

TRIBAL CONSULTATION - PROPOSED REGULATIONS FOR
STATE COURTS AND AGENCIES IN INDIAN CHILD CUSTODY
PROCEEDINGS - "ICWA PROPOSED RULE" (25 CFR 23)

TULSA, OKLAHOMA

MAY 14, 2015

MR. ROBERTS: I want to thank everyone for joining this morning at this Tribal Consultation. I want to get things started this morning with an opening blessing from Deputy Principal Chief Crittenden. Thank you for opening this -- this Tribal Consultation up for us.

(Prayer was given.)

MR. ROBERTS: Thank you. So good morning, everyone. Thank you for joining us.

My name is Larry Roberts. I'm the Principal Deputy Assistant Secretary from Indian Affairs and I'm a member of the Oneida Nation of Wisconsin. We have a team of folks with us here today from the Department of the Interior and I'm going to let everyone introduce themselves in a -- in a moment.

We have a presentation this morning, a PowerPoint, that will roughly take 15 to 20 minutes. And then after that, we're going to open it up to the floor for comments from all of you. And so we have

1 a -- a pretty good-sized audience here. I think folks
2 will probably join us as we're -- as we're getting
3 started this morning and so one of the things I would
4 ask is just to -- to insure that everybody has an
5 opportunity to provide comment, that we limit initial
6 comments to about five minutes. And then once
7 everyone has had a chance to provide comments has done
8 so, we'll reopen -- we will reopen it for folks that
9 want to provide additional comments.

10 I would also ask that for those tribal
11 leaders that are here, if we -- if the tribal leaders,
12 obviously, want to make comments first, that would be
13 appreciated. And then if there are folks here that
14 are designated by leadership to make comments, that --
15 that will -- that will be wonderful as well.

16 So I am going to let my team here, who is
17 both from the Assistant Secretary's Office, Indian
18 Bureau of Affairs and from the Solicitor's Office,
19 introduce themselves and we're all going to play a
20 role here in walking you through the PowerPoint. That
21 should be roughly 20 minutes.

22 MS. CAVE: Good morning. I'm Rodina Cave.
23 I'm Senior Policy Advisor to the Assistant Secretary
24 for Indian Affairs.

25 MS. JACKSON: Good morning. Regina

1 Jackson. I'm Western Shoshone from Nevada and I am a
2 Senior Fellow to the Assistant Secretary's Office of
3 Indian Affairs.

4 MS. ORTIZ: Good morning everyone. My
5 name is Hankin Ortiz. I am the Deputy Bureau Director
6 for the Office of Indian Services for the Bureau of
7 Indian Affairs. I'm Kiowa, Caddo and Comanche from
8 Oklahoma.

9 MS. KRISPINSKY: Good morning. I'm
10 Rebekah Krispinsky and I'm Assistant Solicitor of the
11 Solicitor's Office, Division of Indian Affairs.

12 MS. BURTON: Good morning. I'm Debra
13 Burton. I'm a member of the Cherokee Nation of
14 Oklahoma and I'm a social worker for ICWA Policy at
15 the Central Office in D.C.

16 MR. ROBERTS: Great. So in your packets,
17 you should have this PowerPoint, but we're going to
18 follow along here.

19 So just in terms of -- of background, I'm
20 sure most folks in the room are aware that ICWA was
21 passed in 1978. It was enacted by Congress to protect
22 the best interests of Indian children and to promote
23 the stability and security of the Indian tribes and
24 families by establishing minimum federal standards for
25 the removal of Indian children from their families and

1 the placement of such children in foster or adopted
2 homes or institutions, which reflect the unique values
3 of Indian culture.

4 So it articulates a very strong Federal
5 policy of maintaining, where possible, that an Indian
6 child should remain in the Indian community.

7 A year after the Act was passed, as -- as
8 most of you are aware, the Department, BIA, issued
9 guidelines for state courts to guide their
10 implementation of ICWA and we also issued regulations
11 that provide on ICWA notice. And we haven't updated
12 those guidelines until very recently since 1979.

13 And so from 1979 to 2014, 2015, you see a
14 wide variety of ways in which state courts have
15 interpreted the provisions of ICWA.

16 In 2014, we undertook a number of tribal
17 listening sessions on how to strengthen ICWA
18 compliance and we heard a number of things from those
19 listening sessions. Not only the importance of
20 updating the guidelines, but also we heard from tribes
21 through those listening sessions that the Department
22 wanted -- that they wanted the Department to consider
23 issuing regulations as well.

24 The Attorney General's Advisory Committee on
25 Children Exposed to Violence also made recommendations

1 with regard to the guidelines and -- and regulations.
2 And then so earlier this year, based on all of that
3 input, in -- in February of this year, we issued
4 updated guidelines. And then in March of this year,
5 we issued the proposed regulations that we're meeting
6 today to talk about.

7 So in terms of the discussion for the
8 PowerPoint today, we're going to hit these primary
9 points of -- of the rules and we're going to start off
10 with the definitions.

11 And so we have a number of definitions here
12 that we're seeking comments on: Active efforts,
13 imminent physical danger or harm, voluntary placement.
14 The proposed rule also revises a number of existing
15 definitions.

16 It's important that, you know, in comments that
17 you provide to us on either comments on the proposed
18 definitions that we have or maybe where we haven't
19 defined something, we ask that the comments be as
20 specific as possible, whether they're shared with us
21 here today or in writing to say, Okay. This needs to
22 be -- it -- it's great if you -- if you flag something
23 that says, This needs to be changed. That is helpful.
24 What's extraordinarily helpful is the next step is,
25 And this is how it should be changed because we're --

1 this is how we're working it on a day-to-day basis.
2 And this needs to be changed and this is how you
3 should change it. That's really helpful.

4 So the goal of the regulations is to promote
5 consistent implementation of ICWA across all the
6 states. And I know that a number of tribes, on their
7 ICWA matters, they're involved in cases across --
8 across the United States and so you're working with
9 many different jurisdictions. Our goal is to -- is to
10 promote consistent implementation.

11 The proposed rule talks about the applicability
12 of ICWA and that it applies to an Indian child that's
13 the subject of a child custody proceeding, including
14 status offenses and juvenile delinquency proceedings
15 if the placement or termination is possible.

16 The proposed rule sets forth that there is no
17 purported existing Indian family exception to ICWA
18 and -- and, generally, the proposed rule is focused on
19 early implementation of ICWA. And so one of the
20 things that the proposed rule provides is that
21 agencies and state courts must ask early on whether
22 the child is an Indian child. And if there is any
23 reason to believe that the child is an Indian child,
24 that they treat that child as an Indian child unless
25 and until it's determined that it is not an Indian

1 child.

2 We talk about how it address also
3 voluntary placements and that ICWA applies if a parent
4 consents to placement or termination, but that ICWA
5 does not apply if the parent or custodian may regain
6 custody of the child upon demand.

7 And then we also, in the proposed rule, set
8 forth steps to contact the tribe to provide notice or
9 to verify membership.

10 And so our next slide, we're going to talk a
11 little bit about pretrial requirements and I'm going
12 to turn it over to Rodina Cave.

13 MS. CAVE: Thank you. Good morning again.
14 I'll come around here. So I'm going to be talking
15 about the pretrial requirements in the proposed rule.
16 And you'll see that the proposed rule includes a
17 requirement that agencies and state courts must ask if
18 the child is an Indian child. And if there's reason
19 to believe that the child is an Indian child, must
20 confirm that they do active efforts to verify
21 membership with the tribe. And the proposed rule also
22 has included examples for when an agency has reason to
23 believe that a child is an Indian child.

24 The proposed rule also includes
25 requirements in -- for voluntary proceedings that if a

1 consenting parent wants anonymity, then the agency or
2 the court must keep the relevant documents under seal,
3 but still provide notice to the tribe. And there's
4 also a requirement to engage in active efforts. And
5 in our listening sessions, we heard a lot about, well,
6 when does -- when does that happen? When should that
7 happen? And the proposed rule includes the
8 requirements that the -- the requirement to engage in
9 active efforts starts as soon as the case or the
10 investigation may result in the placement of an Indian
11 child outside the custody of a parent or Indian
12 custodian. And that it applies while investigating
13 whether the child is an Indian child.

14 The proposed rule also includes that only
15 the tribe may determine whether the child is a member
16 of that tribe and that the agency must notify all
17 tribes in which the child is potentially a member.
18 Sets up the steps of -- of designating the child's
19 tribe if the child is potentially a member of more
20 than one tribe. And also provides what are the
21 notification requirements, filing the designation with
22 the court and also the proposed rule also includes the
23 requirement that the state court must dismiss an
24 action as soon as it determines that it lacks
25 jurisdiction. For example, when the tribal court has

1 jurisdiction.

2 The proposed rule also provides for
3 notice, what sort of notice is required, what
4 proceedings it applies to and, you know, how notice is
5 provided by registered mail with return receipt
6 requested.

7 The proposed rule also lays out the time
8 limits that no substantive proceedings, rulings, or
9 decision on the child's placement or termination of
10 parental rights may happen until notice and waiting
11 periods have elapsed. That the proceeding may not
12 begin until ten days after the parent or Indian
13 custodian and the tribe receives notice and that an
14 additional 20 days can be requested.

15 And regarding emergency removal, the
16 proposed rule provides that emergency removal must be
17 as short as possible and that the agency or the state
18 court must document whether removal or placement is
19 proper and continues to be necessary to prevent
20 imminent physical damage or harm to the child. And
21 that the court must promptly hold a hearing to
22 evaluate whether that continued removal or placement
23 is necessary and immediately terminate the placement
24 or removal when the emergency has ended.

25 Continuing with emergency removal, the

1 proposed rule provides that the agency must treat the
2 child as an Indian child until a contrary
3 determination has been made and conduct active efforts
4 to prevent the breakup of the Indian family as early
5 as possible before removal, if possible.

6 And also, you know, there's additional
7 notifying parents, custodians and of each tribe and
8 maintaining records that notice was provided.

9 Continuing with emergency removal, the
10 proposed rule provides that any court hearing on
11 emergency removal or placement, the court must decide
12 if the removal or placement is no longer necessary to
13 prevent imminent physical damage or harm to the child
14 and that temporary emergency custody should be less
15 than 30 days unless a hearing is held with a qualified
16 expert witness or extraordinary circumstances exist.
17 And that the emergency removal or placement must end
18 as soon as the imminent physical damage or harm no
19 longer exists or the tribe exercises jurisdiction over
20 the case.

21 And to talk about transfers to a tribal
22 court, Debbie Burton from Indian Services will cover
23 that.

24 MS. BURTON: All right. The -- the
25 proposed rule clarifies that there is a right to

1 request a transfer to tribal court with each
2 proceeding at any stage of the proceeding because some
3 state courts have denied transfer to tribal court
4 because they found that it's too late in the
5 proceeding and the new rule clarifies that that right
6 exists at any stage.

7 The state court must transfer unless
8 either parent objects, the tribal court declines, or
9 the state court determines that good cause exists to
10 deny the transfer.

11 Now, the new rule states clearly that the
12 good cause basis must be on the court -- stated in the
13 court record and that the new proposed rule sets out
14 three factors that the court is not allowed to
15 consider when determining whether there's good cause
16 not to transfer.

17 The first factor is whether the case is at
18 an advanced stage. The second one is the child's
19 contacts with their tribe or reservation, the
20 qualities of those, the frequency, etcetera. And then
21 the third is the tribal court's prospective placement
22 for the child.

23 So those are three factors that the state
24 court cannot consider.

25 Now, the petition -- any petition for

1 placement or termination of parental rights must
2 demonstrate to the court that active efforts remain to
3 avoid the need to remove the child prior to and until
4 commencement of the proceedings and that active
5 efforts were not successful. And the proposed rule
6 states that these active efforts must be documented in
7 detail in the court records and that the records must
8 show and that the parties have to use or attempt to
9 use the resources of the extended family, tribe,
10 Indian social service agencies, etcetera, and that
11 that must be documented in the record.

12 Now, the court may order foster care
13 placement only if there's clear and convincing
14 evidence supported by the testimony of one or more
15 qualified expert witnesses that continued custody with
16 that parent or custodian is likely to result in
17 serious physical damage or harm to the child.

18 And that's -- you know, that's not new,
19 but what is new is that the rule clarifies what is and
20 what is not clear and convincing evidence. And so as
21 we have in the statute, the court may order
22 termination of parental rights only if there's
23 evidence beyond a reasonable doubt, again supported by
24 the qualified expert witness and, again, there has to
25 be a risk of serious physical damage or harm to the

1 child. And the rule is clear about what the clear and
2 convincing evidence needs to consist of.

3 Now, the proposed rule sets out four
4 categories of qualified expert witness and the rule --
5 proposed rule states that these are in descending
6 order of preference and that the first preferred
7 category is a member of the child's tribe who's
8 recognized by the tribal community as knowledgeable in
9 tribal customs, of family rearing and childrearing.

10 And the second category, the second preferred
11 category, is a member of another tribe who is
12 recognized by the child's tribe as an expert in these
13 areas. The third preferred category is a layperson
14 who is recognized as having substantial experience in
15 delivery of child and family services to Indians and
16 knowledge of the tribe's social and cultural
17 standards. And the fourth, and least preferred
18 qualified expert witness category, is a professional
19 who has education and experience in a specialty who
20 can show that they have knowledge of the social and
21 cultural standards of the practices within the tribe.

