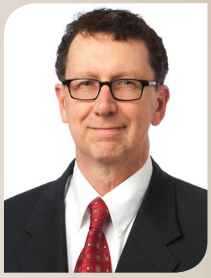
GODFREY & KAHN S.C.

Indian Nations Law *Focus*

June 2019, Volume 14, Issue 6



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Supreme Court Upholds Crow Tribe's Treaty-Reserved, Off-reservation Hunting Rights

In *Herrera v. Wyoming*, 2019 WL 2166394 (U.S. 2019), the Crow Tribe had entered into a treaty with the United States in 1868, ceding most of its aboriginal territory but retaining a portion for the establishment of the Crow Reservation and retaining hunting rights in the ceded territory: "The Indians herein named agree, when the agency house and other buildings shall be constructed on the reservation named, they will make said reservation their permanent home, and they will make no permanent settlement elsewhere, but they shall have the right to hunt on the unoccupied lands of the United States so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts." In *Ward v. Race Horse*, 163 U.S. 504 (1896), the Supreme Court, construing the same language in the 1869 Fort Bridger Treaty with the Bannock Shoshone Indians, held that the Tribe had not thereby preserved its hunting rights because the reserved hunting right "clearly contemplated the disappearance of the conditions therein specified," was of a "temporary and precarious nature" and "the repeal results from the conflict between the treaty and the act admitting that State into the Union. The two facts, the privilege conferred and the act of admission, are irreconcilable in the sense that the two under no reasonable hypothesis can be construed as co-existing." Relying on *Race Horse*, the Tenth Circuit had held in *Crow Tribe v. Repsis*, 73 F.3d 982 (10th Cir. 1995) (Respis), that the Crow Tribe's reserved hunting rights were "repealed" by the act admitting Wyoming to the union in 1890 or, alternatively, because the establishment of the Bighorn National Forest in 1897 meant the forest was no longer "unoccupied." In its 1999 decision upholding Chippewa treaty rights, *Minnesota v. Mille Lacs Band*, 526 U.S. 172, the Court characterized *Race Horse's* assumption that reserved treaty rights were incompatible with statehood a "false premise." In 2015, Herrera, a Crow member, challenged his prosecution by Wyoming officials for hunting elk in the Bighorn National Forest, arguing that *Repsis* was no longer good law after *Mille Lacs*. The Wyoming Supreme Court disagreed and, holding that Herrera's claims were precluded by *Repsis*, affirmed his conviction. Herrera appealed to the U.S. Supreme Court.

On May 20, 2019, in an opinion authored by Justice Sotomayor and joined by Justices Ginsburg, Breyer, Kagan and Gorsuch, the U.S. Supreme Court, by a 5-4 vote, reversed the Wyoming Supreme Court, repudiating *Race Horse* and holding that statehood did not imply termination of reserved hunting rights, establishment of a national forest did not render an area "occupied" and *Repsis* did not preclude Herrera's challenge:

> The Wyoming courts held that the treaty-protected hunting right expired when Wyoming became a State and, in any event, does not permit hunting in Bighorn National Forest because that land is not "unoccupied." We disagree. The Crow Tribe's hunting right survived Wyoming's statehood, and the lands

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within Bighorn National Forest did not become categorically "occupied" when set aside as a national reserve.

…

Mille Lacs upended both lines of reasoning in *Race Horse*. The case established that the crucial inquiry for treaty termination analysis is whether Congress has expressly abrogated an Indian treaty right or whether a termination point identified in the treaty itself has been satisfied. Statehood is irrelevant to this analysis unless a statehood Act otherwise demonstrates Congress' clear intent to abrogate a treaty, or statehood appears as a termination point in the treaty. See 526 U. S. at 207. "[T]here is nothing inherent in the nature of reserved treaty rights to suggest that they can be extinguished by implication at statehood."

