

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

LISTENING SESSION
Proposed Regulations for State Courts and Agencies
in Indian Child Custody Proceedings
"ICWA Proposed Rule" (25 CFR 23)

---oOo---

Grand Sierra Resort
Reno, Nevada
April 28, 2015

REPORTED BY: KRISTINE BOKELMANN
CSR #165, CRR, RDR

1 APPEARANCES OF PANEL:

2
3 ANN MARIE BLEDSOE DOWNES
4 Deputy Assistant Secretary for
5 Policy and Economic Development

6 RODINA CAVE
7 Senior Advisor to Assistant Secretary - IA

8 SARAH WALTERS
9 Counselor to the Assistant Secretary

10 GINA JACKSON
11 Senior Fellow, IPA, Indian Child Welfare
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

	<u>SPEAKER:</u>	<u>PAGE:</u>
1		
2		
3	GLORIA SIMEON	19
4	Orutsararmuit Native Council	
5	VICTOR JOSEPH	20
6	President of Tanana Chiefs Conference	
7	SUSAN WELLS	22
8	Kenaitz Tribal Court Judge	
9	DAVID HARRISON	24
10	Private Citizen, Chickaloon	
11	ONA WHITEWING GARVIN	24
12	Ho-Chunk Indian Tribe	
13	BEN NUVAMSA	26
14	President of KIVA Institute	
15	MARY ANN MILLS	27
16	Kenaitz Tribal Court Judge	
17	ELIZABETH SAAGULIK HENSLEY	30
18	Maniilaq Association	
19	JULIE ROBERTS-HYSLOP	31
20	Vice President for Tanana Chiefs Conference	
21	WILL MICKLIN	32
22	First Vice President of Central Council United Tribes of Arkansas	
23		
24	KEN SELBY	35
25	Community Service Director, Aleutian Pribilof Islands Association	

I N D E X

	<u>SPEAKER:</u>	<u>PAGE:</u>
1		
2		
3	ANTONIO MONDRAGON Taos Pueblo	37
4		
5	LIISIA BLIZZARD Kenai, Alaska, Kenaitz Council Member	39
6		
7	SHAWN DURAN Taos Pueblo, Tribal Administrator	41
8		
9	GRETA EDSON Ketchikan Tribal Community	42
10		
11	MARCH RUNNER Tribal Administrator Director, Galena Village, Alaska	46
12		
13	TOM UKALLAYSAAQ Executive Director of Kotzebue	48
14		
15	GEORGE THURMAN Principal Chief of Sac and Fox Nation	51
16		
17	RICHARD JACKSON Ketchikan Native Community	53
18		
19	FRANK THOMPSON First Chief of Evansville Tribal Council of Alaska	54
20		
21	WILL MAYO Tribal Citizen of Tanana Village	54
22		
23		
24		
25		

1 (Listening Session already in progress.)

2 MS. DOWNES: I wanted to also acknowledge -- I
3 didn't do this in the first part of my introductions,
4 but the other federal officials in the room have been
5 instrumental in this work. Specifically I know that
6 Gena Tyner-Dawson is here from DOJ. Gina? Who has been
7 really critical in this work, and I'd like to thank her
8 for joining us and being with us today.

9 I saw Dr. Robidioux earlier. She's been very
10 helpful when we're organizing some of this work under
11 the White House Council on Native American Affairs under
12 the health sub-group. I don't know if Dr. Robidioux is
13 still in the room, but thank you for being here.

14 And I know we have other officials from within
15 the bureau and other agencies in the federal government,
16 and thank you all for being here.

17 So with that, I will go ahead and sort of dive
18 into the substance of the presentation and get started
19 with what we're doing.

20 So as many of you know, we issued updated
21 guidelines very recently, and it was through that work
22 that we realized and recognized that we needed to take
23 additional steps, and hence, the proposed rule.

24 When Congress enacted ICWA, it had the best of
25 intentions. It was to protect kids from forced removal

1 from their community and to protect tribes from losing
2 their children. But as we've seen over the past 35
3 years, and most notably in the CHECKCHECK Veronica case,
4 ICWA hasn't always lived up to its potential, but, you
5 know, obviously we can do better and state court
6 proceedings and with agency actions and we want to,
7 through this rule, to address some of that.

8 So prior to enactment of ICWA there were
9 guidelines and regulations issued, but they were not
10 strong enough to create a consistent application of the
11 law. And through the course of the listening
12 sessions -- I think we held a total of five on the
13 guidelines -- we learned about some of those
14 inconsistencies and some of the struggles out there with
15 ICWA, and so the regulations are an attempt to try to
16 improve on that [indiscernible] and provide additional
17 guidance.

18 We have not updated the regulations since
19 right after ICWA was enacted, and in fact, those
20 regulations were less of a substantive type guidance to
21 ICWA, and so we're hoping that these indeed do do that.
22 And so now we are here today in trying to implement that
23 process and issue these regulations, and your input and
24 advice on that is critical.

25 This is one of a series of listening sessions

1 and consultations we'll be doing. We did put this
2 listening session on the agenda after [inaudible] took
3 these added to this session in Reno and we were happy to
4 do that.

5 We were pleased to hear about the interest and
6 the desire to have this. I'd like to thank all of you
7 for being here. Obviously I know it's a commitment of
8 resources and time away from your local communities to
9 travel not only to these conferences but to participate
10 in sessions like this, so I would really like to thank
11 you for that.

12 We're in a critical stage of the process, and
13 as I said, May 19th is the date for closing of the
14 comments, so this session is timely, I think.

15 So what we're going to try to do, my
16 colleagues are going to help me have walk through the
17 regulations in a more detailed manner, but essentially
18 we're going to share with you what the rule --
19 regulation is attempting to do. We have some updated
20 definitions. We have definitions to other items.

21 I'm not good with PowerPoint.

22 So for example, active efforts, custody,
23 voluntary placement, just by way of example. These are
24 items that came up in our listening sessions on the
25 guidelines that we realize we needed to further address

1 through regulation, and so that's some of what we're
2 trying to do here.

3 The goal essentially, like I said earlier, is
4 to try and get consistent application of ICWA in all
5 states. As we know, it is applied differently in
6 different states. Some are much stronger in their
7 application and adherence to ICWA and others perhaps not
8 so much. So we're hoping that the regulations will
9 address some of that inconsistency in getting a
10 comprehensive and clear guidance for the application of
11 the ICWA.

12 Actually, I think that closes out my portion.
13 I'm going to go ahead and turn to Rodina who is going to
14 cover the next few portions of the slide. And again, if
15 you haven't received the materials, raise your hand.
16 We'll get some out to you. If not, they are in the back
17 of the room, so that you can follow along with this
18 portion of the public presentation.

19 MS. CAVE: Thank you. I guess there's someone
20 over here on this side of the room that needs some
21 materials.

22 MS. DOWNES: And in the center.

23 MS. CAVE: And in the center, so if someone
24 could run some --

25 MS. DOWNES: Keep your hand up.

1 MS. CAVE: Yeah, keep your hands up. Thanks.

2 I'm Rodina Cave. I am the senior policy
3 advisor to the assistant secretary and I'll be talking
4 about the pretrial requirements that are included in the
5 proposed rule.

6 And so the proposed rule includes a
7 requirement that agencies and state courts must ask
8 whether the child is an Indian child. So they need to
9 ask if there's reason to believe that the child is an
10 Indian child, and the proposed rule includes some
11 examples of when an agency has reason to believe that a
12 child is an Indian child.

13 And also the proposed rule includes a
14 requirement regarding for voluntary proceedings that if
15 the consenting parent wants anonymity, then the agency
16 or court must keep the relevant documents under seal but
17 still provide notice to the tribes.

