

1 PROPOSED REGULATIONS FOR  
2 STATE COURTS AND AGENCIES IN  
3 INDIAN CHILD CUSTODY PROCEEDINGS  
4 "ICWA PROPOSED RULE" - 25 CFR 23

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8 PUBLIC MEETING

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10 April 22, 2015

11 911 NE 11th Avenue

12 Auditorium

13 Portland, Oregon

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2 Panel Members:

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6 Rodina Cave  
7 Senior Adviser to Assistant Secretary  
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16

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1 PORTLAND, OREGON; WEDNESDAY, APRIL 22, 2015

2 9:03 a.m.

3 \* \* \*

4 PUBLIC MEETING

5 LARRY ROBERTS: Good morning, everyone.  
6 We're going to go ahead and get started here this  
7 morning.

8 Before we get -- my name is Larry Roberts.  
9 I'm the Principal Deputy Assistant Secretary for  
10 Indian Affairs at the Department of Interior.

11 I want to thank all of you for attending  
12 this public meeting this morning.

13 Before we get started, we -- it's  
14 traditional for Indian Affairs to start our tribal  
15 consultations and public meetings with -- with a  
16 blessing and get us started off in a good way.

17 And so Mr. Vigil is going to -- Governor  
18 Vigil is going to give us an opening blessing.

19 (Blessing by Governor Vigil.)

20 LARRY ROBERTS: Thank you.

21 So -- so this morning we have a number of  
22 folks here from the Department of Interior that I  
23 want to quickly introduce.

24 To my left here is Vanessa Ray-Hodge.  
25 She's with our Solicitor's Office.

1 I have Rodina Cave who is the Senior  
2 Adviser to the Assistant Secretary.

3 I have Gina Jackson, who's a Senior Fellow  
4 with the Department.

5 And I have -- Angie Campbell is with us.  
6 She may be helping folks get registered this morning.

7 And Debra Burton from the Office of Indian  
8 Services.

9 And Bodie Shaw is here from the Regional  
10 Director's Office.

11 And so this light is really bright. I  
12 cannot see any of you out there. So I apologize for  
13 that.

14 So to get things started, we have a Power  
15 Point that we're going to run through. It should  
16 hopefully take no more than 20 minutes to go through.

17 Because the main point of this session is  
18 to receive public comment from all of you, and to  
19 receive public comment on the proposed rule that we  
20 have.

21 And so I want to say a couple of things.  
22 One is, we have a lot of people here that have  
23 traveled from a very far distance. I want to make  
24 sure that everybody has a chance to speak. And so I  
25 would ask that you limit your initial comments to

1 five minutes.

2 It looks like we have a small enough group  
3 here that everyone's going to be able to have the  
4 time to say -- provide any comments that they want on  
5 the rule.

6 But I want to limit folks, initially, to  
7 five minutes, just so everyone clearly has a chance.

8 The other thing that I would say is there  
9 have been a couple of folks that have approached us  
10 here this morning and saying that they have flights  
11 to catch, and that they need to -- they need to leave  
12 this public meeting somewhat early.

13 So I would ask that those folks that have  
14 flights to catch, if you can come up to the mikes  
15 first and get your comments on the record, that would  
16 be great.

17 For those of you that do not have a flight  
18 to catch, please let those folks speak first.

19 The other thing that I want to say is I  
20 know that what we're talking about today is a very  
21 important issue. And the comments that we're  
22 receiving are a very important issue on this.

23 I want to make sure that everyone feels  
24 comfortable in making their comments, because we need  
25 to receive all the comments from everyone.

1           So you may feel strongly one way or another  
2 about a particular comment, but please, let's treat  
3 everyone with respect in this forum, and so that  
4 everyone has an opportunity to share their comments  
5 on the -- on the proposed rule.

6           So with that, we're going to run -- run  
7 through this Power Point.

8           It should -- everyone should have copies of  
9 it. We're just going to hit the high points here.  
10 Because like I said, the point is to receive comments  
11 from you all on the proposed rule.

12           So a little bit of background. The  
13 Indian -- Indian Child Welfare Act was passed in  
14 1978. Congress enacted ICWA to protect the best  
15 interest of Indian children, and to promote the  
16 stability and security of Indian families.

17           It established minimum federal standards  
18 for the removal of Indian children from their  
19 families, and for placement of their children in  
20 foster or adoptive homes.

21           And Act articulates strong federal policy  
22 that, where possible, an Indian child should remain  
23 in an Indian community.

24           In 1979 the Department issued guidelines  
25 for the implementation of ICWA, and issued

1 regulations on notice to be provided under Indian  
2 Child Welfare Act.

3 From '79 to 2014 state courts have worked  
4 with -- to implement ICWA. And that implementation  
5 has not been completely consistent over time.

6 In 2014 we had a number of listening  
7 sessions on our 1979 guidelines, and we -- we heard  
8 at those listening sessions that we should look at  
9 revising our guidelines, and that we should look at  
10 promulgating regulations.

11 The other important piece of all of this is  
12 that the Attorney General's Advisory Committee on  
13 Violence -- on Native Youth Exposed to Violence also  
14 recommended that we look at it more closely in terms  
15 of regulations and guidelines.

16 To this year -- earlier this year, in  
17 February, we issued updated guidelines. And in March  
18 we issued the proposed regulations.

19 So this next slide -- sorry about this.  
20 This next slide talks about the various parts of this  
21 part that we're proposing to adopt to the ICWA  
22 regulations; general provision, pretrial  
23 requirements, all of these issues we'll be talking  
24 about as part of this Power Point presentation.

25 So we've added definitions to the proposed

1 rule; active efforts, continued custody, voluntary  
2 placement, other definitions.

3 It's important when we receive your  
4 comments -- whether they're here orally today, or  
5 whether they're in writing, it's important to -- if  
6 you have comments in terms of how the proposed rule  
7 should be changed, that we get your ideas, your  
8 thoughts on how -- specifically, how they should be  
9 changed.

10 We may receive comments, and we typically  
11 receive comments on rule-making, where someone will  
12 say, We think you should change the definition of X.  
13 But they don't tell us how it should be changed.

14 So it's helpful for us, as we're going  
15 through the comments, to hear from all of you in  
16 terms of how you feel the definition or various  
17 sections of regulation should be changed.

18 The goal of the proposed rule is consistent  
19 ICWA implementation in all states.

20 And it's also a goal to make very clear  
21 that ICWA applies whenever there's an Indian child  
22 that's the subject of a child custody proceeding.

23 We've put in the regulation that there is  
24 no so-called existing Indian family exception. And  
25 we've listed a number of factors that should not be



1 considered in determining the applicability of ICWA.

2 We proposed in the proposed rule that  
3 agencies and state courts ask as early as possible  
4 whether the child is an Indian child. And if there's  
5 reason to believe that the child is an Indian child,  
6 that the agencies and courts treat that child as an  
7 Indian child, unless and until it is determined that  
8 the child not an Indian child.

9 We also provide examples of -- for an  
10 agency -- when an agency has reason to believe that a  
11 child is an Indian child.

12 So I'm going to turn it over to Rodina here  
13 to talk a little bit about pretrial requirements.  
14 And I'll turn it over to her.

15 Thank you.

16 RODINA CAVE: Good morning. Let me see if  
17 I can clip this here and get it to work.

18 Let me know if you can't hear me.

19 So for pretrial requirements, the proposed  
20 rule requires that agencies and state courts must ask  
21 if the child is -- if there's reason to believe that  
22 the child is an Indian child.

23 And the proposed rule also sets out  
24 examples of, you know, when an agency or state court  
25 would have reason to believe that the child is an

1 Indian child.

2 Next.

3 The proposed rule sets out that if the  
4 consenting parent wants anonymity, then the agency or  
5 court must keep the relevant documents under seal,  
6 but -- but still provide notice. And that there's  
7 the requirement to engage in active efforts.

8 And so when does this requirement start?  
9 When does active efforts start? It starts as soon as  
10 case or investigation may result in placement of an  
11 Indian child outside of the custody of the parent or  
12 the Indian custodian.

13 Next.

14 The proposed rule sets out how it -- how a  
15 child's tribe is designated. And what's the process  
16 for when there's more than one tribe that is  
17 potentially the child's tribe.

18 And you know, it also sets out, you know,  
19 after designation of a tribe, you know, how are  
20 the -- how is the notice handled.

21 And -- and also, that the state court must  
22 dismiss an action as soon as it determines that it  
23 lacks jurisdiction.

24 Next.

25 So when is notice required? How is notice

1 provided?

2 Next is time limits, and that a proceeding  
3 may not begin until ten days after each parent or  
4 Indian custodian and Tribe receives notice or -- and  
5 30 days, if the -- the parent and Indian custodian or  
6 tribe receive notice, and they -- they've requested  
7 additional 20 days.

8 Next.

9 And so it also sets out procedures for  
10 emergency removal. Must be as short as possible.  
11 And it lays out the process for what the agency or  
12 state court -- documenting whether removal or  
13 placement is proper and continuous to be necessary to  
14 prevent imminent physical damage or harm to the  
15 child.

16 And that it must be immediately terminated,  
17 placement/removal, when the emergency has ended.

18 And next, emergency removal continued.

19 That's -- the agency must treat a child as  
20 an Indian child until contrary determination has been  
21 made and conduct active efforts.

22 And next.

23 That -- emergency removal continued, that  
24 the Court must decide if -- at any court hearing or  
25 emergency rule placement hearing, the Court must

1 decide if removal or placement is no longer necessary  
2 to prevent imminent physical damage or harm. And  
3 that temporary emergency custody should be less than  
4 30 days and less, unless particular requirements are  
5 met.

6 And -- hi, Beth -- so Deb Burton is from  
7 Office of Indian Services. She is an Indian child  
8 welfare social worker and is here on behalf of the  
9 Chief of Human Services, which is part of our Office  
10 of Indian Services.

11 And she'll go through transfers to tribal  
12 court.

13 DEBRA BURTON: Hello. Good morning.

14 The proposed rule stresses that the -- the  
15 right to request a transfer to tribal court is  
16 present at any stage of the proceeding. And the  
17 proposed rule also states that there are factors that  
18 a Court cannot consider when determining if there's  
19 good cause not to transfer.

20 And these factors are whether the case is  
21 at an advanced stage, the child's contacts with the  
22 tribe, and the tribal court's prospective placement  
23 for the child.

24 The proposed rule stresses that active  
25 efforts have to be documented in detail in the court

1 record. And that the resources of the extended  
2 family tribe and other tribal groups have to be  
3 utilized to the extent possible.

4 The Court may order foster care placement  
5 only if there is clear and convincing evidence  
6 that -- and there must be qualified expert witness  
7 testifying to this -- that continued custody with  
8 parent Indian custodian could result in serious  
9 physical harm -- damage or harm to the child.

10 And in the termination of parental rights,  
11 the evidence is to be beyond a reasonable doubt is  
12 the requirement.

13 Now, the proposed rule talks about  
14 qualification for qualified expert witnesses. And  
15 these are in descending order of preference.

16 The first preference is for a member of the  
17 child's tribe to be qualified as the expert witness,  
18 someone recognized by the tribal community as  
19 knowledgeable in the child-rearing of the child.

20 The second preference is someone recognized  
21 by the tribe as an expert witness in those areas.

22 The third person is a layperson that has  
23 experience and knowledge in services to Indians.

24 And then the fourth is a professional that  
25 has the knowledge of a tribe.

1           GINA JACKSON: Good morning, everyone. My  
2 name is Gina Jackson. And I'm a Senior Fellow with  
3 the Assistant Secretary's Office of Indian Affairs.

4           I'm talking briefly on some high points on  
5 the Power Point that you have on voluntary  
6 proceedings.

7           In voluntary proceedings the proposed rule  
8 states that the agency and the state court must ask  
9 if the child's an Indian child, providing the tribe  
10 is noticed of the voluntarily proceeding, including  
11 the notice of the right to intervene. So State and  
12 agency is highlighted.

13           Next slide.

14           The agency must follow in dispositions of  
15 the placement, even if there is a request for  
16 anonymity, providing clear and convincing evidence  
17 for diligent search to meet the preferences, and  
18 explain if it couldn't be met. Again, notification,  
19 documentation of placements.

20           And when it comes to good cause, the good  
21 cause basis must be included in the record. And the  
22 party asserting the cause has a burden to prove the  
23 cause by clear and convincing evidence.

24           Next slide.

25           The good cause to depart from placement

1 preferences must be based on the parents' request, if  
2 both attest they reviewed the placement option; the  
3 child's request, if they're able to understand the  
4 decision; the child's physical -- extraordinary  
5 physical or emotional needs, as established by a  
6 qualified expert witness; and does not include  
7 bonding/attachment from placement; or the  
8 unavailability of placement, and the determination  
9 that active efforts were made to find placement.

10 Good cause may not be based upon  
11 socioeconomic status of any placement relative to  
12 another placement.

13 The proposed rule in post-trial rights  
14 establishes procedures to vacate an adoption if  
15 consent was obtained by fraud or duress, or the  
16 proceeding violated ICWA.

17 Establishes who can invalidate an action  
18 based on a violation of ICWA.

19 And the -- and so who the Indian child,  
20 parent or Indian custodian, tribe, regardless of  
21 whether that particular party's rights were violated.

22 Another highlight is it requires notice of  
23 any change in the child's status, such as change in  
24 placement.

25 Next slide.

1 Post-trial rights. Also, the proposed rule  
2 states that the States must provide the BIA with a  
3 copy of the decree or order in any final adoption or  
4 information on the child. And establish a single  
5 location for all records of voluntary or involuntary  
6 foster care, preadoptive placement, adoptive  
7 placement that will be available within seven days of  
8 request by the Indian child's tribe or the Department  
9 of Interior.

10 And so that information would be available.

11 Next slide.

12 Today we're -- and during this comment  
13 period, we're looking for comments on any provision  
14 of the proposed rule.

15 Next slide.

16 We have public meetings and tribal  
17 consultations -- well, of course, here. Albuquerque  
18 is coming up, Rapid City. We have Prior Lake,  
19 Minnesota, a nationwide teleconference, Tulsa.

20 Tribal consultations also are following  
21 same suit, specifically for tribal leaders and their  
22 designees.

23 Next slide.

24 And the important date to remember is that  
25 comments on the proposed rule are due by May 19th.



1 Email is a preferred method to submit comments. And  
2 the email is comments@bia.gov.

3 We look forward to hearing from you.

4 LARRY ROBERTS: Okay. Thank you, Gina.

5 So we've had a number of folks join us as  
6 we're going through the Power Point. So I'm just  
7 going to take a moment just to cover some initial  
8 ground that we covered in the opening.

9 One is my name is Larry Roberts. I'm the  
10 Principal Deputy Assistant Secretary of Indian  
11 Affairs. I'm from the Oneida Nation of Wisconsin.

12 With me here today is Regional Director  
13 Stan Speaks is here in the audience from BIA for  
14 this region.

15 As I said, we're going to allow everyone an  
16 opportunity to provide comments here today. We'd ask  
17 that you limit your initial comments to five minutes,  
18 so that everyone has a chance to speak.

19 There are a couple of folks in the audience  
20 that have said they need to catch flights this  
21 morning, and so they're hoping to be able to speak  
22 first.

23 So what we're going to do is we're going to  
24 have folks come up to these microphones on either end  
25 of the auditorium. I would like you to say your name

1 and the organization that you're with.

2 And look right over here at this court  
3 reporter, because she needs to get all your  
4 information down, so that we have an accurate record  
5 in terms of your name and spelling. And so we want  
6 to make sure that we have a clear record of your  
7 comments today.

8 So -- and finally, again, this is an  
9 important issue. I know it's important, because all  
10 of you have come to this public meeting. And I just  
11 want to stress that we respect everyone's opportunity  
12 here to provide comments.

13 So with that, I will open it up to folks to  
14 provide comments to the Department.

15 MS. BURTON: I'm Kate Fort. I work at the  
16 Indigenous Law and Policy Center at Michigan State  
17 University College of Law. I'm the staff attorney  
18 for that organization.

19 I also teach -- I believe I'm one of the  
20 few people who doctrinal class on the Indian Child  
21 Welfare Act in law school.

22 What I would like to say is thank you for  
23 promulgating the regulations. We appreciate it.

24 I am someone who can talk at length at the  
25 inconsistencies of cases across the country and state

1 courts. And that, hopefully, regulations such as  
2 these will decrease those inconsistencies as the law  
3 is applied.

4 I -- we will be submitting detailed written  
5 comments on any suggestions, changes and authority  
6 for the regulations before May 19th.

7 Thank you.

8 LARRY ROBERTS: So I'm just -- I'm just  
9 going to ask, if there's somebody here from GSA or in  
10 the building, if they can work on increasing volume  
11 of the microphones out here, that would be greatly  
12 appreciated.

13 We're going to go with Governor Vigil here.

14 GIL VIGIL: Thank you.

15 My name is Gil Vigil. I'm a council  
16 member, former governor of Pueblo Tesuque. And I'm  
17 President of Indian Child Welfare Association.

18 And the reason I'm asking to go first is  
19 our conference is concluding this morning, and I'd  
20 like to get back to the conclusion of our conference.

21 My comments are basically that the Indian  
22 Child Welfare Act was passed to protect our Indian  
23 children. And the rules were made to guide those --  
24 that Act.

25 And I'm glad that we're finally having

1 these rules being changed, because I think it's going  
2 to give it clarity. Not just clarity, but  
3 interpretation of the law and how it should be  
4 implemented. It's been long overdue.

5 Because in my role as an ICWA board  
6 member -- I've been on the board for -- since 1997.  
7 And there has been some cases where ICWA was not  
8 followed.

9 If you only follow the law in itself, I  
10 think a lot of these issues would be addressed, and  
11 they would not be -- create places where children are  
12 taken away from their home, in my opinion, illegally.

13 And so I'm glad that these rules are being  
14 changed. And we will be providing a written  
15 statement, specifically, some of those areas of the  
16 rule through NICWA, and by May 19th.

