



## **Supreme Court to Hear Case of Texas Couple Fighting to Keep Adopted Native American Child**

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November 6, 2022

The Supreme Court this week will hear the case of a Texas family at risk of losing one of their two adopted Native American children because of a federal law they allege gives tribes “race-based” priority in custody disputes. The case, *Haaland v. Brackeen*, combines litigation from a handful of other families and multiple interested states, including Texas, where Chad and Jennifer Brackeen live with their children. The tribes defending the law, meanwhile, warn that if the Brackeens win, the case could have far-reaching consequences that undermine their sovereignty.

At the center of the controversy is the Indian Child Welfare Act (ICWA), a 1970s law meant to protect Native American children in state custody proceedings.

“There are Americans out there who are eager to help these children out, and the Indian Child Welfare Act says they are not allowed to because their skin is the wrong color,” Timothy Sandefur, an adjunct scholar at the libertarian Cato Institute, told Fox News Digital.

Chad and Jennifer Brackeen told Fox News Digital that they are worried their adopted daughter, Y.R.J., could be “ripped” from their family thanks to the Indian Child Welfare Act.

### **TEXAS FAMILY FIGHTS AT SUPREME COURT TO KEEP ADOPTED NATIVE AMERICAN CHILD DUE TO LAW THAT FAVORS TRIBES**

“That’s outrageous and unconstitutional,” he said. Sandefur wrote a brief for the Goldwater institute supporting striking down ICWA.

ICWA was a reaction to high rates of Native children being adopted by non-tribal members – often with little process and unjustly.

It prioritizes placing Native children with extended family members, members of their tribe, and if that's not possible, with another Native family. Exceptions for "good cause" are allowed but not defined.

Tribes argue that their children are key to their continuation as political entities and that their unique status under U.S. law means legislation directed at the tribes isn't race-based.

### **ABORTION RIGHTS PROTESTERS INTERRUPT SCOTUS ARGUMENT SESSION**

"The precedent of the Supreme Court is that Indian tribes are political groups of people, they are not racial groups of people," Chrissi Ross Nimmo, the deputy attorney general of Cherokee Nation, told reporters last month. "Tribes determine citizenship ... just like countries."

The Supreme Court will hear the case *Haaland v. Brackeen* on Nov. 9, 2022. Several Native American tribes and a handful of states are also parties in the case.

But critics of the law say it removes the best interest of a child, including staying with adults they've known for some time, in favor of placing a child with anyone of the same or a similar race. "No other federal law that is triggered by a child's biological eligibility for tribal membership," Sandefur said. "Every other Indian law on the books applies to a person because that person is a member of a tribe."

"Congress's racial discrimination is 'most evident' in ICWA's third placement preference ... which bluntly favors any 'Indian famil[y]' from any of 574 tribes over any non-Indian family," a brief from the Brackeens' lawyers says.

### **SUPREME COURT LIKELY TO BAN AFFIRMATIVE ACTION IN COLLEGE ADMISSIONS, LEGAL EXPERTS SAY**

Chad and Jennifer Brackeen's journey to the Supreme Court began when Navajo Nation sought to place their adopted son, referred to in court documents as A.L.M., with unrelated tribal members who lived in a different state.

The family to whom the Navajo Nation wished to send A.L.M. stepped back from the proceedings, and the Brackeens won custody. But their adoption saga continued after A.L.M.'s mother gave birth to his half-sister, known as Y.R.J.

The Supreme Court Tuesday will hear a case that could have major ramifications for Native American sovereignty.

The biological mother supported placement with the Brackeens. But Navajo Nation sought to place Y.R.J., according to the Brackeens' lawyers, "in another state hundreds of miles away with either a great-aunt or an unrelated Navajo couple."

That case is still in a state court in Texas. But the Brackeens' lawyers say the result of their Supreme Court case, which stemmed from their fight to keep A.L.M., will likely decide the result of Y.R.J.'s case and thus the future of their family.

### **AFFIRMATIVE ACTION CASE: JUSTICES ALITO, ROBERTS SNAP AT HARVARD LAWYER**

“Our children are young, our oldest is 13, the baby sister is 4 and a half. So, to some degree, only the oldest are fully aware of what we’re going through,” Chad Brackeen told Fox News Digital. “And it’s our responsibility to sort of shield our children at this point of the uncertainty, that she could ultimately be taken, ripped from our home and moved states away.”

Another major issue Sandefur said the case could turn on is whether ICWA unconstitutionally commandeers state courts to implement federal policy.

“ICWA is the only federal law in existence that is exclusively enforced by state officials. The feds don’t enforce ICWA,” Sandefur said. “But our federalist system under our constitution prohibits Congress from compelling states to enforce laws against their will.”

Justice Neil Gorsuch is known to be “sensitive” to Native American legal issues.

Lawyers backing top tribal leaders, however, say the consequences for Native Americans could go far beyond adoption disputes if the justices rule against them.

### **JUSTICES HEAR ARGUMENTS OVER AFFIRMATIVE ACTION IN HARVARD, UNC SUPREME COURT CASES**

Kate Fort, the director for the Indian Law Clinic at Michigan State University, called the case a “facial attack on tribal sovereignty.” She also said it could “lead to a fundamental re-understanding of how Congress can or cannot pass laws for tribes.”

Fort said other litigants suing over an alleged gambling monopoly for Native Americans in Washington state are already mimicking the arguments used in the Brackeen case.

Oral arguments are scheduled for Wednesday, with an extended hearing set to last nearly two hours due to the number of parties.

Unlike many politicized cases, the court may not split directly along ideological lines. Tribal law is a subject on which the justices at times may form unusual alliances to decide a case.

“A lot of people are particularly interested in how Justice Gorsuch is going to look at this case, because he has a reputation for being very sensitive to... Indian law issues,” Sandefur said.