly limited Tribal jurisdiction over non-Indians within Tribal territories. A meeting of Tribal leaders, attorneys, and advocates on September 11, 2001, led to the formation of the TSCP supported by an NCAI Resolution and house at NARF.

The TSCP identifies and monitors AI/AN and federal Indian law cases at both the petition and merits stages, averaging 23 cases per term. It coordinates a nationwide workgroup of more than 300 volunteers, including legal experts, professors, and advocates, to provide legal analysis, strategy, and amicus support. The Project also offers direct assistance to attorneys, organizes moot courts, and provides research and technical support.

The TSCP emphasizes amicus strategy, discouraging duplication and ensuring high-quality briefs. It has successfully coordinated amicus briefs from Tribes, Tribal organizations, states, legal scholars, and other stakeholders to support Tribal interests.

IMPACT

- **Improved Win-Loss Record**

Before the TSCP, Tribes lost 80% of their SCOTUS cases. In the first four terms after the Project's creation, Tribes won 50% of their cases. Despite setbacks during Chief Justice Roberts' early tenure, the win rate improved to 70% in the last decade. This improvement is attributed to the Project's coordinated advocacy and the changing composition of the Court, including the appointment of Justice Neil Gorsuch, who has demonstrated a strong understanding of federal Indian law and tribal sovereignty.

- **Enhanced Amicus Strategy**

Amicus briefs have become increasingly significant in SCOTUS cases, providing specialized information and perspectives. The TSCP has revolutionized Tribal amicus strategy, ensuring briefs are cohesive, unique, and complementary to the parties' arguments. The Project has also successfully engaged states as amici in support of Tribal interests, a practice that has become a regular part of its strategy.

LANDMARK CASES

Nebraska v. Parker (2016)

The Court unanimously upheld the boundaries of the Omaha Tribe's reservation, affirming that Congress had not diminished them.

McGirt v. Oklahoma (2020)

In a landmark 5-4 decision, the Court upheld the Muscogee (Creek) Nation's reservation boundaries, emphasizing the importance of adhering to treaty terms. Justice Gorsuch's majority opinion reaffirmed Tribal sovereignty and the enduring validity of treaties.

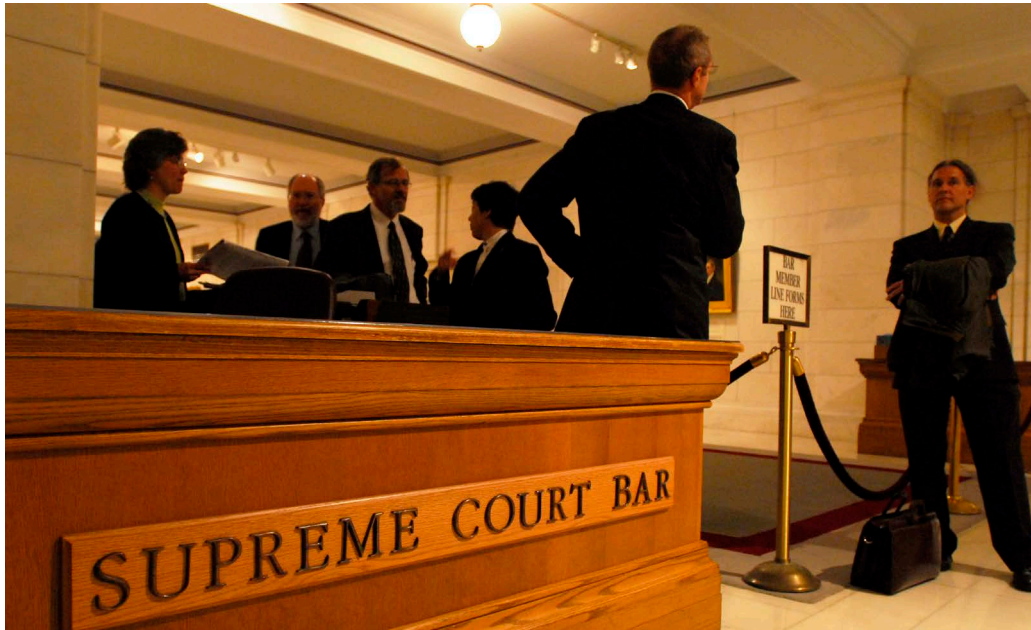
Haaland v. Brackeen (2023)

This case challenged the constitutionality of the Indian Child Welfare Act (ICWA), threatening foundational principles of federal Indian law. The TSCP coordinated the largest united Indian Country amicus brief in history, with 497 Tribes and 62 Tribal organizations. The Court upheld ICWA's constitutionality in a 7-2 decision, marking a significant victory for Tribal sovereignty.