22 And now Gina Jackson is going to speak on
23 the next slide

24 MS. JACKSON: Hello everyone. Oh, my mic
25 is a little loud.

1 So today I'm going to cover the slides in
2 the PowerPoint on voluntary proceedings, disposition,
3 and post-trial rights. I'm going to highlight some
4 major points in each of these slides.

5 So in voluntary proceedings, the proposed
6 rule requires both the agency and the state court to
7 ask if the child is an Indian child and whether -- and
8 also provide notice to the tribe of the voluntary
9 proceeding and the notice of the right to intervene in
10 voluntary proceedings.

11 Consent of the parent or a custodian must
12 be in writing recorded before the court, explain the
13 consequences and the terms of the consent, and certify
14 that the consequence and terms were fully explained
15 and understood by the parent or Indian custodian.

16 In dispositions, the proposed rule
17 clarifies that the agency must follow ICWA placement
18 preferences or tribal placement preferences even if
19 there's a request for anonymity in voluntary cases --
20 or disposition, providing clear and convincing
21 evidence that it conducted a diligent search to meet
22 the preferences and explain if the preferences
23 couldn't be met, notifying parents and the custodians,
24 family members, the tribe, and maintain documentation
25 of the placement.

1 And in order to depart from placement
2 preferences, it can happen only if the court finds
3 good cause and the basis of the good cause must be
4 included in the record. The party asserting good
5 cause, they're the ones who have the burden to prove
6 good cause by the standards of clear and convincing
7 evidence.

8 Good cause must -- oh, to depart from
9 placement preferences, it must be based upon the
10 parents' request, if both attest they reviewed the
11 placement and -- placement options. The child's
12 request, if they are able to understand the placement
13 decision. The child's extraordinary physical or
14 emotional needs as established by a qualified expert
15 witness.

16 What it does not include is bonding or
17 attachment from the placement or the unavailability
18 of -- of placement and determination that active
19 efforts were made by the placement. Good cause may
20 not be based upon socioeconomic status of any
21 placement relative to another placement.

22 The proposed rule also clarifies in
23 post-trial rights and establishes procedures to vacate
24 an adoption if consent was obtained by fraud or duress
25 or if the proceeding violated ICWA. It establishes

1 who can invalidate an action based on a violation of
2 ICWA, which is an Indian child, the parent, the Indian
3 custodian, tribe, regardless of whether that
4 particular party's rights were violated. It
5 establishes adult adoptee's rights to learn their
6 tribal affiliations and it encourages states to
7 designate someone to assist adult adoptees.

8 It also requires notice of any change in
9 the child's status, such as change in placement.

10 So states must provide BIA with a copy of
11 the decree, which they already have to do, or any
12 order in any final adoption and information on the
13 child, but what is new in this proposed rule is that
14 states must establish a single location for all of
15 records -- all of the records of voluntary or
16 involuntary foster care, pre-adoptive placement and
17 adoptive placement that would be available within
18 seven days by request of the child's -- from the
19 child's tribe or from the Department of Interior. And
20 the records must contain, at a minimum, the petition
21 or complaint, all substantive orders in the
22 proceeding, and record of placement determination,
23 including findings by the court and also the social
24 worker's notes.

25 So notice at the high level of overview.

1 We are excited to hear from you today on any provision
2 of the proposed rule. We are going to have a public
3 meeting this afternoon from 1:00 to 4:00, which anyone
4 is invited to and anybody can attend that. And we
5 also have an important date that I would like for you
6 to remember and that is May 19th. It is the final
7 date and the deadline for submitting comments on the
8 proposed rule.

9 So thank you very much. Look forward to
10 hearing from you.

11 MR. ROBERTS: Okay. And thank you, Gina.

12 Okay. So we've had a number of people
13 join us during the presentation. I just wanted to
14 start by saying thank you for attending the tribal
15 consultation this morning. Obviously, this is a
16 tribal consultation just for tribes. It's not open to
17 the public or to the press. And I wanted to say that
18 if you're going to make comments, please try to limit
19 your initial comments to five minutes so that
20 everybody has an opportunity to provide comments. And
21 at this point, we'll open it up to -- to tribal
22 leaders and representatives.

23 And everything is being transcribed and
24 we're going to look at what -- what -- we'll review
25 the transcription as we're going through the --

1 formulating the final rule. So we would ask that when
2 you do make your comments, please introduce yourself
3 and which tribe you're with.

4 MS. KRAMER: Good morning. My name is
5 Patti Kramer and I am Vice Chair for the Kaw Nation.

6 And my comments this morning, we're
7 excited to see that terms are being clarified in this
8 proposed change. Active efforts means more than
9 reasonable efforts and they give -- provide examples.
10 Continued custody means physical and/or legal custody
11 that a parent already has or had at any point.
12 Biological mothers are deemed to have had prior
13 custody. Parents cannot be defined by the tribal law
14 or customs in addition to state law.

15 The qualified expert witness, we really
16 want that to mean a qualified expert witness within
17 that tribe as all tribes are different as we all know.
18 We would each have our own qualified expert witness.

19 ICWA has been clarified. ICWA applies to
20 all Indian children in custody proceedings. The
21 existing Indian family exception is rejected. In
22 addition, whether ICWA applies, courts may not
23 consider whether the Indian parent ever had custody of
24 a child nor the extent to which the parents or
25 children are connected to the tribe.

1 Indian communities or customs, a court
2 and -- and agencies must ask in every proceeding if a
3 child is or could be Indian. If there is a reason to
4 believe the child is an Indian child, ICWA must apply
5 unless or until the court determines that the child is
6 not a member or eligible for membership in any Indian
7 tribe.

8 Only tribes can be determined -- can
9 determine a child's membership. There is no
10 requirement that a child has certain contacts with the
11 tribe or certain blood quantum and tribes may not
12 formally enroll the child for the child to be a
13 member.

14 The state cannot substitute its judgment
15 for the tribe's judgment and a court must confirm the
16 agency has made active efforts to verify membership or
17 eligibility for membership with the tribe for which
18 the child may be a member.

19 If there is a request for anonymity in a
20 voluntary proceeding, this does not relieve obligation
21 to obtain verification from the tribe. Tribal notice
22 must be provided in all involuntary and voluntary
23 custody proceedings. If a child is transferred
24 between states, we ask that each state give notice to
25 the tribe. The tribe, parents, and Indian custodian

1 must immediately be notified of any emergency
2 placement.

3 A diligent search for placement within the
4 placement preference must include notification and
5 explanation provided to parents, Indian custodians,
6 all known reasonable and identifiable extended family
7 members, the tribe and all approved licensed by the
8 tribe and/or native foster homes within the state.
9 The state court must determine -- must make a
10 determination as the residency domicile of the Indian
11 child and must submit the case if the child would have
12 exclusive jurisdiction -- if a tribe would have
13 exclusive jurisdiction. If a child was previously a
14 resident or domiciled on a reservation, the state
15 court must contact the tribal court to determine
16 whether the child was a ward of the tribal court. The
17 tribe, parents or Indian custodian in a state child
18 custody proceedings, at any stage of the proceedings,
19 may request, orally or in writing, the case be
20 transferred to tribal court. The burden is then
21 placed on the party opposing the transfer.

22 In determining whether or not there is
23 good cause not to transfer, the courts may not
24 consider whether or not the case is at an advanced
25 stage. The transfer would result in a change of

1 placement for the child, the child's contacts with the
2 tribal reservation, the socioeconomic condition, or
3 any perceived adequacy of the tribal agency or court.
4 The tribal court must be given at least 20 days to
5 respond to the request for transfer.

6 Active efforts should begin at the moment
7 a case or an investigation begins that may lead to
8 removal and be conducted even while the agency is
9 verifying a child's ICWA eligibility. Active efforts
10 must document in detail and should include the
11 extended family, tribe, Indian social services agency,
12 and the Indian caregivers.

13 To remove a child from his or her home,
14 clear and convincing evidence must show a causal
15 connection between conditions in the home and serious
16 physical or emotional harm to the child. Evidence of
17 poverty, a single parent, inadequate housing or
18 substance abuse or nonconforming social behavior by
19 itself cannot meet the standard of proof. Placement
20 must be -- placement preferences must be followed
21 unless there is a good cause not to do so. If the
22 preference cannot be met, the agency must demonstrate
23 the clear and convincing evidence that a diligent
24 search for preferred placement has been made. Good
25 cause to deviate can only be found if, one, there is a

1 request of both parents after reviewing ICWA,
2 preference of the child, if he or she can understand
3 the decision at hand, extraordinary physical or
4 emotional needs of the child at present.

5 The court cannot include ordinary bonding
6 or attachment due to a placement -- noncompliant with
7 the placement preference, nor can it consider the
8 socioeconomic status of one of the placements versus
9 another.

10 Temporary emergency custody for all Indian
11 children cannot be continued for more than 30 days
12 without ICWA compliant custody proceedings unless
13 there are extraordinary circumstances. Emergency
14 removal must terminate as soon as it is no longer
15 necessary to prevent imminent physical damage or harm
16 to the child or if the tribe exercises jurisdiction
17 over the case.

18 Voluntary adoptions clarifies that the
19 consent to terminate a parental right for adoption may
20 be withdrawn at any time prior to the event of the
21 filing TPR or adoption, whichever occurs later.

22 Conducting a proceeding, the court
23 shall allow alternative methods of participation of
24 the court hearing, such as telephonic participation or
25 video conferencing. And we learned yesterday that

1 there may be a cost for that and we would ask that
2 there be no cost to that tribal parent or to a
3 placement person.

4 The state must furnish to BIA all final
5 adoption decrees or orders from state court, including
6 enrollment information. The information is not
7 subject to the Freedom of Information Act.

8 States must establish a single location to
9 keep records for all voluntary and involuntary foster
10 care. Pre-adoptive placement and adopted placement to
11 make the records available within seven days upon
12 request by the Indian child's tribe or the Department
13 of Interior.

14 Alternative proceedings are provided for
15 adult adoptees to get information needed for tribal
16 enrollment in cases where adoption records are closed.

17 We solely support all the changes that
18 have been recommended and we would like to see those
19 take place as soon as possible.

20 Thanks for your time.

21 MR. ROBERTS: Thank you.

22 MS. ROSS-NIMMO: Good morning. I'm
23 Chrissi Ross-Nimmo, Assistant Attorney General for
24 Cherokee Nation.

25 The Cherokee Nation is the largest tribe

1 in the country with more than 300,000 members. We
2 have 125 child welfare workers who are involved in
3 cases in all 50 states last year. They participated
4 in 1,300 dependency or deprived proceedings involving
5 approximately 2,100 Cherokee children. They also
6 participated in 360 private adoptions.

7 Last year we received approximately 9,000
8 notices under ICWA notification. It is with this
9 experience that, in addition to our written comments,
10 I offer our comments today.

11 I'm going to be fairly fast because I have
12 a lot to say.

13 First, we fully believe that the BIA has
14 the authority to implement the proposed regulations.
15 The text of ICWA itself gives the BIA that authority
16 and we believe that there's a wealth of case law out
17 there that gives great deference to federal agencies
18 in implementing rules.

19 We fully adopt the comments that we know
20 that you are going to receive in writing that support
21 the BIA's authority to implement the proposed
22 regulation.

23 I want to comment on a couple of very
24 specific proposed regulations that we think are very
25 important.

1 Section 23.2, defining active efforts.
2 This will make a huge difference to families who are
3 involved in deprived and dependency proceedings.
4 Oklahoma case law and active effort says you have to
5 lead a horse to water and we believe that the
6 definition includes the steps that both state and
7 private agencies have to take to lead these parents to
8 water regarding ramification with their children.

9 Section 23.103, denouncing the existing
10 Indian family doctrine and specifically mentioned that
11 blood quantum is not a factor in determining whether
12 or not ICWA applies to a child. I believe everyone is
13 aware there's a reason the Oklahoma Court of -- the
14 Court of Civil Appeals' opinion in which the court
15 denounced the new guidelines and they left a child in
16 a non-Indian, non-family placement. And in the
17 opinion, the Court of Civil Appeals in Oklahoma
18 mentioned and underlined the child's blood quantum as
19 an excuse to not fully apply ICWA.

20 We also saw this in the Veronica case.
21 The opening sentence of the United States Supreme
22 Court mentioned her blood quantum. So it's very, very
23 important, especially as we sit here in Oklahoma today
24 with so many tribes, that blood quantum is not a
25 factor in citizenship. This is a very important

1 clarification.

2 Section 23.117, talking about good cause
3 to deny transfer to tribal court. It is extremely
4 important that we clarify that the request can be made
5 at any point in any proceedings. I was involved in a
6 case in Okfuskee County that we will likely be
7 appealing where the judge ruled that the case was at
8 an advanced stage of the proceeding. It was a
9 four-year-old case; however, Cherokee Nation had only
10 received notice of the case about four months ago. So
11 even though it's at an advanced stage, we only had
12 knowledge for four months and the judge found that was
13 the reason to deny transfer to tribal court.

