

Magazine

What Makes Someone Native American?

One tribe's long struggle for full recognition

Brittany Hunt

Story by **Lisa Rab** Photos by **Travis Dove**

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In March 2012, Heather McMillan Nakai wrote a letter to the federal Bureau of Indian Affairs asking the agency to verify that she was Indian. She

was seeking a job at the Indian Health Service and wanted to apply with “Indian preference.” Nakai knew this might be difficult: As far as she was aware, no one from her North Carolina tribe — the Lumbee — had ever been granted such preference.

Her birth certificate says she’s Indian, as did her first driver’s license. Both of her parents were required to attend segregated tribal schools in the 1950s and ’60s. In Nakai’s hometown in Robeson County, N.C., strangers can look at the dark ringlets in her hair, hear her speak and watch her eyes widen when she’s indignant, and know exactly who her mother and father are. “Who’s your people?” is a common question in Robeson, allowing locals to pinpoint their place among the generations of Lumbee who have lived in the area for nearly 300 years.

Yet in the eyes of the BIA, the Lumbee have never been Indian enough. Responding to Nakai the following month, tribal government specialist Chandra Joseph informed her that the Lumbee were not a federally recognized

tribe and therefore couldn't receive any federal benefits, including "Indian preference." Invoking a 1956 law concerning the status of the Lumbee, Joseph wrote: "The Lumbee Act precludes the Bureau from extending any benefits to the Indians of Robeson and adjoining counties." She enclosed a pamphlet titled "Guide to Tracing Indian Ancestry."



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As a staff attorney for the National Indian Gaming Commission, Nakai understands the intricacies of documenting native bloodlines. In fact, she had submitted 80 pages of evidence to support her case. The Lumbee are descended from several Carolina tribes, including the Cheraw, who intermarried with whites and free

African Americans in the 18th and 19th

centuries. Nakai, 38, can trace her family tree back to at least 1900, when her great-grandfather was listed as Indian on the federal census. “That’s a terrible feeling,” she says, “to have somebody say to you, ‘You’re so not Indian that you need somebody to send you a pamphlet.’ ”

Lumbees rely on historic census documents listing the “Indian Population” of specific counties to enroll members in their tribe. In researching her response, Nakai realized the same documents could be used to argue that Lumbees were eligible for federal benefits. She thought hers was a powerful legal argument. If she could receive Indian preference, then so could other members of her tribe. “When I’m pushed, I don’t run,” Nakai says. “I want to push back.” And so she appealed the bureau’s decision — and kept appealing until her case landed in federal court.

Her battle would force the Department of the Interior to reexamine its policy toward the more than 55,000 Lumbee who make up the largest tribe east of the Mississippi. For more than 60

years, the government has acknowledged that they are Indians, yet denied them the sovereignty, land and benefits it grants to other tribes. It's a situation that raises fundamental questions about identity: What makes someone Native American? Is it a matter of race, or culture, or some combination of both? The Lumbee don't fit neatly into any racial categories, but they have long been living as Indians, cultivating unique traditions and community. Can a country divided by race ever accept them?







Clockwise from top: Osceola Mullin, Earl B. Chavis and Heather McMillan Nakai

The Lumbee tribe takes its name from the Lumber River, which snakes beneath bridges and spills into swamps in their sandy eastern corner of North Carolina. The founding families settled along these swamps in the 1700s, fleeing the war and disease that followed colonization of the coastal Carolinas. Many Lumbees still have the last names handed down by those families: Locklear, Chavis, Brooks, Oxendine, Lowry. Some people believe they are descended from members of Sir Walter Raleigh's "Lost Colony" of Roanoke who intermarried with indigenous people and fled inland. But most historians agree there was a Cheraw settlement on the Lumber River in the mid-18th century, and that several tribes — along with whites and free blacks — migrated to the area around that time. Their descendants now speak a unique Lumbee English dialect; they cash their checks at the Lumbee Guaranty Bank and enroll their kids at the University of North Carolina at Pembroke, the country's first state-

Nakai is trying to secure individual benefits without undergoing the arduous process of winning recognition for her entire tribe. (Her case relies on a 1934 federal law, the Indian Reorganization Act, which grants rights and benefits to indigenous people who

can prove they have “one-half or more Indian blood.”) For Lumbees as a group, meanwhile, their long struggle to win recognition has been complicated by their history of interracial marriage — even though interracial marriage was common among southeastern tribes prior to the Civil War. Many powerful western tribes have “a perception that the Lumbee are really a mixed-race, mainly African group,” says Mark Miller, a history professor at Southern Utah University who has written extensively about tribal identity. That “original sin,” he says, is a major cause of the Lumbees’ political problems.