…

To avoid any future confusion, we make clear today that *Race Horse* is repudiated to the extent it held that treaty rights can be impliedly extinguished at statehood. … Because this Court's intervening decision in *Mille Lacs* repudiated the reasoning on which the Tenth Circuit relied in *Repsis, Repsis* does not preclude Herrera from arguing that the 1868 Treaty right survived Wyoming's statehood.

…

We conclude that a change in law justifies an exception to preclusion in this case. There is no question that the Tenth Circuit in *Repsis* relied on this Court's binding decision in *Race Horse* to conclude that the 1868 Treaty right terminated upon Wyoming's statehood. See 73 F. 3d at 994. When the Tenth Circuit reached its decision in *Repsis*, it had no authority to disregard this Court's holding in *Race Horse* and no ability to predict the analysis this Court would adopt in *Mille Lacs*. *Mille Lacs* repudiated *Race Horse's* reasoning. Although we recognize that it may be difficult at the margins to discern whether a particular legal shift warrants an exception to issue preclusion, this is not a marginal case. At a minimum, a repudiated decision does not retain preclusive force.

…

Here is it's clear that the Crow Tribe would have understood the word "unoccupied" to denote an area free of residence of settlement by non-Indians.

…

Given the tie between the term "unoccupied" and a lack of non-Indian settlement, it is clear that President Cleveland's proclamation creating Bighorn National Forest did not "occupy" that area within the treaty's meaning. To the contrary, the President "reserved" the lands "from entry or settlement." Presidential Proclamation No. 30, 29 Stat. 909. The proclamation gave "[w]arning . . . to all persons not to enter or make settlement upon the tract of land reserved by th[e] proclamation." *Id.* at 910. If anything, this reservation made Bighorn National Forest more hospitable, not less, to the Crow Tribe's exercise of the 1868 Treaty right.

Justice Alito filed an aggressive dissent, disputing the majority's treatment of the claim preclusion issue. The meaning of his curious statement that "today's decision will not prevent the Wyoming courts on remand in this case or in future cases presenting the same issue from holding that the *Repsis* judgment binds all members of the Crow Tribe who hunt within the Bighorn National Forest" is unclear.

The Court's decision is especially welcome to Chippewa tribes whose treaty-reserved, off-reservation hunting and fishing rights were upheld in the *Mille Lacs* case. Because Herrera based his appeal largely on *Mille Lacs*, an adverse ruling might have raised new and unwelcome issues. The Alito dissent in *Herrera* poses no threat to Chippewa treaty rights because the claim preclusion issue raised by the *Repsis* decision is absent.

Other Court Decisions

In *United States v. Smith* (9th Cir. 2019), Smith, a member of the Confederated Tribes of the Warm Springs Reservation, on two occasions led police on high-speed chases through the reservation after he was observed speeding. Smith was convicted on two counts of fleeing or attempting to elude a police officer in violation of Oregon Revised Statutes (ORS) § 811.540(1), as assimilated by 18 U.S.C. § 13, the **Assimilative Crimes Act** (ACA), and 18 U.S.C. § 1152, the Indian Country Crimes Act (ICCA). On appeal, Smith argued that the federal government lacked jurisdiction to prosecute him for

his violation of state law in Indian country because the ACA does not apply to Indian country, because he could have been tribally prosecuted, and because the Major Crimes Act (MCA) precludes federal prosecution of his assimilated state crime. The Ninth Circuit rejected all of Smith's arguments and affirmed.

