

21-380 BRACKEEN V. HAALAND

DECISION BELOW: 994 F.3d 249

LOWER COURT CASE NUMBER: 18-11479

QUESTION PRESENTED:

State child-custody proceedings generally are governed by state law, with placement decisions based on the child's best interests. The Indian Child Welfare Act of 1978 ("ICWA"), 25 U.S.C. §§ 1901-1963, however, dictates that, in any custody proceeding "under State law" involving an "Indian child," "preference shall be given" to placing the child with "(1) a member of the child's extended family; (2) other members of the Indian child's tribe; or (3) other Indian families" rather than with non-Indian adoptive parents. *Id.* § 1915(a); *see also id.* § 1915(b). The en banc Fifth Circuit fractured over the constitutionality of the placement preferences, affirming in part the lower court's decision striking them down as unconstitutional.

The questions presented are:

1. Whether ICWA's placement preferences- which disfavor non-Indian adoptive families in child- placement proceedings involving an "Indian child" and thereby disadvantage those children-discriminate on the basis of race in violation of the U.S. Constitution.

2. Whether ICWA's placement preferences exceed Congress's Article I authority by invading the arena of child placement-the "virtually exclusive province of the States," *Sosna v. Iowa*, 419 U.S. 393, 404 (1975)-and otherwise commandeering state courts and state agencies to carry out a federal child-placement program.

CONSOLIDATED WITH 21-376, 21-377 AND 21-378 FOR ONE HOUR ORAL ARGUMENT.

CERT. GRANTED 2/28/2022