18 And also the proposed rule includes a
19 requirement to engage in active efforts, and so one of
20 the things that we heard a lot about in the listening
21 sessions is, you know, when does that start. When do
22 active efforts -- when does that requirement start.

23 And so the proposed rule states that it starts
24 as soon as the case or investigation may result in
25 placement of an Indian child outside the custody of a

1 parent or the Indian custodian. And it also -- active
2 efforts are also required when investigating whether the
3 child is an Indian child.

4 The proposed rule also includes the
5 requirement that only the tribe may determine whether
6 the child is a member of that tribe or eligible for
7 membership.

8 The proposed rule also sets out the steps if
9 the child is potentially a member of more than one tribe
10 and other -- there's other processes for designating a
11 tribe -- or sorry, after the designation of the tribe,
12 how does notice happen. And also that a state court
13 must dismiss the action as soon as it determines that it
14 lacks jurisdiction, for instance, if a tribal court has
15 jurisdiction.

16 The proposed rule includes provisions
17 regarding when notice is required and how the notice
18 should be provided, Registered Mail with return receipt
19 requested.

20 And also the proposed rule includes provisions
21 for time limits, that no substantive proceedings,
22 rulings or decisions on a child's placement or
23 termination of parental rights may occur until notice
24 and the waiting periods have elapsed, and it also
25 includes the waiting periods. So, you know, a

1 proceeding may not begin until 10 days after the parent
2 or Indian custodian and tribe receives notice, and that
3 the tribe or Indian custodian or parent can request an
4 additional 20 days.

5 Regarding emergency removal, the proposed rule
6 sets out that emergency removal must be as short as
7 possible and that the state court or agency must
8 document whether removal or placement is proper and
9 continues to be necessary to prevent imminent physical
10 damage or harm to the child, and, you know, that the
11 court has to hold a hearing to evaluate whether the
12 emergency removal continued placement is necessary and
13 immediately terminate it when the emergency has ended.

14 And continuing with emergency removal, the
15 agency must treat the child as an Indian child until a
16 contrary determination has been made and conduct active
17 efforts to prevent the breakup of the Indian family as
18 early as possible before removal is possible.

19 And also, you know, again, notification and
20 that the agency must maintain records of when notice was
21 provided.

22 And also on emergency removal, the proposed
23 rule provides that at any court hearing or emergency
24 removal placement, the court must decide if removal or
25 placement is no longer necessary to prevent imminent

1 physical damage or harm. And that every emergency
2 custody should be less than 30 days unless there's a
3 hearing or testimony of a qualified expert witness or
4 extraordinary circumstances exist.

5 And now I will turn it over to Sarah Walters
6 who will be talking about transfers to the tribal court.

7 NS, JACKSON:

8 MS. WALTERS: Good afternoon. I'm Sarah
9 Walters. I'm Counselor to the Assistant Secretary for
10 Indian Affairs and a member of the Cheyenne River Sioux
11 Tribe.

12 Thank you so much for being here with us
13 today. I'm going to talk a little bit about transfers
14 to tribal court. ICWA requires that tribal courts have
15 exclusive jurisdiction over cases -- Indian child
16 welfare cases for kids that reside on Indian
17 reservations.

18 States can have jurisdiction over cases where
19 Indian children reside off Indian reservations.
20 However, any party at any time has the right during
21 the -- at any time during the proceeding to request
22 transfer to a tribal court, which is very important.

23 And courts have to transfer to tribal courts
24 except in very limited circumstances such as that either
25 parent objects to the transfer; that that tribal court

1 declines the transfer, which does happen at times; or
2 state court -- a state court determines that there's
3 good cause.

4 Now, this is -- we heard during our listening
5 sessions that the good cause determination is by far the
6 most implemented by state courts to prevent the transfer
7 of those cases to tribal courts. So the transfer and
8 the request is really important.

9 Oh, sorry. I wasn't even on that slide. I
10 apologize. I'm new at this, too.

11 So now, during the petition for the placement
12 or termination of parental rights, there are specific
13 requirements for that petition as well, which is -- one
14 of which is that active efforts to avoid the need to
15 remove the child were conducted by the removing agency
16 and starting at the commencement of the proceeding.

17 Active efforts in the guidelines and in the
18 proposed rule constitute more than the reasonable
19 efforts that are required in all child welfare cases.

20 The active efforts have to be documented.
21 They also have to show what active efforts were used and
22 they have to use resources like the child's extended
23 family, as well as tribal members, to keep the Indian
24 family intact. That's what the active efforts are
25 geared towards, is keeping the family intact if

1 possible.

2 So there's also requirements for when the
3 court can decide when a foster or adopted placement is
4 necessary. There's a standard of proof, clear and
5 convincing evidence, and the court can order the
6 termination of parental rights only when there's
7 evidence beyond a reasonable doubt that that's the
8 necessary thing to do.

9 ICWA also requires that there be testimony by
10 a qualified expert witness during the child custody
11 proceeding, and the guidelines in the proposed rule
12 discuss the requirements for those qualified expert
13 witnesses, that they can't just be experts in child
14 welfare generally. They have to have knowledge of the
15 child's tribe, tribal culture and community so that the
16 court can determine what the parameters of that
17 relationship are and what is considered appropriate
18 behavior.

19 Next I am going to turn it over to our senior
20 fellow, Gina Jackson, and she's going to finish up for
21 us.

22 NS, JACKSON: Hello, everyone. Great to see
23 you all here today, and we're excited to hear from you
24 today. I'm going to talk about voluntary proceedings,
25 disposition, and post-trial rights, and I'm going to hit

1 a few highlights from the proposed rule and just so we
2 can save time for all of you to speak.

3 So for the proposed rule, in any voluntary
4 proceeding, the agency and state court must ask. So
5 it's not just the agency and the court relying on the
6 agency and it's not just the court. It's the state and
7 the agency and the court, both must ask whether the
8 child is an Indian child, providing the tribe with
9 notice, including the right to intervene.

10 In dispositions, the agency must file --
11 follow the ICWA preferences, placement preferences or
12 the tribal placement preferences. And if there is a
13 request for anonymity, they still must be followed.

14 There must be clear and convincing evidence
15 that diligent search was made to meet the preferences,
16 and explain if it couldn't be met, noticing parents,
17 Indian custodians, family members, the tribe, and
18 maintain documentation of placements.

19 Departure from the placement preferences can
20 be made only if a court finds good cause. And the good
21 cause basis must be included in the court record. And
22 the party asserting good cause, they have the burden to
23 prove good cause by the standard of clear and convincing
24 evidence.

25 In dispositions, good cause to depart from the

1 placement preferences must be based on the parents'
2 request, if both attest they have reviewed the placement
3 options; the child's request, if they are able to
4 understand the decision; the child's extraordinary
5 physical or emotional needs as established by a
6 qualified expert witness. And what it does not include
7 is bonding and attachment from the placement.

8 Good cause may not be based on socioeconomic
9 status of any placement relative to another placement.

10 In post-trial rights, the proposed rule
11 establishes procedures to vacate an adoption if consent
12 was obtained by fraud or duress, or if the proceedings
13 violated ICWA.

14 The proposed rule establishes who can
15 invalidate an action based on a violation of ICWA, which
16 it is the Indian child, the parent, the Indian
17 custodian, the tribe, regardless of whether that
18 particular party's rights were violated.

19 The rule establishes adult adoptees' rights to
20 learn their tribal affiliation; encourages states to
21 designate someone to assist with adult adoptees. It
22 also requires notice of any change in the child's status
23 such as change of placement.

24 Other post-trial rights. States must
25 establish a single location for all records of

1 voluntary, involuntary foster care, pre-adoption
2 placements, adoptive placements that will be available
3 within seven days of request by the Indian tribe or by a
4 child's tribe or the Department of Interior.