14 Sections 23.11 and 23.123, for applying
15 notice in voluntary proceedings. First, we believe
16 that the text of ICWA supports this regulation. The
17 text of ICWA specifically says what must happen in
18 involuntary proceedings, but it doesn't preclude
19 notice in voluntary proceedings. And as the Oklahoma
20 Supreme Court has said, it's hard to enforce the right
21 of the tribe to be involved in voluntary placement if
22 they don't have notice.

23 This has been the rule in Oklahoma since
24 1982. Tribes are required to receive notice in
25 voluntary proceedings. The statute in Oklahoma

1 specifically addresses how to deal with requests for
2 anonymity from a parent and I think you -- you will
3 hear today from -- from the people in this room that
4 this -- this works well. We get notice of private
5 adoptions. We're able to offer placement homes to
6 birth mothers and adoption agencies and this is
7 something that the tribe in Oklahoma has specific
8 experience with and I think we will all support that
9 provision.

10 Section 23.130, good cause to depart from
11 placement references. I can tell you that is one of
12 the most litigated areas that Cherokee Nation is
13 involved in Indian cases in both involuntary and
14 voluntary proceedings. We believe the new regulations
15 are consistent with the best practices of ICWA in the
16 majority of the case law and that it will insure that
17 the Indian children are placed in and remain in family
18 homes and tribal homes.

19 We do believe that there are positions --
20 portions of the regs, and we have talked about this in
21 our written comments, that should specifically state
22 how they are consistent with the holding the adoptive
23 couple v. Baby girl because we have seen those who
24 oppose ICWA attempt to stretch the holding in an
25 adoptive couple v. Baby girl and we believe that the

1 regulations are in line with that holding and would
2 like to see the regulation themselves state why there
3 are in line.

4 The emergency removal provisions in the
5 new regulations mirror those verbatim of the ones in
6 Oklahoma and we can again tell you that when they
7 are -- when they are followed, they work.

8 And I would just note on Section 23.121,
9 and I believe a few others, I think this may have been
10 a simple clerical error, but the -- the text of ICWA
11 says, as far as continued custody, it must lead to
12 serious physical or emotional harm. And the word
13 emotional has been left out in several sections and we
14 would recommend adding that back in.

15 Finally, again, we just want to thank you.
16 We know the hard work that you all have put into this
17 and you're probably going to hear thank you from
18 tribes more today than you ever have.

19 So thank you for working on the regs.
20 Thank you for coming to listen to us. We fully
21 support the implementation and we know this will make
22 a difference for Indian children and families.

23 Thank you.

24 MR. ROBERTS: Thank you.

25 MR. TIGER: Good morning. My name is

1 George Tiger, Principal Chief of the great Muscogee
2 Creek Nation. Welcome to our country. If you get a
3 chance, go to our casino.

4 I just want to say thank you. I was
5 having a conversation with one of our staff people and
6 I said, You know, this is about the third time we've
7 been to something like this. So one time was in D.C.
8 and I guess the day has finally come, and I'm hoping
9 that the state will definitely recognize how important
10 this is to Indian tribes. And the sooner it's
11 implemented the sooner it is for everybody -- you
12 know, the best it is for everybody.

13 I look at where we've come from and where
14 we're going. I just think that for too long there was
15 too many questions and I think, through these proposed
16 rules, that many of those questions will be -- will be
17 taken care of.

18 And just like my relation from Cherokee
19 Nation said, tribal leaders and everyone involved with
20 these -- these proposed rules are seeing that light at
21 the end of the tunnel, so to speak.

22 But I do have staff that will be coming up
23 and making statements, but as far as tribal leaders
24 are concerned, I -- I just felt it from my heart to
25 say that, you know, among our people there's always a

1 saying that it takes a village to raise a child
2 regardless of what the situation may be. And I see
3 this as a coming full circle. I just hope that the
4 state, with everything that we've done, will recognize
5 this very important document as a main support,
6 recognizing who we are as tribal governments. We are
7 sovereign nations. We've come a long ways and we do
8 need to work together, whether it's the State of
9 Oklahoma or whatever state it be may, as well as
10 working with us as a sovereign nation because we have
11 a -- we have a stake in everything that we do with
12 this particular document.

13 So with that, I say thank you very much.

14 MR. ROBERTS: Thank you, Chief.

15 MS. PARTON: My name is Terri Parton. I'm
16 President for the Wichita and Affiliated Tribes. We
17 appreciate the opportunity to comment on the
18 regulations, especially in light of the recent court
19 cases that have a future effect on the future of
20 Indian children when placed in foster care and that
21 are being adopted.

22 The constant inconsistencies of evidence
23 in a recent court case is specifically why there
24 exists a need to implement these proposed rules. A
25 recent Oklahoma court decision mediated a placement

1 preference. The court apparently believed that it was
2 in the best interest of the child. If the Indian
3 Child Welfare Act regulations had been followed at the
4 beginning of the case, there would have been a
5 different outcome that would have prevented them from
6 having to deviate from the placement preferences.

7 In 1978, Congress chose the best interest
8 of Indian children when they enacted the Indian Child
9 Welfare Act. The regulations are necessary to provide
10 consistency in any proceeding involving Indian
11 children to protect their rights as an Indian child.
12 So I'm -- I'm going to mention a few things and then
13 we're going to also submit comments in writing.

14 The first one is the proposed rule
15 provides the definition for active efforts. Active
16 efforts must be made to re -- reunite an Indian child
17 with his or her family. The definition gives specific
18 things that should be done to work towards keeping
19 Indian families united in a child custody proceeding.
20 Indian families often need specific assistance in
21 reaching their goals for reunification that is
22 culturally appropriate and fits within their specific
23 lifestyle and cultural practices. This definition
24 helps to re -- or helps to define the things that
25 should specifically be done as an active effort in

1 assisting the families in reunification.

2 Second, the proposed rule also provides a
3 definition of imminent -- imminent physical damage or
4 harm. Many times, it seems that Indian children are
5 removed from their homes due to the lack of
6 understanding of the culture. Indian people
7 culturally live -- often live a different lifestyle
8 from what DHS workers may be accustomed to.

9 Third, the existing Indian family doctrine
10 is rejected. The court should not make determinations
11 on what constitutes an Indian family. The court
12 should follow the Indian Child Welfare Act and not
13 make those determinations when, in most cases, the
14 state court judge knows nothing about Indian families
15 or what it means culturally to be an Indian.

16 Fourth, the rule to require state courts
17 to inquire in every proceeding whether a child is an
18 Indian child is another step in protecting our Indian
19 children. Many times children are taken into custody
20 and go through the system for months before -- months
21 or years before someone determines that the child is
22 an Indian child. This should -- should help speed up
23 the process and avoid cases such as the Baby Veronica
24 case.

25 Fifth, the requirement of notice in child

1 custody proceedings to Indian tribes, whether the
2 proceeding is voluntary or involuntary, will ensure
3 that all Indian children will be protected when going
4 through proceedings whether they are voluntary or
5 involuntary.

6 Sixth, placement preference should be
7 followed at the beginning of a court case. Following
8 the placement preferences insures that the best
9 interest of Indian children are being followed when
10 they are able -- or able to stay in a tribal
11 community.

12 I have other comments that I will provide
13 in writing. Our Indian children suffer enough when
14 they are taken from their homes and their immediate
15 families. These children have a right and a need to
16 grow up knowing who they are and where they come from.
17 That is something non-Indians will not understand.
18 Our Indian children have a right to be protected from
19 court decisions that do not understand nor take into
20 consideration Native American culture or their way of
21 life.

22 We ask that you swiftly implement these
23 proposed rules. Thank you for this time.

24 MR. ROBERTS: Thank you. And if anyone
25 has written materials that they want to provide today,

1 we can -- we can accept those. And if there are any
2 statements that you want to provide, we can also
3 provide them to the -- the court reporter here as well
4 to make sure that everything is accurate.

5 MR. KILLER: My name is Kevin Killer,
6 State Representative from South Dakota and I'm also a
7 member of the Oglala Sioux Tribe and half Kiowa.
8 So -- and (Native language) I shake your hand with a
9 warm and open heart.

10 So and I just want to comment and say I
11 support the proposed regulations to enforce the Indian
12 Child Welfare Act because despite the guidance -- the
13 guidance promulgated and Congress made through the
14 tribal state operation over the past 35 years, a wide
15 range of inconsistent applications exists. These are
16 proposed regulations -- these proposed regulations
17 implement uniform best practices for all state child
18 welfare agencies, adoption agencies and the courts.

19 The proposed regulations are helpful
20 because they explain the difference between active
21 efforts, which are a best practice required by ICWA,
22 and reasonable efforts. The notice in the language --
23 the notice language in the proposed regulation insures
24 that tribes have an opportunity to fully participate
25 in proceedings affecting their citizens. The

1 regulations insure that the tribes receive notice of
2 all -- at all phases of a case.

3 Opposing group's concerns about best
4 interest being ignored or despite because if there is
5 a full compliance with active efforts and placement
6 preferences, ICWA assures that the health, safety, and
7 best interest of the tribal child are met.

8 These proposed regulations help uphold the
9 political status and rights of each Indian child. The
10 child has their own independent set of rights that can
11 not be waived by parents, guardians or even the tribe.
12 The child has a right to safety and a right to thrive
13 as a member of their tribal community.

14 And I just wanted to also add that, you
15 know, for the past eight years, the past seven years
16 that I've been in the legislature, I've been working
17 on ICWA issues. And coming at it from a state
18 legislator perspective, it's been frustrating
19 because -- especially in South Dakota, you see a whole
20 court system interpret rules separately from what the
21 Social Services Department interprets it. And then
22 being a native state legislator, you understand what
23 ICWA was supposed to be for in the first place.

24 And so in 2013, I did a bill that would
25 have gave the kids more rights uniformly, not just

1 native kids, but uniformly all -- all kids involved in
2 the foster system and that bill was met with
3 opposition from our -- our court system in South
4 Dakota, our Social Services Department in South Dakota
5 and also with various training groups in South Dakota
6 came out and that. And it was just giving the kids
7 more time for a hearing. And a part of it was South
8 Dakota, specifically, was known to have kids going
9 through a hearing that was like 30 seconds. You know,
10 they -- they -- because the parents couldn't come up
11 and for whatever reason to come to the kids -- the
12 kids -- their -- their -- when they were placed in
13 foster homes, you know, when the judge had to do a
14 hearing, the kids would be subject to like a two- or
15 three-minute phone call with the parents and then
16 other people. And that was their only -- their
17 hearing. And that was very frustrating, you know, as
18 being a state legislator and seeing my -- my own
19 constituents, you know, I consider young people in my
20 community to be constituents because half of our
21 population is under 18. And so, you know, kids are
22 going to be impacted by this big time, regardless of
23 what happens.

24 So I really do appreciate the efforts of
25 that -- that -- the efforts of making these comments,

1 but also the efforts of all tribes in the room and the
2 efforts of the BIA to really do something about this
3 because it's time. You know, it's -- it's a long time
4 coming and, you know, this law has been in place
5 for -- since the late '70s and, you know, we're still
6 having issues today. And being a member of our Native
7 state legislator's caucus where we have so many
8 members, we will be signing the letter and supporting
9 the rules as well. It should be in the mail today.

10 So -- but, you know, as a Native state
11 legislator and other Native state legislators, there
12 are 50 different interpretations of all this law as it
13 applies. So it would be great that we have uniformity
14 and I appreciate that as well. Thank you members.

15 MR. ROBERTS: Thank you.

16 MR. BIGLE: Good morning. My name is Greg
17 Bigle and I -- I wear several hats with different
18 tribes. This morning, at this point, I want to speak
19 on behalf of the Kickapoo Tribe of Oklahoma where I'm
20 the Attorney General and we have our Child Welfare
21 Director with us. But the Business Committee has
22 asked me to make some comments and we will follow that
23 with written submissions later.

24 We are in support of the proposed BIA
25 regulations and the strength and trust made in the

1 areas that we see problems with the state courts.

2 I want to emphasize that the Kickapoos
3 are -- have a unique situation in that many of our
4 families and parents are either not fluent in English
5 or else they're not comfortable in English. Kickapoo
6 still often being their primary language.

7 We are resided primary headquartered there
8 in the McCloud, Oklahoma area, but we also have a very
9 free flowing back and forth with the KTTs in -- down
10 in Texas and even in Mexico, the old village down
11 there. We have also have settlements out in Arizona.
12 And so our people are spread out through -- in
13 organized units throughout the states and
14 internationally.

15 Because of this, it's not that we want to
16 say that -- that the regulations or the states have to
17 understand -- have to look at a culture to see whether
18 they're Indian or not, but rather the tribes get to
19 determine what their culture happens to be. And,
20 thus, when you have issues of bonding and issues of
21 placement, that it should be referred to the tribe in
22 the first place and that is what the -- what these
23 regulations attempt to do. That the placements may
24 vary from what we see elsewhere, but the tribes should
25 be that which gets to determine it and also is a very

1 good reason for it to be transferred to the tribal
2 courts at any stage at any point.