In *National Lifeline Association v. Federal Communications Commission*, 921 F.3d 1102 (D.C. Cir. 2019), the **Federal Communications Commission** (Commission or FCC) in 1985 had established a "Lifeline" program that permitted low income consumers of broadband services to receive a monthly discount of $9.25 on qualifying services. Since 2000, low-income consumers living on Tribal lands were eligible for an additional $25 per month discount through the Tribal Lifeline program. In 2017, the Commission (1) limited the Tribal Lifeline subsidy to services provided by eligible telecommunications carriers that utilize their own fixed or mobile wireless facilities, excluding carriers that resell services provided over other carriers' facilities (Tribal Facilities Requirement) and (2) limited the enhanced Tribal Lifeline subsidy to residents of "rural" areas on Tribal lands (Tribal Rural Limitation). Petitioners, including the Crow Creek Sioux Tribe and intervenor Oceti Sakowin Tribal Utility Authority, challenged the two limitations under the Administrative Procedure Act (APA). The D.C. Circuit Court vacated the Commission's rules and remanded for reconsideration: "The Commission's adoption of these two limitations was arbitrary and capricious by not providing a reasoned explanation for its change of policy that is supported by record evidence. In adopting the Tribal Facilities Requirement, the Commission's decision evinces no consideration of the exodus of facilities-based providers from the Tribal Lifeline program. Neither does it point to evidence that banning resellers from the Tribal Lifeline program would promote network buildout. Nor does it analyze the impact of the facilities requirement on Tribal residents who currently rely on wireless resellers. Further, the Commission ignored that its decision is a fundamental change that adversely affects the access and affordability of service for residents of Tribal lands. Similarly, in adopting the Tribal Rural Limitation, the Commission's decision evinces no consideration of the impact on service access and affordability. Its decision does not examine wireless deployment data related to services to which most Tribal Lifeline recipients subscribe. Various non-harmless procedural deficiencies exist as well. The Commission failed to provide an adequate opportunity for comment on the proposed limitations. For instance, the 2017 supplemental notice of proposed rulemaking lacked key information needed for interested persons to anticipate that small towns below 10,000 in population would be excluded. Because the Commission stated that it intended to address remaining Tribal issues in a future rulemaking, petitioners reasonably did not submit current data on abandonment of the Lifeline program by facilities-based providers. Two weeks' notice in the form of an unpublished draft order was inadequate."

In *Dine Citizens Against Ruining Our Environment v. Bernhardt*, 923 F.3d 831 (10th Cir. 2019), various groups, including Dine Citizens Against Ruining Our Environment, sued Department of Interior and Bureau of Land Management (BLM) officials, alleging violations of the **National Historic Preservation Act** (NHPA) and the National Environmental Policy Act (NEPA) in connection with the approval of more than 300 applications for permits to drill horizontal, multi-stage hydraulically fracked wells in the Mancos Shale area of the San Juan Basin in northeastern New Mexico. Plaintiffs contended that BLM authorized the drilling without fully considering its indirect and cumulative impacts on the environment or on historic properties. The district court denied the plaintiffs' motion for injunctive relief. On appeal, the Tenth Circuit upheld most of the permits but vacated others on the ground that BLM had failed to consider cumulative impacts in considering the reasonably foreseeable development scenarios (RFDS) relating to the permits when it connected its environmental assessment (EA) under the NEPA: "We conclude that the 3,960 horizontal Mancos Shale wells predicted in the 2014 RFDS were reasonably foreseeable after the 2014 RFDS issued. The BLM therefore had to consider the cumulative impacts of all 3,960 wells when it conducted its site-specific EAs. … As to these five EAs, the BLM was required to, but did not, consider the cumulative impacts on water resources associated with drilling the 3,960 reasonably foreseeable horizontal Mancos Shale wells. The BLM therefore acted arbitrarily and capriciously in issuing FONSIs and approving APDs associated with these EAs."

In *Tolowa Nation v. United States*, 2019 WL 1975442 (9th Cir. 2019), the Tolowa Nation (Nation) sued the Department of the Interior (DOI) under the Administrative Procedure Act, challenging DOI's rejection of the Nation's application for **federal acknowledgement** under the Part 83 regulations. The Ninth Circuit affirmed the DOI's decision: "Only one criterion was decided by the DOI and is at issue in this case: the petition must establish that a 'predominant portion of the petitioning group comprises a distinct community and has existed as a community from historical times until the present.' § 83.7(b).5. … The DOI concluded that, prior to the formation of the rancherias, the evidence does not show the Nation's ancestors existed as a community distinct from the ancestors of the Smith River or Elk Valley rancherias. … According to the Proposed Finding, the key problems with evidence for this time period are the lack of contemporary documentation naming individuals who could be identified as ancestors of the Nation or linking ancestors who could be named to social interactions that were exclusive from other Tolowas in the region. … The DOI had proper grounds to find insufficient evidence distinguishing the Nation's community from the other Tolowa during this time period."