“

Winning a case like *Brackeen* truly takes a village The collaborative approach is not unique to *Brackeen*. It is a hallmark of litigating federal Indian law cases, which involve partnerships developed as part of the Tribal Supreme Court Project. The Project is a resounding success, greatly improving outcomes for tribal nations in cases before the Court.

Ian Heath Gershengorn, *Haaland v. Brackeen – A Window into Presenting Tribal Cases to the Court*, 56 Conn. L. Rev. 1103, 1105-06 (May 2024).



GOALS AND VISIONS FOR THE FUTURE

- **Expanded lower-court tracking and assistance**

The TSCP aims to improve its tracking of lower-court cases to identify those likely to reach SCOTUS. By investing in advanced case-tracking platforms and forming partnerships with law firms, nonprofits, and law schools, the Project plans to increase its involvement in lower-court cases to improve their posture before reaching SCOTUS.

- **In-depth analysis of SCOTUS jurisprudence**

The TSCP plans to commission a comprehensive review of SCOTUS's recent federal Indian law decisions, voting patterns, and emerging issues. This analysis will help refine strategies and allocate resources effectively.

- **Supporting federal Indian lawyers**

The TSCP will expand its resources for Tribal attorneys, including SCOTUS practice manuals, exemplar briefs, and training programs. The Project also aims to develop a Native SCOTUS bar by collaborating with law firms, Tribal attorney organizations, and law schools.

- **Outreach and education**

The TSCP will increase its presence in Indian Country and the legal community by participating in conferences, meetings, and events. It will also strengthen connections with state attorneys general organizations to foster collaboration.

Over the past 25 years, the TSCP has transformed Tribal SCOTUS advocacy, improving win-loss outcomes, enhancing amicus strategies, and securing landmark victories. As new challenges to Tribal sovereignty emerge, the Project's continued investment in coordinated advocacy, legal expertise, and strategic planning will be essential to protecting Tribal rights and advancing justice in the nation's highest court. 🏛️

TO READ THE FULL REPORT, VISIT SCT.NARF.ORG.



CASE UPDATES

RESOURCES FOR INDIVIDUALS AND NONPROFITS APPROACHED BY ICE



We have developed a comprehensive set of “Know Your Rights” resources to support Native Americans who may encounter U.S. Immigration and Customs Enforcement (ICE) and address reports of unlawful targeting and detention of Tribal citizens. These materials emphasize that Native Americans are U.S. citizens and that ICE generally lacks jurisdiction over them in immigration matters, while recognizing that enforcement actions have nonetheless impacted Native communities.

The guidance outlines key constitutional protections, including the right to remain silent, the right to refuse consent to searches without a valid judicial warrant, and the right to consult with an attorney. The resources provide detailed, scenario-specific guidance for interactions with ICE in homes, vehicles, workplaces, and public spaces, as well as tailored information for minors and individuals who are detained. They also address practical

considerations, such as the importance of carrying Tribal or state-issued identification and understanding the legal differences between judicial and administrative warrants.

In addition, we created a fact sheet for Native-serving nonprofits, offering guidance on protecting clients and staff, designating public and private spaces, and establishing internal policies to safeguard Fourth Amendment rights. The resources also encourage proactive safety planning and documentation of potential rights violations, while directing Native Americans who believe ICE violated their rights, contact the Native American Rights Fund at (303)447-8760 or rfa@narf.org. Find them all at narf.org/ice-resources-2026.

MICHIGAN SUPREME COURT HEARS CHALLENGE TO LINE 5 TUNNEL PERMIT



Bay Mills Indian Community President Whitney Gravelle speaks at the March 11 hearing. Photo credit: Sarah Rice for Earthjustice.

NARF is supporting Tribal Nations in ongoing litigation before the Michigan Supreme Court challenging the approval of Enbridge’s proposed Line 5 oil tunnel beneath the Straits of Mackinac. The latest development occurred on March 11, 2026, when the court heard oral arguments in consolidated cases brought by Tribal Nations and environmental organizations seeking review of the Michigan Public Service Commission’s 2023 permit approval.