In the Jim Crow South, white ancestry was acceptable for indigenous people, but black blood was not. When the United States was dividing up reservations and providing land “allotments” to Indians, a government commission told the Mississippi Choctaw that “where any person held a strain of Negro blood, the servile blood contaminated and polluted the Indian blood.” Many Native Americans internalized these racial politics and adopted them as a means of survival.

In their segregated corner of North Carolina, Lumbees enjoyed more power and privileges than their black neighbors, but this was not the case for Native Americans in every state. In Virginia in the 1920s, Indians were required to classify themselves as “colored,” whereas Oklahoma considered Indians to be white — prompting Creek Indians to reject tribal members with black ancestry.



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By the early 1930s, the Lumbee had spent several decades trying to persuade Congress to recognize them as Indians, and now sought to be recognized under the provisions of the Indian Reorganization Act. In 1936, representatives of the federal Office of Indian Affairs traveled to Robeson County to determine the purity of the tribe's "Indian blood." Harvard-trained anthropologist Carl Seltzer and his colleagues conducted tests on 209 people. They measured skulls, opened people's mouths and examined the size of their teeth. As Lumbee historian Malinda Maynor Lowery recounts in her book, "Lumbee Indians in the Jim Crow South," Seltzer noted whether each person's hair was "straight," "curly," "frizzy" or "fine." He scratched women and children on their breastbone to see if he left a red mark. (In his view, such redness indicated "mixed blood," according to Lowery.)

Three years after she filed her first request to the BIA, Nakai was digging through boxes at the National Archives when she saw the mug shots Seltzer took of her ancestors, and the looks on the women's faces after they had been

forced to open their shirts and allow a strange man to scratch their chests. She was devastated. “Just even thinking about the possibility that I would allow that to happen to my child — it’s horrifying,” she says.

In the end, Seltzer concluded that only 22 of the 209 people he tested in Robeson possessed one-half or more “Indian blood” and thus qualified for some federal benefits. (In some cases, Seltzer decided that one sibling had the required “blood quantum” and the other sibling did not.) Once the federal government offered some individual benefits to the “Original 22,” they broke off from the Lumbee to form their own political organization. Their descendants have their own complicated history of pursuing benefits and recognition.

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The rest of the Lumbees continued fighting for recognition from the federal government. And in 1956 Congress did pass the Lumbee Act, which acknowledged the indigenous people of

Robeson County as Indians and called

them by the name they had chosen for themselves. But at the time, the federal government was trying to terminate its relationships with native people by disbanding tribes and selling their land. The Interior Department did not want the financial burden of providing services to a large new tribe, so lawmakers struck an odd political compromise: They recognized the Lumbee yet prohibited them from receiving any benefits or services offered to other tribes. Over the next few decades, the law was interpreted to mean that Lumbees could not qualify for health, housing or educational benefits offered to other Native Americans; their land was not protected, their children were not protected from being adopted out of the tribe, they couldn't form their own police force, and they weren't consulted when private companies wanted to build natural gas pipelines on their land.

Above all, the law deprived tribal members of a clear label they could use to identify themselves to outsiders. It even confused the government officials charged with enacting Native American

policy — people like Chandra Joseph at the BIA, who insisted in her letter to Nakai that the Lumbee were not a recognized tribe. If the BIA treats you like you're not really Indian, it's hard to convince people who haven't closely studied Indian law that they're wrong. And the constant burden of explaining and justifying one's identity can take a psychological toll. Reggie Brewer, a cultural coordinator for the tribe, says the current Lumbee recognition quest is not about money but respect. "We know who we are," he says. "We want our children to have that self-pride, that self-esteem of who they are."

