

KAVANAUGH, J., concurring

SUPREME COURT OF THE UNITED STATES

Nos. 21–376, 21–377, 21–378 and 21–380

DEB HAALAND, SECRETARY OF THE INTERIOR,
ET AL., PETITIONERS
21–376 *v.*
CHAD EVERET BRACKEEN, ET AL.

CHEROKEE NATION, ET AL., PETITIONERS
21–377 *v.*
CHAD EVERET BRACKEEN, ET AL.

TEXAS, PETITIONER
21–378 *v.*
DEB HAALAND, SECRETARY OF THE
INTERIOR, ET AL.

CHAD EVERET BRACKEEN, ET AL., PETITIONERS
21–380 *v.*
DEB HAALAND, SECRETARY OF THE
INTERIOR, ET AL.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

[June 15, 2023]

JUSTICE KAVANAUGH, concurring.

I join the Court’s opinion in full. I write separately to emphasize that the Court today does not address or decide the equal protection issue that can arise when the Indian Child Welfare Act is applied in individual foster care or adoption proceedings. See *ante*, at 29, 32, n. 10. As the Court explains, the plaintiffs in this federal-court suit

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against federal parties lack standing to raise the equal protection issue. So the equal protection issue remains undecided.

In my view, the equal protection issue is serious. Under the Act, a child in foster care or adoption proceedings may in some cases be denied a particular placement because of the child's race—even if the placement is otherwise determined to be in the child's best interests. And a prospective foster or adoptive parent may in some cases be denied the opportunity to foster or adopt a child because of the prospective parent's race. Those scenarios raise significant questions under bedrock equal protection principles and this Court's precedents. See *Palmore v. Sidoti*, 466 U. S. 429 (1984). Courts, including ultimately this Court, will be able to address the equal protection issue when it is properly raised by a plaintiff with standing—for example, by a prospective foster or adoptive parent or child in a case arising out of a state-court foster care or adoption proceeding. See *ante*, at 29, 32, n. 10.