

# Kate Fort on: *Brackeen v. Haaland*

June 21st, 2023, 12-1:15pm PT via Zoom Webinar

1 Standard CLE (pending approval)

12:00 pm	Introductions	Addie Smith
12:15 pm	Overview of the Decision	Kate Fort
1:00 pm	Q&A	Kate Fort, Addie Smith
1:15 pm	Conclusion	Addie Smith

The United States Supreme Court has issued an opinion in the highly anticipated *Haaland v. Brackeen* case. The litigation involving three foster families, Texas, four intervening tribes and countless amici came to an end after nearly seven years. The Court's holdings implicate both Indian Child Welfare Act practice and federal Indian law practice. The Court had the opportunity to address the following issues:

1. Whether provisions of ICWA place unique burdens upon the prospective adoptive parents and the biological parent solely on the basis of race in violation of the Fifth Amendment Equal Protection Clause;
2. Whether ICWA impermissibly commandeers states to enact a federal scheme without Constitutional authority;
3. Whether ICWA exceeds the federal authority to legislate pursuant to the Indian Commerce Clause, the trust relationship, the Congress's plenary power in this area; and
4. Whether ICWA violates the anti-delegation clause by permitting tribes to alter the federal law's placement preferences.

The decision, released June 15th, requires a close read of the issues to see how the Court's decision will affect day to day practice. This CLE (pending approval) will provide an overview of the opinion, a breakdown of each issue litigated, and provide information on the decision's relevance to ICWA practice.

Event webpage with substantive material:

<https://www.twgtrainings.com/brackeen-decision-23>

## Addie Smith



**Faculty moderator/facilitator: Adrian (Addie) Smith** is a nationally known Indian Child Welfare Act trainer and has worked in states across the country to change policies and improve systems that promote ICWA compliance. She has also worked with a variety of tribes on projects designed to improve tribal social service systems and tribal courts.

Addie is the former staff attorney at the National Indian Child Welfare Association where she helped coordinate the response to *Adoptive Couple v. Baby Girl* and comments to the ICWA Federal Regulations. After which she worked on issues related to child welfare and juvenile justice for Oregon Governor Kate Brown and as Counsel to the Judiciary Committees in the Oregon State Legislature.

Her work with The Whitener Group focuses on improving tribal courts through systemic assessment, stakeholder engagement, and strategic planning. She also continues to work with states to change policies and improve systems to improve ICWA compliance. Both her law degree and master's in social work are from Washington University in St. Louis.

When not working with TWG, you will find Addie outside: hiking, skiing, mountain climbing, surfing or backpacking; or inside: reading, practicing yoga or trying a new recipe. She is really just your basic PNW gal. She would like you to know she is VERY chill (even if her co-workers don't always agree).

## Kate Fort



**Speaker: Kathryn (Kate) E. Fort** is a nationally recognized scholar in the field of federal Indian law, with specific expertise in the Indian Child Welfare Act and tribal child welfare systems. Kate is the Director of Clinics at Michigan State University College of Law and runs the Indian Law Clinic, where she teaches the Clinic class and other classes in federal Indian law. In 2015, she started the Indian Child Welfare Act Appellate Project, which represents tribes in complex ICWA litigation across the country. In this role, she works closely with tribal in-house attorneys.

She is the author of *AMERICAN INDIAN CHILDREN AND THE LAW*, published by Carolina Academic Press. Prof. Fort has written articles on laches, land claims, and has researched and written extensively on the Indian Child Welfare Act. Her publications include articles in the *Harvard Public Health Review*, *George Mason Law Review*, *Family Law Quarterly*, *Saint Louis University Law Journal*, *American Indian Law Review* as well as chapters in *CRITICAL RACE JUDGEMENTS* (Cambridge University Press, 2022) and *CHILD WELFARE LAW AND PRACTICE* (National Assoc. of Counsel for Children, 2023). She co-edited *FACING THE FUTURE: THE INDIAN CHILD WELFARE ACT AT 30* (Michigan State University Press 2009) and she is a contributing editor to the *COHEN'S HANDBOOK OF FEDERAL INDIAN LAW*. She co-edits the influential Indian law blog, TurtleTalk with Prof. Matthew Fletcher. Prof. Fort has represented tribes in the Washington Supreme Court, the Colorado Supreme Court, the Michigan Supreme Court, the Ohio Court of Appeals, the Illinois Court of Appeals, and the Second, Fourth, Fifth, Eighth and Ninth U.S. Circuit Courts of Appeals, as well as the United States Supreme Court.

Her work for The Whitener Group includes tribal court assessments, child welfare program assessments, and code writing and review. Prof. Fort graduated magna cum laude in from Michigan State University College of Law with the Certificate in Indigenous Law and is licensed to practice law in Michigan. She received her B.A. in History with honors from Hollins University in Roanoke, Virginia.

When not teaching or working with TWG, you will find Kate at her lake cottage reading a book, embroidering, or walking her puppies. In the summer she's on the pontoon boat while her two boys play in the water, and in the winter she plays a mean game of pond hockey with them, all while something delicious simmers on the stove—she is gourmet like that!