



# NAVAJO NATION DEPARTMENT OF JUSTICE

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### FOR IMMEDIATE RELEASE

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### NAVAJO NATION CELEBRATES VICTORY IN *HAALAND v. BRACKEEN* UPHOLDING INDIAN CHILD WELFARE ACT

WINDOW ROCK, AZ – The Navajo Nation celebrates the hard-fought victory in *Haaland v. Brackeen*. In its opinion issued today, the U.S. Supreme Court held the Indian Child Welfare Act is constitutional.

Congress passed the Indian Child Welfare Act in 1978 after many years of overreach by state child welfare services and state family courts in breaking up Native families and facilitating adoptions of Native children by non-Indians. Under ICWA, Congress mandated minimum protections of Indian children and families to maintain a child's cultural connections to their Indian family and Indigenous Nation. ICWA also created preferences if an Indian child's extended family, a family of that child's Indigenous Nation, or another Indigenous Nation, were available as a foster or adoptive home.

The Navajo Nation intervened in the case as a party to defend ICWA from attack by the Brackeen family, who adopted one Navajo child, and seeks to adopt a second Navajo child, despite the Nation's identification of Navajo families willing and able to care for the children. The Nation collaborated with other tribal nations, the Cherokee Nation, Oneida Nation, Quinault Indian Nation, and Morongo Band of Mission Indians, in filing a joint brief before the Court urging it to uphold ICWA as a vital statute protecting the sovereignty and cultural integrity of Indian tribes.

In today's opinion, Justice Amy Coney Barrett and six other justices agreed that Congress had the constitutional authority to pass ICWA under the Indian Commerce Clause of the U.S. Constitution. They also held ICWA does not violate the anti-commandeering doctrine arising from the Tenth Amendment of the Constitution. In doing so, the Court has honored fundamental principles of Federal Indian Law and Constitutional Law.

Justice Gorsuch closed his concurring opinion by noting that "In adopting the Indian Child Welfare Act, Congress exercised that lawful authority to secure the right of Indian parents to raise their families as they please; the right of Indian children to grow in their culture; and the right of Indian communities to resist fading into the twilight of history. All of that is in keeping with the Constitution's original design."

Navajo Nation President Buu Nygren lauded the opinion, “The Indian Child Welfare Act is a vital tool for protecting Navajo families and communities, and we are grateful that the Supreme Court has recognized its importance.”

The Speaker of the 25th Navajo Nation Council, Crystalyne Curley, noted “On behalf of the Navajo Nation Council, I thank the Supreme Court Justices who honored and respected the sovereignty of the first people of this country and ruled in support of our children.”

Navajo Nation Attorney General, Ethel Branch, stated “I am so thankful to the Court for upholding this law that is so vital to preserving the integrity of Native families. We have nothing without our children; they are our future, and this decision ensures our collective Indigenous futures as Indigenous Nations.”

Thomas Cody, Director of the Nation’s Division of Social Services reflected that “It has been an emotional morning; this is an enormous win for Indian Country. I attended the oral arguments before the Supreme Court and am overjoyed to hear that ICWA stands because of its importance in advancing sovereignty for all tribal nations.”

Crescentia Tso of the Nation’s Indian Child Welfare Act Program noted “On behalf of the Navajo Indian Child Welfare Act Program, we are delighted that the Court upheld ICWA. Our work impacts hundreds of children and families across the United States. ICWA allows the Navajo Nation to have a seat at the table to continue to advocate for the best interest of our Navajo children and families. It is vital for our Navajo children to grow up with their Navajo families and extended families, so they have an opportunity to be raised with our Navajo culture, language, and traditions.”

The Nation celebrates the opinion as upholding key principles of the United States’ constitutional system. Currently, there are 649 Navajo children, who are in placement, throughout 25 states. Navajo DOJ remains committed to cooperate with other tribal attorneys in defending ICWA and the rights of Indian children, as well as the inherent sovereign authority of Indigenous Nations. Navajo DOJ will also continue to work with the States in ensuring compliance with the federal ICWA, state ICWA laws, and Agreements the Navajo Nation has previously entered into with the States of New Mexico, Arizona, and Utah regarding Navajo child welfare.

Special thanks to the litigation led on behalf of the Nation by Assistant Attorneys General Paul Spruhan of the Litigation Unit and LaTonia Johnson of the Human Services and Government Unit. Thanks also to former Assistant Attorney General Kandis Martine who participated in the case early on.

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