3 We are in support of the positions where
4 you can also have a right to continuous notice. We
5 have seen problems in the past where we don't receive
6 notice until late. We appear or we have one or two
7 workers and we can not attend all hearings and, thus,
8 the court or the judge can sustain notice and consider
9 us having waived certain positions.

10 We want to also preserve the right to
11 transfer at any point. Oftentimes we will wait until
12 transfer until after the adjudication because we have
13 perceived problems in having the appearance of
14 witnesses in the tribal courts. If it's from some
15 distance, we may not be able to get the witnesses
16 there, the reports unable to successfully prosecute an
17 adjudication and then it would have to be dismissed.
18 So, therefore, we oftentimes want to wait until
19 post-adjudication where we can do the services and
20 reunifications.

21 In that light, because of our -- both
22 because of our -- our cultural needs and also because
23 of distances, we believe that appearing digitally or
24 by telephone is very important. I think where it
25 says, should, we would like to see that strengthened

1 to, Shall allow visual or telephonic appearances.

2 We also are in support of the fact that
3 there be no fees for such things. We are aware that
4 there are certain software through third-party vendors
5 which are utilized by state courts and that may be
6 85-, \$100, \$200 and we believe that that fee should
7 not be imposed upon these parents who cannot afford
8 that and also the tribes.

9 We further believe that, and especially,
10 because as Kickapoos in the tribe of Oklahoma has a
11 free allowance of a transfer between the Kickapoo
12 Traditional Tribe of Texas, memberships flowing back
13 and forth, when they are youth, that any eligible
14 tribe should be able to participate in the hearings
15 because also when they turn 18, they may be able to
16 transfer their membership. Thus, we think it's
17 appropriate for all tribes who are -- have eligible
18 memberships to participate.

19 We want to also be very clear that this is
20 not a racial classification. This is a right of a
21 government and of a peoples to continue their
22 existence and, thus, those -- those arguments which
23 are made against these proposed regulations are the
24 Indian Child Welfare Act do not apply. We are not
25 speaking about ethnic minority. We're not talking

1 about whether they're Chinese or whether they are
2 derived originally from Latin America or elsewhere.
3 This is a continuous government with a right to a
4 continued existence and that existence only continues
5 if we're able to have access and abilities to have
6 children that grow up in our -- in our -- within our
7 governmental structures.

8 And any other comments, we will submit in
9 writing.

10 Thank you very much.

11 MR. ROBERTS: Thank you.

12 MR. COWAN: Good morning. My name is
13 Klint Cowan and I am the Attorney General for the Kaw
14 Nation. Thank you all for coming here today and
15 hearing the comments of tribes. It's very much
16 appreciated.

17 The Kaw Nation is fully in support of
18 these regulations and sees the need for them as being
19 very strong at this point. We see cases where Indian
20 children are taken into state custody in deprived
21 cases and placed in non-Indian foster homes or
22 non-tribal foster homes, spend several months there
23 and the Social Services workers and the state courts
24 are very unwilling to even consider taking the
25 children out of the foster placement and placing them

1 into a tribal placement. Letting the tribe intervene,
2 letting the tribe take jurisdiction of the case and
3 there's a -- a lack of understanding among both the
4 state judiciary and the Social Services workers that
5 ICWA creates a right in the tribe itself to have
6 children in -- to be -- continue to be citizens of the
7 Nation and to enter into these cases and take the
8 children from non-Indian homes if -- if that's what
9 the tribe decides.

10 I think the -- the regulations, as they're
11 proposed, does hold nicely with the federal Indian
12 policy in support of tribal courts. There are several
13 places in the United States code that refer to the
14 Federal government support of tribal courts, strong
15 tribal government and having a strong judiciary for
16 tribes allows them to have strong governments that the
17 Federal government has a policy of promoting and
18 supporting. And with the Indian Child Welfare Act
19 with Indian children, there's a place for these tribal
20 courts to grow and exercise their jurisdiction in a
21 way that will help the tribe continue to grow and to
22 exist into the future.

23 Unfortunately, what we see is that the State
24 Social Services workers and -- and state court judges
25 often don't understand ICWA, don't understand tribal

1 courts, and don't want to transfer jurisdiction to the
2 tribal courts and look for any excuse that might pass
3 as good cause to refrain from transferring the cases
4 to tribal court. So I think it may be important to
5 reference the federal government's strong support of
6 tribal courts and strong tribal governments in the
7 regulations. To make it clear, the tribal courts have
8 a real role to play here and they're -- and they're
9 more than capable of processing these cases.

10 The Kaw Nation has a tribal court and has
11 several Indian child welfare cases on its docket right
12 now that we've transferred from state courts, but
13 being a border tribe, we also have cases that arise in
14 Kansas and even in other states. And when those types
15 of things happen, it's even more difficult to explain
16 to Social Service workers, the courts, the attorneys
17 involved the right that the tribe has to come in and
18 take jurisdiction over the tribes. There's a lack of
19 understanding, a lack of willingness to cooperate with
20 the tribe and I -- and I just believe that these
21 regulations would help in that effort. It -- it would
22 give Attorneys Generals and -- and tribal attorneys
23 something to point to and say, This is the law. You
24 have to follow this. The parents don't object to the
25 transfer. You have to do this barring certain very

1 limited exceptions because that's what we're asked.

2 When we enter into a -- a state court case
3 with a deprived Indian child, the Social Service
4 workers and the judges sometimes look at us like we're
5 aliens and then they just have no idea what we're
6 talking about. And I think what these regulations
7 would enable us to say, It's here in black and white.
8 This is the law. You have to do this.

9 I agree with the other commenters [verbatim]
10 that the BIA has full authority to do this under the
11 Indian Child Welfare Act, which is federal law, after
12 all, and delegates this -- this authority to the
13 agency to implement these regulations.

14 So the Kaw Nation fully supports the
15 regulations and -- and hopes that they're implemented
16 quickly.

Thank you

17 MR. ROBERTS: Thank you.

18 MS. JORDAN: Good morning. My name is
19 Courtney Jordan and I'm a citizen of the Cherokee
20 Nation, but also an attorney here in Oklahoma in
21 private practice.

22 I currently am very blessed to be the
23 tribal attorney for the Comanche Nation and am very
24 honored to speak on behalf of the Comanche Nation for
25 this very important issue.

1 The Comanche Nation is pleased to have the
2 opportunity to comment on the notice of public rule
3 making regarding the regulations for state courts and
4 agencies in Indian child custody proceedings.

5 On February 21st, 2014, Secretary Kevin
6 Washburn sent a Dear Tribal Leader letter asking for
7 comments on the Bureau of Indian Affairs guidelines
8 for the Indian Child Welfare -- Welfare Act.

9 As a result of those comments and
10 testimony, on March 25th, 2015, the BIA released a
11 proposed rule that would add a new subpart to the
12 Department of Interiors's regulation implementing
13 ICWA. Specifically, this proposed rule establishes a
14 new subpart to the regulations implementing ICWA at 25
15 CFR part 23 to address Indian Child Welfare
16 proceedings in state court.

17 The Comanche Nation applauds the Secretary
18 and the BIA for their quick responses to the pleas of
19 tribal nations for revised BIA ICWA guidelines and for
20 regulations to insure implementation of these
21 guidelines. This tremendous step forward in ICWA
22 enforcement is sincerely appreciated.

23 Oklahoma is home to 39
24 federally-recognized Indian tribes, each with a unique
25 cultural and historical background, including their

1 own kinship and childrearing tradition.

2 For the Comanche people, families are the
3 center of the community and children are sacred gifts
4 from the Creator.

5 Congress enacted ICWA to protect the best
6 interests of Indian children and to promote the
7 stability and security of Indian tribes and families
8 by establishing minimal -- minimum federal standards
9 for the removal of Indian children from their families
10 and placement of such children in foster or adoptive
11 homes or institutions which will reflect the unique
12 values of Indian culture.

13 ICWA does articulate a strong federal
14 policy that, where possible, an Indian child should
15 remain in the Indian community. The Comanche Nation
16 strongly agrees that Comanche children should remain
17 in the Comanche community.

18 The BIA previously provided ICWA guidance
19 through federal guidelines. These guidelines allow
20 for a wide variation of practice. In the past, the
21 Oklahoma Supreme Court has deferred to the guidelines
22 when tasked with interpreting ICWA. Recently,
23 however, the Oklahoma Civil Court of Appeals renounced
24 certain provisions of the updated guidelines due to
25 their nonbinding authority. This has caused

1 uncertainty for our Comanche children and families.
2 The inconsistency in state court interpretation of
3 ICWA provisions has led to uncertainty for our
4 children, our nation and the state. Without these
5 regulations, ICWA will continue to be misunderstood
6 and misapplied to cases involving Comanche children.

7 The proposed regulations specifically
8 address the lessons learned over the last 35 years and
9 provide uniform guidance with greater legal force.
10 Precisely what is needed to protect Comanche children
11 and families.

12 The Comanche Nation is very hopeful that
13 federal regulations supporting this policy will help
14 create clarity and certainty in ICWA's decisions in
15 Oklahoma and throughout the United States.

16 The Comanche Nation expressly supports the
17 regulation requiring earlier identification of native
18 children. This will promote compliance with ICWA and
19 stability for Comanche children, in addition to
20 increasing opportunities for the Nation to be involved
21 early in proceedings to protect historical tribal
22 interests and support the nation's children and
23 families.

24 The Nation has a right and a duty to
25 protect our Comanche children. This means that we can

1 intervene in state ICWA proceedings or transfer cases
2 to our tribal courts. In order to do so, we need to
3 have notice that a child is involved in an ICWA case.
4 The new rules will make sure that we have notice in
5 all ICWA cases and can protect our children's rights,
6 family's rights and child's interests.

7 The Comanche Nation clearly supports
8 clearly stated examples of active efforts to reunite
9 our Comanche children with their family. Oklahoma
10 case law defines active efforts as leading a horse to
11 water, but gives us little guidance otherwise.
12 Comanche children and families don't always get the
13 services they need when they are in state care.
14 States often fail to provide culturally relevant
15 services to our children and families or work with the
16 Nation's programs. This hurts our Comanche children
17 and families. They simply don't have a chance when
18 they can't get services they need or the services that
19 work. The regulation provide a much needed definition
20 of active efforts. The new definition is very
21 specific and will assist state courts in making a
22 determination as to whether the party seeking a foster
23 care placement or termination of parental rights has
24 met the burden of active efforts under ICWA.

25 The Comanche Nation is also proud to note the

1 numerous places where the proposed regulations mirror
2 our own state law, the Oklahoma Indian Child Welfare
3 Act. The OICWA was a result of years of collaboration
4 between Oklahoma and the tribes. One of the goals of
5 the OICWA was to provide clarity for state court
6 judges attempting to interpret different provisions of
7 ICWA. Some examples where the proposed regulations --
8 regulation in our existing state law are consistent
9 includes notice in involuntary proceedings, placement
10 preference and anonymity, emergency removal provisions
11 and elimination of the so called existing Indian
12 Family Doctrine.

13 The Comanche Nation strongly supports these
14 regulations, but we also believe it is necessary to
15 provide specific comments on -- on improvement for the
16 proposed regulations.

17 First, it's important that the authority of the
18 BIA to regulate be included in the final published
19 rule. We also think that individual regulations
20 should be justified with references to cases, state
21 regulation and legislative history.

22 Second, we also believe that the -- the
23 regulations should explicitly address the Baby
24 Veronica case. The regulations should clarify that it
25 should not be applied outside of the private adoption

1 context and provide guidance on how it should be
2 implemented in practice.

3 Lastly, ICWA applies based on a child's
4 political status. This is, of course, based on their
5 membership in a tribe. As a sovereign government, the
6 Comanche Nation is the only entity with the legal
7 authority to determine whether a child is a member of
8 our tribe.

9 We are thoroughly pleased that the
10 regulations are undeniably clear on this point.

11 Thank you.

12 MR. ROBERTS: Thank you. Thank you for
13 participating this morning.

14 MS. COLLINS: Tribal leaders, Elders,
15 Senator, Department of the Interior officials,
16 colleagues and friends, I would like to address you
17 this morning. My name is Lee Collins. I'm the
18 Director of Social Services at the Osage Nation. I've
19 been in child welfare about 20 years and have 27 years
20 of social work experience. I am a member of the Iowa
21 Tribe and I'm also Osage growing up on the Osage
22 reservation. Both of my parents were Osage as well.
23 I feel that I am qualified or at least equally
24 qualified as anyone in this room to make these
25 comments about the proposed ICWA rule and I would like

1 to thank you for this opportunity to do that today.

2 First, I will say that I am in support of
3 the rule from Page 14880 through 14894 with the
4 exception of some things on 14892. I forgot a paper.
5 Hold on.

6 Under Section 23.131, How Determination
7 For Good Cause For Preference Placements Made, I'm in
8 disagreement with A and B. First, under A, I believe
9 that this gives an incentive for private adoption
10 agencies to continue and even, I don't know how else
11 to say it, but ramp up their efforts to provide
12 assistance or benefits to mothers who are seeking
13 placement for their children for voluntary adoption.
14 We don't need that. It's hard enough as it is
15 already.