17 Thank you.

18 LELAND MORRILL: Hi. My name is Leland  
19 Morrill, and I'm with the Los Angeles County ICWA  
20 Task Force.

21 And I was born Leland Kirk. And I'm Navajo  
22 Many Ghost Clan, born from the Santa Domingo Pueblo.  
23 I'm a pre-ICWA adoptee, meaning I was adopted before  
24 the Indian Child Welfare Act was enacted in 1978.

25 I was taken from my Kirk family when I

1 stepped into a fire with my right foot. And my  
2 grandparents took me to the Keams Canyon Indian  
3 Hospital in Arizona. They were listed as my parents  
4 in the 1968 Navajo traditional way.

5 And at some point the hospital found out  
6 that my biological mother had died. And they were  
7 defined in the white way as grandparents.

8 My biological father was living in the  
9 Santa Domingo Pueblo, and there was no birth  
10 certificate. So there was no trace of who my father  
11 was on record.

12 This provided a way for them to say there  
13 was father abandonment; child neglect through my  
14 childhood act of playing and happening to step into a  
15 fire; the diagnosis of malnutrition; and then, of  
16 course, there was poverty issue, reasons to take me  
17 from my Navajo biological family.

18 The Keams Canyon Indian Hospital decided to  
19 remove me and send me to the Gallop Indian Hospital  
20 without my Navajo family's consent.

21 At the time my grandmother only spoke  
22 Navajo Diné Bizaad. They did not know where I had  
23 gone to.

24 The doctor in Gallop suggested foster care  
25 and assigned me to a BIA caseworker, who found the

1 Morrills, who fostered and then adopted me and my  
2 biological cousin, Virginia Bitsue, in July of 1971.

3 The Morrills already had two biological  
4 daughters. But my new adoptive mother had six  
5 miscarriages. And it was her dream to have twelve  
6 children.

7 So they moved to the Navajo reservation.  
8 And my adoptive father worked for the Church of Jesus  
9 Christ of Latter-day Saints' education system --  
10 church education system.

11 At the time my adoptive mother also worked  
12 for him recruiting and finding Native preschool  
13 children to come to the Mormon Church, the LDS Church  
14 for preschool.

15 My adoptive father wrote educational  
16 curriculum, and also wrote for the church's  
17 seminaries and institute program throughout his life.

18 After my adoptive -- after my adoption in  
19 the Navajo Tribe Children's Court in Chinle, Arizona,  
20 we were moved -- we were removed and moved to  
21 Burford, Ontario, Canada.

22 Within a year my adoptive mother also  
23 wanted to fulfill her twelve-children idea. And they  
24 took -- they looked for children to adopt, and found  
25 Ojibwe children who were one family of brothers and

1 sisters.

2 They were adopted, and a few years later  
3 removed from Canada, where we moved to Rapid City,  
4 South Dakota. My mother eventually worked for LDS  
5 Social Services, both also helped with the LDS  
6 Church's Indian placement programs, specifically with  
7 Navajo children in the four corners area, Ojibwe,  
8 Mohawk children, and the Lakota Sioux nation in the  
9 Dakotas, Utah, Wyoming and Nebraska.

10 This was their life calling, to remove and  
11 educate Native children. They were doing God's work,  
12 but not realizing the detriment that they were doing  
13 with what I term state-to-state, country-to-country  
14 human trafficking, because we were moved from  
15 Ontario, Canada to South Dakota, United States.

16 I tell you this, because I can. And I was  
17 also adopted without a birth certificate.

18 And as you know, the law has changed. And  
19 the REAL ID Act introduced by Jim Sensenbrenner of  
20 Wisconsin passed and was enacted and enforced in  
21 California in 2010.

22 In this Act, it also required anyone in the  
23 United States to provide reason to live here. And  
24 when you renewed your State-issued I.D. or driver's  
25 license, your birth certificate is primary document

1 for this.

2 I was denied renewal, which meant I could  
3 not have employment through the E-Verify system, and  
4 also could not use a valid I.D. for employment  
5 development.

6 Where I -- where I'm going from here is  
7 that we do not know what the future laws will affect  
8 our future generations 10, 20, 30, 40 years from now.  
9 We are fighting for the bare minimum for sovereign  
10 nations, indigenous or Indian children here.

11 Children who are the byproduct of  
12 generations of trauma, great-grandparents who were  
13 removed and herded for -- to -- sent to concentration  
14 camps such as the Basque Redondo. Grandparents and  
15 parents who were removed from their families and sent  
16 to boarding schools, and a generation that were  
17 removed during the Relocation Act of the 1950s. And  
18 also those removed through foster care and adoption,  
19 all to kill-the-native-and-save-the-child mentality.

20 We are now at the phase where the natives  
21 are healing ourselves and educating our youths,  
22 setting up universities and colleges on reservations,  
23 such as the Diné College, a community college.

24 We are urban natives, where a large  
25 percentage of natives live off reservation, but are



1 still tribal citizens. We are fighting for the bare  
2 minimum to keep our children and to heal our  
3 families.

4 I currently live in Los Angeles County,  
5 where there are no Indian reservations. But we have  
6 the second-largest population of urban Indians. We  
7 also have a wealth of Native resources. We are  
8 organized enough to have our own white pages called  
9 The Red Pages, a resource guide for the American  
10 Indian Alaska Native Community in Los Angeles County,  
11 which lists many cultural and resources for healing  
12 and connection to other natives.

13 Last year our ICWA Task Force Group and  
14 Los Angeles County Department of Children and Family  
15 Services and our American Indian units organized a  
16 Native foster parents recruitment on our own. We are  
17 now in the recruitment process. We are healing our  
18 own. We are at the beginning stages.

19 We are asking for the bare minimum of  
20 guidelines to save our children and reaching out  
21 through the newly-formed ICWA guidelines.

22 We need these to preserve our culture from  
23 erosion, from human trafficking, and genocidal  
24 tactics.

25 Thank you for allowing me to speak. Thank

1 you for the ancestors of this land for being present  
2 and allowing our generation and for our temporary  
3 presence here in Portland.

4 Thank you for all those who authored the  
5 ICWA guidelines.

6 LARRY ROBERTS: Thank you.

7 So I know we have a lot of people lined up  
8 there. Do all of you have a flight to catch?

9 Okay. I just wanted to make sure that  
10 we're respecting everybody having to catch flights  
11 today.

12 VICTORIA SWEET: Good morning. My name is  
13 Victoria Sweet. I am an attorney living in Reno,  
14 Nevada right now. And I'm here speaking on behalf of  
15 myself.

16 But in my -- in my -- my interest in the  
17 regulations has to do, first of all, with  
18 consistency. In the work that I do there is so much  
19 confusion among judges, attorneys, advocates,  
20 agencies, because state to state there are no set  
21 standards.

22 State to state it is difficult to know what  
23 to expect -- even court to court, within some  
24 states -- to know what you can expect when you are  
25 dealing with an ICWA case. It causes confusion. It

1 causes fear. It causes people to dread having to  
2 deal with ICWA cases.

3 The consistency, I think, is -- is key.  
4 And it is vital, particularly in my professional life  
5 in the work that I have done.

6 There are a few things I feel are extremely  
7 helpful in these new regulations.

8 Number one is the clarification of what is  
9 active efforts. One of the biggest things I am asked  
10 professionally is, can you help me understand active  
11 efforts. I don't really understand how it differs  
12 from reasonable efforts. The clarifications are  
13 incredibly helpful.

14 Number two, the changes in information on  
15 good cause to deviate from ICWA placement  
16 preferences. Again, this has caused a lot of  
17 confusion among professionals. And to be able to  
18 understand this, to have some more clarification on  
19 just what is appropriate, but what is not appropriate  
20 is incredibly important.

21 Number three, good cause to not transfer to  
22 tribal court. Again, I think that there has been  
23 confusion about this. The new regulations help with  
24 the clarification.

25 And to get more judges to understand how to

1 remain within the original intent of the statute I  
2 think is incredibly important.

3 And then finally, Notice. We know that  
4 many, many courts are understanding about registered  
5 mail, return receipt requested. But to state  
6 specifically, This is a minimum standard. There are  
7 other things you can do as well.

8 But reminding us that you must at least do  
9 this, this is an incredible best practice. And I  
10 think it's very helpful to many of our judges and  
11 attorneys and agency workers to have that.

12 And finally, speaking specifically as a  
13 Native woman, my family is from the White Earth  
14 Reservation in Minnesota. I am a first-generation  
15 not just attorney, but first-generation college  
16 student in my family.

17 My grandfather went to a boarding school by  
18 force. It created huge intergenerational traumatic  
19 patterns in our family.

20 And I do not think you can ever minimize  
21 the importance of culture and identity when it comes  
22 to overcoming intergenerational traumatic patterns.

23 I credit a great deal of the ability in my  
24 own personal life to be a mother, and now a  
25 grandmother, successfully, to have a career, and to

1 be able to be a functioning member of our society and  
2 to overcome some of the things that happened in my  
3 family by -- because of my connection to my culture.

4 This is why I feel so strongly about this  
5 both professionally and personally.

6 And thank you so much for the effort being  
7 put into making these regulations.

8 LARRY ROBERTS: I think we have both  
9 microphones working now, by the way, in case there's  
10 folks on this side of the room that also want to  
11 provide comment over to me.

12 NADJA JONES: Thank you. My name is Nadja  
13 Jones. I am the Tribal Affairs Director at DHS for  
14 the State of Oregon.

15 My comments have been vetted and approved  
16 through the governor's office, Governor Kate Brown.  
17 And it's a pleasure and honor to be in front of you  
18 today.

19 I want to commend the commission and the  
20 advisory and the tribes for continuing the work of  
21 improving ICWA compliance. And the following  
22 comments are offered in that spirit of intention to  
23 collaborate.

24 Active efforts. The law and guidelines  
25 describe the types of activities that a quarter (sic)

1 state child-placing agency can provide to prevent the  
2 removal of an Indian child from the home, and efforts  
3 required to reunify the family if removal is done.

4 However, the length of time for active  
5 efforts to be provided is not described in the  
6 current guidelines or regulations. Tribes in Oregon  
7 have experienced inconsistent application of active  
8 efforts and would be appreciative of enhanced  
9 regulation and guidance in this area.

10 The State of Oregon would like to request  
11 additional language in the regulations that provide  
12 clarity regarding the length of time in an Indian  
13 Child Welfare dependency case that active efforts is  
14 required, and the standards apply.

15 The use of qualified expert witness in ICWA  
16 cases has been described in the 2015 proposed  
17 regulations. Oregon DHS Tribal Affairs last year  
18 conducted a hand count to our tribes of all  
19 ICWA-eligible children in our custody and care as of  
20 April 1st, 2014.

21 Data across Oregon revealed that 358  
22 ICWA-eligible tribal children are in the State's  
23 care. The ratio of out-of-state to in-state tribes  
24 was two to one.

25 In-state Oregon tribes are meeting the

1 needs for expert testimony. Out-of-state tribes do  
2 not have adequate qualified expert witness capacity.

3 The categories in the BIA guidance  
4 regarding who can be a qualified expert do not  
5 include a preference order or guidance regarding how  
6 to provide qualified expert witness for ICWA-eligible  
7 children who are from out-of-state tribes.

8 The State of Oregon would like to request  
9 additional information regarding how the categories  
10 are to be utilized in cases involving out-of-state  
11 ICWA-eligible children.

12 I now, for the record, am taking off my  
13 badge.

14 My name is Nadja Jones, and I am Comanche,  
15 Onondaga, Oneida and Otoe. I was raised and I was  
16 privileged to be enriched in the culture and the  
17 longhouse of Iroquois Confederacy.

18 I have been raised to believe that tribal  
19 sovereignty has been honored between the tribes and  
20 the Federal Government to the greatest extent that  
21 humans can endure.

22 I know that in trying to promote ICWA,  
23 there is opportunity for advancing collaboration  
24 between state courts and private adoption agencies.

25 Section 23.134, The rights of adult

1 adoptees, the "should" needs to be "must." Musts.  
2 Required.

3 In 19 -- in 1878 -- I did the math. I  
4 stand here as a seventh generation. The first  
5 generation would have been born in 1878. I carry the  
6 DNA and the lineage of Ten Bears, who traveled to  
7 Washington, D.C. and did consultation very similar to  
8 this.

9 I carry the DNA of Chief Ray Elm, who  
10 traveled to D.C. and carried a message similar to  
11 this.

12 We need to maintain the connection to the  
13 adult adoptees. We need to maintain the right of  
14 adult adoptees to access their birth records.

15 My brother, Darryl Alonzo, was born in  
16 1958. In 2011 he found us. He was placed by a  
17 private adoption agency. And the only way that he  
18 found his way back to the tribe was his ability to  
19 secure the original birth certificate.

20 His father -- his adoptive father  
21 approached the Comanche Tribe in 1978, and the  
22 Tribe's interpretation of the law being passed --  
23 ICWA being passed allowed him to become enrolled.

24 He was an enrolled Comanche, as I am, for  
25 the entire length, from 1778 until now. It was only



1 his ability to access his original birth certificate  
2 that allowed him to be re-membered back to our tribe.

3 He is now a part of our community. He is a  
4 part of our family. And our society as a whole is  
5 made better.

6 I have great faith that we can collaborate  
7 in a way that allows our adult adoptees to access  
8 their birth records.

9 Thank you.

10 CINDY BAILEY: Hello. My name is Cindy  
11 Bailey. My husband and I, John, had six beautiful  
12 children, three of which are full-blooded Navajo. My  
13 husband and I opened our home to foster care for  
14 children who needed a safe place to sleep and grow  
15 and just be kids.

16 When our three children were placed with  
17 us, it was only after there had been many  
18 unsuccessful attempts to have them stay in  
19 ICWA-compliant placements. They had been removed  
20 from their parents' home by Tribal CPS and Arizona  
21 Department of Economic Security, Arizona CPS, off and  
22 on for four years.

23 By the time they came to be placed with us,  
24 we were their seventh foster home. All of those  
25 prior were Native American foster homes.

1 My concern is if we go through all that,  
2 and we still don't have a placement for them, but  
3 non-Native homes cannot be allowed to adopt Native  
4 children, where are these kids going to go? What's  
5 going to happen to them?

6 At the time my children didn't know if they  
7 were coming or going. They needed stability,  
8 normalcy, attention, boundaries, love and acceptance.  
9 Most importantly, they needed to know that they had a  
10 future.

11 We agreed to take the children in knowing  
12 that it was a temporary placement, because both the  
13 tribe and ACDS were looking for an ICWA-compliant  
14 placement for our children.

15 We did what was in the best interest of our  
16 children. We gave them a place to stay while we were  
17 trying to find them a permanent place to stay.

18 Days turned into weeks. Weeks turned into  
19 months. Months turned into years, and still no  
20 suitable placement was found by the Tribe or DES.

21 For various reasons, Native families could  
22 not or would not take all -- all three children  
23 together. To split the children from each other  
24 would have been a tragic story that surely would have  
25 ended with the loss of the only bond that our

1 children had left. And that was with each other.

2 They flourished in our home. And we  
3 attended family meetings, visitation, court dates.  
4 And they all came to the same conclusion. They were  
5 in a non-Native home.

6 However, no Native home would take all  
7 three children. And it should always be in the best  
8 interest to keep the children together.

9 Before we knew it, they had been in our  
10 home longer than they had been in their mother's  
11 home. When it came time for their parents' rights,  
12 their biological parents requested that they be  
13 placed with us for adoption.

14 We agreed. Everyone agreed. Their aunts,  
15 their uncles, their grandparents, all agreed that  
16 even though we were a non-Native placement, it was in  
17 the best interest of the children to keep them  
18 together.

19 They wanted the children to remain with us  
20 so that they could stay together and have each other.  
21 All the while the Tribe and DES were still looking  
22 for a Native home that could take all three children  
23 together, and none could be found.

24 If the proposed guidelines are made into  
25 law, you are taking the rights of Native American

1 parents, family members and older siblings to choose  
2 what is in the best interest of their children.

3 Without the flexibility of the guidelines  
4 and the State's due diligence and compliance with the  
5 law, our children would have faced certain separation  
6 from their parents, family members and each other at  
7 a time that they needed each other the most.

8 While I agree completely with the ICWA law  
9 as it stands now, we cannot allow Indian children to  
10 be denied their right, as Americans, a safe place to  
11 sleep and grow up in a home that only wants to love  
12 and care for them, no matter what. It shouldn't  
13 matter if it's a non-Native placement.

14 By making the ICWA guidelines an unyielding  
15 tool, you are also taking the personal out of the  
16 family unit. You are then creating a situation where  
17 Indian children in, or that need to be in foster  
18 care, who are the victims in all scenarios, property  
19 owned by a person or a group of people to be placed  
20 without regard for how they are loved or understood.

21 If you take away the State's obligation to  
22 be involved and view a child's case from start to  
23 finish for all that it is, and not just a bloodline  
24 of a child or a group of children, you are taking  
25 away a team of advocates that have been in the

1 child's life and on the child's side from day one, by  
2 demanding that they turn their back on the child, and  
3 have the child stripped of all that is familiar to  
4 them, normal and loving and comfortable, and what  
5 that child has come to be known as theirs, to suit a  
6 group of cold and unfeeling set of words that makes  
7 up a law.

8 We as adults and leaders of our country  
9 cannot allow this happen. I believe if you leave the  
10 guidelines as they are, a flexible tool used to  
11 protect all Indian children.

12 Thank you.

13 LARRY ROBERTS: Thank you.

14 CINDY BAILEY: I'd also like to submit our  
15 trial documents and our Arizona State of Appeals  
16 documentation with my statement.

17 LARRY ROBERTS: Thank you.

18 And if anyone else -- I know that some  
19 folks are reading their comments as well. We're  
20 happy to take copies of that and make sure that  
21 they're part of this record.

22 JAY MCCARTHY: Good morning, everyone. My  
23 name's Jay McCarthy. And I traveled here from  
24 Flagstaff, Arizona.

25 I wanted to comment about Cynthia Bailey --

1 Cindy. She flew here from North Carolina. And I had  
2 the honor of representing her and her family in the  
3 case she described.

4 I had the honor to have a ten-day trial.  
5 And when I walked into the courtroom, it was full of  
6 Diné people. And they were all there for them.

7 She's too modest. The tribe said, even  
8 though these children went into custody -- oh. Ten  
9 times -- it started in 2003. The trial was 2010.