5 And the records must contain, at a minimum,
6 the petition or complaint, substantive orders in the
7 proceedings, and record of placement determination,
8 including the findings in the court record and the
9 social worker's statement.

10 One of the most important things that we're
11 looking at is hearing from you, and you may comment on
12 any provision of the proposed rule, not just here today
13 but also in writing. We also will have other
14 opportunities through tribal consultation sessions and
15 public meetings.

16 We're looking at upcoming meetings next week
17 in Albuquerque; Prior Lake, Minnesota. We'll have a
18 national teleconference. And then the week after will
19 be in Tulsa, Oklahoma.

20 The important date to remember is May 19th,
21 that we're accepting comments on the proposed rule any
22 time until May 19th. Email is the preferred method.
23 And even today if you give verbal comments, submitting
24 comments in writing as well would be greatly appreciated
25 and we look forward to hearing from you.

1 MS. DOWNES: So that concludes our
2 presentation to sort of start off the session, and I
3 hope that gives you an overview of what the rule is
4 about and sort of what's going on. Many of you work
5 with this on a day-to-day basis and we're really anxious
6 to hear from you.

7 We did start our session a little late, and so
8 I think we're okay kind of spilling over past the 4:00
9 o'clock hour in this room. So we'll set a target and
10 time for around 10 after, maybe quarter after. Let's
11 say quarter after 4:00 in the hopes that we can get
12 everybody's comments in.

13 I will reiterate that we would like you to
14 state your name and spell your name for the record so
15 that the court reporter has a clear identification for
16 purposes of the record. If you have a business card and
17 you'd like to share that with her, I would encourage you
18 to do that as well.

19 And that we would like to hear from tribal
20 leadership in the room first, if at all possible. And
21 please limit your comments to around five minutes.

22 So this is really our chance to hear from you.
23 If there are points that need clarification, what are
24 those points. If you have suggestions for that, we
25 would really like to hear that.

1 So with that, we have two mics up at the front
2 of the room. You can start a queue. I don't want
3 anybody standing too long, but we want to make sure that
4 we get everybody in.

5 So I will go ahead and open up the floor for
6 comments. And again, remember your name and spelling.
7 And we will go ahead and get started with the listening
8 portion of our session and I'll turn first to this lady
9 here.

10 MS. SIMEON: Thank you. Gloria Simeon,
11 S-I-M-E-O-N, Orutsararmiut Native Council,
12 O-R-U-T-S-A-R-A-R-M-I-U-T, representing the native
13 [inaudible] of Alaska.

14 I brought this up before when we discussed
15 family law as it pertains to tribes and native people,
16 and these are all well and good. Where the disconnect
17 is is where the state is mandated to apply these laws in
18 all of their [indiscernible] with native people.

19 So if there's any way that we can enforce the
20 ICWA, especially with the states, we are looking to a
21 better day in Alaska with the new governor and
22 lieutenant governor, for the people to be more kind to
23 tribes.

24 But that's for Alaska. Other states have the
25 same issues and they need -- and states need to know

1 that these are not suggestions. These are mandated by
2 federal law to protect our children. Thank you.

3 MS. DOWNES: Thank you so much. And yes,
4 there are some exciting developments in some states, and
5 I know Alaska is one of them, so I appreciate that.
6 Over here.

7 MR. JOSEPH: Thank you. Victor Joseph,
8 V-I-C-T-O-R, J-O-S-E-P-H, President of Tanana Chiefs
9 Conference, Interior of Alaska.

10 First of all, I wanted to thank you for
11 putting on this listening session in such a quick order.
12 I know that the request just came in a few days ago. So
13 you all doing this is really greatly appreciated. It
14 gives us an opportunity to join into these.

15 First off, I have a clarification and a couple
16 points that I want to make. First of all, if you can
17 clarify May 19th. I know we're going to have our
18 information in before May 19th, but is that the end of
19 business day Eastern Time or the end of the day 11:59?
20 It's just a question I have for clarification for
21 others.

22 The other, we really support the regulations,
23 and it was some good work, and I just wanted to thank
24 you. But we also strongly encourage you to move through
25 this process timely. We don't want to be giving states,

1 our state agencies the discretion to deny or transfer
2 jurisdictions to tribal courts or prevent continued
3 deviation from ICWA placement criteria, so the faster we
4 can move through this.

5 I've seen these proposed rules stay in process
6 for a while, and I really think it would be good if we
7 can move very quickly, especially since we know that the
8 administration's going to change shortly.

9 That also being said, we also recommend that
10 the authority of BIA to meet to regulate that include
11 the final published rule. It is also recommended that
12 the individual regulations be justified with references
13 to cases, state regulations, and legislative history.

14 It's important that we look at this as exactly
15 what the Assistant Secretary, Ken Washburn, talked about
16 yesterday. We're seeing authorities of the executive
17 body being challenged more and more, so it's important
18 that you keep up to this.

19 But it's also very important, because we've
20 been waiting for this for years, and we want to make
21 sure that these regulations stand up to any challenge
22 that's going to be laid forward. So I want to thank you
23 for your work in advance and for what you've done, and
24 Onamasay [phonetic].

25 MS. DOWNES: Thank you. Real quickly, I would

1 like to respond to the question about the May 19th. Can
2 I turn to one of my colleagues to -- what's the --

3 MS. WALTERS: So it's going to be midnight
4 Eastern Time on May 19th, so just keep that in mind.
5 We'll keep it open until midnight EDC. Thanks.

6 MS. WELLS: Thank you. I'm Susan Wells. I'm
7 a Kenaitz Tribe -- Kenaitz Nation citizen in Kenai,
8 Alaska. I'm a tribal council member and also a tribal
9 court judge.

10 My concern with this language -- or not -- I
11 think we need to add something in here. We have that
12 the state court must dismiss an action as soon as it
13 determines it lacks jurisdiction. It doesn't say that
14 if I have a Tanana child living in my city or in the
15 outlying areas, it's in the tribal -- I mean, in the
16 state court that I can intervene.

17 Where our children get lost in the shuffle and
18 through the cracks is that the language says that they
19 are a member or eligible for membership in a tribe. Not
20 necessarily my tribe.

21 And so I'd like to be able to help protect all
22 of the children in Alaska, whether they're from up
23 north, Barrow; west, [indiscernible] on chain on the
24 Pribilof. If they're in my area, they're in my
25 jurisdiction. They're native children.

1 How that works in Kenaitz Court is if we
2 intervene with the child -- and we've done this because
3 they're natives and they're our children, they're our
4 cousins, I'll say -- what we do is we intervene, and
5 then we go above and beyond to find out where that
6 child's from, who -- what tribe they belong to or what
7 tribes they belong to, and then we will contact that
8 tribe and get a resolution.

9 We may ask them to sit concurrent with us or
10 we may transfer the case to them or whatever we can so
11 that we do not get this child lost in the state system.

12 The state is not friendly to our children. We
13 can take care of our children. And we always take -- go
14 above and beyond to make sure that the child -- that we
15 work in the best interests of the child.

16 We always want to reunify. If we can't
17 reunify them with their parents, then we find a family
18 member. And they're always connected to our tribe.

19 So thank you. I'd really like to have that
20 clarified in the law -- or in the regulation.

21 MS. DOWNES: Thank you. I'm going to take
22 just a moment. Are we hearing everything okay for the
23 record?

24 THE REPORTER: Most of it.

25 MS. DOWNES: Most of it? I know. I think

1 part of it is sort of the sound gap up here, too. So if
2 you can speak loud and clear and make sure we get it on
3 the record, that would be great.

4 I'll turn first to you next.

5 MR. HARRISON: My name is David Harrison,
6 private citizen Chickaloon Village. And just a
7 recommendation for the agency. When they have public
8 comment periods and public meetings, more often than not
9 the federal government forgets that there's almost half
10 of the federally recognized tribes in Alaska, and the
11 economic conditions prohibit many of us from traveling
12 to the Lower 48 to attend these types of hearings, these
13 listening sessions.

