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Interrogating Haaland v. Brackeen: Family Regulation, Constitutional Power, and Tribal Resilience: The Connecticut Law Review Symposium

Casey M. Corvino

Julia R. Vassallo

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Introduction

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CASEY M. CORVINO & JULIA R. VASSALLO

In October 2023, the Connecticut Law Review *hosted the Symposium "Interrogating* Haaland v. Brackeen*: Family Regulation, Constitutional Power, and Tribal Resilience." The symposium was centered on the state of federal Indian law in the wake of the* Brackeen *decision. This decision was a victory for Indigenous families and Native nations as it left the Indian Child Welfare Act (ICWA) unscathed and affirmed the constitutional relationship between tribal nations and the United States. However, threats to tribal sovereignty continue as a handful of states and interest groups continue to seek ways to challenge tribal authority and federal laws that support it. This Introduction summarizes the arguments of several of the symposium's contributors and authors in the* Connecticut Law Review.

Interrogating *Haaland v. Brackeen*: Family Regulation, Constitutional Power, and Tribal Resilience: The *Connecticut Law Review* Symposium

CASEY M. CORVINO[*] & JULIA R. VASSALLO[**]

In 1978, Congress passed the Indian Child Welfare Act (ICWA), recognizing "that there is no resource . . . more vital to the continued existence and integrity of Indian tribes than their children . . . ."[1] The law, which prioritizes placement of Indian children with Indian families, has been hailed as a "gold standard" by child welfare advocates.[2] Despite this, ICWA has been repeatedly challenged in federal courts.[3] *Haaland v. Brackeen* was the latest effort to render ICWA invalid and had the potential to not only upend federal Indian law, but also constitutional and family law, while raising significant questions of federalism.

On June 15, 2023, the Court decided *Brackeen*. Justice Amy Coney Barrett's majority opinion was a victory for Native nations and families. It left ICWA unscathed and affirmed the constitutional relationship between tribal nations and the United States.[4] However, threats to Native families and tribal sovereignty continue, and Native children continue to be removed from their communities by a market seeking adoptable children. Interest groups and a handful of states continue to seek ways to challenge tribal authority and the federal laws that support it. And because the Supreme Court held that the *Brackeen* plaintiffs lacked standing to raise their equal protection challenges to ICWA,[5] those claims can be raised at a future date.

Recognizing both the incredible victory for Native nations and continuing challenges to their sovereignty, the *Connecticut Law Review* hosted the Symposium "Interrogating *Haaland v. Brackeen*: Family Regulation, Constitutional Power, and Tribal Resilience" on October 6,

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[*] J.D., University of Connecticut School of Law, 2024; M.M., Rutgers University; B.A., Manhattanville College.

[**] J.D., University of Connecticut School of Law, 2024; Certificate of Interdisciplinary Disability Studies in Public Health, University of Connecticut Center for Excellence in Developmental Disabilities Education, Research and Service, May 2024; B.A., University of Connecticut.

[1] 25 U.S.C. § 1901(3).

[2] *Brackeen Headed to Supreme Court*, NATIVE AM. RTS. FUND (June 28, 2022), https://narf.org/icwa-brackeen/.

[3] *See, e.g.*, Miss. Band of Choctaw Indians v. Holyfield, 490 U.S. 30 (1989) (challenging tribal jurisdiction over Indian children); Adoptive Couple v. Baby Girl, 570 U.S. 637 (2013) (limiting the scope of ICWA and the parental rights of indigenous fathers).

[4] Haaland v. Brackeen, 143 S. Ct. 1609, 1641 (2023).

[5] *Id.*

2023. The Symposium was a virtual event that was viewed, in real time, by nearly three hundred individuals across the country.[6] The event featured insight from leading scholars, attorneys, and Tribal leaders, and provided an invaluable opportunity to explore the ramifications of *Brackeen* and its implications for Native communities. We extend our gratitude to our participants, Professor Kathryn "Kate" Fort, Attorney Ian Gershengorn, Chairwoman Cheryl Andrews-Maltais, Professor Laura Briggs, Professor Gerald Torres, Professor Gregory Ablavsky, and Professor Seth Davis, for their thought-provoking insight and lively discussion.

This Symposium Issue of the *Connecticut Law Review* builds upon the discussions at our October event. Each of these pieces prominently addresses critical issues in federal Indian law and policy. Professor Ablavsky's Essay explores the original meaning of "commerce" in the Indian Commerce Clause. Professor Davis observes that attacks on the administrative state have reached federal Indian law and argues that there is no nondelegation doctrine for Native nations, nor should one exist. Attorney Gershengorn, who argued *Brackeen* before the Supreme Court, takes readers through the process of litigating an Indian law case before the Court. Finally, Professor Briggs stresses that an understanding of history and critical adoption studies are necessary to grasp ICWA's stakes.

We thank Professor Bethany Berger, whose mentorship and expertise in federal Indian policy and law were instrumental to the production of this Symposium and subsequent Issue. We would also like to thank each of our contributors for their time and impactful contributions to both this Issue and the Symposium event itself. Lastly, we extend our thanks to Professor Leslie Levin for her ongoing support and guidance as the Faculty Advisor for the *Connecticut Law Review*.

We also acknowledge the diverse range of topics covered in this Volume, reflecting the interdisciplinary nature of legal scholarship. While this Issue showcases a focus in federal Indian law and policy, we also celebrate contributions from our previous authors and student authors who also explored other critical legal issues ranging from education law, civil procedure, environmental law, tax law, privacy, and more.

We hope this Issue sparks thoughtful reflection and further inquiry into the complex legal landscape addressed within its pages.

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[6] The Symposium is available to watch in its entirety on YouTube. *See 2023 Connecticut Law Review Symposium: Interrogating Haaland v. Brackeen*, YOUTUBE (Oct. 6, 2023), https://www.youtube.com/watch?v=LaxHkQMZ50M.