In *Stockbridge-Munsee Community v. Wisconsin,* 922 F.3d 818 (7th Cir. 2019), the Stockbridge-Munsee Community (Community) had operated North Star Mohican Casino Resort on its Shawano County reservation since 1992. In 2008, the Ho-Chunk Nation (Nation) had opened Ho-Chunk Gaming Wittenberg, also in Shawano County and, in 2016, announced plans to add slot machines and gaming tables, plus a restaurant, a bar, and a hotel. The Community sued in federal court under the **Indian Gaming Regulatory Act** (IGRA), which provides federal jurisdiction over "any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect". 25 U.S.C. § 2710(d)(7)(A)(ii). The Community argued that Ho-Chunk Gaming Wittenberg (i) was not located on land held in trust on or before Oct. 17, 1988, as required, except under certain circumstances, by the IGRA and (ii) violated the designation of the Wittenberg casino in the Nation's compact with the State as an "ancillary" gaming facility where gambling is not the "primary business." The district court dismissed on the ground that the Community had failed to bring its suit within the applicable six-year statute of limitations. The Seventh Circuit affirmed: "[T]he Department of the Interior in fact took the parcel into trust for the Nation in 1986. Any claim by the Community that the Department should not have done so is subject to the six-year statute of limitations for federal administrative law and expired in 1992. … The Community's other argument is that Wisconsin has failed to enforce the contract's provision that the casino in Wittenberg be 'ancillary' to the Nation's other businesses there, such as a hotel. … The Community insists that the Act gives every tribe the right to compel each state to enforce all contracts negotiated with every other tribe. We asked at oral argument if this is in the nature of a claim that the Community is a third-party beneficiary of the contract between the Nation and the State; the Community's lawyer disclaimed any argument of that kind and insisted, instead, that the Act itself requires states to enforce all deals struck with all tribes. We have searched the Act in vain for such a requirement. … Both the Nation and the State believe that the casino in Wittenberg complies with their compact. Why, then, would the State sue the Nation? … And how could the Community benefit, given the fact that the Nation and the State are free (as far as the Act is concerned) to delete the 'ancillary' language from the portions of the compact that bear on the Wittenberg casino? The Community accordingly lacks any federal rights under the State's contract with the Nation, and it has foresworn any rights under state third-party-beneficiary law. It is not within the Act's protected zone of interests, to the extent it wants the Nation's casino closed or shrunk." In dicta, the Court suggested that a tribe suing to prevent gaming by another tribe within the plaintiff tribe's market may lack standing and that states are free to permit gaming on land that is not regulated by the IGRA because it is fee land or trust land acquired after October 17, 1988.

In *Grand Traverse Band of Ottawa and Chippewa Indians v. Blue Cross and Blue Shield,* 2019 WL 2173350 (E.D. Mich. 2019), the Grand Traverse Band of Ottawa and Chippewa Indians (Tribe) and its Employee Welfare Plan (the Plan) sued Blue Cross and Blue Shield of Michigan (BCBSM) under the Employee Retirement Income Security Act (ERISA), state contract law, Michigan's Health Care False Claims Act (HCFCA), common law

fiduciary duty, and other common law tort claims based on BCBSM's failure to bill the Tribe at federally-mandated **Medicare-like rates** for health care provided to tribal members. The court had previously dismissed state law claims on the ground that ERISA preempted them but these claims were reinstated after the Sixth Circuit held that ERISA did not apply to non-employee Tribe members. On the defendant's motion to dismiss, the court held that the Tribe had stated a claim under the HCFCA but that their common law fiduciary duty claim was barred by the statute of limitations.