16 Also, the parties seeking departure from
17 the preferences bears the burden of -- hold -- hold on
18 just a second. Yeah. The part about where the kids
19 can have a say on where they're placed, that -- that
20 just opens the door for their placement provider to
21 encourage them to stay right where they are. We have
22 to be very, very careful with that. I -- I -- I don't
23 know if that's a good thing or not so, at this point
24 in time, I'm going to recommend that it be removed.

25 Under Section 22.130, when you're talking

1 about placement preference in the adoption, foster
2 care and pre-adoptive placements, I don't see that
3 placement with siblings is considered at all.

4 Prior to the passage of the Indian Child
5 Welfare Act in 1978, I spent, along with my two
6 siblings at that time, three years in foster care.
7 The State of Oklahoma removed us from our parents.
8 There was no hearing, there was nothing and they kept
9 us for three years. I was nearly adopted, so I
10 understand -- and they separated us. We were each
11 placed in three different homes.

12 I can tell you from my own experience,
13 that has lifelong lasting effects and that you need to
14 seriously reconsider and possibly add or address
15 placement with siblings.

16 The best interests, we -- everyone in this
17 room, I -- I believe that everyone in this room,
18 including yourselves, believes that the best interests
19 of the Indian child is with the tribe. I don't think
20 we question that at all, but I would say that the
21 majority of people outside of here don't share that
22 with us, that belief. Attachment and bonding is an
23 important thing to consider, but it should never
24 supersede placement of a child with an Indian family
25 in an Indian community or even outside as long they're

1 with an Indian family. That's what matters. I
2 believe that that is more in the best interest of the
3 child.

4 We wouldn't be here today if we weren't
5 suffering from so many afflictions, drug abuse,
6 domestic violence and those are the things that I
7 strongly believe that that's all related to the
8 historical trauma, which as you probably know, is
9 related to the genocide, the removal, the
10 assimilation, all of those things that our ancestors
11 endured. And here we are, here we are, we're still
12 here, but we need your help because so many times that
13 attachment and bonding, that rules out and it should
14 not.

15 A child can be treated for those issues
16 that are related when they have been in a long-term
17 placement and then they're moved to a tribal home
18 because of all the things that they get to experience
19 in that tribal home, plus, I mean, it's -- it's 2015.
20 We can get counseling for those children. They can
21 overcome those issues. It's very short term. You'll
22 hear, you know, the child will be devastated. Yes,
23 they will for a little bit, but if we address it in a
24 proper way, they won't. So it is extremely important
25 that these rules are strong enough that people

1 understand that the best interest of a child is -- an
2 Indian child is with their tribe.

3 I'm very happy to see in the proposed rule
4 where transferring a case, they can not deny
5 transferring a case to tribal court because of the
6 advanced stage of the case. Six or seven years ago,
7 we had a case that was a two-year-old child and we
8 received notice like October the 20th of a termination
9 of parental rights hearing. It was the first we had
10 heard of it. It was right here in Oklahoma and the
11 next hearing was scheduled for December. There was a
12 couple -- we -- we filed a motion to intervene to
13 monitor immediately and a motion to transfer
14 immediately. In October those were filed. Those
15 documents were filed with the court. That next
16 hearing came up and there was a series of hearings
17 after that. So as you know, a little bit more time
18 passed and this child had been put in custody
19 practically at birth. It wasn't long after birth that
20 she was put into custody. We had at that
21 time a certified Osage adoptive family. We also had
22 certified Osage foster families that we wanted to
23 place her in. That court denied that transfer due to
24 the advanced stage of the case, even after we fought
25 as hard as we could. But -- so I -- I -- I have to

1 tell you, that's something that I'm very happy to see
2 in the proposed rule.

3 The voluntary proceedings, when I see
4 that, I -- I immediately think this -- I know that's
5 more than just private adoptions, but that's what I
6 think of right off the bat. And it was critical
7 that -- that the rule addresses those and I'm very
8 glad that you have done that. We share what happens
9 to us out here in the field.

10 Those private adoption agencies, they will
11 pick up the phone or they'll send you a letter,
12 occasionally you'll get an E-mail, and they will
13 identify themselves and let us know they have a mother
14 who says she's Osage and she wants to -- she's
15 selected a home from their agency and she wants her
16 child placed there for adoption. And they know they
17 have to let us know and we tell them, this is not
18 formal notice. This is not meeting the requirements
19 for formal notice. In fact, the child is usually not
20 even born at that point, but they want to know what
21 our -- what our stand is and we tell them, we always
22 object. We have waiting Osage adoptive families that
23 will take these children. And the next thing that
24 happens is we'll continue to get phone calls. Then,
25 now, they get pushy and they become bullies. They

1 bully us. They try to tell us that we can't do this.
2 We can't do that, but we -- we know our rights. We
3 know that we can and we know what is in the best
4 interest of the child. By the time the child is born,
5 they don't even contact us and they go ahead with
6 their adoption. We don't even know the child has been
7 born and they go ahead.

8 Think about this, that happens -- Osage
9 Nation is not a large tribe. We have 19,000 plus
10 members across the United States. This happens in our
11 agency at least three times a year, sometimes five.
12 Think about that, 37 years ago the Indian Child
13 Welfare Act was passed. Do a little math. Five times
14 37, that's 185 children that have been stolen from our
15 tribe. That can make a difference in a tribal
16 election. There may be people in this room who won
17 their tribal election by less votes. So even though I
18 may tell you that that happens to us three to five
19 times a year, when you think about it in the big
20 picture, it's a serious issue. So I'm very, very glad
21 that this proposed rule has addressed that.

22 Tribal child welfare has evolved so much.
23 We're at a much more sophisticated level than we have
24 ever been. You can trust us to carry out this law and
25 to carry out these regulations. We can and we will do

1 more to meet the needs of our tribal children and to
2 strengthen and to heal our tribal families.

3 Again, thank you for the opportunity to
4 address you and I support the proposed regulations for
5 the Indian Child Welfare Act with the exceptions that
6 I mentioned at the beginning.

7 MR. ROBERTS: Thank you. Thank you for
8 your very specific comments and thank you for sharing
9 with us on-the-ground issues that Osage is working
10 through on a daily basis.

11 It's about 10:30. If there's no
12 objection, I would say we take a -- a short
13 five-minute break and give everyone a chance to grab
14 some coffee and stretch their legs and we'll reconvene
15 at 10:35. Thank you.

16 (Break taken at 10:25 a.m. to 10:36 a.m.)

17 MR. ROBERTS: Okay. Everyone, we're going
18 to go ahead and get started. I really appreciate
19 everyone's participation this morning on a rainy, cool
20 morning here in Tulsa. I really appreciate everyone's
21 being respectful to the -- the audience in terms of
22 keeping their comments within the -- the five minutes.

23 I will say that I'm not sure who made the
24 comment this morning. Someone said that they were
25 going to speak very quickly to get in all their

1 comments and I think that that shot a little bit of
2 concern with our court reporter here. So I -- I -- I
3 just want to say that I know everyone is being
4 respectful. I know a lot of folks have travelled
5 from -- to get here this morning to participate and I
6 appreciate everyone being respectful to everyone's
7 time here.

8 So with that, I will reopen the session
9 here and we're ready to hear additional comments.

10 Thank you.

11 MS. SMITH: My name is Angel Smith. I am
12 a private attorney and I work in several tribal courts
13 representing tribal children. So I'm not speaking --
14 speaking specifically to a tribal position today. I
15 want to raise some awareness of the rights for the
16 Indian children within our tribal system, as well as
17 factors that are within ICWA that I believe need to be
18 addressed.

19 First, let me clarify, I myself am a
20 former ICWA child. 1980 case that went on appeal in
21 re: A Doe, A being for Angel. So I've literally been
22 an expert in ICWA, I will call myself that, since I
23 was born. I have proceeded in a case that went on
24 writ and it closed in about 1988.

25 So I take ICWA, ICWA law matters involving

1 our Indian children very seriously because at five
2 years old in Tulsa County Juvenile Court, I determined
3 I wanted to be an attorney for Indian kids.

4 Since then, my case work has included In
5 Re: HAS, which did strike down the existing family
6 exception in Kansas or doctrine in Kansas. I
7 represented Baby Veronica and I have, in the last
8 month, been, with permission I can publically
9 announce, an attorney for one of the parents of Baby
10 Desiree, against a third party custody matter and that
11 child has been returned to the parent.

12 So ICWA is what I do. ICWA is my life
13 experience.

14 A couple of factors that I wanted to point
15 out is that this is called the Indian Child Welfare
16 Act. I speak on this very often and I point that out,
17 Indian child, because there is encompassed within the
18 Act, the protection and the rights of Indian children
19 as children.

20 Many people who, much more eloquently than
21 me, spoke to say that you have hundreds of years of
22 government-to-government relationship. They're
23 encapsulated within the Act. I support the proposed
24 regulations because I believe it protects and
25 recognizes that Indian tribes are sovereign, which

1 includes citizens and within that, their minor tribal
2 citizens and members.

3 Some very specific things I did want to
4 point out is that Indian children within the language
5 that is actually in the proposed rule, and Chrissi
6 Nimmo spoke to this as well, that it speaks to harm,
7 imminent harm, but it doesn't necessarily speak to
8 whether that covers emotional since it is limited to
9 physical.

10 One of the main points that are recognized
11 is a right of Indian children for validation. One of
12 the things I want to bring up is that that requires
13 attorneys who understand the rights of Indian kids.
14 What we saw prior to my appointment in Oklahoma here
15 for Baby Veronica was, this is public knowledge, her
16 attorney guardian ad litem did not consider her best
17 interests as an Indian child. So we have to have
18 attorneys appointed, whether a tribe is doing that on
19 their own, whether the state court is recognizing, you
20 have to have attorneys appointed who understand the
21 rights of these children. It is the protected rights
22 that they are guaranteed by the Act and in also
23 proposed regulations.

24 Another factor, there is no existing
25 Indian family, clearly I would have to the ability to

1 say that since I stood in front of the Kansas State
2 Supreme Court and finally got that doctrine dismissed
3 which was very archaic and let me tell you, that was
4 my very first case out of law school. So I'm very
5 passionate about not seeing that language revised.

6 Blood quantum, the blood quantum
7 requirement, that is completely a fallacy when it
8 comes to judicial determination. It is not contained
9 within the purview of the Act. It's not within the
10 requirements and I really support any statements
11 stating that that needs to be eliminated.

12 Children are citizens and members of
13 sovereign tribal nations and they are due protection
14 of those rights. It's recognized through the
15 regulation, the proposed regulation. It's recognized
16 through the Federal Indian Child Welfare Act. It's
17 also recognized through international documents as
18 well. So we are dealing not with state rights,
19 they're statutorily protected. We're dealing with
20 citizenship rights and basic fundamental human rights
21 of Indian children. Since the Indian Child Welfare
22 Act, it does seek to protect the children's rights to
23 their tribes and their Indian family and it is
24 something that I support as to the regulations.

25 I will speak later at a public hearing as

1 to my personal experience. Thank you.

2 MS. HURT: (Native language) My name is
3 Johnna Hurt. I'm an enrolled member of the Chickasaw
4 Nation and a case worker for Indian Child Welfare for
5 Wichita and Affiliated Tribes and I represent children
6 of the Caddo Nation of Oklahoma. I'm a former ICWA --
7 I'm an ICWA adoptee, a former ICWA placement provider.
8 I'm also an adoptive parent of an ICWA child, am a
9 co-founder of a national movement originally known as
10 Standing Our Ground For Veronica Brown. It is now
11 known as Standing Our Ground For Children.

12 Today, I want to testify to the fact that
13 the proposed rules are necessary to stop the
14 circumvention of ICWA, eliminate the misunderstanding
15 of ICWA and more important, to protect the federal
16 rights of native children that currently receive
17 minimum consideration when it comes to the decision
18 that non-Indian people are making in state court
19 cases.

20 I would like to address a few points in
21 particular. While the opponents will tell you the
22 deviation of placement is often necessary due to
23 bonding in a non-compliant home, I maintain that when
24 active efforts are made to place a native child in
25 compliance with respect to their right to cultural and

1 family ties, deviation is not necessary. The more
2 proactive a case worker is in the placement of a
3 native child and the earlier they take that proactive
4 approach in a case, the chances are lessened of a
5 child being placed out of compliance. But due to
6 little or no consequences for violation of ICWA's
7 placement preference, there are an alarming number of
8 situations in which placements are made out of
9 compliance and the deviations continue with that
10 placement is met with the augment that bonding has
11 occurred. The proposed rule stipulation that bonding
12 in a non-compliant home will not be used to find good
13 cause to deviate a placement is absolutely necessary
14 to stop the current procedures being used to maneuver
15 around placement preference. And I can testify to
16 this as an ICWA worker that witnesses this in state
17 court on a weekly basis.

18 I also want to address briefly about the
19 adoption industry in relation to our ICWA law. The
20 private adoption agency profits \$13 million annually
21 with little government regulation. I've received
22 numerous examples of what is referred to as adoption
23 situations. They have been published in news articles
24 and agency websites. They include native infants that
25 are available for a fee that range from 30- to \$45,000

1 each. There is no need for monetary involvement where
2 native children are concerned and these proposed rules
3 are absolutely critical to allow children in Oklahoma
4 no longer being sold for a profit to non-Indian
5 families when their identity is lost and their ties to
6 the family and culture are severed. And I can testify
7 as an adoptee how damaging and life altering this can
8 be for a native child.