During oral argument, petitioners asserted that the Commission’s decision should be vacated and remanded for further proceedings, arguing that the agency failed to adequately consider environmental risks, alternatives to the tunnel project, and impacts to treaty-protected rights. The cases specifically challenge limitations placed on the evidentiary record and the commission’s analysis of public need and potential oil spill risks in the Great Lakes. The Michigan Supreme Court has not yet issued a decision, but parties anticipate a ruling before the end of July. The outcome will determine whether the permit is upheld or returned to the Commission for a more comprehensive review.

These proceedings represent the latest stage in ongoing litigation, with Tribal Nations, represented by NARF and Earthjustice, seeking to ensure that state agencies comply with legal standards and fully evaluate impacts to Tribal treaty rights and protected resources.

Tribal Supreme Court Project



TRIBAL SUPREME COURT PROJECT

The Tribal Supreme Court Project is part of the Tribal Sovereignty Protection Initiative and is staffed by the National Congress of American Indians (NCAI) and NARF. In 2026, the Project will commemorate 25 years of service furthering the interests of Tribal Nations and Native American people as they appear before the U.S. Supreme Court. The Project was formed in 2001 in response to a series of U.S. Supreme Court cases that negatively affected Tribal sovereignty. The Project’s purpose is to promote greater coordination and to improve strategy on litigation that may affect the rights of all Tribes. We encourage Tribal Nations and their attorneys to contact us to coordinate resources, develop strategy, and prepare briefs, especially at the time of the petition for a writ of certiorari.

As of this writing, during its March Term 2026, the U.S. Supreme Court has heard no oral arguments in Indian law cases. Among pending petitions, the Project currently is tracking:

Turtle Mountain Band of Chippewa Indians v. Howe (25-253)

The Turtle Mountain Band of Chippewa Indians and three individual Indians sued the North Dakota Secretary of State in federal district court under 42 U.S.C. § 1983 and the Voting Rights Act of 1965 (VRA) alleging that the State’s redistricting violated the VRA Section 2, which bans voting discrimination based on race, color, or language-minority membership. The district court ruled for the plaintiffs. A majority of a three-judge panel of the U.S. Court of Appeals for the Eighth Circuit reversed, holding that Section 2 is not enforceable

by private plaintiffs suing under Section 1983, and its holding in an earlier decision that Section 2 is not privately enforceable through an implied right of action.

United States v. Hopson (25-1039)

Jason Hopson and Robert Johnston are Indians who were charged under the Major Crimes Act with felony assaults in Indian Country. The federal district court in jury trials in each of their cases instructed the jury that it could find them guilty of the lesser offense of simple assault. Each jury did so. On appeal to the U.S. Court of Appeals for the Tenth Circuit, the Court of Appeals reasoned that even if the Major Crimes Act entitles a defendant to ask a jury to find him guilty of a lesser included offense not listed in the Act, the Act deprives the district court of the ability to enter a conviction if the jury so finds. Hence, district courts must instruct juries that they can find Indian defendants guilty of lesser offenses, but when juries do so, the courts must treat the verdicts as nullities and set the defendants free because they lack power to sentence after a guilty verdict on a lesser included offense is returned

Winnemucca Indian Colony v. United States (25-1170)

The Winnemucca Indian Colony sued the United States in the Court of Federal Claims (CFC) for money damages alleging that the U.S. failed to protect the Tribe’s water on Tribal trust land. The CFC dismissed for lack of jurisdiction, and the U.S. Court of Appeals for the Federal Circuit affirmed, finding that Winnemucca failed to identify a money-mandating treaty, statute, or regulation imposing the alleged water rights duties on the U.S. 🏞️



The Tribal Supreme Court Project 25th Anniversary Celebration!

Thursday, September 17, 2026, 6pm-9pm at
the National Museum of the American Indian

FOR MORE INFORMATION VISIT SCT.NARF.ORG




BULLETINS IN COLLABORATION WITH COLORADO LAW'S AMERICAN INDIAN LAW CLINIC

Every Wednesday, the Indian Law Bulletins provide subscribers with a free round up of court opinions, legislation, regulatory updates, law review articles, and news relevant to legal issues in Indian Country. National Indian Law Library (NILL) staff research updates in these many areas, tracking down items from a wide variety of sources.

During the academic term, NILL is fortunate to have Colorado Law American Indian Law Clinic students to assist in researching Tribal court opinions. With many Tribal courts throughout the United States, it can be challenging to keep track of the opinions they publish. Colorado Law students research updates through Westlaw and LexisNexis as well as by periodically checking the websites of dozens

of Tribal courts for new documents. Thanks to the help of these students, NILL can track more Tribal court cases regularly and provide bulletin updates in a timely manner. The clinic provides a new student each month to help with research, so a number of students gain experience throughout the semester.