In her hometown, Nakai rarely had to explain her background. But when she went to summer camp with other Native American children, they started asking questions she didn't know how to answer. "Everywhere I went, people would say, 'Are you mixed? What's your heritage?'" Nakai recalls. "And I would look at them blankly."

Some Lumbees have red hair and freckles, others have tight blond curls, and others have sleek, dark hair and mocha skin. No one is kicked out of the tribe because of their skin tone — and

that concept is hard for the BIA to accept, according to Mary Ann Jacobs, chair of the Department of American Indian Studies at UNC-Pembroke. “They don’t like the fact that we refuse to put people out who look too white or look too black. If they’re our people, we keep them.” Jacobs laughed, as if the idea of doing anything else were absurd. “We refuse to give them back. Why should we separate out based on this thing, this race thing? If we have grown them and they speak Lumbee the way we speak Lumbee, and they’ve gone to Lumbee schools and Lumbee churches and we’ve fed them and nourished them, they’re Lumbee.”



Taylor Hunt, Brian Keith Bryant and Shirley Dial



Kaya Littleturtle, Chloe Hammonds and Reggie Brewer

On a hot June morning, Nakai buckled her 4-year-old daughter into the car seat in her Chevy Tahoe and drove to church. As we entered downtown Lumberton — a cluster of hotels and strip malls off Interstate 95 — Nakai explained that native people never used to live there. Robeson County is 41 percent Native American, 31 percent white and 24 percent black, and its neighborhoods have long been divided along racial lines. The county had five school districts, separating children in the cities from Indians in the rural areas, until 1989, when Nakai was 9.

Nakai was baptized in the Lumber River and married her husband in the

sanctuary of Smyrna Baptist. Church is such an essential part of Lumbee culture that when a Lumbee teenager gets a new boyfriend, her grandparents will ask him, “Where does your people church?” Families who have “churched” together for centuries share the same burial grounds, and the elders want to make sure their children don’t marry a distant relative.

When Nakai was accepted to Dartmouth College, Smyrna’s deacons sat on the porch of her grandparents’ house and tried to persuade her grandfather not to let her go. New Hampshire was too far away for a Lumbee girl to move to, they argued. Nakai understood that the men were worried about her safety, but she also knew Dartmouth was an Ivy League institution with a strong Native American studies program. If she wanted to pursue her dream of becoming a legal advocate for her people, she had to go. She earned her bachelor’s degree there and attended law school at UCLA.

Many Lumbee parents fear that if their children live away from home for too long, they won’t come back and will

lose their ties to land and family. But Nakai's elders also faced decades of discrimination within Robeson County, limiting their hopes for advancement. No matter how hard they worked, someone would find a way to take their land and force them to become sharecroppers. Even if they spoke English and went to church like white men, "they still weren't the same," Nakai says. She was raised to believe that she constantly had to prove herself. "It's just ingrained — you have to work harder," she says. "Even if you've been perfect, it won't be enough."

The Lumbee don't have an official clan system, Nakai says, but children are expected to live near the land where they were raised. When Nakai and her husband moved back to Robeson from Rockville, Md., last year, no plot was available for them to build a house on the dirt road where 35 of her relatives live. Instead, they moved into a country club development about half an hour away — shocking fellow Lumbees, who asked Nakai, "They let Indians live there?"

In 2015, Robeson County had the highest poverty rate in North Carolina, with 32 percent of its population living below the poverty line. It also had the highest rate of violent crime. Nakai doesn't think the Lumbee can fully tackle these problems until their political status is resolved. Federal recognition would allow them to protect their land and alleviate the costs of housing and health care — in addition to enjoying the economic boom a casino might bring. "It's like a cloud hanging over us that most people aren't even aware of," she says. "Right now, I'm still arguing about whether I exist or not."