In *El Paso Natural Gas Company, LLC v. United States*, 2019 WL 2137265 (D. Ariz. 2019), El Paso Natural Gas Company, LLC, whose predecessors operated uranium mines on the Navajo Reservation in the 1950s and 1960s, sued the federal government for cost recovery and contribution under the **Comprehensive Environmental Response, Compensation, and Liability Act** (CERCLA). The United States asserted a CERCLA counterclaim against El Paso for contribution. In addition to assessing 35% of the clean up costs to the United States for its active involvement in the mining operations, the court assessed 5% of the costs against the United States in its capacity as "land owner." The government objected that it owned the land in trust for the Navajo Nation and that trust assets could not be used to contribute to clean up costs. The court disagreed: "The government conceded in its proposed findings and conclusions that 'the assets held in the fiduciary capacity include the trust lands, natural resources, and other assets such as revenues, all of which are held for the benefit of the Navajo Nation and individual Navajo tribal members.' … The United States has presented no evidence to show that non-land trust assets are insufficient to satisfy the 5% owner liability allocated above." In a footnote, the court retreated from its extraordinary holding that the federal government could expend tribal trust assets to meet its land owner liability under CERCLA: "After this decision, the Parties filed a joint motion to clarify or amend the order and judgment pursuant to Federal Rules of Civil Procedure 59 and 60 to address the Court's application of the CERCLA § 107(n) defense. As set forth in the Parties' joint motion, the United States' position is that no tribal trust assets may be used to pay the judgment in this case, and El Paso disagreed with the § 107(n) ruling for different reasons. It is not necessary to resolve those issues, however, as the Court has granted the Parties' joint request to amend the judgment so the 5% share allocated to the United States on the basis of CERCLA 'owner' liability will be paid by the United States, but need not be paid out of any tribal trust assets."

In *Navajo Nation v. Barr*, 2019 WL 2027861 (D. Ariz. 2019), Tsingine, a member of the Navajo Nation (Nation), was killed by officers of the Winslow Police Department during a confrontation over alleged shoplifting. The Maricopa County Attorney's Office determined not to prosecute the officers involved. The U.S. Department of Justice investigated but was unable to conclude that the officers had not acted in self-defense. The father of Tsingine's daughter, Tiffany, assigned Tiffany's legal claims to the Navajo Nation, which brought **civil rights claims** against federal officials for injunctive and monetary relief under *Bivens v. Six Unknown Fed. Narcotics Agents*, 403 U.S. 388 (1971), and brought wrongful death claims for injunctive and monetary relief against Winslow officials under 42 U.S.C. § 1983. The federal court dismissed, holding that the Nation lacked standing to bring the *Bivens* claim, that Tiffany's § 1983 claims were not assignable under Arizona law, that § 1983 damages claims brought on behalf of Navajo Nation members in Winslow failed because the Nation lacked organizational standing and *parens patriae* standing and that claims for injunctive relief under § 1983 likewise failed to state a plausible claim for relief: "*Bivens* actions can be maintained against a defendant in his or her individual capacity only, and not in his or her official capacity. … This limitation is grounded in the sovereign immunity of the United States. … The general rule is that a suit is against the sovereign if ... the effect of the judgment would be to restrain the Government from acting, or to compel it to act. … The relief the Nation seeks against the Federal Defendants would compel the government to act. And the government has not waived sovereign immunity for claims alleging constitutional violations. … For these reasons, the Court lacks jurisdiction to hear the Nation's *Bivens* claim against the Federal Defendants. … Any amendment would be futile because the Nation has no claim against the government for exercising its prosecutorial discretion in choosing not to file suit. … The Nation has not pointed to statutory authority allowing for the assignment of Tiffany Robbins' claim to the Nation. Thus, the assignment

of the wrongful death claims under § 1983 to the Nation is void. … To the extent that a damages claim is brought *in parens patriae* on behalf of Navajo Nation members in Winslow, the claim also fails for lack of standing. The complaint does not articulate how the shooting of Loreal Tsingine—the event giving rise to the damages claim—injured other members of the Navajo Nation living in Winslow." (Internal quotations and citations omitted.)