14 Granted, there's a number of us here, but
15 there's a lot more at home that probably would like to
16 have some say publicly about issues that affect their
17 lives, and this is one that greatly affects our future
18 generations. But we would just like to make the
19 recommendation that don't forget to come to Alaska with
20 your public hearings and comments and those things.
21 Thank you.

22 MS. GARVIN: Good afternoon. My name is Ona
23 Whitewing Garvin, O N A, W-H-I-T-E-W-I-N-G, last name
24 Garvin, G-A-R-V-I-N. I am executive director of health
25 for the Ho-Chunk Nation.

1 In 2005 and 2009 the Ho-Chunk Nation
2 Legislature was asked to bring an issue before the state
3 of Wisconsin because our children were being lost. They
4 were being kidnapped. They were being taken away, and
5 we lost sight of them.

6 1978 law didn't do anything for our people in
7 Wisconsin. So the legislature, along with the other 10
8 tribes in the state of Wisconsin, got together and they
9 formed a coalition to go in and lobby with the state of
10 Wisconsin legislators.

11 So in 2009 the ICWA codification took place in
12 the state of Wisconsin and was passed into law, and all
13 social workers, judges, and so forth have to abide by
14 it.

15 And there was also a great big training effort
16 that had to occur. There was a lot of money the tribe
17 spent, and there was underfunded for our Indian Child
18 Welfare purposes at this point. So I applaud the BIA
19 finally doing this, since 1978.

20 And many of the points that you have gone
21 through in your presentations are the exact ones that
22 are codified into law in the state of Wisconsin. But
23 please consider what we did and we'd like to -- I'll
24 take this back to our tribal legislature and we will be
25 submitting a formal comment before May 19th.

1 Thank you very much.

2 MS. DOWNES: Thank you. And we're anxious to
3 hear, based on your experience, some of the things that
4 work well. Thank you so much.

5 MR. NUVAMSA: Thank you. My name is Ben
6 Nuvamsa, N-U-V-A-M-S-A. I am president and CEO of Kiva
7 Institute, former chairman of the Hopi Tribe.

8 I do have a recommendation, although this is
9 not specific to the proposed regulations, but again, to
10 emphasize the lady from Alaska, her comments about the
11 state-run child welfare programs.

12 There are the amendments to the Social
13 Security Act, Titles IV(e) and IV(b), that are managed
14 by the states. The money comes from HHS to the states
15 for Indian child foster care programs and such.

16 And what I have to recommend to you and the
17 people here is that efforts should be made to allow for
18 the transition from -- of the funds from the states to
19 tribal governments so that when this happens, maybe the
20 tribes would be able to secure the funds and provide for
21 more holistic programs, because that's what I believe
22 the idea is.

23 And that's where most of the problems also lie
24 is because of the state-run programs. We have placement
25 problems. We have foster care problems. But if the

1 funds were -- could be transferred directly from HHS to
2 the tribes, and I suggest under the statutory authority
3 of the Public Law 93 638, because it would be consistent
4 with the language in 638, which says services providing
5 for Indians, because of their status as Indians.

6 But that would allow tribes to contract these
7 programs under Title I and compact them under Title
8 either IV or V.

9 And so I believe that in this way it would
10 lead towards addressing all these problems that we have
11 with state-run programs. It would move these programs
12 away from a discretionary nature into more of an
13 entitlement program and make these programs more
14 permanent and would bring in all the other benefits that
15 we see that are afforded tribes under Public Law 93 638.

16 And I think that it may be a different effort,
17 but I think it's something that can be done by both
18 Interior and HHS so that tribes will be able to at least
19 control their child welfare programs.

20 Thank you very much for this opportunity.

21 MS. DOWNES: Thank you.

22 MS. MILLS: My name is Mary Ann Mills,
23 M-A-R-Y, A-N-N, M-I-L-L-S, and I am a council member for
24 the Kenaitz Indian Tribe and also a Tribal Court judge
25 in Kenai, Alaska.

1 And on your proposed rule, transfer to tribal
2 court, the state court must transfer unless either
3 parents object. This could be very problematic in
4 Alaska because of the severe colonization that has
5 occurred in Alaska, and in many cases our children are
6 native and non-native. And this proposed rule gives
7 more preference to the state than it does to the tribes,
8 and it's very unfair.

9 Another thing I have question on is qualified
10 expert witness. Who decides what is -- what is a
11 qualified expert witness and -- or -- and also a good
12 cause and is it appropriate to the culture of the
13 tribes. That to me is also very important.

14 Also, I agree with the last speaker with
15 regard to funding going to tribes. Oftentimes when our
16 tribal court orders parents or grandparents or aunts and
17 uncles, their native child, there's no money that goes
18 with it, and that's because the state has all of the
19 money going to the state, and so that also is a deficit
20 for the tribes, because when we give jurisdiction or
21 custody to a grandparent, there's no money for them.

22 Also Indian Country is not appropriate for
23 Alaska because there are no reservations. Although we
24 know the title to Alaska is still with the indigenous
25 people, it is -- we're having a tough time with the

1 government dealing with that issue.

2 And so what I would like to see for Alaska is
3 instead of Indian Country, to use jurisdiction of the
4 tribe to extend to our traditional territories.

5 And these things, you know, I will be writing
6 to the BIA for better wording and explanation, but these
7 are the things that we see.

8 And also in Alaska, many of the tribes are
9 decreasing in number because there is no economics for
10 them. So we do get a lot of children moving into our
11 area. Even though it isn't a huge area, it has more
12 opportunity for employment.

13 And like Judge Wells said, we take all Alaska
14 native children in our jurisdiction because we don't
15 want them slipping through the cracks, and that has been
16 the history in Alaska.

17 We do notify the tribes and we do get their
18 resolution or a letter of consent. We also invite them
19 to be parties to the case. So number one, you know,
20 these are their children, and then they have knowledge
21 for the whole process.

22 And also because of the lack of funding that
23 we've had for educating tribal judges, it's a way for us
24 to teach other tribes or tribal courts on different
25 processes, and we're working all together in trying to

1 improve keeping our children within our native
2 communities.

3 And in Alaska, we have lost so many children.
4 Since the 1980s, we have had calls from native people
5 from all around America asking if they are members of
6 our tribe. And so we know that because of the adoption
7 rate was so great. Removing children from their tribes
8 in Alaska to America has been absolutely devastating to
9 us.

10 And I would like to thank all of you for your
11 presentation and for taking our testimony. Thank you
12 very much.

13 MS. DOWNES: Thank you. And we look forward
14 to your written comments. And again, with all of these
15 items, if you don't currently have suggestions for how
16 some of these things that are unclear can be improved,
17 please do include that in your written comments as well.
18 We're really looking forward to hearing how we can make
19 things clearer.

20 I'll turn next to you.

21 MS. HENSLEY: Elizabeth Saagulik Hensley.
22 Saagulik, S-A-A-G-U-L-I-K. Hensley, H-E-N-S-L-E-Y. I'm
23 here with Maniilaq Association. We represent 12 tribes
24 in Northwest Alaska.

25 We thank you for proposing these rules.

1 They're extremely important. Our states need more than
2 guidance. They need regulation so that we don't have
3 more [indiscernible] cases, no more baby girl cases.
4 They need a force of law.

5 This subject is something that impacts each
6 and every one of us. I have two aunts personally who
7 were taken from our community and raised in the Lower
8 48, thousands of miles from home, because there were no
9 regulations, no force of law making sure they would stay
10 home.

11 So we thank you. We don't have any
12 recommendations at this time for changes, but we just
13 wanted to say we support this. Thank you very much.