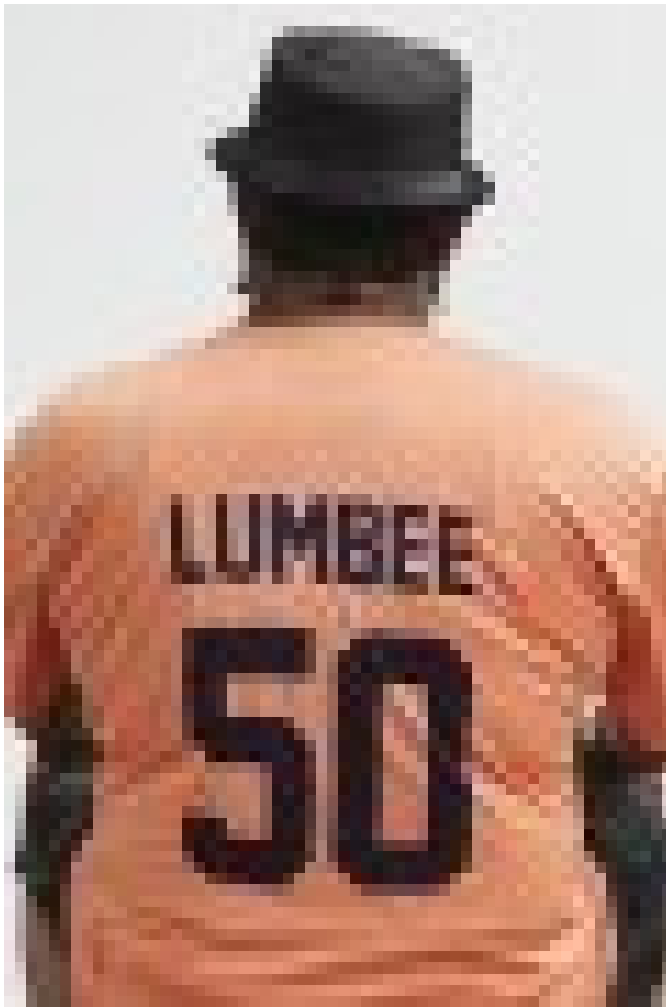
Brittany Hunt is also accustomed to defending her Native American identity. She's a PhD student in educational research at UNC-Charlotte, hoping to become a professor who will bring more indigenous perspectives to classes on race and education. At 27, Hunt has hazel eyes, dark hair and a smattering of freckles. She smiled broadly when I asked her why she's so proud of her Lumbee heritage. "I think being Indian is just the best," she said.

But it is “amazing and terrible at the same time.”

Hunt’s mother fought for her to attend gifted and talented classes in Robeson County schools, after the principal told her that no one from her side of Lumberton would qualify for the program. When Hunt enrolled at Duke University in Durham, she was the only Lumbee undergraduate on campus, she says. She quickly learned how to defend her identity. “I felt like I was on trial for my Indian-ness a lot of times,” she recalls.

At school Hunt befriended her black classmates because she felt they had similar experiences with discrimination. Still, they had trouble accepting her native identity. Some would point out that Lumbees had black ancestors. “That’s true, but I don’t have any family members who identify as black and I don’t identify as being that,” she would respond. Others would insist she was black or call her “light-skinned.” And she would argue, “No, I’m not light-skinned, I’m Lumbee.”





Clockwise from top: Kerigahn Jacobs, Dean Clark and Richard Jones

Questions of race and culture don't just affect whether a tribe can gain recognition as Native American; they also influence which individuals can feel at home in — or join — a particular tribe. In Hunt's view, cultural traditions — shared norms like humor, food, devotion to land and family — are more important aspects of Lumbee identity than race. Yet she concedes that Lumbee children with one black parent might not feel accepted by the tribe. "There's a lot of

Such racial conundrums are not unique to the Lumbee. Wealthy members of the Cherokee Nation once owned slaves, and their African American descendants were treated as equal citizens of the Oklahoma tribe for decades — until 2011, when the tribe stripped thousands of black Indians of their enrollment rights on the grounds they could not prove their “Indian blood.” (In August 2017, after a lengthy legal battle, a U.S. District Court restored their citizenship rights.)