In *Muscogee Creek Indian Freedmen Band, Inc. v. Bernhardt*, 2019 WL 1992787 (D.D.C. 2019), descendants of former slaves of the Creek Nation and citizens of the Muscogee Creek Nation (MCN) sued Department of Interior (DOI) and MCN officials, contending that the plaintiffs are entitled to MCN **citizenship status** under the Creek Treaty of 1866 regardless of their "blood status." The court granted the MCN chairman's motion to dismiss on the ground that the plaintiffs had failed to exhaust their tribal remedies: And, nowhere in their Complaint do Plaintiffs allege that they actually applied for enrollment in the tribe. … First, tribal exhaustion promotes the 'orderly administration of justice.' … Second, tribal exhaustion allows federal courts to obtain tribal 'expertise' in tribal matters. … Third, requiring that plaintiffs first seek remedies through the tribal system furthers the congressional 'policy of supporting tribal self-government and self-determination.'"

In *California v. United States Department of Interior*, 2019 WL 2223804 (N.D. Cal. 2019), the Office of Natural Resources Revenue (ONRR), the agency within the DOI responsible for royalty collections issued a final rule on July 1, 2016, Consolidated Federal Oil & Gas and Federal & Indian Coal Valuation Reform (Valuation Rule) after a five-year rulemaking process to update the regulations pertaining to oil, gas and coal royalties, including publication of a proposed final rule in 2015 and extensive hearings and comments. The rule's purposes, according to ONRR, included "(1) to offer greater simplicity, certainty, clarity, and consistency in product valuation for mineral lessees and mineral revenue recipients; (2) to ensure that **Indian mineral lessors** receive the maximum revenues from coal resources on their land, consistent with the Secretary's trust responsibility and lease terms; (3) to decrease industry's cost of compliance and ONRR's cost to ensure industry compliance; and (4) to provide early certainty to industry and to ONRR that companies have paid every dollar due." After 2016 training sessions conducted by the ONRR, industry groups sued in the U.S. District Court for the District of Wyoming on Dec. 29, 2016, challenging the rule on the ground that it would "create widespread uncertainty and render compliance impossible" and requesting delay. The ONRR, now answering to Trump appointees and echoing industry objections, responded that the lawsuits raised "serious questions concerning the validity or prudence of certain provisions of the 2017 Valuation Rule, such as the expansion of the 'default provision' and the use of the sales price of electricity to value coal." The ONRR subsequently published a Notice of its postponement of the Valuation Rule on Feb. 27, 2017, a Notice of intent to repeal it on April 4, 2017, and Notice of Final Repeal on Aug. 7, 2017. California and New Mexico sued under the Administrative Procedure Act and the Court granted their motion for summary judgment, holding that the ONRR's repeal was arbitrary and capricious: "In *Fox*, the Court held that a policy change complies with the APA if the agency … provides 'good reasons' for the new policy, which, if the 'new policy rests upon factual findings that contradict those which underlay its prior policy,' must include 'a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy.' … In repealing the Valuation Rule, the ONRR completely contradicts its prior findings. Despite its previous, detailed conclusions in support of the Valuation Rule's approach to valuing non-arm's-length coal transactions—and dismissing the industry's criticisms thereof—the ONRR now finds the approach prescribed in the Valuation Rule to be 'unnecessarily complicated and burdensome to implement and enforce.' Likewise, in contrast to its prior criticisms of the benchmarks, the ONRR now lauds the benchmark system as 'proven and time-tested,' … as well as 'reasonable, reliable, and consistent,' … Although the ONRR is entitled to change its position, it must provide 'a reasoned explanation ... for disregarding facts and circumstances that underlay or were engendered by the prior policy.' … Neither Federal Defendants nor Industry Intervenors identify where in the Final Repeal or elsewhere in the record the ONRR provided such an explanation. … ONRR's conclusory explanation in the Final Repeal fails to satisfy its obligation to explain the inconsistencies between its prior findings in enacting the Valuation

Rule and its decision to repeal such Rule. The ONRR's repeal of the Valuation Rule is therefore arbitrary and capricious."