14 MS. DOWNES: Thank you.

15 MS. ROBERTS-HYSLOP: Thank you. My name is
16 Julie Roberts-Hyslop. R-O-B-E-R-T-S, hyphen,
17 H-Y-S-L-O-P. I'm a native of Tanana and also currently
18 the vice president for Tanana Chiefs Conference in
19 Alaska.

20 The only recommendation that I would like to
21 make is under 23.104, for you have to provide notice to
22 a tribe. I would like to insert some time frame, like,
23 say, 90 days for the state agency to make a concerted
24 effort to contact the tribes.

25 So that's the only comment I have. I just

1 wanted to make sure that's absolutely covered.

2 MS. DOWNES: Great. Thank you.

3 MR. MICKLIN: Good afternoon Miss Bledsoe.
4 Good to see you. I'm Will Micklin. I'm First Vice
5 President of Central Council United Tribes of Alaska and
6 we will be providing written comments.

7 Many of the recommendations that you heard on
8 the language and on the intent improvements to the
9 proposed rule we'll be providing.

10 I did want to just mention a few things that
11 are intimately related to this effort to improve ICWA
12 practices, and that's from the point of view of funding.
13 We don't have funding for our tribal courts, and we need
14 our tribal courts in order to process these ICWA cases.

15 We are a court with the state of Alaska.
16 We've had a long pending litigation on their performance
17 under the federal statute and regulations. We won in
18 court and the state is appealing it. We're trying to
19 convince them to drop the appeal, with the election of
20 the new governor and lieutenant governor.

21 It takes time, but the important point is that
22 we've often had to litigate the state of Alaska's
23 performance in ICWA issues. It's a strain on us in
24 finding the funds and that we really don't have
25 enterprise funds to supplement for these types of

1 purposes, the government.

2 You know, we have approximately 30,000 for
3 ICWA in our village communities, about 56,000 for our
4 general community. After rescission and sequester and
5 program reductions, that was a 17 percent reduction in
6 our funding.

7 So for our six village communities, \$24,440,
8 \$46,000 in Juneau. We have about 7,000 tribal citizens
9 in Juneau alone. So that funding is all we have.

10 And changes to the rule are important, and
11 they will be helpful in the cases we can process, but
12 that number is so vastly insufficient for protecting our
13 children, our tribal citizens, under the law that it's
14 just very troubling that we're nibbling at the edges,
15 when the huge problem is that we just are not offered
16 funding sufficient to the task at hand.

17 We have approximately 25 percent of the
18 children in the jurisdictions that we're in, and there's
19 about 60 plus, 60 plus percent are in foster care. So
20 we are disproportionately represented in dysfunctional
21 families and placements.

22 And many of these placements, speaking from
23 personal experience -- knowing families, I can't, of
24 course, mention names, but I will say that the practices
25 are so similar to those that the Department of Justice

1 launched the investigation into in -- I think it was the
2 state of South Dakota, that we are intent on asking the
3 Department of Justice to launch a similar investigation
4 into the practices in the state of Alaska.

5 It's a lack of representation in courts for
6 the custodial parents and the noncustodial parents as
7 well. It's the bullying, particularly the bullying from
8 CPS, from Child Protective Services on the state, many
9 of which seem to have a prejudice against native
10 children in outplacements.

11 These are horrendous practices that continue,
12 really, without check among the secretary's advisory
13 committee for HHS. We've long implored them to flex
14 their authority in bring the state of Alaska to bear on
15 their plan for the administration of ICWA under statute
16 and regulation.

17 Their funding stream needs to be sensitive to
18 their performance. Under the law, certainly the tribes
19 are in jeopardy if we went astray from the application
20 of regulations and statutes as far as the states have
21 gone.

22 We really hope that there's a strong
23 [indiscernible] relationship with BIA and the Interior,
24 with the Department of Justice and Health and Human
25 Services, because each one of them bears a

1 responsibility under ICWA and we can't see you operating
2 separately or it being in twos, leading another out.

3 This is going to take a concerted,
4 collaborative effort. We are certainly willing to
5 participate. We've fought this battle on ICWA on our
6 own funds in the state, but there's such a great need.
7 We need the funds to do what the state won't do or is
8 trying to undo.

9 And so I much encourage you on the rule, but
10 we need to back it with some action, as well. So thank
11 you for the chance to offer these remarks.

12 MS. DOWNES: Thank you so much. We definitely
13 hear you and the other commenters on the funding issue
14 and the importance of the collaboration, coordination
15 among the agencies for sure is critical.

16 MR. SELBY: Good afternoon. I am Ken Selby,
17 K-E-N, S-E-L-B-Y, Community Service Director for the
18 Aleutian Pribilof Islands Association of Alaska. We
19 have 12 tribes that participate in our ICWA program
20 throughout --

21 MS. DOWNES: Can you come to the mic a little
22 closer?

23 MR. SELBY: As we reviewed the proposed rules,
24 we anticipate the new rules will allow the delivery of
25 in-home case management services on tribal reservations,

1 implementing a new child welfare service approach with
2 high involvement by tribal partners and using a
3 structured decision-making model that focuses on family
4 protection and awareness and assessment, family
5 strengths and needs assessments, and evaluating tribal
6 member progress through [inaudible] in the
7 reassessments.

8 Now, these are services that we hope to
9 provide on behalf of our tribal [inaudible]. The state
10 involvement has been difficult or not available.

11 We also look forward to being able to develop
12 a regional foster parent retention and deployment
13 enrollment plan, an in-home preference placement of
14 children -- that's always our priority -- and state
15 governance working more actively with tribal --
16 enhancing tribal and state collaboration to build
17 sustainable partnerships.

18 As been has echoed by previous presenters in
19 Alaska, we all, even in the Aleutians -- and my
20 involvement with the program goes back to 1988 -- we
21 recognize the same issues that you heard before
22 throughout the state of Alaska for tribes, many of the
23 tribes, the cooperation by the state to work with us in
24 adopting cases and the lack of funding.

25 We've heard that there's the increase of

1 tribal court funding. I'm very hopeful and looking
2 forward to the opportunity for our tribal court in
3 Alaska to have access to those funds.

4 And in conclusion, I have a question, or maybe
5 it's a clarification to confirm that does the rules as
6 proposed provide the opportunity for off-reservation
7 tribal member parents to request to have the right for
8 the case to be transferred to an off-reservation tribe,
9 such as in the case of 280 State, which Alaska is, and
10 perhaps specific language should be addressed to the
11 proposal, if need be. Thank you.

12 MS. DOWNES: Okay. We'll go over here.

13 MR. MONDRAGON: My name is Antonio Mondragon.
14 A-N-T-O-N-I-O, M-O-N-D-R-A-G-O-N. I'm from Taos Pueblo,
15 New Mexico. We have a population of about 2500 tribal
16 members, and I will say about 13, 1400 of them live on
17 the reservation right now. Everybody is living
18 elsewhere out of state and so on.

19 I'm at the governor's office, and we have
20 one-year terms under the tribal secretary for 2015. And
21 we have a traditional judge. Ours is a traditional
22 court.

23 Every year ICWA cases are transferred to the
24 tribal courts, and they come to our office to see if
25 tribal courts should accept an ICWA case concerning kids

1 who are tribal members, or even if they're not tribal
2 members, soon to be enrolled as tribal members.

3 In the past I'm not sure what they did, but
4 some of them were not accepted. And in April we kind of
5 did not accept a case, of an ICWA case to be taken by
6 our tribal courts, but I've been talking to the governor
7 to kind of like hold it, just hold on yet, because I
8 feel like we shouldn't be the ones to make that
9 decision. I think it should be the tribal courts, but
10 because of fact that the tribal court is under us, they
11 do what we say.

12 Because in our governor's office we have the
13 governor, the lieutenant governor, who is a traditional
14 court judge, and then the tribal secretary. We have two
15 sheriffs and then five others who are in charge of our
16 church.