9 Another element that is crucial to the
10 well-being of native children is the active efforts to
11 determine membership in tribes and active efforts to
12 find family placement.

13 My husband was a foster child adopted out
14 of the foster care system along with his sibling.
15 That sibling later parented a child that required
16 removal. Due to the tribe's involvement, she's a
17 Choctaw child, active efforts were made and my husband
18 was located. When given placement under ICWA to a
19 two-year-old that we had never met, but besides our
20 children, she was the only biological bond my husband
21 knew and so to take placement wasn't ever questionable
22 for us.

23 We later completed an adoption. She is
24 now 11 and though her parents are not rehabilitated in
25 a manner that would allow them to raise her, they are

1 in a place to have a healthy relationship with her.
2 Though we have always provided her with a safe and
3 loving environment, there was still tremendous
4 feelings placed for her at the point she was able to
5 resume communication with them. Her identity stems
6 from her biological parents and it always will. I
7 can't possibly put into words, although I'm trying,
8 how necessary it is for a child to maintain their ties
9 to family.

10 While a case worker may not initially
11 understand that on the surface of the case, the
12 regulations that require active efforts in these areas
13 will be life changing for native children and it will
14 be key to healing generational trauma of separation
15 that has affected our culture since the boarding
16 school era and I can testify to this as an adoptive
17 mom.

18 The uniformity and guidelines they will
19 provide to state courts across the country is another
20 reason they're necessary and overdue. Every case
21 worker, every judge, every district attorney, and
22 every foster parent has a different understanding and
23 perspective of ICWA. These perspectives are based on
24 range of experiences and the range of experiences is
25 due to situations that are most often played out at

1 different levels in the judicial system.

2 When Congress enacted ICWA in 1978, it
3 determined the best interests of an Indian child. It
4 promoted the stability and security of Indian tribes
5 and families. Veronica Brown, should have stayed
6 secure with her father as determined by Congress
7 32 years before she was ever born, but due to the
8 manipulation of the court system, the circumvention of
9 ICWA, an unethical adoption industry and the
10 determination the State made for her, she was forcibly
11 removed from her home on September 23rd, 2014. It is
12 time for the proposed rule to close these loopholes so
13 that never happens to an Indian child again. And I
14 can testify to this as a co-founder of Standing Our
15 Ground For Children.

16 I would like to discuss and support one
17 more point. The requirement of voluntary proceeding
18 is key under current situations occurring in the
19 adoption field. Oftentimes mothers who voluntarily
20 are placing their children with the adoption agency
21 under coercion and without father's consent. It is
22 necessary for the tribe to be involved for many
23 reasons, including their ability to assist the mother
24 with help and with any situation that may be leading
25 to her feel as if she can't raise her child, such as

1 financial and housing concerns.

2 Another reason that often adoption
3 proceeding are made voluntary the mother, but not
4 voluntary to the father and ICWA protects the child's
5 rights to all of her family.

6 In placing that child in a home, if all
7 parties come to the agreement that an adoption is
8 necessary, the tribe can assist the family in placing
9 that child in a home that would protect the child's
10 rights to culture and tribe. And the tribe can do so
11 without the profit and without the cost that is found
12 in the business-driven adoption industry. This
13 guarantees the child's best interest is protected
14 rather than a compromise by a third-party financial
15 gain. And I can testify to that as an advocate and
16 friend of adoptees, birth mothers and their fathers.

17 Thank you again for your time and
18 consideration.

19 MS. OWINGS: I can't believe everyone is
20 not jumping up yet. My name is Jodi Owings. I'm the
21 Director of Indian Child Welfare Program with the
22 Kickapoo Tribe of Oklahoma and our attorney had spoke
23 earlier.

24 A couple of things that I just wanted to
25 mention on the guidelines on the definitions of active

1 efforts on 23.27 where it talks about the tribal
2 services, one of the things that we were looking at
3 was talking about -- it said all tribal services as
4 deemed appropriate by the child's tribe, including
5 traditional healing as acceptable remedial services by
6 the agency and the courts. And it says, Many
7 families -- we have been working with ICWA on this,
8 one of the things it says, Many families are
9 prohibited from utilizing tribal services as agencies
10 and courts will not recognize this service as
11 acceptable. One of the reasons why we're in support
12 of this part is because how the placement related
13 earlier.

14 We have a tribal member in a court in a
15 county here in Oklahoma and the father is very, very
16 traditional as our attorney had spoke earlier about
17 how traditional the Kickapoos are. And they were
18 upset because they said that he was not bonding with
19 his child during the visits. That baby is, like, five
20 months old. Well, what they don't understand is, as a
21 traditional Kickapoo man, that's not his role and they
22 didn't understand that. And so we had a family team
23 meeting and I explained that to him -- or to -- to the
24 worker, and then we go to court and in the court
25 report, instead of putting it in there that we were

1 there and we explained the practices of the Kickapoo
2 traditional men and how they are, he said, Dad not
3 bonding with his child even after we were there. So I
4 think it's very important that we have that in there
5 to change that part. We'll be submitting these as
6 well.

7 Another part that -- I just looked at it
8 and I wrote it down. Oh, on the 23.111 on the -- on
9 G, I just want to thank you for putting that in there
10 about the language. That goes back to the -- the
11 county that we worked with that don't understand that
12 some of these people do not speak English or fluent
13 English, so they don't understand English. I had one
14 attorney come up to me and said, She couldn't believe
15 this man didn't know how to speak English. Well, he's
16 traditional. His grandmom is Kickapoo. His mom is
17 Kickapoo and that's all he knows. I've got little
18 ones speaking Kickapoo and I don't understand one
19 thing so I don't know. I have to have somebody help
20 me interpret what they're trying to say. And I do
21 have a worker who's Kickapoo who speaks Kickapoo and
22 Spanish. So that's very helpful in our department. I
23 think that's great. I mean, I'm glad that's in there
24 because they don't understand.

25 Another thing they don't understand about

1 that is I had one worker go to court to kind of
2 interpret. They don't have words for transportation
3 or bus or anything, so it sounds like they're saying a
4 lot, but they're not. They're trying to break it down
5 and explain to our families on what their -- what
6 these petitions are saying. There's not a word for
7 adjudication. There's not a word for all of that. So
8 I'm very thankful that that is in there.

9 When I had the one girl go and talk to the
10 father, they -- when they -- we were supposed to be
11 there for just -- talk about doing a DNA test. When
12 they found out she spoke Kickapoo and explained this
13 to them, she -- they were asking her to do all kinds
14 of stuff. Another thing they don't understand is
15 females can't ask males certain things, you know, and
16 there's certain things that are not appropriate. So
17 that goes back to understanding the tribes. But
18 that's all I'm going to say right now.

19 Next. Who's next?

20 MR. ROBERTS: Thank you.

21 MS. COLEMAN: Hello. Good morning. I'm
22 Texanna Coleman. I'm here representing the Iowa Tribe
23 of Oklahoma. I'm an enrolled member of the Apache
24 Tribe of Oklahoma and I'm also Tonkawa. I grew up in
25 Fort Oakland.

1 As many people in this room know from our
2 varied meetings from the last couple of weeks, I'm
3 very new in this position, but that's not to say that
4 I don't understand the impact that ICWA has --

5 MR. ROBERTS: I'm just going to interrupt
6 you for a second. There's a gentleman in the back
7 taking photographs. This is closed to the press.

8 PRESS: Okay.

9 MR. ROBERTS: Sorry to interrupt you.

10 MS. COLEMAN: That's okay. But I do have
11 a lot of personal experience. I will go ahead and
12 share this story.

13 I have an older sister, who has fallen
14 into an addiction with meth. And so my parents are,
15 like many grandparents here in the State of Oklahoma,
16 raising their Indian grandchildren. So my parents,
17 they got done raising me and my brother and my two
18 sisters and then they had to start all over with their
19 grandchildren. Honestly, without ICWA, I don't know
20 where those -- where they would be. They might be
21 somewhere. Who knows where they would be. They
22 probably wouldn't even still be together.

23 So I think it's very important that we
24 have these regulations in place. I think that's great
25 that we have these regulations and we support them.

1 Now, on the Iowa Tribe of Oklahoma, they
2 do support these regulations. I will go ahead and
3 read a little bit of a letter that they have sent.

4 In Native cultures, families are the
5 center of the community and children are sacred gifts
6 from the Creator. The Indian Child Welfare Act of
7 1978, or ICWA, protects the best interests of
8 Indian -- of the Indian child and promotes stability
9 and security of Indian tribes and families. So today
10 to ICWA -- sorry, ICWA regulations that provide rules
11 for its implementation in state courts and bind state
12 and public agencies have never been issued. Without
13 binding regulations, ICWA has been misunderstood and
14 misapplied for decades. This has, in turn, led to the
15 unnecessary breakup of native families and placement
16 instability for native children and children of
17 families. And agencies and courts that implement ICWA
18 needs and deserve the clearance that the propose
19 regulations provide.

20 There's some specific parts of the
21 regulations that they support. The proposed
22 regulations specifically address the lessons learned
23 and provide uniformed guidance with greater legal
24 force. Provisions in the proposed regulations that
25 are particularly helpful include early identification

1 of ICWA-eligible children.

2 All too often, children and families are
3 denied the protections of ICWA because a court or
4 agency did not ask whether the child had native
5 heritage. Not only can this result in Indian children
6 not being identified at all, it can create a rift of
7 insufficient service provision, delay or
8 representation in court proceedings and placement and
9 stability once a child is identified. The
10 requirements regarding earlier identification
11 include -- included in the regulations require good
12 practice and promote compliance with the requirements
13 of the law.

14 Recognitions of tribe's exclusive
15 authority to determine membership. ICWA applies based
16 on a child's political status, specifically it applies
17 to children who are members or are children of members
18 and eligible for membership in a federally-recognized
19 tribe.

20 With regard to membership, tribes, as
21 sovereign governments, are the only entity with legal
22 authority to determine a membership of a child's
23 tribe. The regulations are clear on this vital point.
24 Too many Indian children have been denied the
25 protection of ICWA and the opportunity to know their

1 families, communities and culture because of the
2 existing Indian family exception and judicially
3 created rule that is inconsistent with ICWA's intent.
4 The proposed regulations mirror overwhelming trends in
5 state legislature, in courtrooms and make this
6 clarification.

7 Designation and examples of active
8 efforts, the provision of active efforts that's
9 required before an ICWA eligible child can be removed
10 from her home or his home and before parental rights
11 can be terminated, yet this term has never been
12 defined. Without a clear definition of active
13 efforts, the state and private agencies haven't been
14 required to provide services without a clear
15 understanding of the level and type of services
16 required. The regulation provides not only a clear
17 definition of active efforts, but illustrative
18 examples to guide state and private agencies practice
19 with Indian children and families.

20 Notice to tribes in voluntary proceedings.
21 In ICWA proceedings this includes the right to
22 intervene in the state proceedings or transfer the
23 case to tribal court. When tribes do not receive
24 notice of voluntary proceedings, they are effectively
25 denied these rights. Further, because tribes have the

1 exclusive authority to determine which children are
2 members, when tribes are not notified and offered the
3 opportunity to verify that a child was ICWA eligible,
4 a court cannot insure compliance of the law.

5 Lastly, tribes are an essential resource
6 for states and agencies seeking placement in line with
7 ICWA preferences. Without knowledge of a voluntary
8 proceeding, children can be denied possible placement
9 consistent with ICWA's placement preferences. Notice
10 of voluntary ICWA proceedings provides agencies and
11 courts the clarity necessary to protect these
12 interests.

13 Limiting the discretion of state courts to
14 deny transfer of a case to tribal court. This Supreme
15 Court -- the Supreme Court has clarified that tribes
16 have presumptive -- presumptive jurisdiction in child
17 welfare cases that involve their member children.
18 Often, however, state courts inappropriately find good
19 cause to not transfer a case because they believe the
20 tribal court will make a decision different from its
21 own. The regulations clarify that this reasoning
22 cannot be used to deny transfer.

23 Also, exercising the need to follow the
24 placement preference and limiting the ability of
25 agencies to deviate from those placement preferences.

1 One of ICWA's primary purposes is to keep native
2 children connected with -- to their families, tribal
3 communities and cultures. Yet currently more than
4 50 percent of native kids are adopted or placed with
5 none-native homes. The regulations provide
6 requirements that will promote placement in
7 accurate -- I'm sorry, in accordance with ICWA's
8 language and intent. We strongly support these
9 regulations, but we're also recommending additional
10 changes to consider.

11 We believe that it's important, that the
12 general authority to create -- I'm sorry, to
13 regulate -- we believe that it's important that the
14 general authority to regulate in carefully
15 articulating that the individual regulations be
16 justified with references to support our cases. State
17 regulations and policies that reflect best
18 practices -- practices and legislative history.
19 Additionally, the regulations should explicitly
20 address the adoptive couple versus Baby Girl case.
21 One, clarifying that it should not be applied outside
22 the private adoption context and, two, providing
23 guidance on how this interpretation would be
24 implemented in state court and private agency
25 practice.

