



CALIFORNIA TRIBAL FAMILIES COALITION

Long-Awaited Court Decision Will Not Impact Indian Child Welfare Act in California

California tribes are currently reviewing the complicated federal appeals decision in a case challenging the law that protects Indian Children and families

After a 14-month wait, a sharply-divided U.S. 5th Circuit Court of Appeals in New Orleans has issued an opinion in *Brackeen v. Haaland* upholding the U.S. Congress' authority to enact the Indian Child Welfare Act (ICWA). The decision is a triumph for tribes, tribal families, and most importantly, tribal children.

The California Tribal Families Coalition (CTFC) is a coalition of over 40 tribes and tribal leader associations from across the state that has been leading the California tribal response to the *Brackeen* case. CTFC is currently reviewing the complicated 325-page decision, but an initial inventory of the opinion shows that the decision should have no impact on the ICWA's application in California.

"From the initial analysis of the decision, the news is good as the Equal Protection attack on tribes has failed," said CTFC Board Chairman Robert Smith, who also serves as Chairman of the Pala Band of Mission Indians. "Despite this, there are troubling aspects of the opinion, and we still have work to do as tribes will not accept any reduction in the protections that ICWA has provided tribal children and families for more than 40 years."

Key portions of the decision were limited to the Northern District of Texas, so the Congressionally-mandated protections that ICWA has provided for tribal children, families, and tribes, remain in place in California. "The Court has upheld ICWA and the worst fears for tribes and tribal advocates did not come to fruition. ICWA remains standing, especially in California," said Teresa Sanchez, a CTFC Board member and a tribal council member with the Morongo Band of Mission Indians, the only California tribe to be a direct party in the case.

"What happens in Texas does not impact ICWA in California, and California tribal leaders will continue to work with the broad base of supportive state leaders to ensure ICWA continues to apply to our cases and equal protection attacks are overcome," said James Siva, Vice Chair of the Morongo Band of Mission Indians.

The full panel of the Court, all but 2 of the 16 judges, heard argument on the *Brackeen* case back in January 2020. The case challenged the constitutionality of the 43-year-old ICWA, the federal law aimed at reversing a history of Indian children being removed from their homes and tribes.

OUR MISSION

To protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and are at the core of tribal sovereignty and tribal governance

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Twenty six states, including California, and the District of Columbia filed amicus briefs in the case asking the Fifth Circuit to uphold ICWA. Collectively, these states are home to 94% of federally recognized tribes and 69% of the national American Indian and Alaska Native population.

California expanded state ICWA protections in 2006 and 2018 through state law, SB 678 and AB 3176, as well as by creating Judicial Council forms and Rules of Court. In addition to state law, the California Department of Social Services and the California Attorney General have affirmed that ICWA, often called the “gold standard” for child welfare practices, remains California law.

For California tribes specifically, they will look to SB 678 and AB 3176 to further distance the Brackeen decision from cases in California. “The hard work of Tribes in ushering SB 678 and AB 1376 through the Legislature is going to ensure that potential ramifications of the Brackeen case are held at bay for our cases here in California,” said CTFC Executive Director Delia Sharpe.

SB 678 and AB 3176, incorporating both ICWA and the federal rules regarding ICWA into California law, are unaffected by the Brackeen decision. Further, with the case having no precedential effect outside of the Northern District of Texas, Tribes, Tribal Social Services and attorneys can largely ignore the convoluted decision.

As stated in the decision: *“This case will not have binding effect in a single adoption. That’s right, whether our court upholds the law in its entirety or says that the whole thing exceeds congressional power, no state family court is required to follow what we say.”*

CTFC appreciates all ongoing support needed to keep children and families safe under ICWA. CTFC remains committed to fighting for ICWA and ensuring all the provisions are upheld. In an effort to remain vigilant, we ask that all advocates be on alert to attempts to use the Brackeen decision and ask that CTFC be immediately notified of such efforts. Together, we will defend ICWA.

About the California Tribal Families Coalition

Comprised of more than 40 tribes and tribal organizations from across the state, the California Tribal Families Coalition’s mission is to promote and protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and are at the core of tribal sovereignty and tribal governance. For information, please visit <https://www.caltribalfamilies.org> or email delia.sharpe@caltribalfamilies.org

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Bear River Band Of Romerville Rancheria



Big Sandy Rancheria



Bishop Paiute Indian Tribe



Cachil Dehe Wintun



Cher-ae Heights Indian Community Of The Trinidad Rancheria



Coyote Valley Band Of Pomo Indians



Dry Creek Band Of Pomo Indians



Enterprise-Rancheria



Federated Indians Of Graton Rancheria



Habematolel Pomo Of Upper Lake



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