Before Native Americans were forced to prove their identity to the U.S. government, they formed a sense of identity through kinship — if your mother or father was part of the group, then you were, too. If outsiders married or were adopted into the group, they became part of that lineage. But once the federal government began forcing them onto reservations, redistributing their land and doling out benefits, they began to care about “blood quantum” — that is, how many direct ancestors were listed as members of their tribe on official government tallies.

To enroll and receive benefits from a recognized tribe, members now have to use historical census documents and “base rolls” to prove that they have some fraction of Indian ancestry. They submit this information to the tribe, and each tribe relies on a different fraction to meet their enrollment standard. “I don’t know of a single tribe that doesn’t require biological relationships with ancestors on the base rolls,” says Kim TallBear, an

associate professor of native studies at the University of Alberta, who has written extensively about race, genetics and Native Americans. “But we do have very active debates on how much culture should matter.” The problem, she says, is that “being the culture police isn’t going to be any easier” than tracing bloodlines. How, after all, do you evaluate if someone is culturally Indian?

Lumbees focus on both culture and kinship when enrolling members in their tribe. Applicants must have at least one ancestor listed as a member of the “Indian Population” on the 1900 or 1910 Census, and prove that they maintain current ties to the Lumbee tribe. In the tribe’s view, familial ancestry is not the same as racial ancestry. Government officials devised the categories of white, black or Indian, and then decided how much white or black “blood” was acceptable for a person to be called Indian. Lumbees couldn’t always squeeze themselves into those categories, and, as Malinda Maynor Lowery notes, “we’ve suffered mightily for it.”

What many tribes fear — particularly those who oppose Lumbee recognition — is losing their identity. They want their members to be able to trace their ancestry to a single tribe that had a documented, indigenous culture and customs that are still practiced today. Lumbees can't do that, because they began mixing with other tribes and races very early on. Southern Utah University's Miller points out that when the Lumbee were "discovered" by colonists in the mid-18th century, they were already farming, wearing European clothing and speaking English. Some leaders of recognized tribes view this as "you guys were always assimilating racially and culturally," Miller says.

In theory, DNA tests to determine a person's overall Native American heritage could solve some of these quandaries, but both TallBear and Lowery say such tests are irrelevant to most tribes. When Lumbees contact her, alarmed that biological tests don't reveal their native DNA, Lowery reminds them that the companies doing the testing don't have base samples of their ancestors' DNA.

“People are allowed to be African American in this society and not have 100 percent African DNA,” Lowery says. “Are the Lumbee being held to a different standard?”



Lumbees swim in the Lumber River, from which the tribe takes its name.

Eight decades after it was conducted, the Seltzer study continues to haunt Lumbees. The BIA still cites it: In a June 2012 letter to Nakai, Eastern Regional Director Franklin Keel told her one of the reasons she didn't qualify for “Indian preference” was because she was not among those “Original 22.” “Right now,” Nakai said of the BIA, “they are sitting somewhere, trying to figure out how to make an argument that says that I am not an Indian under the law because no one ran a pencil through my hair without it getting

tangled.” (Spokeswoman Nedra Darling says the BIA cannot comment on matters that are still being adjudicated by the agency.)

There are two ways for a tribe to become recognized: by an act of Congress or by petitioning the BIA for acknowledgment. In 1987, when Nakai was 7, the Lumbee prepared a lengthy petition for the BIA, only to have it rejected two years later. Since then, at least 27 bills to fully recognize and extend federal benefits to the Lumbee have been introduced in Congress. The closest they’ve come to success was in 2010. President Barack Obama had courted the Lumbee vote en route to winning North Carolina narrowly in 2008, and a recognition bill passed the House with the support of his administration. But it died in the Senate after news broke that Lumbee tribal leaders hired a gaming consultant company to lobby for them — even though the bill promised no casino would be built on their land.

Indeed, gaming is a major hurdle to Lumbee recognition. The Eastern Band of Cherokee Indians operates a casino in the mountains of western North

Carolina, and its profits provide individual members of the tribe with \$8,000 to \$10,000 in annual payments, Miller writes in his book “Claiming Tribal Identity.” No other tribe has a casino in the state. In 2009, the Eastern Band, along with other powerful southeastern tribes, used its casino profits to lobby against Lumbee recognition, according to Miller. (Lynne Harlan, public relations manager for the Eastern Band, declined to comment for this story.)