10 Half of these children's lives were with  
11 that family. They had blessings for them. They took  
12 them to the reservation. And to this day, the Navajo  
13 relatives still see these children.

14 I want to ask you, Why do we not have open  
15 adoptions like in our state of Arizona, and give  
16 tribes the right to have open adoptions, where tribal  
17 rights are preserved? I begged for this in 2003,  
18 which I think was the last time Congress tried to  
19 amend the Indian Child Welfare Act.

20 Now, I'm here today to say some things that  
21 many of you will be upset with me. And I beg you to  
22 listen. Because I come here, because I have for over  
23 35 years had the privilege of representing foster  
24 children. And it is a privilege that I do not take  
25 lightly.

1 I have been called many things. But I will  
2 tell you, they do not hurt when I see what happens to  
3 those children.

4 I also have the great honor of being an  
5 attorney that represents adult adoptees, as the  
6 gentleman from Los Angeles. I have had the privilege  
7 of 30 people from all over the United States have  
8 contacted me. And I've been able to open their  
9 files -- and many were pre-ICWA files -- to get them  
10 enrolled and connected to their tribe.

11 The Diné people have a saying. I need to  
12 say it, because I'm too emotional. They say, Be  
13 careful when speaking. You create the world around  
14 you with your words. And I need to think that,  
15 because I'm on the verge of much anger today.

16 First of all, I hand-delivered a 45-page  
17 document, which I would ask that the Solicitor's  
18 Office read carefully, very carefully.

19 My first question is to you. Has Congress  
20 amended the Indian Child Welfare Act? I don't  
21 believe they have. No, they have not.

22 Has Congress recently given any direction  
23 to you to make these guidelines now federal  
24 regulations? Has there been any Congressional action  
25 recently to you to instruct you to do this?

1 LARRY ROBERTS: Not that I'm aware of.

2 JAY MCCARTHY: So I think what all of you  
3 need to know what we're talking about, they're  
4 federal regulations, not guidelines.

5 A federal regulation supersedes state law.  
6 With one fell swoop, 36-plus years of state appellate  
7 court cases regarding children's rights and families  
8 will be gone.

9 Now, I want to tell you the first question  
10 that has to be asked is, Where is the authority?

11 Before I go into that, let me make this  
12 clear. I worked for passage of ICWA. Yes, my  
13 daughters say, It's really the mileage, not the age  
14 that makes you look like you do. But I was there.

15 And what I want you to remember is that the  
16 guidelines -- and the guidelines are interpreted.  
17 Regulations are law. This is a huge distinction.

18 When the guidelines were published in 1979,  
19 we all know that the individuals that wrote those  
20 were the same individuals that helped in the passage  
21 of the Indian Child Welfare Act. They were in  
22 Congress making sure that one of the greatest pieces  
23 of legislation for children was passed. And they  
24 wrote the guidelines.

25 Now, why do I want you to know that? I ask



1 all of you to read the guidelines from 1979. And I  
2 will give you four excerpts as to why you should read  
3 those, and why this is a cruel joke that we are going  
4 through today.

5           What they say on the very first page -- so  
6 if you go to the guidelines, you look at page 67584,  
7 they say, Nothing in the legislative history  
8 indicates that Congress intended the Department to  
9 exercise supervisory control over state or tribal  
10 courts; or to legislate for them with respect to  
11 Indian child custody matters.

12           For Congress to assign to an administrative  
13 agency such supervisory control over courts would be  
14 extraordinary.

15           1979, they also say, Nothing in the  
16 language of the legislative history of 25 U.S.C.  
17 1952 -- which is the authority being cited now to  
18 make binding regulations -- now, they say in '79:  
19 Nothing compels the conclusion that Congress intended  
20 to vest this Department with extraordinary power.

21           That's not all. They say, Assignment of  
22 supervisory authority over the courts to an  
23 administrative agency -- which by the way, is an  
24 administrative agency that has nothing to do with  
25 child welfare and nothing to do with the

1 administration of courts -- is a measure at odds  
2 with the concepts of both federalism and the  
3 separation of powers. That it should not be imputed  
4 to Congress in the absence of an expressed  
5 declaration of intent.

6 Now, I want to also address the definition  
7 of, Good cause. Good cause is a phrase that many of  
8 us lawyers know is found in two very, very important  
9 parts of the Indian Child Welfare Act: The transfer  
10 from state court to tribal court, and the placement  
11 preferences, which apply to foster care and adoption.

12 And don't -- I would ask all of you to look  
13 this up. Because -- excuse me. I don't have a  
14 table.

15 This is from the BIA guidelines. And this  
16 is incredibly important for all of you to understand.  
17 The primary responsibility for interpreting other  
18 language -- talking about the Indian Child Welfare  
19 Act -- however, rests with the courts that decided  
20 Indian child custody cases.

21 For example, the legislative history of the  
22 Act -- again, we're talking about the Indian Child  
23 Welfare Act -- the federal statute states explicitly,  
24 The use of the term, Good cause, was designed to  
25 provide state courts with flexibility in determining

1 the disposition of a placement proceeding involving  
2 an Indian child.

3 The idea is that these children deserve the  
4 best. They deserve every court to hear every little  
5 bit of evidence about them.

6 And what you're trying to do cannot happen.  
7 You are saying that -- the lady that just spoke who  
8 had those children half their lives, they wouldn't  
9 even have got a hearing. Do you understand that?

10 They were there for four years when they  
11 were eight years old, and they wanted to take the  
12 eight-year-old and the seven-year-old away from their  
13 fifteen-year-old sister, the Navajo Nation. That was  
14 their position. Not the Navajo people, the Nation.

15 Do you understand that these are going to  
16 be federal law? And they will say, You cannot  
17 consider the length of time that those children were  
18 with that family?

19 Do you understand that the judge would not  
20 have been able to have a hearing? Do you understand  
21 that attachment -- they're saying is voodoo science.

22 It is not voodoo science. We all know how  
23 important attachment is. That's what those  
24 guidelines say.

25 Don't be -- just stand up and say you have

1 to fight for these children.

2 Foster children are the most vulnerable  
3 children in our society. And we have an obligation  
4 to give them the best, not the worst.

5 Now, Good cause in the legislative history  
6 says it cannot be restricted. And what they're doing  
7 is restricting it. They're saying that a foster  
8 child that has any Native -- if they're a, quote,  
9 Indian child -- I don't like that. I hope that is  
10 not offensive.

11 A Native American child cannot be treated  
12 the same.

13 Now, I appear in the Yavapai Apache, White  
14 Mountain Apache, Hopi and Navajo Courts. I have for  
15 a long time been very blessed by medicine men who,  
16 when I was ill, they came to see me.

17 We all know tragedy. My family were the  
18 orphan trains, the Irish, the poor Irish. We were  
19 not good. We were cast aside. We came west. But  
20 because of my color -- I was primarily white -- I  
21 made it.

22 No one here today is saying that this  
23 Indian Child Welfare Act is not important. No one  
24 here today is saying it should be rescinded. But it  
25 is not meant to make children second-class citizens.

1           And let me talk about my birth mothers. I  
2 represent birth mothers who -- the first case in  
3 Arizona I tried was a rape victim. She was a member  
4 of the Tohono O'odhams Tribe. And they said, We  
5 don't care if you want to pick a family that you knew  
6 that were Hispanic. We are against this.

7           Now, there's something called the U.S.  
8 Constitution. And a birth parent has those rights,  
9 rights of privacy. Tribal rights are nothing but  
10 statutory.

11           Also, children, they have constitutional  
12 rights. And those rights give them an opportunity to  
13 have full due process.

14           We are asking you to please take out some  
15 of these egregious things. These are not things that  
16 would help children.

17           We are not talking about cases in the  
18 tribal court. We all agree those are cases that  
19 should be there. We are just asking you to please  
20 think about the children and not solely tribal  
21 rights.

22           And I thank you.

23           LARRY ROBERTS: Thank you.

24           SEAN MIDDLETON: Geez. All right.

25           LARRY ROBERTS: So -- so we're going to --

1 again, no commentary on other people's comments.  
2 Because nobody would like commentary on their own  
3 comments. Okay?

4 So thank you.

5 SEAN MIDDLETON: My apologies.

6 My name is Sean Middleton. I'm a Shanabi  
7 (sic). I am in the Chief Seattle Club. I am their  
8 IPAC representative. I have been asked by my  
9 community, the Seattle community, to come and speak  
10 with you, please.

11 When I became the IPAC representative, I  
12 asked the community what they wanted and needed from  
13 us. This was the number one priority was Indian  
14 Child Welfare.

15 We love and support what the new  
16 guidelines, regulations that you're putting in there.

17 I'll read this also as well: We strongly  
18 support these regulations in general. We do have a  
19 few recommendations that we advance for  
20 consideration.

21 We believe that it is important that the  
22 rationale for the authority to regulate be carefully  
23 explained, and that the individual provisions should  
24 be justified with references to supportive cases,  
25 State regulations, and policies that reflect best

1 practice and legislative history.

2 We also believe that the regulation should  
3 explicitly address the adoptive couple -- the Baby  
4 Girl case -- one, clarifying that it should not be  
5 applied outside of the private adoption context; and  
6 two, providing guidance how the Supreme Court  
7 interpretation of the law should be effectuated in  
8 state court and agency practice.

9 We urge you to carefully consider technical  
10 recommendations that would be provided by national  
11 organizations and attorneys who have the expertise in  
12 the ICWA from the tribal perspective.

13 Once again, we very much appreciate  
14 everything everyone here does. Everyone here has a  
15 hard job. And everyone is right. It's hard.

16 So thank you all for coming here and  
17 speaking for our children.

18 But I was also asked to speak to the fact  
19 that while the community likes everything that's  
20 happening here, they asked that you actually make  
21 sure that these things are enforced. They asked that  
22 you make sure to do audits.

23 I'm in region two of Washington state. My  
24 community's too scared to come here today to talk.  
25 My community feels like the ICWA guidelines have been

1 tossed to the side, and they're living in a state of  
2 fear of the Office of Indian Child Welfare.

3 And these are adoptive Native parents.  
4 These are non-Native parents who are taking in Native  
5 foster kids.

6 So we ask that you come and pass these, but  
7 make sure that you have checks and balances to follow  
8 up. Because the current laws aren't being followed  
9 up. The current policies and recommendations aren't  
10 being followed up in the eyes of the Seattle  
11 community.

12 I work at the Chief Seattle Club. We have  
13 over a thousand members from 200 different tribes. I  
14 have four people who have lost their kids and had  
15 them adopted out because they're First Nations.

16 So they also asked, Please put in some more  
17 protection for our First Nations people. In the  
18 urban community, we're losing our children, and it's  
19 very scary.

20 But I want to thank you for all that you  
21 do. This is not an easy job. And everyone believes  
22 in their heart that they're right. But let's all try  
23 to put that aside and work forward for our kids.

24 REGINA WOODS: This is kind of new to me.  
25 I was raised that you swept everything under the



1 carpet and put it in a closet. So the things I'm  
2 going to share today I don't generally share unless  
3 people -- I know them well, and I'm close to them.

4 My name is Regina Woods. I'm a mother of  
5 two beautiful boys, 16 and 22. I'm a certified  
6 public accountant. I'm a business owner. I'm a  
7 first on my paternal side to graduate from college.

8 I was a U.S. Army veteran. I served from  
9 1985 to 1993. I was stationed in Frankfurt, Germany  
10 during the First Gulf War. I have an honorable  
11 discharge.

12 I'm here to represent myself and my  
13 relatives and my ancestors of the past, present and  
14 future, especially my mama and my auntie, even though  
15 she was mean, and my granny, all of who have passed.

16 I am affected by adoption. Ninety-three  
17 years ago in Missouri, in 1921, my maternal  
18 grandmother was put up for adoption. She was told  
19 this was because her mama was white, and her daddy an  
20 Indian.

21 She was told her birth mama was either  
22 raped, or her daddy was married. And that was also  
23 why she was put up for adoption.

24 My granny's adoptive parents changed her  
25 name to Orphie. When she was 16, they put her on a

1 train to Oregon to marry one of their nephews. And  
2 then she could pick a new name and didn't have to be  
3 called Orphie anymore.

4 She had four children. Her husband became  
5 an alcoholic after a logging accident. She stayed  
6 with him until he was so bad, he shot her.

7 One bullet put four holes in my granny, two  
8 in her arm and two in her leg, because it ricocheted  
9 off of her bones.

10 She left him. And when she did that, she  
11 was alone. She had no family, just her and her four  
12 children.

13 Her two daughters, my auntie and my mama,  
14 were molested by a church deacon. When they told on  
15 the deacon, the church took them -- they were four  
16 and five years old. And they took them to the  
17 church, and they placed them on the altar to cast the  
18 demons out of them.

19 My mother and my aunt became schizophrenic.  
20 My mother was the worst. She was hospitalized 22  
21 times over a period of about 25 years.

22 When I was little, I would ride the bus  
23 with my grandma to Dammasch State Hospital to visit  
24 my mama. We did that a lot. Sometimes my mama would  
25 sneak me from my granny, and she'd put me in the car

1 and make me curl up on the passenger seat on the  
2 floorboard while she drove around giving people  
3 letters. And she had me hide there so that the  
4 demons she saw couldn't hurt me.

5 My aunt was mean. And she had her reasons.  
6 When she moved back home, she made me and my mama  
7 live by ourselves without my granny.

8 She would tell me to stop being weird. I  
9 was too sensitive. I cried too easily. I needed to  
10 stop talking about my dreams. If I didn't, I would  
11 become crazy, like my mama.

12 My aunt told me not to braid my hair or to  
13 wear moccasins, because that was weird. And I didn't  
14 have enough blood from my granny to be an Indian.  
15 She also said that my daddy had lied about having  
16 Native blood.

17 By the time I was 12, I was taking care of  
18 me and my mama in our little trailer. By the time I  
19 was 17 I enlisted in the army. A few months after I  
20 enlisted, before I shipped out, my mama got sick  
21 again.

22 This time I called mental health. And I  
23 asked for a commitment hearing. I went to court, and  
24 I had my own mother committed. A social worker  
25 walked up to me and said, You're not 18. I'm going

1 to place you in a foster care home.

2 Well, I wasn't a dumb girl. I knew when I  
3 signed those enlisted papers -- enlistment papers, I  
4 was legally an adult.

5 So I left. I got married. I had my sons.  
6 I tried corporate America, different churches, and  
7 spirituality. But nothing got rid of that part  
8 inside of me that felt dead.

9 My granny died. Ten years ago my mama  
10 died. And about that same time I was diagnosed with  
11 cancer twice. I didn't have cancer, but I had two  
12 surgeries. And I was sick for quite a while.

13 But my dreams came back. They told me what  
14 foods to eat, which a lot of them were Native. They  
15 told me what vitamins to take. And then about four  
16 years ago I started to feel better.

17 And I took a Qigong class. And the concept  
18 in martial arts is the energy. As soon as I started  
19 doing that, my dreams came back with such a vengeance  
20 that even though I was way too old as far as what  
21 western doctors will tell you to be crazy like my  
22 mama, I thought I was going crazy.

23 But it taught me a lot about myself.

24 Then an old man came in my dreams who felt  
25 like my maternal great-grandfather. He gave me a

1 name, and he told me to go home.

2 I remembered years back -- it had been  
3 probably over 20 years ago -- that my grandmother had  
4 gotten her adoption papers, and she had gotten her  
5 birth certificate. She was happy that her adoption  
6 papers had said her real name. And her birth name  
7 was Jessie.

8 But her birth certificate was  
9 funny-looking. It was handwritten. It didn't list  
10 her daddy. And she couldn't find anything else  
11 really out. It was before we had Internets.

12 So I started doing genealogy research. And  
13 looked and looked. And I found out a lot about all  
14 areas of my family. But I couldn't find anything  
15 else about that. So I gave up.

16 But I went ahead and wrote Missouri. And I  
17 asked for more copies of my granny's birth  
18 certificate. Because I promised my uncle I would,  
19 because we only had one original.

20 And even though I couldn't find anything  
21 more out, I felt my heart. And with or without  
22 confirmation, I knew who I was. I was an Indian.

23 **A week after that I got the copies of the**  
24 **birth certificate from the State of Missouri. And**  
25 **they were complete. And they had my**

1 great-grandfather listed on there.

2 His name -- his name was Jessie. Within  
3 minutes from the census reports I found that he had  
4 been a widow -- widower, like, two years before. He  
5 wasn't married. And a mama does not name her baby  
6 girl after a daddy, if it was a rape.

7 I also found her daddy on the final rolls  
8 as an enrolled member of the Cherokee Nation of  
9 Oklahoma.

10 So for me, my granny's adoption made me  
11 feel isolated and stupid. Because I learn different  
12 than a lot of other people. And I have dreams.

13 I feel the people, the tribe would have  
14 been the support my family needed. We would have had  
15 the ceremonies, songs and language that resonates  
16 with our hearts. From the census data, my granny had  
17 11 aunts and uncles. We didn't have to be alone and  
18 isolated.

19 When I went to my first powwow and heard  
20 the drums, I knew I was home. As I've become more  
21 involved in the Native community, the deadness that I  
22 felt has gone away.

23 It's been 94 years since my granny's  
24 adoption, and it took me 46 years. But I'm proof  
25 that you can take the Indian out of the tribe and

1 away from the heartbeat of the drum, but you can't  
2 take the heartbeat of the drum out of the Indian.

3 I'm a Cherokee. I'm an Indian. And I have  
4 come home. Wado.

5 LARRY ROBERTS: Thank you.

6 RAJU DAHLSTROM: Good morning. My name is  
7 Raju Ajaya Tharcicus Dahlstrom. And the reason I go  
8 with the lengthy name is I probably share a lot of  
9 very similar stories, like you folks out here.

10 But it's not about me today. If I  
11 invariably come back to me, it's because I have a  
12 very big ego. So I'm going to put that aside.

13 I'm here today to speak on behalf of the  
14 Sauk-Suiattle Indian Tribe. I am the director of the  
15 Indian Child Welfare Department.

