

Brackeen v. Haaland



Understanding the case and possible impact on the Indian Child Welfare Act (ICWA) and Tribal sovereignty

This post may contain triggering material relating to boarding schools and family separation

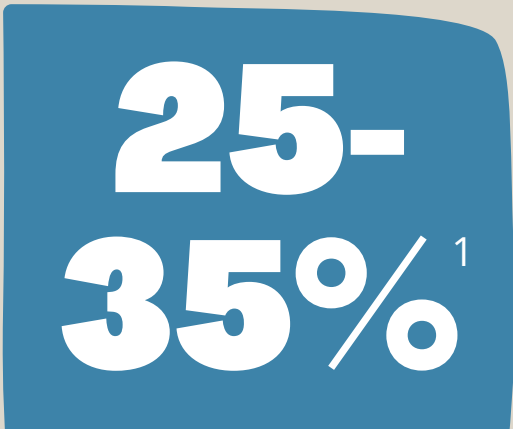
Why is this case so important?

In this case, ICWA is under attack. ICWA was created to help prevent family separation and alienation from children's cultures. This was a practice the United States has been using for many years to advance assimilation, like with boarding schools.

An attempt to end ICWA is an attempt, once again, to erase Tribes and Tribal sovereignty.^{3,5}

What is ICWA?

ICWA was an act passed in 1978 to address the problem of child separation through foster care and adoption¹

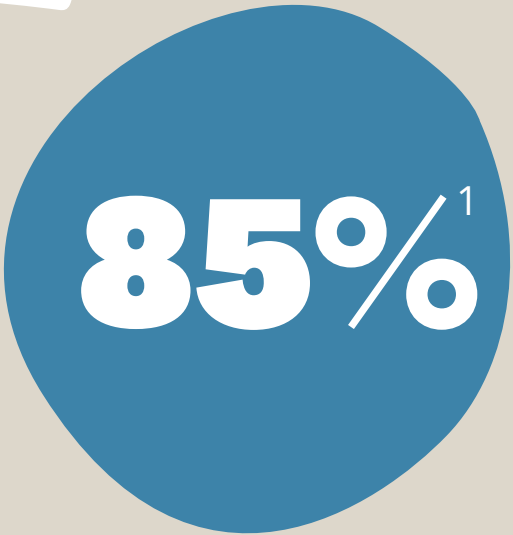


**25-
35%**¹

of all Native children were being removed from their families (see page 8 for more information)



of those
children,



85%¹

were put in non-
Native placements

What is ICWA?

ICWA is a set of procedures a state must follow in child custody proceedings of **a child that either has or is eligible for Tribal membership.**^{1,2}

According to the National Indian Child Welfare Association, case workers must:



Provide aid to help the child stay with their family



Identify a valid placement (first family, and then within the Tribe)



Notify and involve the Tribe in custody proceedings

The basis of this case is an issue of people misreading ICWA as a law about race and not about Tribal sovereignty

Indian Adoption Project

The United States debating policies surrounding Indigenous adoption is nothing new. The Indian Adoption Project was **just another example of this practice. The Bureau of Indian Affairs (BIA) funded the Child Welfare League of America (CWLA) to place Indigenous children with white families in the 1950s and 1960s.**

"And the idea was literally to separate these people, the parents and their children from their tribal communities permanently. And ultimately the hope was the tribes themselves would disappear."

-Bert Hirsch⁵

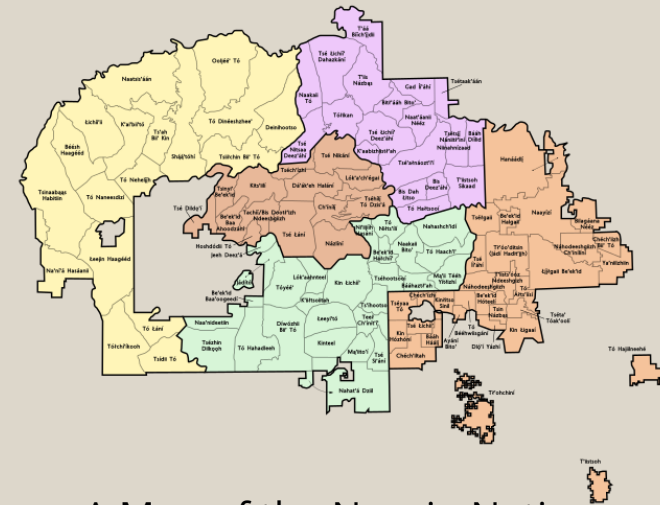
This was yet another policy showing how the United States continues to debate adoption in Indian country

The Case

ICWA is currently being challenged in the court case Brackeen v. Haaland. It will be heard in the Supreme Court this session. ³

The child, "ALM"³

- ALM- Navajo boy in the foster care system
- Went into foster care where he lived with The Brackeen family.
- The Brackeens wanted to adopt him, but the adoption was halted because of ICWA.
- Using the powers of Tribal sovereignty acknowledged under ICWA, The Tribe wanted to send ALM to an Indigenous family in New Mexico



A Map of the Navajo Nation

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The main argument: ICWA constitutes racial discrimination because it decides on the basis of race

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The Brackeen Family³

- Chad and Jennifer, from Texas.
- Conservative and Evangelical Christian.
- Church encourages families to adopt, so they fostered "ALM."
- When the adoption was denied due to ICWA, they sued with the pro bono help of a conservative lawyer.



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The main argument: ICWA constitutes racial discrimination because it decides on the basis of race

The Case, today

Recently, the Fifth Circuit court of appeals heard the case.⁴



The Brackeen family, with the help of their lawyers, was trying to overturn ICWA. However, this court **upheld the constitutionality of ICWA.**

This court:



Affirmed the current definition of "Indian Child" for ICWA proceedings



Said the Bureau of Indian Affairs has the authority to create binding rules for states



Reversed many of the district court rulings, meaning many parts of ICWA are no longer struck down

Consequences Today

Lawyer Matthew McGill, backed by the state of Texas, decided to take the Brackeen's case pro bono. Yet, every child welfare organization disagrees with ending ICWA. **Why is this case being fought?**⁵

If the supreme court strikes down ICWA, white Americans will once again be able to adopt Indigenous Children without Tribal input



This will, once again, allow the United States to continue its history of family separation and assimilation.⁸

References

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