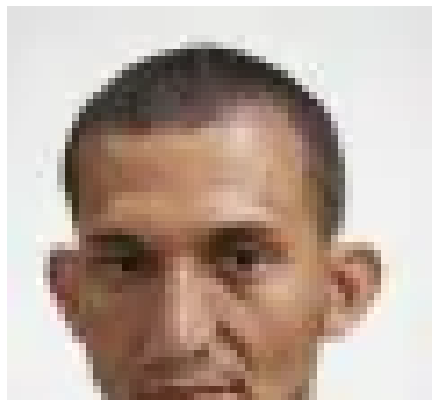
That year, the Congressional Budget Office estimated it would cost \$786 million over a four-year period to extend federal benefits to the Lumbee. Other recognized tribes balked at that number; they don’t want their share of BIA funding to shrink. As Principal Chief Richard Sneed argued in the Cherokee One Feather newspaper last September, Lumbee recognition “has some staggering implications” for the Eastern Band’s economy. “The increase in competition for federal funding will grow exponentially if the Lumbee and their estimated 50,000 members gain recognition,” he wrote. “This will impact our housing and roads money

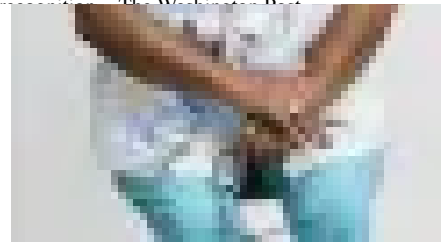
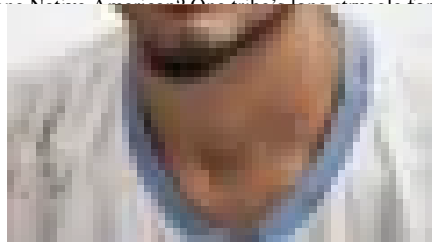
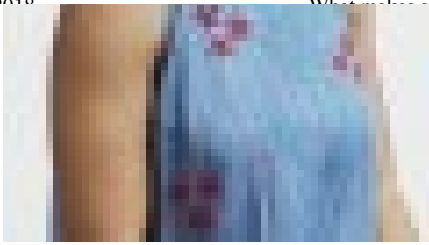
among other federal funds which are dwindling with the proposed budget.”

BIA officials have stoked such fears by holding meetings with powerful tribes in western states and warning that their federal funds will be “significantly lessened if the large Lumbee tribe secures status,” Miller writes. For their part, the Lumbee have no casino profits to use in their lobbying efforts.



Stinston Revels, Nola Graham and Bryce Locklear, and Mickey Revels





Azalea Thomas, Austin Brayboy and Jerlene Maynor

And yet, a glimmer of hope arrived in December 2016, when the then-solicitor of the Interior Department admitted that Nakai was right — sort of. In a 19-page opinion, Hilary Tompkins wrote that the Lumbee Act did not disqualify all individual Lumbees from federal benefits. The BIA was wrong to automatically reject Nakai's request for Indian preference simply because she was Lumbee, Tompkins wrote, and must reconsider her application. She went on to say that the Lumbee tribe could apply for federal recognition from the BIA, and if recognition was granted, they would qualify for all the benefits offered to other tribes.

For Nakai, this was a small victory: She had changed the government's stance toward her tribe. But she still hadn't won her case. She now had to supply even more documentation to the BIA, showing that she has "one-half degree

or more of Indian blood.” As of July 2018, her case was still pending.

Meanwhile, the Lumbee are hoping Congress will grant them recognition. In the summer of 2017, two Republicans from North Carolina — Sen. Richard Burr and Rep. Robert Pittenger — introduced bills to give the Lumbee full federal recognition. Pittenger, whose district includes Lumbee territory, cited the millions of dollars of damage done to homes, schools and businesses in Robeson County during Hurricane Matthew in 2016. He argued that some of the damage could have been prevented if the Lumbee had better access to emergency funds reserved for federally recognized tribes in advance of the storm. “The Lumbee tribe is not asking for special treatment,” Pittenger said. “They are asking for parity and consistency in the way that the federal government views them.”