16 What I am here to speak on, very briefly,  
17 is the proposed changes to the -- to the ICWA rules.  
18 One of the biggest things that have stymied the Tribe  
19 that I work for, the Sauk-Suiattle Indian Tribe,  
20 we're located in Darrington, Washington at the  
21 foothills of the Cascades.

22 What I find fascinating is that no matter  
23 what courtroom I appear throughout the state of  
24 Washington, when I am notifying the Court of our  
25 interests in our children, the Courts invariably look

1 at me and then point me toward the direction of the  
2 door, or to a seat in the back room, or to be silent.

3 My given Indian name is mischief-maker, so  
4 that's when I begin to start making mischief. And I  
5 remind the Court that I represent the Sovereign  
6 Nation of the Sauk-Suiattle Tribe.

7 I had one judge who bent over down looking  
8 at me and saying, Would you please kindly sit. And I  
9 said, Your Honor, the sovereign tribe I represent is  
10 requiring me to stand.

11 And this was a proceeding, oddly enough, at  
12 the 11th hour regarding a termination petition to  
13 violate the constitutional rights of one of our  
14 children, where she was going to be adopted out into  
15 a white home.

16 The legal documents that the State had  
17 provided me was voluminous. It was about, maybe, yay  
18 high (indicating). And there was numerous redactions  
19 in the record.

20 And those redactions were what would be  
21 considered active effort documentation. But oddly  
22 enough, it was redacted out of the record.

23 Additionally, information regarding tribal  
24 affiliation, that was also very conveniently redacted  
25 from the record.



1           So how are we to find our children, if the  
2 state court can allow this impermissible act to be  
3 performed right in front of the courtroom?

4           So I'm in -- speaking to, again, the  
5 transparency that needs to occur in all ICWA  
6 proceedings. I think there needs to be rules that  
7 proclamate clearly that there cannot be a redaction  
8 of any records that are transferred from the state  
9 courts to tribal court or any communications  
10 involving the ancestry of a child.

11           I think that needs to be in the rules. It  
12 needs to be -- it needs to be enforced.

13           I have heard ridiculous comments out of the  
14 state courts, sometimes from the Attorney General's  
15 Office or from the State social worker saying, Oh.  
16 We're sorry. We had to redact that because of the  
17 HIPAA law.

18           And I often remind them, I'm hip to the  
19 HIPAA law. And it has absolutely no application to  
20 ICWA.

21           The second issue that we need to bring up  
22 is that we often conflate MEPA and ICWA. The  
23 Multi-Ethnic Placement Act has no placement in ICWA.  
24 And the Heritage Foundation, in a congressional  
25 hearing, attempted to conflate the two and to say

1 that MEPA and ICWA are really one and the same.

2 No, it's not.

3 ICWA stands for the premise that children  
4 of Indian ancestry -- children affiliated with tribes  
5 and children eligible for enrollment, fall under the  
6 ICWA for placement preferences, and it does not fall  
7 under MEPA.

8 And so I think that needs to be clarified  
9 in the rules. Because I think oftentimes State  
10 social workers in -- with -- with good intentions,  
11 have very bad consequences for our children when it  
12 comes to placement priorities.

13 The next step in -- in the rule-making  
14 policy, I think it is absolutely imperative --  
15 absolutely imperative -- and I think there needs to  
16 be a bright line listed in here -- all children --  
17 Native children, identified or eligible, when they  
18 are in the state court proceedings for placement, it  
19 needs to be emphasized that not only is the placement  
20 temporary, but that no matter what designation that  
21 the State has provided in their licensing, it is not  
22 an adoptive home.

23 And I think that's where we get into  
24 trouble so much with our tribal children when they  
25 are entering into the foster care system at 2 a.m. in

1 the morning -- you know, I need to be awake at 2 a.m.  
2 in the morning to make sure that that child, when  
3 being removed in an emergency situation, is not  
4 placed into a home that says, this is an adoptive  
5 home.

6 Because to the child and to the tribe that  
7 we're interested in, it isn't.

8 Also, I would like from the -- from the  
9 Sauk-Suiattle's own definition in the family code, we  
10 do not recognize termination of parental rights. And  
11 I think that needs to be universally clear,  
12 accessible and available to all courts in the United  
13 States jurisdiction, that the Sauk-Suiattle Indian  
14 tribe does not allow for the termination of parental  
15 rights.

16 Recently, when I was dealing with a state  
17 court in Iowa, they said, Iowa law takes precedence  
18 over your Sauk-Suiattle law.

19 And I reminded them that the Sauk-Suiattle  
20 tribe is a sovereign nation. We have our own family  
21 code.

22 And yes, of course, you may tell the judge  
23 that it supersedes his courtroom antics and rules.  
24 Then I was told that I would be -- they would file a  
25 complaint against me for being rude.

1 I don't know how it can be translated as  
2 being rude when I'm trying to encourage compliance  
3 with ICWA.

4 The additional item is that we do not adopt  
5 out our children.

6 So there again, I think in -- within the  
7 rules, in the federal register, if there are codes  
8 that are clear and concise for the Sauk-Suiattle  
9 tribe, it needs to be known across the board, whether  
10 it's within the state boundaries of the state of  
11 Washington or within the contiguous United States.

12 In addition, while -- before I forget, the  
13 Sauk-Suiattle Indian Tribe will be providing a  
14 written -- formal written statement.

15 It'll probably come out of our office of  
16 legal counsel, because I'm a social worker. So I  
17 can't speak the legalese.

18 But I do want to end with one very quick  
19 story. I began work for the Sauk-Suiattle Tribe in  
20 November of 2010. And at that time the charge that  
21 was given to me by the Tribal Council and by the  
22 Honorable Norm Joseph was to bring our children home.

23 And so I looked at my caseload, and I  
24 thought, This should be very easy. There's just  
25 seven children to account for. But it was a long

1 journey.

2 Three years later we were able to account  
3 for every child that was enrolled to the  
4 Sauk-Suiattle Tribe or eligible for enrollment of the  
5 Sauk-Suiattle Tribe. We were able to effectively  
6 identify that, no matter what courtroom they were  
7 hiding behind, no matter what foster home they were  
8 hiding behind, or no matter what arcane rules they  
9 were hiding behind to hide our children.

10 So we want our children back home. The  
11 Sauk-Suiattle Indian Tribe is a very tiny tribe. But  
12 I can tell you this at firsthand. We have a big  
13 heart. But more important, we want to enforce, and  
14 want the enforcement by the Federal Government and  
15 the State to all of the ICWA compliance provisions.  
16 And more importantly, the changes that are going to  
17 be coming about.

18 And -- and for anyone who is interested in  
19 additional stories, you're certainly welcome to come  
20 and talk with me.

21 But before I end, four children -- no,  
22 three children I had the pleasure of removing after  
23 being in a foster home that was designated as an  
24 adoptive home for them; when I came into that home,  
25 within the first 30 seconds, I knew that my charge

1 would be to remove these children out of a home that  
2 they had known for four years.

3 And the reason for that is, the foster mom  
4 looked at me, looked at the child and said, You will  
5 call me Mommy. You will call me Mommy.

6 And the little boy said, My mommy is  
7 outside of here, is on the reservation. My daddy is  
8 waiting for me. And he's outside on the reservation.

9 And she decided -- the foster mom decided  
10 to prove to me that she was a good parent, grabbed  
11 the little boy's hand, and dragged him away, and put  
12 him in a corner and said, You're on a time-out for  
13 being rude.

14 And I stood up off the couch, and I said,  
15 Please be ready to assist in packing the bags of  
16 these children. They're going back to their home.  
17 They're going back to their reservation. They're  
18 going back to their family.

19 Thank you for listening to me. And have a  
20 good afternoon.

21 LARRY ROBERTS: Okay. I'm just going to --  
22 I know that there's folks waiting in line that are  
23 probably getting a little bit tired of standing up.

24 I just want to say, if we can please try to  
25 keep our comments to five minutes, so that everybody

1 has a chance to speak.

2 You'll have another opportunity to speak.

3 But please, let's been respectful of everybody that  
4 is waiting in line.

5 Thank you.

6 JESSICA HANNAH: My name is Jessica Hannah.  
7 I am an Athabascan from Seldovia, Alaska.

8 I was raised with foster children. And my  
9 heart broke for them. Because I've seen child after  
10 child has bounced from home to home. And they've  
11 never had identity or roots. And that's saddened me.  
12 And it angered me greatly.

13 So I vowed when I turned 21, by golly, I  
14 was going to be a foster parent. And I'm now in my  
15 ninth year.

16 I made some notes. And I'll be submitting  
17 my -- I'll be submitting another document. Because  
18 as everyone spoke, I am thinking through things, and  
19 with nine years of being in the foster care system as  
20 a foster parent.

21 I started out -- the reason I really got  
22 into it when I was 21, the girl that I was raised  
23 with had a baby, and she was using drugs. And so I  
24 took my -- my first son, Nicholas, and adopted him.

25 My husband and I decided that we needed a

1 break for a while. We needed some rest. And we  
2 decided we had one -- we were going to do one more  
3 case. And I am a Native home, but I've never been  
4 placed with a Native child.

5 And we took on our child. And her nickname  
6 we gave her was Sunshine. We didn't know her name  
7 for months. And I just -- she goes by, Sunshine.

8 One of the things I'm concerned about with  
9 this is -- you know, I understand that -- and it  
10 saddens me that this country is built on a lot of sad  
11 stories.

12 But there are so many positive stories.  
13 And I am here to advocate for some amazing foster  
14 parents that are investing in the culture of our  
15 children.

16 I've kind of spear-headed it. I -- I  
17 love -- I absolutely love my culture and where  
18 I've -- where I'm from.

19 Many times my grandfather and I have gone  
20 to Alaska. And as so many, you know, my  
21 great-grandmother was taken, married off to a Russian  
22 in Alaska. And her name was changed. So that has  
23 been something that people deny being -- they've  
24 denied in the past being Native, because it wasn't a  
25 good thing. But it is a good thing.



1           So this -- this last Friday my daughter has  
2           been ordered by the Yakima Nation Tribe to be removed  
3           from my care -- I've had her for three years --  
4           because they want her on the reservation. I live  
5           outside the reservation. And I am a Native home.

6           And was very angered, and I'm fighting for  
7           her.

8           I have grown to love her birth mother. I  
9           was with her through the death of a family member  
10          recently -- her only family member. She says that I  
11          am like her sister. And we have done many rounds of  
12          treatment. Unfortunately, she's been unable to  
13          complete them.

14          But she's burdened -- which a lot of our  
15          people -- with alcoholism. But she -- that doesn't  
16          mean she doesn't love her child and her children.

17          She has asked if I would care for her  
18          long-term, until she's able to complete her  
19          treatment. But her rights are being overlooked  
20          because of her lack of not being able to complete  
21          treatment.

22          So they are moving. They have worked for  
23          all their Native children to be -- the Yakima Nation,  
24          to be returned to the reservation. So we have lots  
25          of children that have been in foster homes for years

1 and years that are being broken. And we are dealing  
2 with children.

3 And one of the guidelines here that we're  
4 trying to put into effect is not looking at the  
5 psychological or bonding attachment issues.

6 I think we can take great heed from  
7 adoptions that have happened in different countries,  
8 that when the children do have attachment and bonding  
9 issues, we see that these children are unable to be  
10 successful in some marriages, because -- some of  
11 them, now, they can get -- through counseling and  
12 stuff they can overcome it. But with bonding and  
13 attachment we have RAD -- Random Attention Disorder.

14 And these children are -- that have been  
15 adopted, that grew up in orphanages and have had --  
16 they haven't had stability in their life. They're  
17 suffering greatly in their lives as adults to be  
18 parents and be a wife or a father, to keep a job,  
19 because they've had such attachment issues.

20 So I do not think that -- this should be  
21 one of the primary -- primary things that we look at  
22 for these children for the success of their future.

23 After my meeting on Friday, I -- on  
24 Saturday, when I woke up, I -- my heart was still  
25 very troubled. I asked my children to leave me to my

1 garden, so I can -- that's kind of my meditation  
2 area.

3 And I was seeking answers. And I believe  
4 that there are answers in the creation.

5 And I was surprised to find, in one of my  
6 milk jugs, that I had some seeds from the dollar  
7 store that were expired. And I didn't think they  
8 were going to make it. And I threw them all in this  
9 jug.

10 And to my surprise, they have all sprouted.  
11 But each of the roots is intertwined. And I looked  
12 at them, and I'm, like, I'm going to save these  
13 flowers. And if I decide to plant them together in  
14 the soil, they are going to choke each other out.  
15 They are going to fight for what water is there.

16 And if you unravel their roots, and I look  
17 at them as an individual flower, they will -- and  
18 plant them in the soil they need, they'll reach their  
19 full potential, their full beauty. And they can make  
20 it.

21 So I ask that we look at -- I'm asking on  
22 behalf of foster children, that we don't look at them  
23 as a whole group, even though that is -- I can see  
24 where everyone's coming from for their tribe's  
25 sake -- but for the individual child, for their sake.

1           And maybe we can reach out across this  
2 barrier that we have between foster families and our  
3 Native communities, and we could not see it as losing  
4 a child, but gaining another family and taking them  
5 along -- take their hand and bring them -- help them  
6 raise our children.

7           And that is what I am -- I'm really pushing  
8 for. I believe that -- that these children will come  
9 back. They will.

10           One of the ladies here said that you can't  
11 take the heart out of the Native children. And you  
12 cannot. And they will come back. And I believe that  
13 they will be our future leaders, and they will take  
14 us into the next generation.

15           Thank you.

16           LARRY ROBERTS: Thank you.

17           RENEE: My name is Renee (unintelligible).  
18 My Cheyenne name is Living Woman.

19           I'm here to tell you about my sister. And  
20 I kindly request that you raise four fingers when I  
21 get to four minutes, because I'm also a storyteller.  
22 You all know what that means.

23           My little sister is 16 years younger than  
24 me. Her name is Jeananne.

25           My father called her, Trouble, because she

1 was so beautiful. He said, When she's a teenager,  
2 I'm going to have a lot of trouble keeping the boys  
3 away.

4 My father was murdered in south side LA.  
5 He was jumped by two white men and beaten to death.  
6 I was 17. My sister was one. She was taken from her  
7 mother, because the police found her on a street  
8 banging my sister's head against a curb. Her mother  
9 is non-Native.

10 She was put into the California foster care  
11 system. She went from home to home to home. She was  
12 physically abused in these foster homes. She was  
13 sexually abused in these foster homes.

14 And I'm not saying every foster home is  
15 bad. Because we know that's not true. My daughter  
16 and her fiancée are foster parents. They're  
17 wonderful people.

18 Could you please raise your hands? Thank  
19 you -- or shake your head, either way.

20 We can take care of our own children. We  
21 appreciate the kindness of others. But people have  
22 been taking our children since they got here from  
23 Europe. People have been taking our children without  
24 their knowledge, without our consent.

25 There's a wonderful movie that I'm an extra

1 in called The Lost Child, with Mercedes Ruehl and  
2 Jamey Sheridan. It's based on a true story from the  
3 Diné people.

4 A mom went to have her children. She was  
5 having twins. And she was told that her children  
6 died. And there were no bodies to bury. They'd  
7 already taken care of that for them.

8 Those children were illegally adopted --  
9 adopted out. The book's called, The Lost Bird. And  
10 it categorizes it -- it shows you that story about  
11 how that woman came back to her Diné people, and how  
12 she's still looking for her brother. And how her  
13 mother died before she found her family.

14 She never stopped believing that her  
15 children were alive.

16 My little sister, in order to get out of  
17 the foster care system, pretended to be  
18 schizophrenic, so that she could be taken out of the  
19 abusive foster home she was in and put in a hospital.

20 And this is the strength of our people, of  
21 our children.

22 She then had to pretend or prove that she  
23 was sane, so they would let her out. Because in  
24 California they pay per bed. Every bed filled is  
25 money. And that's what my sister was to the State of

1 California.

2 Why is this story important? Because I  
3 never met my little sister until I was -- until she  
4 was thirty-three. Thirty-three years old. And the  
5 first time we met, it was as if there had been no  
6 time.

7 We met in the Los Angeles airport. I was  
8 flying through, and she was in LA. And I had called  
9 her. And I said, I'm coming to your city. Please  
10 come meet me.

11 And I asked a little Chinese man to  
12 videotape her and take pictures. And I know that's  
13 stereotypical, but he was quite nice.

14 And it was if it was an Oprah moment. And  
15 it was. And there were tears. And she wanted to  
16 know where her family was. Why was I left there so  
17 long? Why didn't anyone ever come save me?

18 That's what these regulations are about.  
19 It's a great start. It's what we need. It's what  
20 our children need. It's what our families need. Our  
21 communities. And our hearts.

22 And for anyone who doesn't understand that,  
23 I beg you to listen to my story, because it's not the  
24 only story. We have hundreds. We have thousands.  
25 We don't need any more stories like that. We need

1 stories of children with their families, with their  
2 extended families. With their grandparents.

3 In the old way, first child born to my  
4 daughter and my son would have been my child. I  
5 would have raised it as my own. My son ...

6 Do I have two minutes? Okay. Thank you.

7 My son had a daughter, and my son and  
8 daughter live with me. So we have that  
9 three-generation family. He won't give me his  
10 daughter, though. They're not traditional. Come on.

11 So those stories, my sister's story, little  
12 Jeananne, this beautiful, vibrant, wonderful,  
13 wonderful girl, who didn't get to meet her family  
14 until she was 33. Let's stop that. Let's grow our  
15 own children. Let's grow them in a healthy way.  
16 Let's help our community members to be healthy and  
17 show them what was taken from us by the boarding  
18 schools.

19 How do we become families? How do we be  
20 parents? That was stripped from our grandparents,  
21 our parents. It was beaten out of them. We can  
22 learn again.

23 I raised my children in a violence,  
24 alcohol, and drug-free home. I have a master's  
25 degree. I have spoken all over the world. The thing



1 I'm most proud of, how I've raised my children, and  
2 how they're raising their children.

3 We can all have that story. We can all  
4 have healthy stories for our children. We can give  
5 them the love and nourishment that they deserve. We  
6 can give them their culture, so they don't grow up  
7 going, Who am I? Where are my people? Why don't  
8 they come for me?