NILL is thankful for the assistance and collaboration of the American Indian Law Clinic students each semester. NILL librarians look forward to meeting with students and sharing the space with future attorneys, scholars, and members of Indian Country's legal community.

Find more information and subscribe to the Indian Law Bulletins at nill.narf.org/bulletins. 

CALL TO ACTION

NARF looks to Tribal Nations to provide crucial funding to continue our advocacy on behalf of Indian Country. It is an honor to list here the Tribes and Native organizations that have chosen to share their good fortunes with NARF and the Native clients that we serve during the 2026 fiscal year so far (Oct. 2025 to Mar. 2026). To join these Tribes and organizations as contributors and partners in fighting for justice for our people and in keeping with the vision of our ancestors, contact Dallin Maybee at dmaybe@narf.org

American Indian Services Inc.
Bay Mills Indian Community
Chickasaw Nation
Foxwoods Resort Casino
Jamestown S'Klallam Tribe
Keweenaw Bay Indian Community
Native Americans in Philanthropy

Native Movement/Mother Earth Alliance
Oneida Nation
Sac and Fox Nation of Oklahoma
Seminole Tribe of Florida
Shakopee Mdewakanton Sioux Community
Yocha Dehe Wintun Nation

The Native American Rights Fund

The Native American Rights Fund (NARF) is a Native-led, nonprofit legal organization defending and promoting the legal rights of Native American people on issues essential to our Tribal sovereignty, natural resource protections, and human rights.

Since 1970, we have provided legal advice and representation to Native American Tribal Nations, individuals, and organizations on high impact issues. Our early work was instrumental in establishing the field of Indian law. NARF—when very few would—steadfastly stood for religious freedoms and sacred places, subsistence hunting and fishing rights, as well as basic human and civil rights. We continue to take on complex, time-consuming cases that others avoid, such as government accountability, climate change, voting rights, and the education of our children. We have assisted more than 300 Tribal Nations with critical issues that go to the heart of who we are as sovereign nations.

NARF's first Board of Directors developed five priorities to guide the organization. Those priorities continue to lead NARF today:

- Preserve Tribal existence
- Protect Tribal natural resources
- Promote Native American human rights
- Hold governments accountable to Native Americans
- Develop Indian law and educate the public about Indian rights, laws, and issues

Under the priority to **preserve Tribal existence**, NARF constructs the foundations to empower Tribes to live according to their traditions, enforce their treaty rights, ensure their independence on reservations, and protect their sovereignty.

An adequate land base and control over natural resources are central to economic self-sufficiency and self-determination. They are vital to the very existence of Tribes. Thus, much of NARF's work aims to **protect Tribal natural resources**.

In order to **promote human rights**, NARF strives to enforce and strengthen laws that protect the rights of Native Americans to exercise their civil rights, practice their traditional religion, use their languages, and enjoy their culture.

Contained within the unique trust relationship between the United States and Tribal Nations is the inherent duty for all levels of government to recognize and responsibly enforce the laws and regulations applicable to Native people. NARF will **hold governments accountable** to Native Americans.

For the continued protection of Indian rights, we must **develop Indian law and educate the public** about Indian rights, laws, and issues. This priority includes establishing favorable court precedents, distributing information and law materials, fostering relevant legal education, and forming alliances with Indian Law practitioners and other organizations.

Requests for legal assistance should be addressed to NARF's main office at 250 Arapahoe Ave, Boulder, CO, 80302. NARF's clients are expected to pay what they can toward the costs of legal representation.

NARF Legal Review is published biannually by the Native American Rights Fund. There is no charge for subscriptions, however, contributions are appreciated.

narf.org

WE'VE MOVED!
Please note our Alaska office has
a new address.

Boulder, CO (Main) Office:

250 Arapahoe Ave, Boulder, CO 80302
303-447-8760; FAX 303-443-7776

Washington, DC Office:

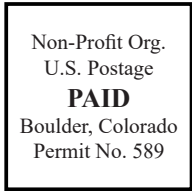
950 F Street, NW, Suite 1050, Washington, DC 20004
202-785-4166; FAX 202-822-0068

Anchorage, AK Office:

420 L Street, Suite 310, Anchorage, AK 99501
907-276-0680; FAX 907-276-2466

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