When tribal chairman Harvey Godwin Jr. testified before a House subcommittee in September 2017, he noted that recognition would “greatly aid” economic development in his rural part of North Carolina. “We would be

able to create a police force to address the violent crime and drug problems riddling our community,” he said. “We could build schools for our children that teach our culture and our history.” (Godwin did not return requests for comment for this story.)

Yet officials who oppose Lumbee recognition have argued that the relatively prosperous tribe — which at one point claimed to have more PhDs than any other Native American group — should not rely on federal assistance. In 1988, Ross Swimmer, a former principal chief of the Cherokee Nation and then-assistant secretary for Indian Affairs, told Congress that providing BIA services to “a sophisticated, well-educated” tribe would create a “pocket of paternalism” in Robeson County.

Gaming presents its own complications. Pittenger’s recognition bill prohibits gaming on Lumbee land, but Burr’s would allow it. Arlinda Locklear, a prominent Lumbee attorney in Washington who represented the tribe in its 2009 recognition quest, says the Eastern Band of Cherokee Indians

still poses a formidable impediment to the bill. The “Eastern Band of Cherokee has money and we do not,” she says. “Their ability to lobby on this bill far exceeds the Lumbee ability to match that.”

Solicitor Tompkins’s opinion could also hurt the bill’s chance of passing. Until now, the Lumbee could argue they had no choice but to go through Congress, because the BIA refused to recognize their tribe. But now that Tompkins has made clear that they can petition the BIA for recognition, Congress may think a law is unnecessary. “It really kind of makes it harder, rather than easier, for us to get the legislation through,” Locklear says.

Nakai, however, remains determined to win her battle with the BIA. She wants to make sure future generations of Lumbee don’t have to argue with the government over their “blood quantum.” She and her husband moved back to Robeson County last year so their daughter could grow up knowing more about her heritage. “Everywhere she goes, people reaffirm not just who she is, but her place in her tribe and in her community,” Nakai says.

Strangers who meet the 4-year-old at church or school can identify “her people.” They can look in her brown eyes and see the generations that came before her. “That’s what it feels like to be Indian,” Nakai says. “To be Lumbee is to know that, come what may, you have a place that you belong.”





Clockwise from top: Jamie K. Oxedine, Mychalene Deese and Mary Deese, and Nancy Locklear

n the first weekend in July, Nakai took
her daughter to the 50th annual

O Lumbee Homecoming parade. More than 20,000 people would be attending. Lumbee Homecoming started in 1968. Many Lumbees had begun moving to cities in search of factory jobs, but they still came home to visit their families during the summer. The festival was a way to celebrate their return and foster pride in their heritage. The week-long event included the Miss Lumbee beauty pageant, a golf tournament, a play about Lumbee history and a powwow. Vendors were selling jewelry and handmade pottery, along with T-shirts that said “Make America Native Again.”

Among those marching in the parade were North Carolina Gov. Roy Cooper. At one point, a small group of people marched by carrying a banner that read, “Full Federal Recognition Now!” They were campaigning with Dan McCready, the Democratic candidate for the 9th Congressional District, which includes Robeson County. Pittenger lost the Republican primary in May, and Democrats now hope to flip the House seat, which has been held by the GOP for more than five decades.

Nakai looked at him, taking in his eagerness to please. She’s devoted six years of her life to a legal battle that no politician has ever won. Her people have been disappointed by government officials for more than 130 years. Yes, she would be happy to meet with one of McCready’s staffers — but first she had a parade to attend. “I’ve got some ideas,” she said, and walked back to join her people.

Lisa Rab is a writer in Charlotte whose work has appeared in Mother Jones, Harper’s and Politico Magazine.

Clarification: This story has been updated to attribute details about Carl Seltzer’s tests to “Lumbee Indians in the Jim Crow South,” a book by Malinda Maynor Lowery.