9 Thank you.

10 SHELDON SPOTTED ELK: Good morning.

11 LARRY ROBERTS: Good morning.

12 SHELDON SPOTTED ELK: My name is Sheldon  
13 Spotted Elk. I'm Northern Cheyenne. And I'm just  
14 here to speak for myself and for, I guess, the  
15 children, too.

16 I'm a -- I'm legally trained. I worked as  
17 a guardian ad litem attorney doing best interests of  
18 the child representation. I'm also -- have a social  
19 work degree. I work for a tribe. And so I just want  
20 to talk to you about my strong support of the  
21 regulations.

22 First of all, I wanted to say the Indian  
23 Child Welfare Act -- and this is me speaking -- you  
24 know, I -- I feel like it highly -- strongly fulfills  
25 the vision of Federal Indian Law -- the highest

1 aspirations of Federal Indian Law, in the sense that  
2 this Federal Indian Law is defining the relationship  
3 between the three sovereigns of the United States.  
4 It's there within the Indian Child Welfare Act, with  
5 deference the tribal courts, with deference to tribal  
6 sovereignty, to be able to make decisions over  
7 children.

8 I -- I want to make a quick comparison,  
9 though. And I feel like these regulations -- in the  
10 way that they're drafted, I feel like provides the  
11 guidance to States. Because of the patchwork  
12 interpretation of -- of ICWA, it provides States some  
13 guidance as far as helping effectuate the best for  
14 Indian children.

15 And much the same way that ASFA, the  
16 Adoption and Safe Families and Children Act, has  
17 produced better outcomes. And we know those numbers.  
18 We have less children in out-of-home placements that  
19 we -- that's the same with Indian Child Welfare Act.  
20 And I feel like these regulations will help fulfill  
21 that.

22 But also, what's associated with that, of  
23 course, there's some penalties that are associated  
24 with ASFA if States are not in compliance.

25 And I ask that you look at those, you look

1 at some of those provisions. And I will also be  
2 submitting written comments. Because that's what  
3 lawyers are supposed to do; right?

4 But I'll just focus my last two comments on  
5 active efforts. And I want to say something about  
6 best interests and wrap up from there.

7 But active efforts is that I -- in my  
8 experience -- in my experience as a guardian ad litem  
9 attorney doing best interests of the tribe, I feel  
10 like active efforts, it represents the best practices  
11 within all child welfare cases. It represents the  
12 van -- you know, the highest, the vanguard of child  
13 welfare practices. That by doing that, it empowers  
14 families. It empowers children.

15 I know in my personal experience as a  
16 guardian ad litem, I'd see -- and as you heard  
17 testimony today about -- is that oftentimes there were  
18 three or four generations, where children -- good,  
19 little children have been raised outside of the home  
20 of -- of these families, whether it was boarding  
21 schools, next generation, maybe churches, the next  
22 generation, State agencies coming and taking the  
23 children.

24 So I've seen the detrimental effect. I've  
25 seen a mother or a father, say, Hey, you're a bad

1 parent. You're not making the grade. And seeing the  
2 look on their face and seeing their heartbreak.

3 Because, Hey, I knew this was going to happen to me.  
4 Because it happened -- a happened to everybody. You  
5 know, its happened to everybody in our community.

6 I believe in Indian families. I believe in  
7 Indian -- Indian communities. I believe in Indian  
8 parents, you know.

9 And I see that as, the more we can empower  
10 those families, the better outcomes for our children  
11 will be. The more we can empower communities, the  
12 better outcome for our children will be. And I feel  
13 like these regulations will achieve that.

14 Statistically speaking, in the area that I  
15 work in, and the jurisdiction that I work in, you look  
16 at the census records, you see that just the vast  
17 majority of children within that area are actually  
18 growing up in non -- nonbiological parent homes.

19 And these are children that are not within  
20 the system. These are children that are not -- they  
21 don't have an open court case. Because there's only a  
22 small fraction of those children that have an open  
23 court case that have placed in out-of-home placements.

24 So I feel like if you look at those census  
25 numbers, and that family's being able to make that

1 decision on their own, and maybe having some -- a hard  
2 time, but maybe grandmas make that decision --  
3 represents the highest.

4 I know that's not always the case. I was in  
5 a guardianship with my grandmother, because my parents  
6 made that decision, you know. So ...

7 But I think that represents the highest,  
8 being able to empower families to make those decisions  
9 that are the best for their children.

10 And I feel like ICWA and these regulations,  
11 that they do.

12 Lastly, I just want to say something about  
13 best interests of Indian children. As I know  
14 oftentimes in maybe some of those cases, I think the  
15 best interests of Indian children against the tribal  
16 governments, you know, the -- those two things really  
17 conflict.

18 But I feel like, much like in states, those  
19 decisions are made -- those decisions about families  
20 and children are best made at -- closest to -- to the  
21 ground, closest to the families, closest to those  
22 governments, closest to those communities.

23 And so I -- I really strongly encourage  
24 that -- that -- that -- well, I like the language. I  
25 like the language that -- that best interests of the

1 tribes are considered in -- and included in that  
2 calculus. Oftentimes that -- States will overlook  
3 that.

4 I feel like the highest aspirations that we  
5 have as advocates and people that care about this --  
6 you know, and I just wanted to acknowledge that  
7 from -- from you sitting at the panel here, working  
8 for the BIA and Indian Affairs, being able to come out  
9 here and -- and listen to us talk about regulations,  
10 whether we support them or whether we don't, and --  
11 and spending your time doing this.

12 Because it's really important in fulfilling  
13 the trust obligation. And I think that's really  
14 important to us as communities and tribal people.

15 So I say thank you for that. And I hope  
16 that we all could come together. This is not about  
17 Indian versus non-Indian. I don't feel that way. I  
18 feel like it -- maybe in the -- maybe in those words  
19 of the martyr Sitting Bull, you know, he said those  
20 famous words, We can all come together and hopefully  
21 come out for the best of our children.

22 So I'll leave it at that. Thank you.

23 LARRY ROBERTS: Okay. We're going to take  
24 a five-minute break. And it'll be only for five  
25 minutes. So please -- please come back.

1 We'll come back at 10:55.

2 (A recess was taken from 10:51 a.m. to  
3 10:55 a.m.)

4 LARRY ROBERTS: So we're running up against  
5 11:00. So I'm going to ask everyone to really try to  
6 keep their comments to five minutes. And I  
7 appreciate your -- your compliance with that.

8 So with that, we'll go ahead and get  
9 started. Please state your name and the organization  
10 that you're with.

11 NICOLE HOMER: Okay. Can you hear me?

12 LARRY ROBERTS: Yes.

13 NICOLE HOMER: Okay. My name is Nicole  
14 Homer. I'm a citizen of the Oneida of the Thames in  
15 Ontario, Canada. But I'm a tribal attorney for the  
16 Ho-Chunk Nation in Wisconsin.

17 I speak here today as myself concerned with  
18 a specific issue that we are facing in Wisconsin. We  
19 have been working diligently to bring our Safe Haven  
20 Relinquishment Act into compliance with the Indian  
21 Child Welfare Act. However not without much pushback  
22 from the hospitals.

23 Our State law allows a parent to drop a  
24 child 72 hours old or less off at a police station,  
25 firehouse or hospital. The law permits absolute

1 anonymity. They are not asked if the child is Indian  
2 when they give birth and leave, or come in and drop  
3 off.

4 My concerns is while the regulations speak  
5 of the fact that a parent's request for anonymity  
6 should not absolve the requirement to ask if the  
7 child is Indian and follow the placement preferences  
8 and notice in a voluntary case, Wisconsin Safe Haven  
9 Law actually falls under the involuntary grounds and  
10 proceeding section in the Wisconsin Children's Code,  
11 Chapter 48.

12 Thus, these regulations do not go far  
13 enough to require the accepting safe place to provide  
14 the information needed for tribes to make a  
15 membership determination to the State agency. This,  
16 unfortunately, creates a back-door approach to ICWA  
17 avoidance.

18 I believe similar strong language regarding  
19 anonymity not trumping ICWA protections be added to  
20 the involuntary sections as well -- although it does  
21 appear to be counterintuitive -- to address any  
22 similarly-situated states that have their safe haven  
23 relinquishment language within the involuntary  
24 sections of their State children's codes.

25 Additionally, a reference to relinquishment



1 could possibly be made in the definition section  
2 under both the foster care and adoption sections in  
3 the Section 23.2, sub (1) and sub (4).

4 Thank you.

5 DANIELLE LAZORE-THOMPSON: I actually set  
6 the timer on my phone there.

7 My name is Danielle Lazore-Thompson. I'm  
8 from the St. Regis Mohawk tribe in northern  
9 New York State, born and raised there. And I  
10 currently work as a Deputy General Counsel for the  
11 St. Regis Mohawk Tribal council.

12 I just have a few comments that I'd like to  
13 make on behalf of the tribe. First of all, I want to  
14 thank -- thank all of you for your efforts and for  
15 the courage to actually put pen to paper and finally  
16 get some regulations like this down for all of us to  
17 consider.

18 Guidelines are -- are just that.  
19 Guidelines are guidelines. And although they've  
20 provided, I know, some, you know, great information  
21 for people in how to apply ICWA, one of the big  
22 problems that we've had in New York State is that  
23 it's been inconsistently applied.

24 You know, if you want to think about that,  
25 it's been inconsistently applied across the country,

1 never mind within each state.

2 I've practiced in the counties that border  
3 our reservation, and these are two counties. They're  
4 right next to each other. They both deal with Indian  
5 issues. And both courts deal with ICWA completely  
6 differently.

7 And these are counties right next to each  
8 other. So never mind the inconsistencies that happen  
9 across the country.

10 So it's so important that these regulations  
11 go forward, and that they help provide consistency  
12 that we all need, just from a practical standpoint.

13 I have several comments that I'm going to  
14 be providing to you in writing. But I wanted to  
15 state here and for the record that the St. Regis  
16 Mohawk Tribe absolutely supports these regulations.  
17 They're long overdue.

18 The one thing that we need to always  
19 remember is that we're trying to overcome something  
20 that has happened systemically to our people for  
21 decades.

22 We are one of the only people in this  
23 country that has had written policy geared towards  
24 exterminating us. That's literal. That's not  
25 exaggerating. You know, we're one of the only groups

1 of people in this country that have faced, you know,  
2 forced sterilization of women.

3 On my territory, which is bordered with  
4 Canada, Canada has similar policies that are even  
5 more egregious. These things are written down in  
6 black and white about our people. And we face these  
7 things today.

8 There's something called intergenerational  
9 trauma. And we figure out a way to put a word to  
10 that, to put a name to that. But it impacts us every  
11 day.

12 My father was born in 1931. He passed away  
13 about ten years ago. But him and all the siblings  
14 were removed from our territory and placed in the  
15 foster home called the Thomas Indian School, which is  
16 located in the Seneca territory.

17 And from there, my aunts never moved back  
18 home. From there, my first cousin committed suicide.  
19 From there, my father and all of my aunts were  
20 lifelong alcoholics.

21 The impact that had on me as a child  
22 growing up, as an adult child of alcoholic -- this is  
23 just my family. We are always going to find those  
24 examples and those good stories.

25 And don't get me wrong. I mean, these are

1 our children that we're talking about. And I  
2 appreciate the people who love our children, no  
3 matter what, no matter if they're white or black or  
4 indifferent. Because in the end it's about the  
5 children.

6 But at the same time, what we're talking  
7 about here is something that is geared towards trying  
8 to rectify a wrong.

9 If you go back to 1979, and when all of  
10 this first happened, a lot of those things are still  
11 happening today. Not a lot has changed. We still  
12 have people that we're losing or people that have  
13 fallen through the cracks.

14 I'm going to tell another brief little  
15 story just on behalf of myself. And this is kind of  
16 funny, because it has to do with Facebook.

17 Two years ago I got this odd message from  
18 this woman. And she sent me a picture of herself.  
19 And she said, Does this person look familiar?

20 And I'm, like, you know, Who is this? This  
21 is some sort of weird joke?

22 Like, you know, I was going to delete it.  
23 And she had said, No, seriously.

24 You know, I've met Beatrice before. And I  
25 think you might be my sister.

1           And I'm, like -- like, Prove it. You know,  
2 I'm, like, Don't be harassing me. Like, What is  
3 this?

4           I was all getting defensive and very  
5 protective of my mother.

6           And sure enough, she sends me a picture  
7 that she had taken of my mother in, like, 1992. In  
8 1955 my mother had a child that she was forced to put  
9 up for adoption. And this woman lived her entire  
10 life away from the community.

11           My mother kept this as a secret from us --  
12 from us children for our entire lives, for 50 years.  
13 I think back as a child, all those times where I saw  
14 my mother crying about something. And I thought it  
15 was something stupid that I had done or something  
16 stupid my brother had done or, you know, some  
17 terrible thing that had happened.

18           And she was crying for that daughter that  
19 was lost. Because we were in a situation where there  
20 was nobody to protect her. There was nobody to keep  
21 my sister in our family.

22           And this is now. You know, we're not  
23 talking about something that happened, you know,  
24 several hundred years ago. The trauma that that  
25 creates within families, it's still going on. It's

1 still continuing.

2 So having these regulations is so  
3 important. Because it is another step towards trying  
4 to rectify some of those wrongs that have happened.

5 I will be providing substantive written  
6 comments on just some little tweaky things in the  
7 law. And if you don't mind, one of my colleagues is  
8 also going to be providing some comments about her  
9 practice. She's actually our ICWA coordinator who is  
10 the one who's working on the ground day-to-day with  
11 our cases involving Indian children.

12 So thank you very much for your time. I  
13 appreciate it.

14 LARRY ROBERTS: Thank you.

15 JAY MCCARTHY: So just out of respect for  
16 everyone in line, everyone's been doing a great job  
17 of keeping within the five minutes. And let's please  
18 try to keep that going.

19 ART MARTINEZ: Hello. My name's Art  
20 Martinez. I come to you today. I'm a member of the  
21 Chumash Tribe of the Kalawatsa (sic) people -- the  
22 Kalawatsa (sic) Village, Turtle Clan.

23 I also come to you as a psychologist. A  
24 psychologist that's been active in the area of Indian  
25 Child Welfare for many years.

1 I've served as an expert witness to state  
2 courts in over 3,500 cases. I served as an expert to  
3 tribal courts in almost a thousand cases. I've seen  
4 many, many cases that would curdle our blood in many  
5 ways of the -- the abhorrent conditions that many of  
6 our children, Native children experience in non-Native  
7 foster homes.

8 We can also find abhorrent experiences, of  
9 course, as Native children in tribal placements or in  
10 tribal homes.

11 But the issues of sovereignty cause us to  
12 pause for a moment and to realize that in the area of  
13 child welfare, courts are imperfect. Courts are an  
14 imperfect process.

15 The more we can define that for a court, the  
16 more that we can define what a process of action -- a  
17 best practice, if you will -- might be, the better we  
18 will be able to serve children.

19 And it's about serving children that brings  
20 me to this work. And that I know brings many -- many  
21 of you here.

22 I also stand before you today as an adoptive  
23 parent of two children, two children that are now  
24 adults. I have eight grandchildren.

25 I also stand before you as the parent of a

1 beautiful ten-year-old disabled child.

2 And I also stand before you today as a  
3 Native person from a family of nine, where three of my  
4 siblings are still lost today from their placement.  
5 They're somewhere in Washington state. That's all we  
6 know.

7 In that experience what I found, in my  
8 experience, is that state courts, if -- if there's not  
9 clear direction to a state court -- clear direction of  
10 process or guidance, as is intended in these  
11 guidelines, state courts will find cracks,  
12 particularly in -- in states where litigation is the  
13 rule of the day. And of course, that's what kind of  
14 happens in courts. Litigation happens.

15 And so it is very important that we begin  
16 to, in standing up for children, define this process  
17 and articulate the process that is intended by the  
18 law.

19 I think the guidelines that are being  
20 proposed do a fairly good job at further articulating  
21 the intent and the process of the Indian Child Welfare  
22 Act.

23 I also think that the prior regulations have  
24 many loopholes. I think they've discussed intent, but  
25 did not articulate the intent of the law, as would be



1 intended in this regulation and guidance.

2 I do see some -- some issues, though, that  
3 will -- or may come up within state courts that I  
4 think we need to be attentive to.

5 In the state of California, as in many other  
6 states, there are issues of presumed parent. There  
7 can be a presumed parent simply by the -- the mother  
8 or the -- one of the parents suggesting -- and,  
9 typically, it's the father -- suggesting that they  
10 know who the father is, and that the father is a  
11 tribal member of a certain tribe.

12 That father may not be available to  
13 acknowledge that child. And so the -- the issues of  
14 acknowledgment that are referred to in the guidelines  
15 are somewhat flawed.

16 In the state of California, and in many  
17 states, even if the father does not the acknowledge  
18 the child -- and there are many, many reasons why that  
19 might happen, by the way -- they can be the presumed  
20 parent, given the fact that they were present at the  
21 birth.

22 The hospital can write their name down and  
23 put it on the birth certificate. So there are many  
24 ways that a parent could be identified without that  
25 parent necessarily acknowledging that child.

1           And in cases where we see child support  
2 issues going on, where we see a child that's on aid,  
3 or a child that may have other issues going on, it's  
4 not unusual to see that one parent has not  
5 acknowledged a child, but they -- they function in the  
6 state court as the presumed parent.

7           And in actual -- actuality, they have rights  
8 of representation in many of these courts as the  
9 presumed parent.

10           So I think that, in that case, we need to  
11 define, or at least guide courts that, when there's a  
12 presumed parent who is Native, that that parent should  
13 be given the rights, and the case should proceed as an  
14 Indian Child Welfare Act, unless that presumption is  
15 then proven wrong or -- or erased, basically.

16           So that's one -- one thing that I would  
17 offer.

18           I would also offer that in many cases what  
19 we find is that it can take years for a Tribe to  
20 recognize that a child is eligible for enrollment.  
21 And the issue has to do with enrollment and  
22 eligibility for enrollment.

23           The Tribe can oftentimes recognize that the  
24 child is from a family from their tribe, and that  
25 is -- that there are other tribal -- other family

1 members that are -- that are tribal members that are  
2 family members that are in their tribe.

