



News

Hinshaw Files Amicus Brief in Support of SCOTUS Review of Ninth Circuit Decision Limiting Federal Judicial Review of Civil Rights Violations by Tribal Authorities

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A Hinshaw & Culbertson appellate team consisting of Joel Bertocchi and Gretchen Harris Sperry filed an amicus brief on behalf of University of Dayton School of Law professor Andrea Seielstad in support of a petition for certiorari challenging a Ninth Circuit decision interpreting the Indian Civil Rights Act ("ICRA"). The ICRA extends fundamental rights and liberties, including the writ of habeas corpus, to Native Americans, and provides for federal judicial review of alleged civil rights violations by tribal authorities where meaningful relief is otherwise unavailable.

Petitioner Jessica Tavares of the United Auburn Indian Community ("UAIC") had sought federal judicial review of her ten-year banishment from tribal property and facilities, punishment imposed by the UAIC tribal council after she and other petitioners had submitted a recall petition against members of the council for alleged wrongdoings. The trial court ruled that it lacked jurisdiction under the ICRA to review the banishment claims and dismissed the case. On appeal, a divided U.S. Court of Appeals for the Ninth Circuit affirmed. Tavares then petitioned the U.S. Supreme Court for review.

At stake in the *Tavares* case is the protection of individual Native Americans from arbitrary and unjust actions by tribal authorities. Due to sovereign immunity, absent an express waiver, the ICRA offers the only independent legal cause of action that can be brought against a tribe. However, the Ninth Circuit in *Tavares* limited the right of habeas review to physical detentions only, despite the writ's ability to protect restrictions on liberty more broadly.

In their brief, Bertocchi and Sperry argue that by limiting the use of habeas to cases of physical detention, the Ninth Circuit makes tribal members vulnerable to abuses of power by their tribal councils with no means to challenge them. According to their brief, "The Ninth Circuit's application of a different custody standard from that normally applied in habeas cases departs from the view of every other circuit and essentially guts habeas corpus for tribal members, ironically in the name of tribal sovereignty, leaving them with no federal remedy for constitutional violations."

The case is *Jessica Tavares et al. v. Gene Whitehouse et al.*, case number 17-429, in the Supreme Court of the United States. [Download a copy of the Andrea M. Seielstad brief](#) (PDF)

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