



Office of the Solicitor
Division of Indian Affairs

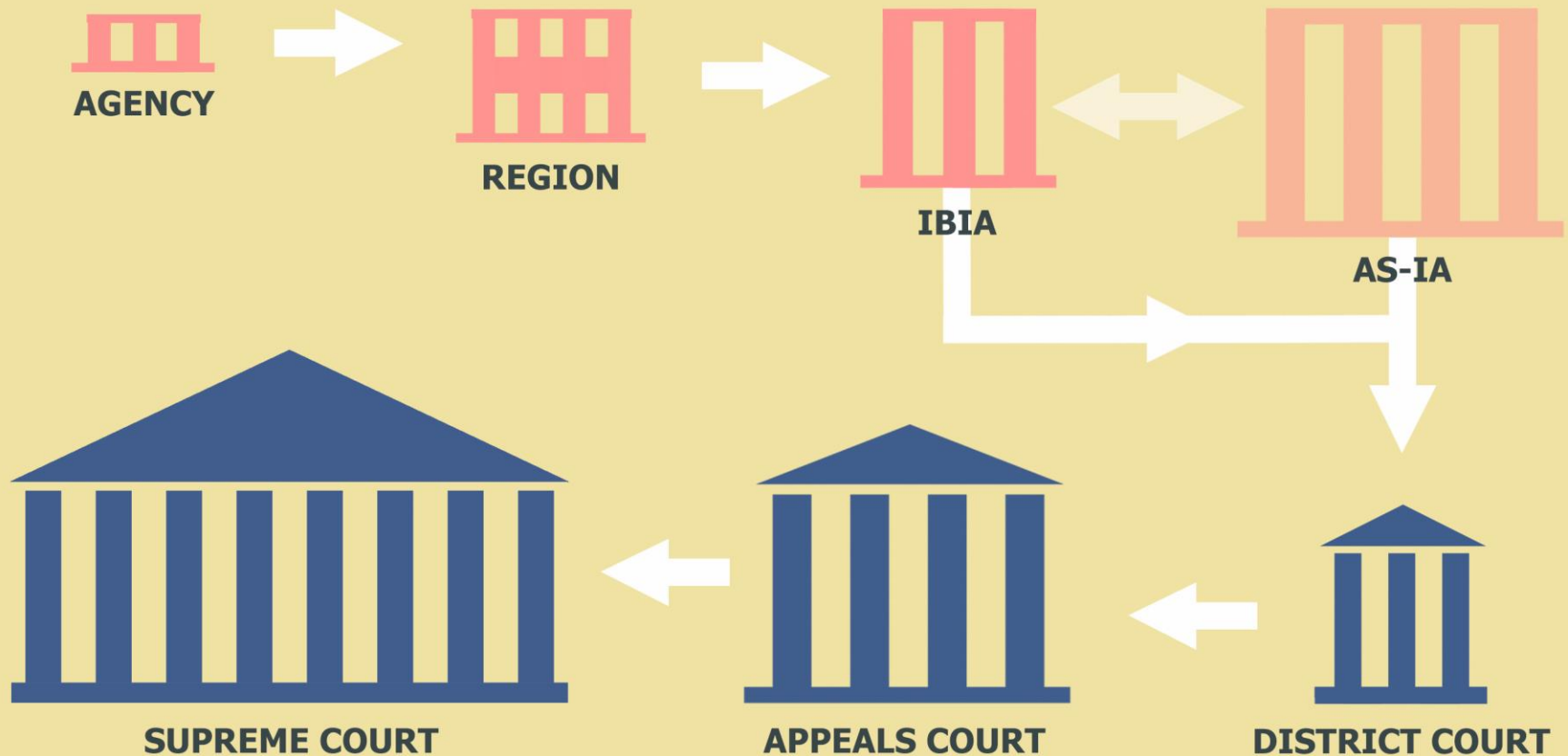
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RECENT DEVELOPMENTS IN FEE-TO-TRUST CASE LAW

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APPEAL PROCESS





Recent U.S. Supreme Court Decisions

- ***Nebraska v. Parker***
577 U.S. ___ (March 22, 2016) (Thomas, J.) (8-0)
- ***Dollar General Corporation v. Mississippi Band of Choctaw Indians***
579 U.S. ___ (June 23, 2016) (per curiam) (4-4)

United States Supreme Court

Nebraska v. Parker

577 U.S. ____
(March 22, 2016)

Unanimous Decision (8-0)

Opinion by Thomas, J.