17 So I'm not really comfortable with us having
18 to make a decision whether or not the tribal courts
19 should accept an ICWA case, so it's been bothering me
20 since April because of the fact that we did not accept
21 one.

22 However, I kind of just went around back and
23 said hold on a minute, let's wait. And I didn't know
24 that ICWA was going to be presented, but I was kind of
25 doing some research.

1 Most of our staff members are not
2 knowledgeable in the ICWA case. I know it's huge and
3 I've handled it in the past. So I have more knowledge
4 about the ICWA case. That's the reason why I've still
5 got this gut feeling about what we did, but -- so I just
6 wanted some clarifications on that.

7 So real quick, in 2007 we had a review of our
8 courts because there was a lot of confusion. People
9 were going to the tribal courts, and if they were not
10 satisfied with their sentencing, they would come to the
11 traditional court.

12 If they were not satisfied with our decision
13 on whatever they did, then they would go to our War
14 Chief staff. And we have a War Chief staff member here,
15 as well. The War Chief secretary is here too.

16 So there was a confusion on that, so we had to
17 kind of look into that and set that straight, but the
18 ICWA cases really puts [inaudible] what I wanted to ask
19 you. Thank you.

20 MS. DOWNES: Thank you. Thank you for that
21 insight.

22 MS. BLIZZARD: Good afternoon. Can you hear
23 me? I'm a little short for the mic. My name is Liisia
24 Blizzard and it's spelled L-I-I-S-I-A. My last name is
25 B-L-I-Z-Z-A-R-D. I'm from Kenai, Alaska. I serve on

1 the tribal council for Kenaitz Indian Tribe, and I want
2 to thank you for your -- this opportunity for us to
3 speak.

4 We say that our children are our greatest
5 resource. We say that they are our future, but during
6 the '60s and '70s and '80s our children -- many of our
7 native children disappeared and most of them have never
8 found their way back.

9 In the villages in Alaska, there is a word for
10 opposite of children services. It's called nantina
11 [phonetic]. And it means, literally translated, it's
12 the wind that took the leaves off the trees, and that's
13 what they call [inaudible].

14 So I would like -- you know, everyone that has
15 spoken has made a lot of, you know, requests, but one of
16 the things that we really need in our area is a tribal
17 representative in every OCS office.

18 OCS, you know, many families that come to OCS,
19 some of them are confused on their tribal membership.
20 They belong to a corporation. They don't know if they
21 belong to a tribe, and they're needs to be a greater
22 effort to determine if that child is native.

23 And I have heard the comment, well, that child
24 didn't look native. Well, that has nothing to do with
25 it. If the parents belong to a tribe, the child is

1 eligible for tribal membership. And there needs to be a
2 greater effort. So I'm requesting that.

3 And also, we are desperately in need of foster
4 care funds. We have families that step up to the plate
5 that have lots of children in their homes and they don't
6 have enough income to provide school clothing and school
7 lunches, things like that.

8 So those, you know, determining eligibility
9 for enrollment is the key thing. That's one key way to
10 prevent our kids from disappearing. So thank you.
11 That's my comment.

12 MS. DOWNES: Thank you. Over here.

13 MS. DURAN: Thank you for the opportunity to
14 come before you and provide comment today. Really
15 appreciate it. My name is Shawn Duran. S-H-A-W-N,
16 D-U-R-A-N. I am the tribal administrator for Taos
17 Pueblo.

18 And the question that I have is in regard to
19 subsection 23.117 on the transfer of jurisdiction to
20 tribal court. Some of the folks that spoke before me
21 mentioned the issue of funding, and as a small tribe,
22 our infrastructure and our tribal court can handle some
23 things and some things it cannot.

24 So my comment is to look at innovation and
25 flexibility in that, and maybe consideration for smaller

1 tribes, that they introduce some kind of language for
2 tribes can either network or collaborate with another
3 tribe, another competent court so that there will be
4 options and flexibility in how a court determines
5 whether or not to take jurisdiction of a case.

6 Thank you.

7 MS. DOWNES: Thank you for that.

8 MS. EDSON: Good afternoon. My name is Greta
9 Edson, Ketchikan Indian Community, Tribal Council.

10 You know, looking at the proposed regulations
11 and the packet that you had given us, you know, I look
12 and I see all of these pretty -- the information that's
13 the same. It's not any new information. There's new
14 laws. There's new things that are being enacted.

15 There's things in there that they say that are
16 going to be the best interests of our Indian children.
17 They're talking to us in Alaska about Title IV, which
18 would -- you know, a grant that would enable the tribe
19 to form a tribal court as well as -- oh, my mind went
20 blank on that second one -- oh, foster care. Foster
21 care. So the Title IV. So we have like a three-year
22 grant in order to be able to see if we can implement
23 this.

24 But one thing that we as a council, as a
25 tribal council looked at, which -- and I'm not talking

1 apples and oranges because, in reality, you're looking
2 at a BIA funding. The BIA would be funding this, the
3 ICWA program, as well as the Title IV which they're
4 asking us to participate in.

5 So to me, the one place that we really -- no
6 one's talked about is the continuity of care for our
7 children. One thing that you as an agency can say,
8 okay, this is what we're going to do and you hand us a
9 packet, and it all looks really good on paper. You
10 know, you're taking the kids away. You're putting them
11 in foster care with Indian families. You're doing all
12 this and all that, and that's looking like it's going to
13 solve a problem.

14 But in reality, what you're -- what has
15 happened and what is happening is our children are being
16 taken out of homes that are unhealthy. They're not
17 taken out because, you know, their parents are, you
18 know, taking good care of them. That's the sad thing
19 about the issues that we have to face as far as our
20 Indian children are concerned.

21 So for us as a council, we discussed this and,
22 you know, how are we supposed to make things better for
23 the children. We can do all this stuff. Put them in a
24 foster care home that's got some Indian people in it and
25 then what?

1 You've got this child who has come from a
2 dysfunctional home, taken out of the family. And even
3 if it is a native family from somewhere else, it's still
4 not home.

5 So we're not talking about that next step,
6 that next step with the continuancy [sic] of the care
7 for our children, our continuity of care.

8 I think that if you're going to be putting
9 this out for us, agencies have to work together. You
10 know, the Title IV(E), the funding, like the lady before
11 us had said, it's pretty nonexistent. You know, for us
12 as a tribe, we're a landless tribe. We don't have
13 casinos or anything else like that to be able to fund
14 these programs.

15 We looked at how much money it was going to
16 cost us and we talked about it. We really seriously
17 looked at it. But, you know, all the different issues
18 that we would have to take in order to implement this
19 program that, you know, that is on this paper. We don't
20 know if we can afford that stuff. We actually can't,
21 but we have to figure out what parts of it we're going
22 to use, you know.

23 The apples and oranges of it is the apples and
24 oranges have to be in the same barrel. I think if
25 you're going to be doing this to us, and I'm not -- it's

1 not in a negative way. I'm not trying to say that.

2 I'm saying if you're going to hand us a paper
3 on how things are going to be done, we also need to have
4 a Plan B. And you can say, okay, you guys can do all
5 this stuff, but you also, in your packet, in your paper
6 have to say how is this child going to be taken care of
7 after its taken -- they're taken out of the family.

8 That is my concern. My concern is the
9 aftermath of a disturbing disruption of the family and
10 of that child. So I'm asking for, you know, you,
11 whoever you talk to, whoever writes these things when
12 you're at a table somewhere to make the decisions, put a
13 little provision in there about the aftercare of the
14 child after the child's taken away from the family.

15 It's not addressing in here. I looked. Trust
16 me. I looked in here because I was wanting to see, you
17 know, what was going to happen next. There's no next in
18 here.