3 But oftentimes there's not enough of a clear  
4 line. Maybe the grandmother and then the mother are  
5 not enrolled.

6 And so what I would encourage is guidance  
7 that would allow tribes, and articulate that tribes  
8 should be involved, and that the case should go  
9 forward as an Indian Child Welfare case, if the -- if  
10 the Tribe itself claims a presumption that this child  
11 may be eligible for enrollment at some point.

12 And eligibility for enrollment, as we know,  
13 takes many -- many phases. There are tribes that  
14 don't have their rolls open for enrollment. There are  
15 tribes that say a child has to be enrolled before a  
16 certain age.

17 There are tribes that will respond that the  
18 child's not eligible for enrollment, but that they're  
19 changing -- thinking about changing the enrollment  
20 standards.

21 We need to make a place for those children  
22 before we find out four years later that they are, in  
23 fact, eligible for enrollment.

24 So using the same thought as a presumed  
25 parent, I think that the presumed tribe in the

1 situation should be then recognized and allowed to be  
2 represented within the proceeding.

3 As an expert witness in so many cases, I  
4 also want to say that -- thank you for defining,  
5 finally, with increased clarity the role of expert  
6 witness -- the -- I'm sorry, the definition of expert  
7 witness.

8 I would only offer that in the last bullet  
9 under, Expert witness, that the expert witness that  
10 has substantial experience with the -- with Indian  
11 children and community services, that that be -- you  
12 may add to that -- or I would like to see added to  
13 that, that the tribe recognizes that person.

14 So the tribe, as a party, recognizes  
15 them -- that person as having distinct knowledge  
16 within their -- their tribe and their community.  
17 Because it may not be the same.

18 Also, you will hear in testimony that will  
19 come up throughout your hearings indications of  
20 bonding and attachment.

21 As an expert in this field, and as an  
22 expert that has testified many times about bonding  
23 and attachment, I can tell you that bonding and  
24 attachment issues are not a hard and fast issue.  
25 Bonding and attachment -- many times we think of --

1 courts will hear arguments about bonding and  
2 attachment of a child to foster parents as somehow  
3 good cause to not follow a law.

4 Well, the fact is that if we use bonding  
5 and attachment to not follow letters of laws, then we  
6 would never remove children from their homes, would  
7 we? Because it is for a legal reason that those  
8 children are being removed.

9 Many times, no matter now how abusive the  
10 home is, the attachment of the bond between the child  
11 and parent is still there.

12 That speaks to the resilience of children,  
13 that children are able -- particularly Native  
14 children, it seems -- are able to be so resilient.  
15 Because once we have a bond -- once we have  
16 established an attachment -- and by the way, that  
17 usually occurs within the first year-and-a-half to  
18 two years of life -- we can then transfer that  
19 attachment.

20 And that attachment in Native families  
21 comes very early. Because of all the arms that hold  
22 children throughout the -- throughout our experience.  
23 And all the ways that aunties, uncles, grandmas -- I  
24 have many grandmothers in my community. It wasn't  
25 until I got older that I realized which ones I was

1 directly related to.

2 They all seemed to order me around pretty  
3 good.

4 LARRY ROBERTS: So, I don't want to stop  
5 you short. Because I appreciate one, traveling here,  
6 and comments as well. But we have a number of people  
7 waiting in line. So --

8 ART MARTINEZ: Okay. The -- the thing that  
9 I would close with is that the issue of extraordinary  
10 needs must be demonstrated.

11 I would suggest that there be wording that  
12 more clearly defines what that is, that it should be  
13 a demonstrated physical developmental or  
14 psychological incapacity of the child that serves as  
15 disability which must be addressed.

16 So with that, I'll close. And thank you  
17 for all your efforts in this area. I know it's an  
18 arduous process.

19 Thank you.

20 CATHERINE DEXTER: Good morning. My name's  
21 Catherine Dexter. And I'm an attorney practicing out  
22 of Portland, Oregon.

23 I've done adoption law for 32 years. I'm a  
24 member of the Oregon State Bar and the Federal Bar.  
25 I was a founding member of the American Academy of

1 Adoption Attorneys and the Oregon State Bar of Family  
2 Law Section Standing Committee on Adoption.

3 I come here basically speaking on behalf of  
4 myself and the practice that I have in the area of  
5 adoption.

6 In reviewing the proposed regulations here,  
7 I do believe there are multiple problems with the  
8 proposed rules that, if adopted, will directly or  
9 indirectly undermine the purpose and functioning of  
10 the Indian Child Welfare Act, and that this can be to  
11 the detriment of Indian children and families and  
12 tribal culture.

13 I'd like to state now that I do support the  
14 written comments that were submitted by the American  
15 Academy of Adoption Attorneys. And I'm not going to  
16 address all of the issues that I see within the Act.

17 I'd like to focus on two. One is the  
18 breath of the proposed rules. And the second is the  
19 definition of imminent physical danger or harm.

20 I believe that the proposed rules exceed  
21 the authority granted to the Department under  
22 25 U.S.C. 1952. Congress gave the Department limited  
23 authority to enact rules regarding tribal  
24 jurisdiction and grant-making.

25 I think by exceeding this authority in --

1 in the way that these rules have been promulgate and  
2 what they contain, the Department is inviting both  
3 state and federal court challenges.

4 We currently have over 35 years of court  
5 decisions. And I don't know that we need to have  
6 more litigation, because we have new rules, and  
7 trying to decide which of the old apply, which of the  
8 new apply.

9 But I think that these challenges will rise  
10 in the areas of the State's individual right to  
11 legislate in area of family law matters. I think  
12 also in the area of the Indian parents' right to  
13 privacy under the federal constitution. And lastly,  
14 a State's right to enforce its criminal law in cases  
15 where child abuse is or is likely to become an issue.

16 In looking at the issue of imminent  
17 physical danger or harm, the definition of a Proposed  
18 Rule 23.2 states that, quote, Imminent physical  
19 damage or harm means present or impending risk of  
20 serious bodily injury or death.

21 This is too low of a standard to be applied  
22 to Indian children, because it fails to protect them  
23 from other behaviors which they currently are  
24 protected from that are injurious and even  
25 criminal -- sexual abuse, domestic violence, child



1 labor exploitation, exposure to drug-making  
2 activities, and psychological injuries, none of which  
3 would show necessarily an imminent danger of physical  
4 harm or damage.

5 Indian children are entitled to the same  
6 level of protection as non-Indian children under  
7 existing child protection statutes under state law.  
8 And I don't -- I would hesitate to support anything  
9 that lessened their ability to be protected.

10 This definition has impact on other  
11 proposed rules.

12 For example, Proposed Rule 23.114, which  
13 requires that in instances where the Court finds an  
14 Indian child was improperly removed from the custody  
15 of his parent or Indian custodian, the Court must  
16 terminate proceeding and immediately return the child  
17 to its parent or custodian without regard or  
18 consideration for the best interest of the child or  
19 other possible criminal actions against the child by  
20 the parent or someone else in their household.

21 In order to help with maybe restating that  
22 definition, so that it more properly protects Indian  
23 children, I would add to the definition of imminent  
24 physical damage or harm to say -- following injury or  
25 death, to put, And any or action which would

1 constitute a crime against the child under state or  
2 federal law.

3 I think that's a minimum protection that  
4 Indian children are entitled to.

5 In conclusion, I'd like to say that  
6 adopting the present rules, I think, in this form  
7 would be very harmful to children and Indian  
8 families, the very ones that ICWA was enacted to  
9 protect.

10 I believe the Indian Nation, the tribes  
11 deserve to have rules and guidelines that support the  
12 reasons that ICWA was enacted to begin with, to  
13 protect Indian children, and to help preserve the  
14 heritage and cultural identity of Indian tribes.

15 I'm also concerned of all the hearings that  
16 are being held and people given the opportunity to  
17 speak, none of them are scheduled for east of the  
18 Mississippi. And I don't know why that is.

19 So I think that we're cutting off a large  
20 portion of our geographic population, not giving them  
21 an opportunity to comment on these rules the same way  
22 that we have here west of the Mississippi.

23 I also think that by restricting the  
24 privacy rights of Indian parents for establishing a  
25 lower threshold for protection of Indian children,

1 the new guidelines and proposed rules devalue the  
2 tribe's members, and undermine the value of the  
3 tribe's heritage and cultural identity.

4 Thank you for this opportunity to express  
5 my opinion. And I appreciate the work that you are  
6 doing. And I appreciate the stories that I've heard.

7 Because having practiced in the area of  
8 adoption law for so many years, I have a great deal  
9 of respect for Indian tribes and Indian families.  
10 And I think they deserve better than these proposed  
11 rules.

12 Thank you.

13 LARRY ROBERTS: Thank you.

14 And there's just one point of clarification  
15 that I want to make, and just a general matter in  
16 terms of our rule-making. A lot of times what we  
17 hear is that we should be going to various states.

18 And we can't go to every state in our  
19 rule-making, generally. But that's why we have  
20 national teleconferences. And those national  
21 teleconferences are created the same way these are.  
22 Everyone can participate. They're transcribed and  
23 then become part of the record.

24 LICIA MCCONELL: Hello. My name's Licia  
25 McConnell. And I'll be speaking on behalf of my

1 family.

2 I'm an enrolled member of the Confederated  
3 Tribes of the Umatilla. My dad was adopted when he  
4 was two, and he was adopted by an Irish family and  
5 taken away. And he lived in Idaho.

6 And because he was adopted, he didn't get  
7 the -- the things that are passed down to the family.  
8 And because of that, I never got those either.

9 I was taken away from my family when I was  
10 eight. And I was placed in a non-Native home,  
11 because my dad was not enrolled, and neither was I.

12 Because my dad was adopted, his files were  
13 sealed, and we couldn't become enrolled members until  
14 a year-and-a-half later. That's how long it took to  
15 unseal those files.

16 When I was placed in a non-Native home, it  
17 went well at first, because I had my older sister,  
18 and I had my little brother, and I had once-a-week  
19 visits with my birth family.

20 As I stayed in the home, the more it  
21 progressed, I stopped going to powwows and I started  
22 going more to church. And I did a lot of more things  
23 that weren't as Native, and gradually I became more  
24 assimilated.

25 And when I was in the fifth grade -- and I

1 don't know how old I was then. But when I was in the  
2 fifth grade, they decided that they wanted to have  
3 guardianship of us. And I thought that was a really  
4 good idea, because my older sister and my little  
5 brother and I could all stay together. And I thought  
6 that we would still have visitations with our birth  
7 parents.

8 But as soon as they got the guardianship of  
9 us, things became different. And I was no longer  
10 allowed to go to powwows. And they started sending  
11 me to Christian schools. And I never got that  
12 cultural part of me.

13 And that was really hard. Because even  
14 though I was Native American, I never got that --  
15 that gratification.

16 And as I got older, I got more cut off.  
17 And they started homeschooling me. And the only  
18 books that I could read were the Bible and dictionary  
19 and my textbooks, which, you know, doesn't leave a  
20 whole lot of room.

21 My older sister went through a similar  
22 thing, and we became targets in the home.

23 And for me, when we were enrolled, my birth  
24 parents -- or not my birth parents -- my foster  
25 parents at the time decided to take our per cap and

1 file -- and say that we were getting braces. But  
2 they really just used that money to landscape their  
3 yard. Which I don't think that would have happened  
4 if I was in a Native home.

5 I made the choice in October last year to  
6 leave the foster home. And doing that -- well, my  
7 sister had already left when I was in the second  
8 grade. But doing that, I left my little brother  
9 behind. Which has been really hard, because we were  
10 the only constants in our life.

11 And he still lives in that home. And it's  
12 really hard, because his foster parents have made it  
13 so I can't see him. And because he's under a  
14 guardianship, the Tribe can't do anything, and  
15 neither can the State.

16 I believe that if we were first placed  
17 inside a Native home, that none of this would have  
18 happened. So that is why I think that these  
19 regulations should be enforced.

20 Thank you.

21 ARNESTO SAUK: Hello. I'm Arnesto Sauk  
22 (sic). I'm -- I'm a foster youth. I am in the ICWA  
23 unit on the east branch DHS.

24 I'm here on behalf of myself. I'm just  
25 curious -- I'm just curious why -- like, curious on

1 just people's life. And you know, I would like to  
2 share my life a little bit.

3 You know, I was adopted at age three. And  
4 my biological parents both are deceased, because they  
5 were unable to take care of me. Now, I was just -- I  
6 didn't get a chance to be in a -- in a home of my  
7 Native tribe. I was just given into a white family,  
8 because they just thought it was easier to do.

9 I was born in Alaska. So I guess, you  
10 know, we didn't have a lot of, you know, regulations.  
11 And it's, like -- I don't know. It's stuff that  
12 would make a lot of sense to me. As in Oregon,  
13 everything is just -- it seems more clear.

14 So at age 12 I was put in a foster care  
15 system, and I was just in a -- many homes. I've  
16 never been in a -- in a Native home.

17 And you know, all of the homes I've been in  
18 now aren't -- they don't -- they don't -- they don't  
19 really support my Native traditions. They -- they  
20 don't really do anything. All they do is -- I've  
21 been in homes that all they care about is money,  
22 treating me really bad, not treating me with respect.  
23 They don't support any of my cultural history or  
24 anything.

25 In fact, they don't care for what I do.

1 They, you know, say, You just got to -- you stay out  
2 of trouble. Be here by this time.

3 They don't even acknowledge, you know, who  
4 I am, you know. They don't understand who I am. And  
5 I've gone through a lot of loss.

6 Now, I could grief on -- you know, I've had  
7 many bad experiences. But why do that, when I can  
8 say there's a lot of positive stuff in me? That  
9 being in DHS, you know, has been a help for me. That  
10 the -- my caseworker, who's here, actually -- prior  
11 caseworker -- who has done so much work on trying to  
12 locate my -- my siblings and stuff in Alaska. Who --  
13 whoever -- I don't know.

14 Like, I think if I wasn't in the ICWA unit,  
15 if my case wasn't an ICWA case, I wouldn't be able to  
16 meet my family or try and meet my siblings or  
17 whatnot. And I really appreciate the work that, you  
18 know, the ICWA unit has done for me.

19 And I -- it's -- it's -- I think it would  
20 speed up the process a whole lot. And you know, I'm  
21 just -- I'm just happy that -- you know, I've had a  
22 rough childhood. You know, because I think this --  
23 and that's what makes me strong, you know,  
24 emotionally stronger, mentally stronger,  
25 spiritually -- everything.



1           It's just -- you know, I wouldn't be here  
2 standing talking you to guys right now if I didn't  
3 have this rough childhood.

4           Thank you.

5           LARRY ROBERTS: Thank you.

6           And so I just want to say, I know that  
7 it's -- it's hard for everyone in this room to  
8 provide testimony for this record. And I really  
9 appreciate the courage of -- of the youth to share --  
10 share their information with us.

11           And so thank you. Thank you for attending  
12 the session. And thank you to everyone for sharing.

13           REBECCA LARSON: My name is Rebecca Larson.  
14 I'm a proud member of the Quinnault Indian Nation in  
15 Washington. I am a second generation survivor of  
16 prior ICWA adoption.

17           I'm here in full support of the regulation  
18 that -- that we're now talking about, finally, and  
19 some teeth to some things that are needed to protect  
20 our children.

21           My mother was part of the Scoop Era that  
22 the BIA at that time funded and -- and cosponsored,  
23 in my opinion. She was taken, physically, from my  
24 grandmother off of our reservation.

25           She was adopted quickly, within a matter of

1 days, to a family here in Oregon, a non-Native  
2 family, where ICWA obviously was not in place to  
3 protect her.

4 She was abused and -- sexually and  
5 physically and emotionally in this home by these  
6 non-Native people who didn't understand her -- her  
7 culture or her pain from being stolen from -- from  
8 our family in Taholah.

9 When she became pregnant with me, this  
10 wonderful white family, who always wanted her to feel  
11 grateful that they had saved her life, sent her away  
12 to a Catholic boarding school for unwed mothers --  
13 because we still had them in those days -- which had  
14 become a clearinghouse for more of our children.

15 And she was forced to give me up for  
16 adoption. She was not allowed to hold me or to see  
17 me.

18 My mother left that place a really broken  
19 young girl. And she lived the rest of her life on  
20 the streets of Portland and Seattle.

21 I reunited with my mother after I was an  
22 adult and had a daughter of my own. And my mother  
23 passed away two years ago.

24 When I -- the coroner called and asked me  
25 to come and identify her body. On her death

1 certificate it stated that she died of an accidental  
2 drug overdose.

3 My mother died of cultural genocide that  
4 was forced upon her by the State, by the government,  
5 and by an adoption agency which sells our children.

6 I, too, was adopted very quickly into a  
7 non-Native home. There was no ICWA to protect me.  
8 I, too, was physically and emotionally abused in this  
9 home by these people who wanted me to be grateful  
10 that they saved this poor Indian girl.

11 I stand before you today also, now, as a  
12 woman who is going through, in region two in  
13 Washington state, a licensing process to become a  
14 foster parent as a single woman, Native woman. I  
15 work for the Suquamish (sic) Tribe, and not in child  
16 welfare.

17 But this is obviously an issue that's very  
18 close to my heart. And things that I have found  
19 going through this process are disturbing.

20 I -- I cosponsored an ICWA training where  
21 they used a video that I have produced about my  
22 story.

23 And it was full of non-Native foster  
24 parents who -- who said appalling things to -- to us  
25 about, Oh. Well, I came today, because I'm really

1 confused. My caseworker in region two said that  
2 ICWA's just a piece of paper, that I don't have to  
3 worry about those kinds of things. And I'm really  
4 confused. And I wanted to come here today to find  
5 out what the truth is.

6 And this was less than two months ago.

7 And so enforcement of ICWA and providing  
8 that for -- for our states and for our -- our region,  
9 it is so important to be able to have that  
10 standardized enforcement.

11 Because the things that I am seeing from  
12 going through the process with the State, it is not  
13 being complied with or applied when it comes to our  
14 children.

15 And just real quick -- another woman  
16 responded, asking a question about an Indian  
17 placement. And she said, I've -- you know, I just  
18 have some questions about that.