1 With these additions, the proposed
2 regulations will better serve native children,
3 families and tribes.

4 Finally, we urge you to strongly consider
5 technical recommendations that will be provided by the
6 National Native Organization and attorneys who have
7 expertise in ICWA.

8 I think those are all of the comments that
9 the tribe wishes to make at this time.

10 Again, we strongly support these
11 regulations, but with those added changes, I think
12 that we would better serve our native children.

13 Thank you.

14 MR. ROBERTS: Thank you. And so I know
15 we've had a handful of folks join us since the break
16 and I just wanted to remind everyone that this is a
17 government-to-government consultation with the
18 Department of Interior and tribes on these proposed
19 regulations. And so I appreciate the comments on
20 behalf of the Iowa Tribe of Oklahoma and all of the
21 other comments that we've received on behalf of tribes
22 this morning.

23 For those of you that are not here on
24 behalf of a tribe, we are having a public meeting
25 session this afternoon that I invite you all to attend

1 from 1:00 to 4:00. But I just want to make sure that
2 is -- everyone knows that this is closed press in this
3 a government-to-government consultation.

4 So with that, I'll open it back up with
5 comments from tribal leaders and their
6 representatives.

7 MS. STRETCH: Hello, my name is Lou
8 Stretch. I'm here from Cherokee Nation. I'm a
9 Program Manager for the Indian Child Welfare
10 Department and I just wanted you to know that Cherokee
11 Nation applauds the BIA for developing a regulation,
12 clarification of ICWA. Consistency in its
13 implementation is essential.

14 My unit works cases throughout the United
15 States. Consistency -- consistency does not exist
16 from county to county, much less state to state. The
17 rights of our children to indigenous people and
18 admitted people, the right to culture, language,
19 extended family, our Cherokee ways and political
20 rights must be protected. Our -- our future and our
21 most important resource, our children, are at risk.
22 The rights of our tribes and communities to our
23 children and our future. We will never know if the
24 most effective leader ever to exist in Cherokee Nation
25 has already been lost to our tribe. I'm very blessed

1 that I work for a tribe that stands behind us.

2 This is a resolution from our Tribal
3 Council of Cherokee Nation and it reads, Whereas, the
4 Cherokee Nation, since time immemorial, has exercised
5 its sovereign right of self government on behalf of
6 the Cherokee people; and, whereas, the Cherokee Nation
7 is a federally-recognized Indian Nation with historic
8 and continual government-to-government relationship
9 with the United States of America; and, whereas, the
10 Cherokee Nation has significant interests in the
11 Cherokee children and their families; whereas, the
12 Bureau of Indian Affairs has proposed regulations that
13 will govern the implementation of the Indian Child
14 Welfare Act; and, whereas, an elected representatives
15 of the citizens of the Cherokee Nation, the Council
16 wishes to express the support of the proposed
17 regulations implementing the Indian Child Welfare Act
18 regulation; and, therefore, it -- it is resolved by
19 the Cherokee Nation that the Council of the Cherokee
20 Nation hereby supports the proposed regulations that
21 will implement the Indian Child Welfare Act Regulation
22 of 1978, improve the lives of Cherokee children in
23 foster and adopted homes throughout the United States
24 and insure the continued existence of the Cherokee
25 Nation.

1 Just a small announcement, we are having
2 a -- an event next door and Councilman said there are
3 snacks and everyone is invited to attend that.

4 We do -- we do support this regulation and
5 the action is strong. The statute provides that
6 Secretary can promulgate such rules and regulations as
7 may be necessary to carry on provisions of the Act.
8 We feel that the BIA has full authority. We recommend
9 that the regulations clarify that ICWA exists for
10 tribes to retain their children, reclaim our children,
11 and establish their culture lost through adoption
12 outside the tribe, boarding schools, assimilation and
13 relocation.

14 We also believe that the regulations
15 should explicitly address the adoptive couple versus
16 Baby Girl. In my unit, we have very regularly had
17 this happen in our deprived cases. We would like to
18 see it as very plain that this does not apply in those
19 deprived cases and it's an argument that we're
20 continuing to see grow and we feel like that that
21 needs clarification in the Act.

22 We recommend a definition be added, tribal
23 representative and is added to the regulation defined
24 as a representative or representatives designated by
25 the tribe to intervene and participate in hearings,

1 provide expert witness testimony, and provide
2 recommendations of the tribe, who will be allowed to
3 participate in all aspects of the court proceedings.
4 We have all too often gone to court and not been
5 allowed to intervene because we're social workers.
6 And we -- we have a very large number of cases. We
7 also -- if -- if the situation warranted, have the
8 ability to -- to ask for the resources of our tribe,
9 for our tribal attorney, but as this is a problem in
10 some areas in every case in that county, that limits
11 our abilities to participate in those cases. We have
12 to watch our resources and be sure that when we use
13 them, it's something that we -- we really need to step
14 forward and contest. But we have the right of
15 participation of every one of our Cherokee children.

16 And so I -- I had run across that problem
17 in several states and we would further ask that the
18 definition of tribal designee any individual or
19 individuals designated by the tribe or the tribal
20 representative in court proceedings involving --
21 involving ICWA. These individuals include the tribe's
22 attorney, ICWA case worker or other designated
23 representatives that is designated by the tribe.

24 23.103C, requiring the agency and court to
25 ask in every proceeding whether the child is Indian.

1 We support this resolution and we hope that -- but a
2 lot of times we do not get notice in a timely manner.
3 We often get notice whenever it goes to termination.
4 I don't know if that is just because it goes into the
5 hands of a different social worker that does realize
6 the child is Indian, but we have also found in the
7 records when we read them, that the family did tell
8 them they were Indian very early in the case. And by
9 that point, they usually have a determination of where
10 they want permanency.

11 We were recently involved in a case that
12 they -- they pressured us to allow this child to stay
13 where it had been, that they had -- it was in this
14 child's best interest. When we requested all the
15 records, we look at every case very seriously and very
16 closely, and realized that there was an uncle that
17 throughout this case had asked for placement, aunt and
18 uncle, and they had not been given that recognition by
19 this agency. And after examining all of the documents
20 in the case, and we had to ask for additional time,
21 and we did recommend that the children be placed with
22 the aunt and uncle. And in the -- in the end, that
23 was successful and the child has done very well. It's
24 like it walked back into its own home. And those
25 aren't isolated incidents. It happens way too often

1 and it's very late in the case. And so, hopefully,
2 this regulation will somewhat help that situation
3 and -- and make it not quite as frequent.

4 23.108, Recognition of the tribe's
5 exclusive authority to determine tribal membership.
6 We had a situation maybe four months ago, and there is
7 a tribal community in the state of Colorado. There
8 were two counties and an outside state county that
9 were sending them notice for Cherokee Nation children.
10 We only learned of it because the agency was what --
11 very confused of what to do with these notices. They
12 were sending them to us. And so the -- I don't know
13 if they had gotten the wrong information, but the
14 notice -- there -- there needs to be -- well, and
15 there's another part in these regulations that do
16 cover that you're supposed to contact the child's
17 tribe, but they just don't understand what a tribe is.
18 And we've had another situation where a tribe that
19 called their self Cherokee, they weren't a tribe, they
20 were an organization, came to court and actually
21 requested a child be transferred to them. And it was
22 so confusing for that judge that we had a three-day
23 trial and they weren't even a federally-recognized
24 tribe.

25 And so there needs to be some -- some

1 additional definition of what an Indian tribe is. I
2 see it's been left out of those regulations. There
3 needs to be some clarification. And their argument
4 was that they had an educational grant from the
5 federal government and they moved to the part that
6 said that if you were receiving these certain monies
7 from the federal government. The judge didn't
8 understand, the judge didn't know, and so he gave it a
9 lot of weight.

10 We had another situation that was not our
11 tribe, but we learned of it. That one of these
12 organizations had actually been successful in
13 transferring a child into their care and he was living
14 with the leader of that organization.

15 So I do think that we need some
16 clarification on what an Indian tribe is.

17 The rejection of the existing Indian
18 family exception, we -- we support that regulation and
19 it still remains a very consistent argument any time
20 one of our cases is suggested, we can almost
21 anticipate that that will come forward and we're
22 really pleased to see that, perhaps, laid to rest by
23 this regulations.

24 Notice to tribes in voluntary cases and we
25 support that. And currently in Oklahoma, that is the

1 law and it has worked very well. We have had had
2 situations where adoptive attorneys have taken a
3 family to a -- to a state court and had to get
4 guardianship for six months prior to moving forward
5 the with adoption in an intention to give the family
6 weight of -- of -- of possession. These kids are not
7 property, but it also avoids giving us notice for a
8 period of time. Well, that child shouldn't even be
9 placed with a permanent family very early on and those
10 are very unethical practices that I'm hoping this --
11 this voluntary notice will relieve, but I am concerned
12 that the guardianship is not representative of the
13 true intentions of -- of that guardianship is a
14 pre-adoptive placement and I -- I don't know exactly
15 how that could be corrected, but I do hope it's
16 something that the BIA considers very closely.

17 Definition of active efforts, it's -- it's
18 a great definition. I think it's going to be really
19 helpful. We have had, just probably in the last
20 couple of months, a conversation with a social worker
21 and we wanted them to pretty much spell out what
22 active efforts they had done, to give us documentation
23 of that. And so she started going down the case plan
24 listing each responsibility of a parent. And we had
25 to explain to her, active efforts are on the agency,

1 they're not on the parent. They are on the agency to
2 insure that the parents get those services necessary
3 to get the return of their child. But they're not the
4 parent's responsibility. And limiting the discretion
5 of the state courts to deny transfer of case tribal
6 courts, we -- we were pleased to see that in there and
7 we do support that. And we have had all of those very
8 reasons that's listed in that transfer of why you --
9 you cannot consider those things. Those are probably
10 the most common things that transfers are denied on at
11 this time. And emphasizing the needs to follow the
12 placement preference and limiting the ability of
13 agencies to deviate from these preferences, I believe
14 that is probably the most important in keeping the
15 children with our tribes, keeping them in their
16 culture and within their tribal communities.

17 And so I'd like to thank you for this
18 opportunity to speak and I really do appreciate
19 everything that the BIA has done.

20 Thank you.

21 MR. ROBERTS: Thank you. I know that
22 there are a bunch of folks standing in the back.
23 There are plenty of seats up front if you -- if you
24 want to grab a chair. However you're most
25 comfortable.

1 MS. TECUMSEH-WILLIAMS: Hurry up. Good
2 morning. My name is Carmin Tecumseh-Williams. Yes,
3 Tecumseh like the great chief. I always wanted to say
4 that. That sounds cool.

5 I am the Director for Children and Family
6 Service Administration for the Muscogee Creek Nation.
7 I'm also an enrolled member of the Muscogee Creek
8 Nation.

9 The proposed rules, we are -- we are
10 definitely in support of the -- of the proposals and
11 excited that this is a new step and -- and looking
12 forward to seeing those actually come about and in
13 state court hearings.

14 I take it very personal. I come from --
15 golly, my mom was adopted, but she was adopted through
16 custom. You know, our people love our children. We
17 love our children and -- and because during that time,
18 this was back in the '50s, and my mom went to a family
19 that was a part of her family. And my mom knows all
20 of her mother's biological siblings. She knows her
21 parents. She -- she had the opportunity to -- to be
22 raised by a large family. And I can't imagine what
23 life would be like for even for myself because of
24 that, because my mom had the opportunity to be placed
25 in her own family without -- without other involvement

1 or without them considering, Well, is this a good
2 placement? Is it not a good placement? They didn't
3 do background checks, but my mom was loved and because
4 of that, my mom raised us in a -- amongst our family
5 where we have the opportunity to attend our -- our
6 traditional churches and to learn to worship Creator
7 in our traditional way, as well as to be able to
8 participate in our ceremonial practices as well. And
9 I can't imagine what that would feel like.

10 I know that at one point it was really
11 important to me to feel that connection with my family
12 and at that point, I began to realize, you know what,
13 I had all these family members and I can't imagine
14 what it would be like not to identify with them. And
15 they helped me to learn and understand my identity as
16 an Indian woman.

17 And so I'm -- I'm very thankful for that
18 and I -- I -- and I believe that these regulations,
19 these proposals for change are going to make great
20 changes for our children and for the future of all our
21 tribes. I -- I -- I do believe that.

22 But there is something I wanted -- before
23 I start crying, although, progress has been made as a
24 result of ICWA, outcome placement of Indian children
25 are still much greater for Indian youth than it's for

1 the general population and Indian child continue to be
2 regularly placed in non-Indian homes.

3 Compliance with the ICWA by states are
4 erratic and state courts decisions inconsistent.
5 There is a great need for the federal governments to
6 provide binding regulations to insure that ICWA is
7 enforced and applied properly in all states so their
8 children and families are fully protected.

9 We support the following provisions in the
10 proposed regulation: Requiring agencies and courts
11 ask in every proceeding whether a child is Indian.
12 This will help insure that all of our children are
13 identified and afforded ICWA protection.

14 Recognition of tribe -- of a tribe's
15 exclusive authority to determine tribal membership.
16 We're very much in support of the affirmation of this
17 key principal of tribal sovereignty.