19 So if you guys at the powers that be can do
20 that for our children, I think we'll be able to have a
21 more healthier child. Because those children need to
22 have people to talk to. They need to have counselors.
23 There's all kinds of things that they need to have. Not
24 just taking them out of the house. So I just kind of
25 felt like I had to say that. Thank you.

1 MS. DOWNES: No, thank you. I mean, that's
2 important. Thank you for the reminder that this is just
3 one step of a much larger theme going on in these
4 children's lives for sure.

5 MS. RUNNER: Good afternoon. My name is March
6 Runner. M-A-R-C-H, R-U-N-N-E-R. I'm tribal
7 administrator director for the Galena Village, which is
8 in Galena, Alaska.

9 I have a 12-page document to send you, but I
10 found more things while sitting is there. One is what
11 is the definition of domicile. The domicile is
12 basically where the child is placed into his permanent
13 placement, and the definition only includes, if the
14 parents are not married, it only includes the mother.

15 There are instances, like in Alaska, where the
16 parents are not married. The father is from one village
17 and the mother is from another village, and because of
18 the schooling, he or she may be with the mother during
19 the school year and then with the father during the
20 summer for subsistence.

21 And the way the law is written, if ICWA
22 becomes involved, the father is not considered as a
23 placement. He's just knocked out of the picture. That
24 needs to be changed.

25 The other thing is the definition of a native

1 family needs to be strengthened. There's been one
2 instance that I dealt with -- because I work with
3 tribes. I work with ICWA children from Galena that are
4 in the Lower 48, and I work with Washington, Nevada,
5 Texas, other states, with the OCS workers.

6 And in one of the states a family was
7 considered a native family because the father of the
8 native family had been -- was granted honorary
9 membership to a tribe down here. That classified that
10 home as a preferred ICWA placement. It wasn't. So the
11 definition of native family needs to be strengthened.
12 And that was under -- he qualified under the ICWA
13 preferred preference placement under 23.128.

14 When you talk about notification to tribes
15 under 23.112, you need to add something that's Alaska
16 specific. If you talk about registered notification,
17 registered notification is two to three days to
18 Anchorage. If you're in Anchorage or Fairbanks, you get
19 it within the time frame. If you live in rural Alaska,
20 there's some places that get mail flights in once a
21 month, and so you don't get the notice in time.

22 And I've received notices and I've worked with
23 other tribes who received notices where the court case
24 has been going on for two months before they even got
25 the first notice that it was done. So something has to

1 be done to get notices to tribes in Alaska more
2 efficiently. We lose children like that.

3 For enrollment under 23.108, the word "or"
4 needs to be taken out of "enrolled or eligible for
5 enrollment." Judges look at that, I can use either
6 enrolled or eligible. And if the child is not enrolled,
7 then I can just ignore eligible and say ICWA doesn't
8 apply. You need -- the "or" needs to come out of it.

9 Also in 23.135, notice of change, with a
10 changed placement, foster home change, say foster home
11 change or any kind of change in placement, it gives you
12 all the series of why the placements, you know, why
13 notices have to be done, but it doesn't say when. I
14 have received notices two to three months after a change
15 has been done. That's not acceptable.

16 MS. DOWNES: We've taken of note of those and
17 look forward to your additional comments. Thank you so
18 much.

19 MR. UKALLAYSAAQ: [speaking Native American
20 language]. Good afternoon. My name is Ukallaysaaq,
21 U-K-A-L-L-A-Y-S-A-A-Q, and I'm the executive director at
22 the Native Village of Kotzebue, and I really appreciate
23 this update. I think it's long overdue, and I want to
24 commend each of you for the work that you've done and
25 the Obama Administration for taking this on.

1 I think our children kind of have been left
2 behind too much and the interpretation by state, like
3 you said at the beginning in your comments, is really
4 true. The state of Alaska interprets it different ways,
5 but there are different field offices also interpreting
6 it differently.

7 So a child in the Anchorage area -- and we
8 work with the Fairbanks office, you know, we get treated
9 totally differently. And so it's not only within
10 states. It's within a state.

11 And, you know, I have a lot of personal
12 experience. I was a foster parent. My wife and I were
13 both foster parents at one time. We're no longer foster
14 parents because of the frustration. And we were foster
15 parenting our own relatives, and some of our relatives
16 got taken from our care and put in a nonnative foster
17 home. You know, it was beyond me of how that ICWA even
18 applied or how that whole process happened, but it
19 happened.

20 And that wasn't that many years ago, you know,
21 this is 1978. This is 2000. So I really want to
22 emphasize the active efforts that are in there, and I
23 appreciate that some of the active efforts include
24 extended family.

25 And I've noticed the state of Alaska, when you

1 look at their foster care manual, they have purposely
2 avoided uses terms in the ICWA act. So they'll call it
3 a relative placement instead of extended family.

4 They'll use terms that are not in the act so
5 that they avoid compliance. And I didn't realize that
6 until I became more educated in ICWA, and people pointed
7 out what the state of Alaska does. And they even avoid
8 official terms in their manuals to their staff so that
9 they can avoid a lot of -- the same word could be used,
10 but they change it. And it's really important I think
11 to see that consistency, you know, throughout. They're
12 doing that on purpose.

13 The other thing I wanted to mention is we did
14 a workshop this summer in our community -- or this fall
15 in our community on grandparents' rights. We've had a
16 lot of grandparents contact us. They take care of their
17 grandchildren, but they don't have legal custody, and
18 sometimes their custody gets questioned or the parents
19 take them back.

20 And I don't know how that issue filters into
21 the ICWA law, but I know in our community -- and that's
22 probably pretty true of a lot of other tribal
23 communities -- grandparents get very frustrated because
24 the parents have the rights, and then when they go into
25 the court system, they listen to what the parents say.

1 And just like the woman said earlier, they got pulled
2 out of care because there was some serious drinking or
3 drugs or some major neglect going on, and so they listen
4 to the parent, who isn't necessarily done with their
5 treatment, versus listening to the healthy grandparent
6 or a healthy uncle or aunt.

7 And that's extremely frustrating that our
8 extended family system can be outside of this legal
9 process where the parents' rights trump really what's
10 best for the child, you know, and that's what we're
11 trying to get back to.

12 So those are my comments and thank you for the
13 work that you're doing, and I look forward to the
14 strength of that going into place.

15 MS. DOWNES: Great. Thank you. Yes. I think
16 that's an important point. At this point we have sort
17 of talked about the inadvertent noncompliance issues
18 that might be related to a lack of training, but there's
19 oftentimes a failure to comply that is done despite
20 potential action as well. So I thank you for pointing
21 that out to us.

22 MR. THURMAN: Thank you. Good afternoon. My
23 name is George Thurman. I am the Principal Chief of Sac
24 and Fox Nation located in Oklahoma. I can point out
25 there are three Sac and Fox tribes already, from Iowa,

1 Kansas, and Oklahoma.

2 My first question here is Indian child's, in
3 parentheses with quotations, what is an Indian child?

4 And then in the red letter deal it says,
5 Indian child's tribe means, one, the Indian tribe in
6 which the Indian child is a member or is eligible for
7 membership. We have cases where they're not.

8 And then number two, the case of an Indian
9 child is a member of or eligible for membership in more
10 than one tribe, the Indian tribe in which the Indian
11 child has more significant contacts. What does that
12 mean, more significant contacts?

13 I'll give you an example. We have tribal
14 members that want to get on our role and they are blood
15 from one of the other or both of the other tribes, Sac
16 and Fox Tribes. And combined, it's been interpreted
17 possibly that that means combining all blood of all
18 three tribes, you can get on our role if you make the
19 blood quantity.

20 But if they don't, then they try to go back to
21 one of the other tribes, one of them is only paternal.
22 You can only get on there if you have a father.