19 And I asked her, Are you -- are you a  
20 tribal placement home?

21 Complete silence.

22 And another woman responded and said, No.  
23 But I am. And I've been licensed for six years. And  
24 I have never been given a tribal placement.

25 And so we need these.

1           And I appreciate you. And thank you for  
2 taking the time.

3           LARRY ROBERTS: Thank you.

4           ESTELLE NAMAHOE: My name Estelle Namahoe.  
5 I'm an enrolled member of the Navajo Nation.

6           I'm here today because my story is similar  
7 to many that are here and aren't here.

8           I was taken from the Navajo Reservation  
9 when I was two-and-a-half, after my mother died. I  
10 was taken by a group of Christian women. And they  
11 went to Orange County, California and were trying to  
12 find homes for us.

13           We ended up being placed in Mormon families  
14 and separated. I did not know my siblings until I  
15 was in my thirties.

16           My family moved to Hawaii. And that's  
17 where I was raised, far from my culture and my  
18 people, my language.

19           **A part of my healing process as an adult**  
20 **has been to work in child welfare and with Native**  
21 **families.**

22           **What I found working for tribes and for**  
23 **states in child welfare is that I believe that the**  
24 **European system of bringing children into foster care**  
25 **is nothing more than the old boarding school and**

1 forced assimilation.

2 We don't have enough Native families. And  
3 we often have barriers to certify Native families, so  
4 our children are forced to go into non-Native  
5 families and pick up their practices of that foster  
6 home.

7 Safety is also our goal in child welfare.  
8 But it's often compromised with the wiping out of  
9 family ties, culture, language, and the knowledge  
10 that we are the First People.

11 European immigrants cannot continue the  
12 conquering of the First People. We were here first.  
13 And we have rights, rights to our land, to our  
14 families, to our traditions.

15 And we will take care of our children. And  
16 we will take care of our families, if we don't have  
17 other people telling us how to do that and putting  
18 limitations on us. We are strong people.

19 ICWA guidelines are important. They can  
20 certainly be expanded. But this is a good start.

21 We're not a dying people. And we are not  
22 submissive. And we will be around for a long time.  
23 And we won't have continued trauma, pain or loss.

24 ALLIE GREENLEAF MALDONADO: My name is  
25 Allie Greenleaf Maldonado. I am the Chief Judge for

1 the Traverse Bay Bands of Odawa Indians. And I am  
2 here today to support the regulations that are being  
3 promulgated.

4 We need these regulations. And I want to  
5 tell you about two cases that I had when I was a --  
6 prior to being chief judge for my tribe, I was the  
7 assistant general council for nine years.

8 And during that time period I litigated  
9 several ICWA cases. In fact, that was a large part  
10 of my practice with my tribe.

11 And I want to tell you about two of those  
12 cases.

13 And the first case I'm going to tell you  
14 about, we -- the Tribe did not receive notice of  
15 these -- of this case until the case had been ongoing  
16 for two years. And it wasn't until one of the  
17 grandmas reached out and contacted our child welfare  
18 commission, and the Tribe then contacted the State,  
19 did we receive -- did the Tribe receive official  
20 notification of this proceeding.

21 And all three of the girls in this case  
22 were tribal citizens.

23 We intervened in the case. And the Judge  
24 that was sitting in on that case was brand new. She  
25 was a newly-elected judge. Not only was this her

1 first child welfare case, this was her -- or her  
2 first Indian child welfare case, it was her first  
3 child welfare case.

4 So she was looking for guidance from the  
5 attorneys that were present on how to proceed. And  
6 the State attorney and the guardian ad litem in that  
7 case were vigorously against application of the  
8 placement preferences in ICWA, because the girls had  
9 been illegally in this placement for two years.

10 And they worked very hard to convince the  
11 judge that this -- that the time that had passed and  
12 the bonding were good cause to deny transfer of the  
13 case.

14 Now, while I was litigating this case, the  
15 attorney for the State gave me a call. And he asked  
16 me if we could speak off the record. So I won't say  
17 his name.

18 And he said, Do you really believe what  
19 you're arguing in this case about the placement  
20 preferences? Do you think that this non-Indian,  
21 non-relative placement is illegal and in violation of  
22 ICWA?

23 And I said, Yes. I do think that.

24 He said, Off the record, will you walk me  
25 through that.



1           And I opened the NARF page on my computer,  
2           and asked him to do the same on his. And we walked  
3           through it together.

4           Now, that -- that moment in time wasn't  
5           going to help me in my case. Because he was a  
6           professional, and he was going to do his job and  
7           represent the State, as he had to do.

8           But it was a pivotal moment for him, and it  
9           was actually very pivotal to the Tribe. Because he  
10          would later come to the table and be part of a group  
11          of attorneys that wrote a bench book for judges, that  
12          would assist judges in understanding the Indian Child  
13          Welfare Act.

14          But in this moment he continued to do his  
15          job very successfully. And that judge -- you know,  
16          she was so -- so inherently annoyed at how vigorously  
17          I was arguing, that she actually threatened to hold  
18          me in contempt of court. And I lost that case.

19          About two years later I was speaking at the  
20          University of Michigan Law School, and -- about the  
21          Indian Child Welfare Act. And I was very surprised  
22          to see her sitting in, like, the second row. I got  
23          very nervous. I wasn't sure if I was about to get  
24          held in contempt of court again. I wasn't sure what  
25          was going to happen.

1           And I wasn't sure if she was going to  
2 interrupt me during my talk. But she didn't.

3           And afterwards I came down, and I thought,  
4 Whew, this is over. But she walked right up to me.  
5 And she said, I don't know if you remember me. And  
6 she said her name.

7           I was like, Of course I remember.

8           She said, I want to apologize to you. I  
9 did not understand how ICWA worked. And I was  
10 misguided by the -- by the guardian ad litem and the  
11 proponents in the room. And if I had understood what  
12 I know now, I would have ruled and done things  
13 differently.

14          She needed these regulations.

15          A case that happened right after that, the  
16 judge in that case -- again, we had a child at the  
17 hospital. The grandmother came to the hospital. And  
18 the day that baby was born, she gave her her Indian  
19 name.

20          Nonetheless, the social workers would not  
21 consider her as a placement. Instead they placed her  
22 in a non-Indian, non-relative placement in violation  
23 of ICWA. Because one of her siblings was already  
24 there and had been there for so long. And so they  
25 called that an Indian placement.

1           So the Tribe tried to intervene. And  
2 everyone was so frightened that if we intervened, we  
3 might then transfer, that we were denied the right to  
4 intervene. And this was immediately after they  
5 terminated the dad's parental rights. So this case  
6 had been going on now for two years.

7           So in a case that was landmarked in  
8 Michigan, the Court of Appeals overturned termination  
9 of parental rights and sent it back -- back down to  
10 the lower court.

11           And from the bench, that judge  
12 apologized -- and I have that transcript -- he  
13 apologized because he said, prior to that case, he  
14 didn't really understand the purpose of ICWA. That  
15 everyone was fighting to keep the tribe from  
16 intervening and transferring, including him, because  
17 they didn't trust that the tribe would do what was in  
18 the best interest of those kids.

19           And that he now understood that that's the  
20 whole point of the Indian Child Welfare Act. That  
21 Indian tribes love their kids, too. And that we are  
22 the ones that should be entrusted with deciding  
23 what's in their best interest.

24           And just to follow up on that case, when  
25 that case -- he did transfer that case to tribal

1 courts. We were able to do something that state  
2 courts couldn't have done, because of state laws'  
3 inflexibility.

4 We allowed the non-Indian foster home to  
5 adopt that child and grandma. And they were able to  
6 have joint custody. And grandma would have the child  
7 on weekends and holidays.

8 And grandma is a fluent language speaker.  
9 She knows our traditional medicines. And that child  
10 is growing up with her culture and her community.  
11 Her sister's a champion hoop dancer, and she's  
12 learning the hoop dance. None of that would have  
13 happened.

14 And that judge, he now sits with me on the  
15 Tribal State Judicial Forum. And the Tribal State  
16 Judicial Forum will be putting forward a letter of  
17 support for these regs. On that forum, 12 state  
18 judges, 12 tribal court judges.

19 Thank you for your work.

20 LARRY ROBERTS: Thank you.

21 SANDY WHITE HAWK: Good morning. My name  
22 is Sandy White Hawk. I was born on the Rosebud  
23 Reservation in 1955. I was the third child of Nyna  
24 Lulu White Hawk York Renselman. And I was adopted  
25 out when I was 18 months old.

1           It was during that time period that you'll  
2 hear many stories of that systematic removal of our  
3 children. Mine is one of the stories where an uncle  
4 recounted that the -- we remember the day the social  
5 worker drove into the driveway, scooped you up, put  
6 you in a car and took you off. And I didn't return  
7 to them until July of 1988.

8           My story is like many who are placed in  
9 white missionary homes, who had no understanding of  
10 who we are. I suffered a great deal of emotional,  
11 physical, sexual, and spiritual abuse.

12           Eventually, through my healing, I saw the  
13 need to formalize a process to gather us together, to  
14 talk and to share, to encourage and to heal.

15           And I wanted to express today that while we  
16 are always talking about the Indian child and the  
17 child, it is not just about that. As Indian people,  
18 we can't separate the child from the family. We  
19 can't separate the family from the community. Even  
20 if we are raised far away. Even if we live in the  
21 urban areas.

22           And you hear also, and will continue to  
23 hear, that situations have not changed a whole lot  
24 between the '50s and '60s and the placements of young  
25 children today, as you heard today from these two

1 individuals.

2 I wanted to share with you today two  
3 thoughts that I had.

4 One is in the proposed rule for qualified  
5 expert witness. You actually didn't word this  
6 exactly as I would have worded it. I just --  
7 actually just thought of this, because I thought  
8 there was going to be more addition in it.

9 But for qualified expert witnesses, I  
10 really believe that those who have been through this  
11 lived experience of what it's like to have the  
12 long-term impact of removal, not having your image  
13 mirrored back to you in any way in your community, to  
14 not know anything about your history -- someone needs  
15 to articulate that in the court, to explain what will  
16 happen to that child as they develop over time.

17 One of the most important developmental  
18 stages that we talk about in child development is the  
19 mirroring back and seeing our -- ourselves within our  
20 community.

21 Well, an Indian child does not have that  
22 mirrored reflection of their image. And as we  
23 develop, we have to find a way to negotiate that.  
24 And unfortunately, most of the time it's a negative  
25 formation that we make.

1 I'd like to share with you that there's a  
2 study that the First Nations Repatriation Institute  
3 and Organization that I've founded has partnered with  
4 the United -- the University of Minnesota. And we've  
5 put together a research study called, The Experiences  
6 of Adopted and Fostered Individuals: An Anonymous  
7 Study to Break the Silence.

8 And I just want to share with you a few  
9 preliminary findings that we have.

10 Twenty-three -- I'm just going to speak to  
11 the ninety-five individuals who responded who said  
12 that they have reunited with some member of their  
13 people.

14 Twenty-three of the ninety-five experienced  
15 sexual abuse in their adoptive home. Forty-four of  
16 ninety-five experienced physical abuse. Forty-seven  
17 of the ninety-five experienced emotional abuse.  
18 Forty-three contemplated and planned suicide. Twenty  
19 attempted suicide. Fifty-one of them say that they  
20 have been in therapy or are in current therapy to  
21 address the emotional and physical abuse that they  
22 experienced in their home.

23 Now, I know that there are loving homes.  
24 And this is not my argument.

25 But what I really want to express as well

1 is that we know that not all of these emotional  
2 difficulties are connected to abuse. You can  
3 experience extreme profound grief and loss in the  
4 midst of a loving home.

5 And sometimes it's even harder for that  
6 individual to express that loss in a loving home.  
7 Because how can that child tell their most loving  
8 parent, I need to know who I am?

9 So it's at great cost that they've received  
10 that love. And that adoptive parent has not been  
11 given the education that they need to understand how  
12 to expand the family and help that child reconnect  
13 and expand.

14 When really true condition -- unconditional  
15 love exists, there's room for everyone. But we're  
16 not guaranteed that.

17 When an adoption decree is signed, no one  
18 goes back into that home to see if that child is  
19 safe, to see if they're being abused. It's assumed  
20 that the problem has been solved, and the child is  
21 put in a safe environment, because that home passed a  
22 background check. So something needs to be done  
23 there.

24 One last comment. You're going to hear  
25 over and over and over about bonding. But there is



1 an original bond that exists that's not being talked  
2 about or addressed. And that original bond is the  
3 bond that we have to the mother who carried us those  
4 nine months.

5 All the energy around that birth that took  
6 place, if it is during a hard time and a stressful  
7 time, we are compelled to return and reclaim. We  
8 have these words: Reunification. Reconnect.

9 Well, if we didn't have this original bond,  
10 we would not be using those terms. And that needs to  
11 be respected and honored.

12 One last comment. I just thought of this  
13 as I was sitting here. Because over the years we've  
14 talked in our circles about how there is no penalty.  
15 There's no legal penalty. There's nothing.

16 I get a parking ticket. But a judge, a  
17 guardian ad litem, a social worker, anyone who's been  
18 in noncompliance of ICWA receives no fine. How do I  
19 receive a parking ticket, and they not receive any  
20 sort of consequence, when a child's well-being is in  
21 their charge?

22 Thank you for your time.

23 LARRY ROBERTS: Thank you.

24 So we're running up towards noon. We'll  
25 have comments from everyone that's still in line.

1           But I also want to say that if you haven't  
2 had a chance to make a comment today, please submit  
3 your comments in writing. All of your comments are  
4 going to be submitted -- or considered.

5           And you can also participate on the  
6 national teleconference as well.

7           So thank you.

8           JACK TROPE: Hi. Thank you. And I'll keep  
9 this very brief. Because I know we're running out of  
10 time.

11           I'm Jack Trope, Executive Director of the  
12 Association of American Indian Affairs. We will be  
13 providing detailed comments. And so I'm just going  
14 to touch on a couple of quick things that I think  
15 need to be made clear on the record.

16           For way of background, the Association in  
17 American Indian Affairs was the organization that  
18 really started the push for the Indian Child Welfare  
19 Act in the late 1960s and early 1970s, convened a  
20 series of meetings before Congress had any interest  
21 in this issue at all, and brought together tribal  
22 people, child welfare people.

23           And the first oversight hearing in 1974 was  
24 organized by the Association. Lead witness was the  
25 Director of the Association.

1           So I've been executive director for  
2 13 years, involved with the organization for 27. And  
3 so when you work for this organization, you learn all  
4 about this history.

5           And so I just wanted to point out one  
6 thing: When the law was passed in 1978, and then the  
7 process began that led to the guidelines, our  
8 organization, and an organization that -- the  
9 National Tribal Chairman's Associates, which no  
10 longer exists, did subcontract with the Bureau of  
11 Indian Affairs to go out and do listening sessions  
12 and help develop what ultimately became a revised  
13 form, the guidelines.

14           The idea at that time was that these were  
15 going to be regulations. And our organization, and  
16 NTCA understood it in that way.

17           But -- and our organization, by the way,  
18 worked closely with House and staffers in working on  
19 drafting the bill. Our attorneys were actively  
20 engaged in that. And there was an expectation that  
21 there would be regulations.

22           The decision was ultimately made within the  
23 Bureau of Indian Affairs to issue guidelines.

24           And I would mention that both the Bureau of  
25 Indian Affairs and the Department of Justice opposed

1 the Indian Child Welfare Act. Both recommended that  
2 President Carter veto the Act.

3 And he ignored that advice and signed the  
4 Act.

5 So it's really not fair to say that the  
6 drafters of the bill understood that there wouldn't  
7 be regulations. In fact, I think that the contrary  
8 is true.

9 I would also mention that the language in  
10 the statute is quite broad in terms of that  
11 regulatory authority. That the case law over the  
12 last 35 years makes it clear that that kind of  
13 delegation is adequate for the issues of regulations.

14 And in fact, the experience of the last 35  
15 years with court decisions that are all over the  
16 place on various issues also is the basis for you  
17 moving forward to provide some consistency across all  
18 of the states as to how the Indian Child Welfare Act  
19 will be applied.

20 So that's the one point I wanted to make.

21 The second thing I want to talk about just  
22 briefly is this -- this notion about -- what was said  
23 about good cause to deviate from the placement  
24 preferences.

25 I don't see anything in this regulation

1 that prevents a court from having a good cause  
2 hearing. So I'm not sure what that's about.

3 And I don't see anything in this regulation  
4 that prevents a court to considering sibling  
5 placements and whether kids are placed with siblings.  
6 I'm not sure why that's been raised as an issue.

7 But I think the provision about bonding and  
8 attachment -- Dr. Martinez and -- and other -- a  
9 whole bunch of other folks talked about bonding,  
10 and -- and attachments. And White Hawk talked about  
11 it.

12 All the provision says is that ordinary  
13 bonding and attachment in a non-preferred placement  
14 is not cause to find extraordinary circumstances to  
15 deviate.

16 Now, the type of situation that was talked  
17 about, where -- and I think that the person's no  
18 longer here, unfortunately. But the type of  
19 person -- or the type of situation that she talked  
20 about, where there were diligent searches for many  
21 years, where there was strong connection with the --  
22 with the Navajo family, where there were siblings  
23 placed together, that's not the typical situation  
24 we're talking about.

25 But what we're talking -- what we're more

1 often talking about is a situation where there's a  
2 non-preferred placement. Very little effort is taken  
3 to find a preferred placement. Or in some cases,  
4 there's even deliberate actions in the litigation to  
5 delay a final determination so that the child can  
6 stay in a non-preferred placement. And that's the  
7 argument that's being made bonding and attachment.

8 And so I think what we're looking at here  
9 is a regulation designed to promote placements in the  
10 best interests of Indian children, more often than  
11 less.

12 Why more often? Because if the placement  
13 references are followed, and reasons for deviating  
14 from them are -- are lessened, then you're going to  
15 see many, many more kids placed in their best  
16 interests, as everybody here has said.

17 And the last point I'll mention is we are  
18 conducting research on some of those issues. I think  
19 what Dr. Martinez said about some of -- about how  
20 courts actually apply those concepts in practice is  
21 very different from what the theory is. That a lot  
22 of the people testifying in this don't really have  
23 expertise.

