

Dept. of Justice: Urges U.S. Supreme Court to reject challenge to key law protecting rights of Native American children, families, and tribes

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MADISON, Wis. – The Wisconsin Department of Justice (DOJ) today joined a bipartisan coalition in filing an amicus brief in *Haaland v. Brackeen* urging the U.S. Supreme Court to reject a challenge to longstanding protections guaranteed to Native American children, their families, and tribal communities under the Indian Child Welfare Act (ICWA). ICWA is a critical framework for managing state-tribal relations, protecting the rights of Native American children, and preventing the unwarranted displacement of Native American children from their families and tribal communities. In the friend-of-the-court brief in support of the federal and tribal parties defending ICWA, the coalition highlights the nation's long history of inequitable removals of Native American children and reiterates the states' fundamental interest in standing up for the well-being of children in state child-custody proceedings.

“The Indian Child Welfare Act has protected Native American children for decades and it must remain in effect,” said Attorney General Josh Kaul. “The U.S. Supreme Court should reject the challenge to this landmark protection.”

Congress enacted ICWA in response to a serious and pervasive problem: State and private parties were initiating state child-custody proceedings that removed Native American children from the custody of their parents — often without good cause — and placed them in the custody of non-tribal adoptive and foster homes. That practice not only harmed children, their families, and their tribal communities, it also posed an existential threat to the continuity and vitality of Indian tribes. To

address this, Congress established minimum federal standards governing the removal of Native American children who are members of federally recognized tribes, or eligible for such membership, from their families. ICWA's provisions safeguard the rights of Native American children, parents, and tribes in state child-custody proceedings, and seek to promote the placement of Native American children with members of their extended families or with other tribal homes. The law's approach is tailored to the unique status of Native Americans and their own political institutions. In the more than four decades since Congress enacted ICWA, the statute has become the foundation of state-tribal relations in the realm of child custody and family services.

In the amicus brief, the coalition asserts that:

- ICWA is a critical tool for protecting Native American children and fostering state-tribal collaboration;
- ICWA is a valid exercise of Congress's powers over tribal affairs in response to unwarranted removals that imperiled relations with Native American tribes and threatened their existence;
- ICWA's provisions do not violate the "anti-commandeering" doctrine, which prohibits Congress from issuing direct commands to state governments; and
- ICWA's preferences for the adoptive and foster-care placement of the Native American children to whom it applies do not violate equal protection.

In filing the amicus brief, Wisconsin DOJ joins Arizona, California, Colorado, Connecticut, the District of Columbia, Idaho, Illinois, Iowa, Maine, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, and Washington.

A copy of the amicus brief is available [here](#). A copy of the amicus brief previously submitted by the coalition urging the U.S. Supreme Court to review the case is available [here](#).