A Case About (Non) Diminishment of Reservation Boundaries



United States Supreme Court

Nebraska v. Parker

577 U.S. ____
(March 22, 2016)

Unanimous Decision (8-0)

QUICK OVERVIEW: City of Pender, Nebraska challenged the authority of the Omaha Tribe to enact a liquor control ordinance, claiming that the town was not within the Tribe's reservation. The town and State of Nebraska argued that Congress diminished the boundaries of the Omaha Indian Reservation by the Act of Aug. 7, 1882, which stated "the Secretary of the Interior [shall] be, and he hereby is, authorized to cause to be surveyed, if necessary, and sold, all that portion of their reservation in the State of Nebraska lying west of the [Railroad] right of way."



United States Supreme Court

Nebraska v. Parker

577 U.S. ____
(March 22, 2016)

Unanimous Decision (8-0)

KEY HOLDING: The 1882 Statute did NOT diminish the Omaha Reservation, but rather only authorized lands to be sold. Only Congress may diminish the boundaries of an Indian reservation, and its intent to do so must be clear. Hagen reaffirmed!

IMPACT OF THE CASE MOVING FORWARD: Primarily reaffirms concepts announced in Hagen. Clarifies that “subsequent treatment” of the area by government officials (as well as subsequent demographics) are of limited value in determining whether Congress intended to diminish the Reservation.



United States Supreme Court

Dollar General Corporation v. Mississippi Band of Choctaw Indians

579 U.S. ____
(June 23, 2016)

Per Curiam Opinion (4-4)

A Case About Tribal Jurisdiction Over Non-Members



United States Supreme Court

Dollar General Corporation v. Mississippi Band of Choctaw Indians

579 U.S. ____
(June 23, 2016)

Per Curiam Opinion (4-4)

QUICK OVERVIEW OF THE CASE: This case arose as a civil damages claim by the family of an Indian boy who alleges that he was sexually abused by the manager of a Dollar General store operating on tribal trust land within the Choctaw reservation in Mississippi. Lawsuit was filed in Tribal Court, but Dollar General argued that the Tribal Court had no jurisdiction to hear the case.



United States Supreme Court

Dollar General Corporation v. Mississippi Band of Choctaw Indians

579 U.S. ____
(June 23, 2016)

Per Curiam Opinion (4-4)

KEY HOLDING: The Supreme Court upheld the Fifth Circuit Court of Appeals' ruling that Dollar General had consented to Tribal Court jurisdiction under the *Montana v. United States* test. The Tribal Court has jurisdiction.

IMPACT OF THE CASE MOVING FORWARD: "Sophisticated tribes and businesses will spend increasing amounts of energy at the bargaining table fashioning partnerships where consents to applicable law and forum are clear and express." -- Gehres





Recent U.S. Appellate Court Decisions

- ***Big Lagoon Rancheria v. California***
789 F.3d 947 (9th Cir 2015) (en banc)
- ***Jamul Action Committee v. Chadhuri***
2016 US App LEXIS 10440 ___ F.3d ___ (9th Cir) (June 9, 2016)
2016 US App LEXIS 10462 (9th Cir) (June 9, 2016)
- ***Akiachak Native Community v. DOI***
___ F.3d ___ (DC Cir) (July 1, 2016)
- ***Patchak v. Jewell***
___ F.3d ___ (DC Cir) (July 15, 2016)

Big Lagoon Rancheria v. California

789 F.3d 947 (9th Cir 2015) (en banc)

Issues:

- Tribal suit against State under IGRA
- Collateral attacks based on *Carcieri*
 - pre-1979 recognition
 - 1994 FTT decision
- Held improper collateral attack on decades-old FTT acquisition, and time-barred by APA
- Distinguished *Carcieri* as timely APA challenge



Jamul Action Committee v. Chaudhuri

2016 US App LEXIS 10440, __ F.3d __ (9th Cir 2016)
2016 US App LEXIS 10462 (June 9, 2016) (unpublished)

Issues:

- Suit under IGRA & NEPA to stop on-reservation casino
- Collateral attack on land's Reservation status
- Published opinion rejected NEPA claim
- Unpublished opinion held collateral attack precluded by *Big Lagoon*



Akiachak Native Community v. DOI

__ F.3d __ (DC Cir July 1, 2016)

Issues:

- Challenge to “Alaska Exception” (25 CFR 151.1) barring FTT in Alaska
- Struck down based on 1994 IRA amendments
- DOI eliminated the Exception in 2014 (79 FR 76888)
- DC Cir held change renders case moot & dismissed
- Dissent by Judge Brown suggests issue not over

Patchak v. Jewell

2016 US App LEXIS 12984, __ F.3d __ (DC Cir) (July 15, 2016)

Issues:

- Final chapter in the Gun Lake FTT saga
- Attack on Tribe's eligibility under *Carcieri*
- Congress passed Gun Lake Trust Land Reaffirmation Act (128 Stat. 1913) while suit was pending
- Act removed courts' jurisdiction to hear challenges to Gun Lake FTT acquisition
- DCt dismissed Patchak's claims under Act
- DC Circuit affirmed



Pending in U.S. Appellate Courts

- ***County of Amador v. Jewell / No Casino in Plymouth v. Jewell***
Nos. 15-17253, -17189 (9th Cir) (resp. briefs due July 29, 2016)
- ***Confed. Tribes of Grande Ronde v. Jewell***
No. 15-5033 (DC Cir) (argued March 18, 2016)
- ***CNYFBA v. Salazar***
No. 16-53 (2d Cir) (US brief due July 21, 2016)
- ***Preservation of Los Olivos v. U.S.***
No. 15-55486 (9th Cir) (briefing completed March 8, 2016)
- ***Roman Catholic Bishop v. Cota***
No. 16-55353 (9th Cir) (opening brief due Aug. 15, 2016)

Confed. Tribes of Grande Ronde v. Jewell

No. 15-5033 (DC Cir)

Issues:

- DCt dismissed *Carcieri* challenge to FTT acquisition for Cowlitz Tribe in Washington
- Held Secretary's interpretation of "recognized" and "under federal jurisdiction" was reasonable
-- basis for *Carcieri* M-Opinion
- Oral argument held on March 18, 2016

U.S. Court of Appeals for the Second Circuit

Central NY Fair Bus. Ass'n v. Salazar

No. 16-53 (2d Cir)

Issues:

- DCt dismissed *Carcieri* challenge to FTT acquisition for Oneida Indian Tribe of NY
- Held Secretary's interpretation of "recognized" and "under federal jurisdiction" was reasonable
- US response brief due July 21





Recent U.S. District Court Decisions

- ***Stand Up for California! v. DOI*** (DDC)
919 F.Supp.2d 51 (DDC 2013)
71 F.Supp.3d 109 (DDC 2014)
- ***Citizens for a Better Way v. US DOI*** (ED Cal)
2015 US Dist. LEXIS 128745 (request to reconsider pending)

Stand Up for California! ***v. DOI***

919 F. Supp.2d 51 (DDC 2013)

Issues:

- Denial of motion for preliminary injunction
- Dismissing *Carcieri* challenge to FTT acquisition for North Fork Rancheria
- Agreeing that
 - IRA vote is evidence of “federal jurisdiction”
 - IRA used “recognition” in non-jurisdictional sense

U.S. District Court for the
Eastern District of California

***Citizens for a Better Way
v. DOI***

2015 US LEXIS 128745 (ED Cal 2015)

Issues:

- Dismissing *Carciari* challenge to FTT acquisition for Enterprise Rancheria
- Agreeing that:
 - Tribe need not be “recognized” in 1934
 - Vote to reject IRA shows “federal jurisdiction”
- Motion to reconsider now before DCt





Pending U.S. District Court Cases

- ***Littlefield v. US DOI*** (D Mass)
Case No. 16-cv-10184
- ***Rosales v. Dutschke*** (ED Cal)
Case No. 15-cv-1145
- ***Jamul Action Committee v. Chaudhuri*** (ED Cal)
Case No. 13-cv-1920

Littlefield v. DOI

Case No. 16-cv-10184

Issues:

- Challenge to 2015 FTT decision for Mashpee Wampanoag Tribe of Massachusetts
- IRA's 2nd definition of "Indian" at issue:
*"all persons who are **descendants** of such members who were, on June 1, 1934, residing within the present boundaries of **any Indian reservation**"*
- Littlefield argues that
 - *Carcieri* means "now" applies to "descendants"
 - "any reservation" excludes state reservations

THANK YOU!

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FTT Caselaw Update