24 There are a lot of studies about how the  
25 whole theory is based on a western model of, you

1 know, a mother and a child's bond, and ignores  
2 multiple bonds and extended family bonds and other  
3 practices that take place in cultures other than  
4 Euro-American culture.

5 So we will submit with our testimony a lot  
6 of that research as well. I think that's, of course,  
7 what Dr. Martinez was saying, and what Sandy White  
8 Hawk was saying.

9 So thank you.

10 LARRY ROBERTS: Thank you.

11 MATT NEWMAN: Good morning. My name is  
12 Matt Newman. I'm a staff attorney at the Native  
13 American Rights Fund. I'm based in the Anchorage,  
14 Alaska office.

15 And I'm here this morning, first and  
16 foremost, just to thank you for the regulations. Our  
17 office will be submitting more formal written  
18 comments with more substantive analysis.

19 But I'd just like to take the time this  
20 morning and mention a few things.

21 The first is that the jurisdiction in which  
22 I practice has taken some unique interpretations of  
23 ICWA since it became law.

24 And your definitions section, which begins  
25 laying out definitions for important terms, such as

1 active efforts, is going to go a long way in bringing  
2 the uniformity and the consistency to ICWA's  
3 application that Congress originally intended and  
4 that, unfortunately, various states and -- and state  
5 court decisions have each gone in their own direction  
6 over the years through interpretation.

7 Secondly, I'd like to mention good cause --  
8 good cause, specifically, for deviating from ICWA's  
9 placement preferences, both the foster care and  
10 adoptive placement preferences. And the gentleman  
11 that spoke earlier had mentioned that the idea that  
12 good cause was meant to embody flexibility.

13 But it's an unfortunate fact of the matter  
14 in the decade since ICWA was passed that flexibility  
15 and good cause -- that flexibility has evolved into  
16 loopholes.

17 And in my ICWA practice in Alaska, I have  
18 had judges -- and we have seen judges start issuing  
19 opinions that good cause exists, because a potential  
20 placement is too old.

21 Good cause exists because a potential  
22 placement in a village only has wood heat. And these  
23 good cause loopholes are being used to ensure that  
24 Alaskan Native children are not placed in  
25 ICWA-compliant homes.



1           And with the regulations listing out and --  
2           and saying what following grounds just cannot be  
3           considered good cause, that's a step in the right  
4           direction. And that's going to have a big impact in  
5           Alaska in a big way.

6           I would just like to close. I -- you had  
7           mentioned earlier that you can't go to every state.  
8           But I would recommend, with Alaska being home to 229  
9           federally-recognized tribes, 40 percent of the tribes  
10          in the United States, Alaska really needs to have a  
11          public hearing.

12          And ICWA -- of all the laws and federal  
13          Indian law, ICWA has the most impact in Alaska.  
14          Alaskan Native children constitute 20 percent of  
15          Alaska's youth population. 63 percent of children in  
16          foster care in Alaska are Alaskan Native.

17          ICWA has a lot of impact. These  
18          regulations are going to have a lot of impact. And  
19          as much as we're encouraging folks to get on that  
20          teleconference, in villages where VHF radio is the  
21          only means of communication, a lot of voices are not  
22          going to be heard as a result.

23          But I'll just conclude, because I know  
24          others are waiting.

25          Thank you again for these regulation. I

1 very much look forward to their finalization and  
2 starting to get my state back on track.

3 LARRY ROBERTS: Thank you.

4 JOHN CHALLY: My name is John, with an H --  
5 Chally -- C-H-A-L-L-Y. I'm an attorney in Portland,  
6 Oregon.

7 My focus of practice has been adoptions for  
8 35 years. And it is in no way focused on Indian  
9 Child Welfare Act issues. But in a general practice,  
10 it's something that we come into contact with fairly  
11 frequently.

12 It can be one of the most frustrating parts  
13 of our practice because of the circumstances we find  
14 ourselves in. Which oftentimes start with, Oh. And  
15 there may be some Native American background.

16 You start with that point. And you sit  
17 down, and you start talking to the person who's  
18 presenting this case, which is, in most cases a -- a  
19 single woman who is very guarded in what they're  
20 willing to share about their background. Very  
21 guarded in what they're willing to say about the  
22 circumstances of conception. Very guarded about the  
23 information they're willing to provide me over  
24 their -- their background and places where I might go  
25 to better understand the circumstances of their

1 lineage.

2 It can be amazingly difficult to do when  
3 you add in the fact that the woman in my office has a  
4 right to confidentiality with respect to my  
5 representation of her.

6 It means that I can't go knocking on doors  
7 trying to find out what her -- what tribal  
8 affiliation an ancestor may have had. I am  
9 prohibited from doing that.

10 And a woman of -- with Indian heritage is  
11 like every other woman, as she's presenting to us.  
12 She is careful about who she shares her circumstances  
13 concerning the adoption plan. She's careful with us  
14 about the circumstances that she's willing to share  
15 with her own family and community with regard to  
16 that.

17 One of the most common things that we find  
18 ourselves in is that we never get any clear  
19 information with respect to the -- the background.  
20 We're told sometimes, I don't know. I've never been  
21 on the reservation.

22 Oftentimes I'm sure that's true. Sometimes  
23 they don't know what the reservation -- where their  
24 reservation is. They can't identify a tribe or any  
25 other background.

1           And we're forced into a situation of trying  
2 to provide notice concerning this to the Bureau of  
3 Indian Affairs.

4           I'll bet that I've done that someplace  
5 between 50 and 100 times. And there has not been a  
6 single circumstance where I have received information  
7 back providing me with a basis to go forward and to  
8 notify a tribe of that background.

9           So it's the twin circumstances of -- of  
10 limited information to begin with, followed by the  
11 natural and understandable need for confidentiality  
12 in the relationship that results in a failure to  
13 contact the tribe and to provide the notice that  
14 some -- and I understand -- where a notice of some of  
15 these circumstances of a voluntary placement is -- is  
16 questioned by some.

17           But the fact of the matter is, that even if  
18 you really a wanted to provide that notice, it can  
19 oftentimes be very difficult to do.

20           I actually have written comments that I  
21 would like to submit at this point. Many of them are  
22 critical of the individual sections of the proposed  
23 regulations. And there's -- it would be quite  
24 inappropriate for me at this point to try to go  
25 through all of those.

1           So I would like to just provide the written  
2     comments.

3           LARRY ROBERTS:    Sure.   Thank you.

4           HALEY CREE:   My name is Haley Cree.   I work  
5     for the St. Regis Mohawk Tribe.   I'm the Indian Child  
6     Welfare Act coordinator for the only program -- ICWA  
7     program in New York State.

8           I am grateful for these regulations for my  
9     program, especially the active efforts from the  
10    beginning of the case or investigation that may  
11    result in the placement of an Indian child.

12          For my program, this means just working  
13    with us from the beginning of dealing with Social  
14    Services in a case that's involving our community  
15    member.

16          And with this, I believe that we could have  
17    less cases go to court.

18          And thank you.

19          LARRY ROBERTS:    Thank you.

20          JILL KEHAU LANI ESCH:   Aloha.   My name is  
21    Jill Kehau Lani Esch.   J-I-L-L -- K-E-H-A-U --  
22    L-A-N-I -- E-S-C-H.   I am the Omnibus President for  
23    the American Indian Families in the state of  
24    Minnesota.

25          Based on the 2013 Minnesota child welfare

1 report, American Indian children living in Minnesota  
2 have the highest rate of contact with the child  
3 protection system in the Nation.

4 This report stated that the American Indian  
5 children were 15.5 times more likely than a white  
6 child to be placed in out-of-home placement.

7 I would like to limit my comments to two  
8 areas that has not been touched on very much today.

9 The first, under Section 23.1038, when does  
10 ICWA apply? I would like to ask that it -- you  
11 specifically state, Third-party custody proceedings.

12 I know that it is there somewhere. But I  
13 have a case right now in Minnesota that the judge has  
14 said that third-party custody proceedings do not  
15 apply in ICWA cases.

16 The second thing that I would like to focus  
17 on is a notice requirement, the notice to be sent to  
18 parents, Indian custodians and tribes -- and this is  
19 in the 1978 ICWA laws -- that it's to be sent  
20 registered mail, return receipt requested.

21 I was over the moon when I reviewed the  
22 revised guidelines of February of 2015, which  
23 specifically stated, reclarified, and again, the  
24 notice is to be sent registered mail, return receipt  
25 requested.

1           The problem that we're getting is people do  
2 not know the difference between registered mail and  
3 certified mail. They think that if they -- you use  
4 the green card, the green card can be used for  
5 registered mail, certified mail and insured.

6           The difference is registered mail requires  
7 the sender to put it in an envelope, seal it with  
8 brown tape, take it to the post office. The post  
9 office will then log it in.

10           And it's kind of like a chain of custody.  
11 Therefore, if it leaves St. Paul, Minnesota airport,  
12 and it travels to White Earth Nation, that post  
13 office will then log it in that it is there.

14           The receipt is when the person signs for  
15 it.

16           The problem is the counties and agencies  
17 are telling me that certified mail is just as good as  
18 registered mail. And it is not.

19           With certified mail, they could -- and they  
20 have done this -- lied that they put something in the  
21 mail. Because all they need to do is make sure that  
22 it has enough postage on it, drop it in the mailbox  
23 outside their office. And they would just say, Well,  
24 Your Honor, we sent it. It just never came back.

25           But with registered mail, there is evidence

1 that they went to the post office, that they  
2 deposited it there. If the receipt never comes back,  
3 they can at least show the Court that they did  
4 attempt to provide notice to the tribe.

5 The problem that I'm having in Minnesota --  
6 we have 87 counties. 90 percent of the Counties, by  
7 not getting the notices out to the tribes as  
8 required, despite the fact that I brought it to their  
9 attention. And they have told me, Jill, the tribes  
10 are really lucky that we give them notice at all.

11 And that is extremely frustrating to me.

12 What I would like is do not cave to the  
13 Counties when they say that certified mail or  
14 electronic mail is just as good as registered mail.

15 This is something that has been in the  
16 regulations from the law from 1978. And let's just  
17 hold their feet to the fire and make sure that the  
18 notices are sent to the tribes, so that the tribes  
19 can do what they need to do for the best interests of  
20 our children.

21 Thank you.

22 LARRY ROBERTS: Thank you.

23 LISA RIEGER: Hello. I'm Lisa Rieger. I  
24 am Vice President of Public Policy and General  
25 council at Cook Inlet Tribal Council in Anchorage,



1 Alaska.

2 I'd like to add my words to what Matt  
3 Newman had to say.

4 Number one, to request a hearing in Alaska,  
5 so that Alaska tribes and tribal organizations can  
6 make themselves heard by you.

7 I wanted to add also that, yes, there are  
8 229 or maybe 231, depending on how you count  
9 federally-recognized tribes in Alaska.

10 The State has spent the last 25 years  
11 litigating every fine point of ICWA. And really,  
12 first of all, questioning whether there were even  
13 tribes at all. And so it is quite an extreme  
14 situation.

15 When I first moved to Alaska 26 years ago  
16 and got involved in -- in ICWA in Alaska, the numbers  
17 were there. There were fewer than 20 percent of the  
18 Native children in Alaska -- fewer than 20 percent of  
19 the children in Alaska were Native. 40 percent of  
20 the children in out-of-home care were Native.

21 So in fact, the numbers are not getting  
22 better. It's getting worse. As Matt said, it's now  
23 at 60 or -- at 60-plus percent.

24 In Anchorage, where the Alaskan Native  
25 youth population is closer to 10 or 15 percent, it's

1 still over 60 percent of children in foster care who  
2 are Alaskan Native. And so it is a very significant  
3 issue in the state of Alaska.

4 And really -- and in addition, the state  
5 courts, as Matt described, have really taken a very  
6 narrow interpretation, in particular, of active  
7 efforts.

8 One time I was in a court listening. And  
9 the judge, in fact, asked the social worker what she  
10 had done differently for this Native family than she  
11 would have done for another family. And she wasn't  
12 really able to answer that question.

13 And I -- I don't know that that's even that  
14 frequent of a question in Court. But the  
15 understanding of active efforts is extremely limited.  
16 And as is -- and, you know, as is shown by the  
17 Jenuna (sic) case, for which we're also very  
18 grateful.

19 So we'll be submitting -- I'm grateful for  
20 the intervention of the Department of Justice and the  
21 Bureau in that case.

22 We will be submitting formal comments. We  
23 greatly support the regulations. We really think  
24 that they are imperative to bring states along where  
25 they're unwilling.

1           We hope that we will continue this process,  
2           and that this is a real opportunity to make change.

3           Thank you.

4           LARRY ROBERTS: Thank you.

5           ANDREA SMITH: I'll keep it brief. My name  
6           is Andrea Smith. I'm an attorney with the Children  
7           and Family Services Department at the Port Gamble  
8           S'Klallam Tribe in Kingston, Washington.

9           The tribe is in full support of the changes  
10          to the regulations that you're proposing. We will be  
11          supplementing other written comments.

12          I would just like to tell you that the  
13          regulations will help make practices much more  
14          consistent across states.

15          I've done a lot of transfers of  
16          jurisdiction, and they're very different in each  
17          State jurisdiction that you speak with.

18          One particular jurisdiction -- and I tell  
19          you this story with full support of the tribe -- we  
20          had a grandma who lived in a different state.  
21          Because at that point in time, economics are hard.  
22          People move away.

23          The State stepped in on the case. Her  
24          daughter had a drug problem, took away one baby.  
25          Figured out -- or decided that the tribe had nothing

1 to do with the case and decimated the rest of the  
2 family within two months.

3 And the entire tribe -- so our chairman got  
4 involved. Our legal department was involved. We  
5 contacted attorneys all over that particular state.  
6 And there wasn't really anything that we could do.

7 Grandma still thanks us for our  
8 involvement. But I consider that a loss, because we  
9 lost a child, and then we lost five more. And the  
10 entire tribe feels a loss.

11 So please, anything you can do,  
12 regulations, especially. Thank you for all of your  
13 help.

14 LARRY ROBERTS: Thank you.

15 So these will be the last two comments.  
16 Because we already went earlier saying that those  
17 were the last comments.

18 JOHN DOSSETT: Oh. I'm sorry.

19 My name is John Dossett. I'm a General  
20 Counsel for the National Congress of the American  
21 Indian. It's an organization of tribal governments.

22 I mostly wanted to express that NCAI very  
23 much supports the regulation and appreciates all your  
24 work in getting them to this point.

25 NCAI has been advocating for regulations

1 rather than just guidance. So having binding  
2 regulations that will result in early placements in  
3 the correct locations seems like a very good step in  
4 the right direction.

5 And I'll leave it at that and turn it over  
6 to the National Indian Child Welfare Association.

7 DAVID SIMMONS: Okay. So this is David  
8 Simmons. I'm the Government Affairs Director for the  
9 National Indian Child Welfare Association.

10 And I just want to start by commending the  
11 Bureau of Indian Affairs for their work to take 35  
12 years of case law and practice and experience and  
13 bring it into a much more defined and clarified  
14 process. We need this.

15 So in our office, we take somewhere over a  
16 thousand calls every -- every year from parents,  
17 professionals, tribes, other interested advocates who  
18 are trying to understand how to implement the Indian  
19 Child Welfare Act.

20 The sad truth is that in many of these  
21 cases we have little to offer to people who call,  
22 because the law itself isn't clear in some areas.  
23 The guidelines have provided some help, but not  
24 enough.

25 So we see kind -- we actually hear

1 firsthand some -- and know what the consequence are  
2 when we don't have clarity in the law.

3 The other thing I want to mention is  
4 there's a lot of discussion today about, you know,  
5 tensions between going back and forth between what  
6 kind of families our -- our Native children and youth  
7 can be placed in.

8 One of the things that's really missing in  
9 the conversation is that there is federal law that  
10 requires every State to have a diverse pool of foster  
11 and adoptive families that reflect the children who  
12 are in their care.

13 There is not one State in this country --  
14 not even -- not even one that's close to having  
15 enough Native children in families who can be placed  
16 in native-licensed homes.

17 The tribes, unfortunately, have beared the  
18 burden of trying to find many of these placements.  
19 They gladly do that.

20 But the States are not doing enough to  
21 provide these homes. And some of the private  
22 interests are not doing enough to find these homes.

23 We personally know of many, many cases  
24 where we have licensed Native families who are  
25 available for adoption in foster care, and who are

1 looked over time again -- after time, after time.  
2 And they're chosen sometimes in cases for non-Native  
3 children. We don't understand that.

4 So these are the kinds of things that we  
5 need to correct.

6 And we appreciate you being here. Thank  
7 you very much.

8 LARRY ROBERTS: Thank you.

9 And I just want to say thank you to  
10 everyone for attending this session today. I really  
11 appreciate everyone's comments.

12 There were a number of comments here today  
13 that were specific, saying, you know, Please change,  
14 for example, the qualified expert witness in a  
15 certain way, shape or form. Those comments are  
16 extraordinarily helpful to us as we're going through  
17 the proposed rules and evaluate how can we move  
18 forward with the final rules.

19 So I thank you all. And I remind everyone  
20 that the deadline to submit written comments is  
21 May 19th.

22 So thank you.

23 (The Public Meeting concluded at  
24 12:22 p.m.)

25

C E R T I F I C A T E

STATE OF OREGON            )  
  )  ss.  
COUNTY OF MULTNOMAH    )

I, Sinead R. Wilder, a Notary Public for Oregon, do hereby certify that, pursuant to stipulation of counsel for the respective parties hereinbefore set forth, that the proceedings occurred before me at the time and place set forth in the caption hereof; that at said time and place I reported in Stenotype all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting under my direction; and that the foregoing transcript, pages 1 to 143, both inclusive, constitutes a full, true and accurate record of all such testimony adduced and oral proceedings had, and of the whole thereof.

Witness my hand and notarial seal at  
Portland, Oregon, this 29th of April, 2014.

*Sinead Wilder*  
SINEAD R. WILDER  
Certified Shorthand Reporter  
Certificate No. 13-0426



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