18 Rejection of the existing Indian family
19 exception. The section insures that ICWA will be
20 applied for all Indian child in any child custody
21 proceeding and that no Indian children will be left
22 behind.

23 Notice to tribes in voluntary cases. By
24 providing notice, this insures that we will be able to
25 assert our jurisdiction and/or intervene in the case

1 if necessary. Notice to the tribe is also critical if
2 the state court is to confirm, as it is required to
3 do, whether the child is an Indian child and covered
4 by ICWA.

5 Defining active efforts to prevent the
6 breakup of the Indian families are requiring that such
7 efforts begin immediately. The provision is vitally
8 important in keeping -- to keeping Indian families
9 together, a central and critical purpose of ICWA.

10 Limiting the discretion of state
11 courts to deny transfer of case to tribal court. Too
12 often state courts refuse to transfer a case because
13 they think that the tribal court will make a decision
14 with which they disagree. The regulations make clear
15 that this is not an appropriate reason to deny
16 transfer.

17 Emphasizing the need to follow the
18 placement preference and limiting the ability of
19 agencies to deviate from the preferences. The failure
20 of state courts and agencies to place Indian children
21 in relative, tribal and Indian homes is one of the
22 biggest problems with the Act's implementation.
23 Keeping children with their families and within their
24 tribal communities and cultures is vitally important
25 to their wellbeing and the central purpose of ICWA.

1 The notice language in the proposed
2 regulation insures that tribes have an opportunity to
3 fully participate in proceedings affecting their
4 citizens. The regulations insure the tribes receive
5 notice at all stages of the case. Notice by
6 registered mail with a return receipt is good and it
7 should include full name of child, tribal enrollment,
8 numbers of parents, tribal enrollment numbers of
9 parents and child, if possible, must include the
10 child's complete program -- I'm sorry, genogram and
11 notice. The more information that can be provided,
12 the better. The section needs to be tightened up.

13 The role of the BIA receiving notice if
14 child may be eligible for membership before sending
15 notice to the BIA. They should check the federal
16 registers for designated ICWA notice recipients. Add
17 a section to the regs about checking federal registers
18 and the BIA should be required to forward notices to
19 the tribe, not just receive notice and respond
20 directly to the state. Tribes are still out of the
21 loop. And in that, a lot of times, even with final
22 adoptions, the BIA is receiving those notices and at
23 that point, a lot of times tribes aren't noticed. We
24 have never received notice and -- and not receiving
25 notices until it's final and at times still not

1 receiving that.

2 So we -- we are requesting that the BIA be
3 able to forward all -- any time they get that
4 information, that they will forward it on to the tribe
5 so that we may be involved. We do have very actively
6 involved staff members that will be there in order
7 to -- to -- to know that these adoptions are -- have
8 been complied by with ICWA.

9 Opposing groups concerns about best
10 interests being ignored are misguided because if
11 they're in full compliance with active efforts and
12 placement preferences, ICWA insures that the health,
13 safety, and best interest of tribal children are met,
14 culture, and family continuity, community
15 connectiveness, sibling groups staying together are
16 critical. This is a political designation and not a
17 racial.

18 We believe that children have their --
19 they have rights as well. These proposed regulations
20 help uphold the political status and rights of each
21 Indian -- Indian child. A child has their own
22 independent set of rights that cannot be waived by
23 parents, guardians or even the tribe. The child has a
24 right to safety and a right to thrive as a member of
25 their tribal community. To feel safe, to thrive, to

1 counsel, to a tribal advocate, to an expert witness,
2 to be an indigenous person, a right to culture,
3 family, siblings, kin, extended family, language,
4 belief system, religion, place in tribal community,
5 political rights, right not to be alienated from all
6 of this. To know who you are even after adopted, to
7 value who are you, to know you belong, and know your
8 history. To be connected to indigenous roots, to
9 citizenship, to Indian clan, to all records before and
10 during and after adoption, to a system of justice, a
11 court and a judge that is knowledgeable of tribal
12 traditions, values and laws. To be enrolled in a
13 tribe, to have a tribal custodian have obligation and
14 to find information and to sue for violation of ICWA,
15 including malpractice on the part of adoption
16 attorneys. To have a cause of action even after their
17 18th birthday

18 23.133 gives a minor three to five years
19 after they turn 18 to sue for violation of rights
20 under ICWA.

21 Thank you.

22 MR. ROBERTS: Thank you.

23 MR. HANEY: I felt compelled to speak
24 since everybody has been getting up.

25 My name is Tracy Haney. I'm the Child

1 Welfare Director for the Seminole Nation of Oklahoma.
2 I am Seminole. I'm a former foster parent as well as
3 an adoptive parent as well of an Indian child.

4 I'm going to be brief, but I just wanted
5 to make sure that everyone knew Seminole Nation Indian
6 Child Welfare Program supports the BIA proposed
7 regulations. The other tribes that have spoken as
8 well, some of their comments we support those. I'm
9 not going to go into detail on those. What we're
10 going to do, we'll make sure they are submitted in
11 written form.

12 One of the things that kind of stands out
13 for me on this is I think serious consideration needs
14 to be given to include penalties for not following the
15 Act. There are -- there are penalties for violating
16 other federal laws and they're pretty clear and
17 distinct, but there's none added to this. Removing
18 funding from states that don't comply, imposing fines,
19 other penalties, even up to imprisonment for
20 violation. It's kind of disheartening to see that
21 there's not the clearcut consequences for violating
22 federal law, yet the continued removal of our
23 children, destruction of our cultures and -- and our
24 tribes bears no repercussion.

25 So thank you.

1 MR. ROBERTS: Thank you.

2 MR. BIGLE: Thank you. My name is Greg
3 Bigle and like I said, I wear several hats. And at
4 this point, I'm the Attorney General for Sac and Fox
5 Nation and the Chief of Sac and Fox Nation, George
6 Thurman, has asked that I make a brief presentation.

7 I wanted to make sure that the Bureau of
8 Indian Affairs knows that the Nation, the Sac and Fox
9 Nation considers this important and is represented at
10 these hearings and that we'll also submit some written
11 comments in the next few days.

12 We are fully in support of the proposed
13 regulations and in support of what most of what has
14 been said today.

15 That one of the issues we are concerned
16 with and that we have seen in the past is the bonding.
17 We would like to see that ordinary bonding is not a
18 reason to avoid placement. Use of the bonding is --
19 as a reason to restrict placements from the ICWA as
20 another means to achieve termination of rights of our
21 children as well as the lifeblood of the tribes.

22 That when we see another context
23 internationally where the children of Africa are
24 stolen by other parties and taken into the -- taken in
25 the woods by force, there's international

1 condemnation. And yet when we see the state courts
2 doing the same thing under a -- under the supposed due
3 process mechanism, there's silence. So we believe
4 that this is an absolute necessity to see these
5 strengthened. So we appreciate that.

6 We also believe that the rights of the
7 tribes to -- as stated earlier to all participate
8 because of the ability of a child -- of a child at
9 some point to make a determination for themselves as
10 to which tribe they wish to participate in. If those
11 records are not available at the time of majority,
12 then they're not able to keep hold of the individual
13 Indian child and also the tribe that is looking
14 towards enrollment is unable to make a sufficient
15 decision. So we think that those records need to be
16 made available to all tribes to which the tribe -- the
17 child may be eligible.

18 Again, we'd also reiterate that we believe
19 the tribes and the parents of the child need to be
20 able to participate -- must be able to participate by
21 telephone or some digital means in order to
22 accommodate the necessity. If you can not participate
23 in the hearing, you can not assert your rights under
24 the law.

25 And, again, we would like to mention that we believe that it's important, as laid

1 out in the proposed regulations, that we can intervene
2 at any point and assert all rights under the Act,
3 whether it's at the beginning or at the end. And if
4 we miss one or two hearings, that we are not
5 restricted from asserting any rights at any point.

6 Thank you.

7 MS. GILES: Good morning. My name is
8 Cherrah Giles. I serve as Cabinet Secretary of the
9 Muscogee Creek Nation Department of Community and
10 Human Services.

11 Earlier you heard from our chief, Chief
12 George Tiger. We will be submitting written testimony
13 as well. I just wanted to reiterate the tribe is in
14 favor of the proposed amendment.

15 I just wanted to remind you, too, that
16 traditionally as, Muscogee people, and as I introduced
17 myself, I say I'm Cherrah Giles, an enrolled citizen
18 of the Muscogee Creek Nation, a daughter of enrolled
19 citizen of the Cherokee Nation. I am Fusualgi. I'm
20 from the Bird clan. I am Picuaski [phonetically] from
21 Waukinai [phonetically] Tribal Town. That's who I am
22 as a Muscogee Creek person.

23 When we look at qualified experts, it's
24 important to realize that just because you say you're
25 a Muscogee Creek or you're Cherokee, those histories

1 are a little bit different and those cultures are a
2 little bit different. And even within the Muscogee
3 Creek Nation, we're a confederacy. We weren't
4 Muscogee Creek Nation when we were removed and brought
5 here to Oklahoma. So it's more important that I
6 recognize that who I am as my clan, who is my tribal
7 town because it may be different than my sister who
8 was from a different tribal town and different clan,
9 but we still are enrolled in the Muscogee Creek. And
10 at Muscogee Creek Nation, we also have the Yuchis
11 enrolled and that they're seeking federal recognition.
12 And they have their own traditions and they have their
13 own language, but yet, they're enrolled in Muscogee
14 Creek. So it's important to recognize those cultural
15 differences even within tribes.

16 Also important that you recognize our
17 children's rights and rights beyond their 18th
18 birthday. So it's important that information is made
19 available to them. It's also important that the BIA
20 continue to collaborate and work with tribes and
21 communicate. Right now, we still have lacking
22 information of having that direct communication.

23 So just wanted to bring those things to
24 your attention and appreciate you coming here to our
25 new homelands here in Tulsa, Oklahoma, Muscogee Creek

1 Nation. (Native language.)

2 MR. ROBERTS: Okay. We have about a half
3 hour left for the tribal consultation here. Some
4 folks may be thinking about lunch or snacks, so I want
5 to make sure, though, that everyone has -- who's come
6 here today that want to provide a comment on behalf of
7 a tribal government is allowed an opportunity to do
8 so.

9 MR. FRIEND: My name is Billy Friend. I'm
10 the Chief of the Wyandotte Nation and I'll keep my
11 remarks brief. I know how Oklahoma people are about
12 lunch and I don't want to be the person that holds
13 that up.

14 But I just want to stand up and say that,
15 you know, my staff, who has worked very closely,
16 our -- our staff there at Wyandotte has worked very
17 closely on this and, you know, I felt that it was
18 important enough for tribal leadership to also stand
19 up and say that we are in full support also of the
20 regulations to enforce the Indian Child Welfare Act
21 and we just want to go over the laws. We will be
22 submitting written comments at a later time, but --
23 but on behalf of the Wyandotte Nation, we are in
24 support of the current regulations.

25 MR. ROBERTS: Thank you, Chief.

1 MS. MIDDLETON: Good morning. My name is
2 Melissa Middleton and I'm the Director of Indian Child
3 Welfare for the Choctaw Nation of Oklahoma. I'm also
4 an enrolled member and a foster parent and adoptive
5 parent myself.

6 I would like to go on the record saying
7 the Choctaw Nation fully supports the regulations. We
8 see the future of our tribe as being based on what our
9 children are today and without those vital resource to
10 our tribe, where do we head? In looking at that,
11 though, it's important to realize our children have
12 rights as well and the Indian Child Welfare Act, as it
13 was originally -- the spirit of it was set out to
14 protect those rights of those children and the rights
15 of our tribes and our families. We believe that these
16 regulations, as they're being put forth, helps give
17 uniformity to the application of that Indian Child
18 Welfare Act and so we fully support that.

19 We will be submitting written comments as
20 well. Thank you.

21 MR. ROBERTS: Thank you.

22 MS. SMITH: I just wanted to add a couple
23 of quick things. When we're talking about -- you're
24 just taller than me --

25 MR. ROBERTS: Can you introduce yourself?

1 MS. SMITH: I'm sorry. Angel Smith again.
2 When we're talking about Baby Girl V, I wanted to
3 incorporate into that discussion that that -- as it
4 applies to private adoption and private matters. It
5 also, that case, does not speak to the rights of the
6 Indian child under the federal law. And if you want
7 to know what a successful ICWA application, which is
8 what these regulations will do, what that looks like,
9 it looks like me. My case was correctly litigated.

10 My client's case, Veronica, was not. So
11 failure of ICWA looks like Veronica. Success looks
12 like her attorney, but I hope to God that she isn't
13 standing here in 37 years.

14 Thank you.

15 MR. ROBERTS: Okay. Any other -- any
16 other comments this morning?

17 All right. Well, I want to thank you all
18 for attending the tribal consultation this morning and
19 if there is something that comes to mind that you want
20 to share with the Department, there's two
21 opportunities to do so on the regulations. One is
22 this afternoon from 1:00 to 4:00 in the public meeting
23 and the second is by written comment by next Tuesday,
24 May 19th.

25 So thank you all for attending the tribal

1 **consultation and safe -- safe travels home.**

2 **(Adjournment of meeting at 11:35 a.m.)**

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