23 There's instances where there are children out
24 there that can't get on a role. Any role. Does that
25 mean they're not Indian children? So there really needs

1 to be more definition.

2 That's just like ICWA. Indian lands. That is
3 so wide open. This is I feel the same case. Indian
4 child.

5 Second question, reservation. Reservation
6 Indian country as defined in 18 U.S.C. 1151, including
7 any lands title to which is held by United States in
8 trust for the benefit of any tribe, any Indian tribe or
9 individual or held by any Indian tribe or individual
10 subject to a restriction by the United States against
11 alienation.

12 We have federal charters where we put lands
13 into trust, and we have titles issued by the county that
14 says held by United States of America in trust for Sac
15 and Fox Nation of Oklahoma. Kevin Washburn, Anna Sledge
16 [phonetic] said we don't recognize your charter. So,
17 see, there's still some loopholes here. I just wanted
18 to point out those two situations. Thank you.

19 MS. DOWNES: Thank you.

20 MR. JACKSON: Thank you. Richard Jackson from
21 Ketchikan Native community. We're going through a
22 planning development grant right now with the Department
23 of Justice to develop a tribal court in ICWA, so this is
24 really timely that you're going through with this.

25 I have a concern about page four. On top you

1 have in bold print "must ask." I think, to me, that's
2 passive. I would say you must determine whether a child
3 is an Indian child. That puts the burden on these
4 agencies of the state and other agencies to do that.

5 We have a case in Alaska where the grandmother
6 wanted her grandchild, and the state felt that the child
7 would have a [indiscernible] nonnative. So the burden
8 would be on the agencies or the state if that language
9 could be very strong as opposed to "ask." Thank you.

10 MS. DOWNES: Thank you.

11 MR. THOMPSON: Good afternoon. My name is
12 Frank Thompson, F-R-A-N-K, T-H-O-M-P-S-O-N, First Chief,
13 Evansville Tribal Council in Alaska.

14 I've got a comment here. We strongly support
15 these regulations, but we also believe that the
16 regulation should explicitly address the Baby Veronica
17 case. The regulations should clarify that Baby Veronica
18 should not be applied outside of the private adoption
19 context and provide guidance on how it should be
20 implemented in practice. This will help avoid further
21 cases like the recent Tanunit case in Alaska. Thank
22 you.

23 MR. MAYO: Will Mayo, W-I-L-L, M-A-Y-O. I'm a
24 tribal citizen of the native village of Tanana in Alaska
25 and working for the Tanana Chiefs Conference in

1 Fairbanks.

2 And the Alaska Tanunit case was based -- that
3 decision was partially based on the Baby Veronica case
4 and applied in a very weird and very strange manner,
5 but -- so for that reason, we feel it's very important
6 to address how these regs will be implemented to address
7 the Baby Veronica case. So that needs to be very clear
8 because there's ramifications that are affecting us
9 because of it and as evidenced by the Tanunit case.

10 Also, in December of '14 Congress directed the
11 Department of the Interior, BIA, and along with the
12 Department of Justice to work together to assess the
13 tribal court needs in Public Law 280 states.

14 And as you've heard from other people who've
15 spoken here, the tribes in Alaska have a very difficult
16 time adequately addressing this. And you may not know
17 that Alaska has a very, very high transient population.

18 A large part of that is just because of the
19 kinds of jobs that are there, and so a high rate of
20 native children are adopted by transient nonnative
21 families. Shortly after that, they leave the state for
22 good, and so, as you know, that is devastating to
23 families and to the identities, as these children grow
24 up, to finding their identity.

25 So many stories that we have of people trying

1 to find their tribal affiliation and coming back to
2 Alaska from all over the nation in their adulthood.
3 Some of them successful but some not.

4 So at any rate, the directive to the
5 Department of the Interior and Department of Justice was
6 to give a report in 180 days, which would place it
7 around the middle of next month.

8 And so I would just strongly urge the BIA to
9 develop that cost analysis for tribes in Alaska to
10 receive some just help, because we do not -- we cannot
11 access the help in any other way that is required. So I
12 just wanted to make those comments and urge the
13 department to please take seriously the report language
14 directing that by Congress. Thank you.

15 MS. DOWNES: Thank you. And my last update
16 was, or understanding, that that report will be
17 completed by the deadline. So we're on track to meet
18 that target, so --

19 MR. MAYO: All right. Thank you very much.

20 MS. DOWNES: Thank you. Do we have other
21 comments? We have the room for another half hour or so.
22 I'd like to ask if Rodina, Sarah, or Gina have anything
23 they would like to share at this point that we might
24 request official clarification or questions on or
25 comments on or anything that would be helpful?

1 MS. CAVE: Hi. Rodina Cave again. We had a
2 comment earlier regarding the agencies working together,
3 Department of the Interior, Department of Justice, and
4 HHS, and I just wanted to point out that those three
5 agencies are working together.

6 I don't know if folks here are aware that the
7 Attorney General's Advisory Committee on American Indian
8 and Alaska native children exposed to violence, they
9 delivered their report and recommendations in November
10 of 2014.

11 And there's a lot to that report. There's a
12 lot in there. There are a lot of recommendations, and
13 many of the recommendations are regarding the
14 collaboration between the agencies, specifically on ICWA
15 compliance.

16 And, you know, we want folks to know that the
17 agencies have already started meeting and will continue
18 meeting. We had a summit, ICWA summit, and we are
19 sharing information and sharing ideas about how to move
20 forward on that.

21 And at the ICWA conference last week -- was it
22 last week? -- the three agencies met at a federal
23 listening session, DOJ, HHS, and Interior, to hear
24 comments specifically on suggestions for ICWA compliance
25 and suggestions from people regarding what is working.

1 What is working with your tribes and states. What are
2 the collaborations that are working. Where are the
3 strengths. Where should resources be directed.

4 And one of the things that DOJ shared at that
5 listening session was specifically they wanted to reach
6 out with some comments or with specific suggestions for
7 the Department of Justice, they have an email address,
8 ICWA@DOJ.gov.

9 So I just wanted to share that and to let
10 folks know that there has been -- we have a unique
11 opportunity at this point, in light of the, you know,
12 the Attorney General's Advisory Committee report, and
13 I'm sure that Ann Marie can also give more information
14 about the President's Gen I initiative, that there are
15 unique opportunities here for collaboration and for work
16 on Indian child welfare issues. Thank you.

17 MS. DOWNES: Anybody else from the panel?
18 Other comments? So I will go ahead and close out the
19 session a few minutes early. It's about 3:47.

20 I'd like to thank everybody who participated,
21 both as commenters today and the staff in the room, and
22 the court reporter, who was instrumental in getting this
23 session on the books, so quickly. So thank you all for
24 attending.

25 If you did not, and for those of you who are

1 still here, if you didn't sign up, please do so in the
2 back. And you can look for the transcript to be and the
3 comments to be posted within a couple, three weeks of
4 today's session.

5 So, and if you think of anything else, please
6 email your comments to Comments@BIA.gov. Thank you all.

7 (Session concluded 3:47 p.m.)

8 -oOo-

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 STATE OF NEVADA)
) ss.
2 COUNTY OF WASHOE)

3 I, KRISTINE BOKELMANN, a Certified Court
4 Reporter in and for the County of Washoe, State of
5 Nevada, do hereby certify:

6 That the foregoing hearing was taken down, as
7 stated in the caption, and the colloquies were reduced
8 to typewriting under my direction; that the transcript
9 is a true and correct record of the proceedings.

10 I further certify that I am not a relative or
11 employee or attorney of any party, nor am I financially
12 interested in the outcome of the action.

13 DATED: This, the 7th day of May, 2015.

14

15 // Kristine A. Bokelmann //

16 KRISTINE A. BOKELMANN, CCR #165

17

18

19

20

21

22

23

24

25