In *State v. Roy*, 2019 WL 2203545 (Minn. 2019), Roy, a member of the Red Lake Chippewa Indian Nation, was convicted of third-degree controlled-substance crime in 2011 in Beltrami County District Court. Sentence was stayed and Roy was placed on probation. In 2017, while still on probation for the Minnesota offense, Roy was convicted of two gross misdemeanors in Red Lake Tribal Court. She served 21 days in the Red Lake Detention Center and was released directly to Beltrami County because the district court had revoked her stay. Roy requested credit against her state sentence. The Court denied the request and the State Supreme Court affirmed: "When determining whether to award custody credit, we distinguish between intrajurisdictional custody (custody within Minnesota) and interjurisdictional custody (custody outside of Minnesota). … Under the test for determining interjurisdictional custody credit, a defendant can only receive credit for time spent in the custody of another jurisdiction if the time was served solely in connection with the Minnesota offense. … Although—as Roy argues—the Red Lake Nation is within the borders of the state of Minnesota, it is an independent sovereign nation with jurisdiction over the members of its tribe. … It is undisputed that the time Roy spent in the Red Lake Detention Center was in connection with her two Red Lake convictions. Therefore, Roy's Minnesota conviction cannot be the sole reason for her detention, and the time she spent in the Red Lake Detention Center does not qualify for custody credit."

In *State v. Thompson*, 2019 WL 2079426 (Minn. App. 2019), Thompson, a non-Indian, appeared at the Red Lake Indian Health Service Hospital, located on the Red Lake Chippewa Reservation, to pick up his brother, who was being discharged as a patient. Bendel, a Red Lake Tribal Police Officer, perceived that Thompson seemed intoxicated. After conducting sobriety tests and determining that Thompson was intoxicated, Bendel handcuffed Thompson and transported him in his patrol car to the reservation boundary, where he transferred custody to Beltrami County Deputy Sheriff Roberts. Thompson was convicted in state court of driving while impaired. He appealed his conviction, arguing that Thompson had no authority to arrest him. The Court of Appeals disagreed and affirmed: "Officer Bendel had a reasonable suspicion that Thompson had engaged in criminal activity by driving while impaired. It also is undisputed that, after conducting a limited investigation, Officer Bendel had probable cause to believe that Thompson had violated the Minnesota DWI statute. Officer Bendel chose to detain Thompson, drive him to the reservation boundary, and deliver him to a Beltrami County deputy sheriff. Officer Bendel was authorized to do so because "**[t]ribal law enforcement authorities** have the power to restrain those who disturb public order on the reservation, and if necessary, to eject them.' *Duro*, 495 U.S. at 697, 110 S. Ct. at 2065-66. Furthermore, if the person disturbing public order is a non-Indian who has committed a criminal offense that may not be prosecuted by the tribe, 'tribal officers may exercise their power to detain the offender and transport him to the proper authorities.'"

In *Colorado In the interest of LRB*, 2019 WL 2292327 (Colo. App. 2019), Montezuma County Department of Social Services (Department) and the guardian ad litem (GAL) of L.R.B., S.B.B., and K.B.B., Navajo children, had stipulated to the Navajo Nation's request to transfer jurisdiction to the tribal court for preadoptive and adoptive placement proceedings. The children's former foster parents opposed the transfer. After a contested hearing, the juvenile court denied the Nation's request to transfer jurisdiction, acknowledging the **Indian Child Welfare Act** (ICWA) generally permits a tribe to request a transfer of jurisdiction but concluding that the plain language of this section does not apply to preadoptive and adoptive placement proceedings and that, even if it did, the former foster parents presented evidence of good cause to deny the request. The Colorado court of appeals disagreed and reversed: "[O]ur state's ICWA-implementing legislation as it existed at the time of this hearing ... applies transfer of jurisdiction requests to preadoptive and adoptive placement proceedings. It also places the burden of proof on the party opposing the transfer. Because the former foster parents lacked standing to oppose the Navajo Nation's request, the juvenile court erred in entertaining their opposition."