

BUREAU OF INDIAN AFFAIRS
PUBLIC MEETING
Proposed Regulations for State Courts and Agencies
in Indian Child Custody Proceedings
"ICWA Proposed Rule" (25 CFR 23)

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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

A G E N D A

PAGE

1. Welcome	4
2. Introduction of Panel	4
3. Overview of ICWA Proposed Rule	8
4. Adjourn	114
Public Comments:	
Chuck Neelley	18
Larry Jenkins	26
Melissa Clyde	29
John Romero	34
Evelyn Blanchard	37
Cheryl Fairbanks	40
Jason Rael	44
Dr. Kee Straits	48
Littlebear Sanchez	53
Conquering Bear Crow	55
Leonard Gorman	59
Susan Paquet	67
Joaquin Ray Gallegos	69
Hal Atencio	71
Doris Clyde	76
Jessica Hanna	78
Kandis Martine	79
Donalyn Sarracino	81
Thomas Cody	83
Don Shircel	89
Marsha Vallo	94
Ron Jackson	95
Tanya Torres	101
Monica Garcia	102
Elizabeth Duran	103
Regina Yazzie	105
Sharon Begay McCabe	109

1 MS. HARRIS: We'll go ahead and get started here.
2 I want to make sure everyone has an opportunity to speak.
3 So welcome, everyone, to the Albuquerque consultation on
4 the Department of Interior's proposed ICWA regulations.
5 I'm Sarah Harris. I'm the chief of staff for the
6 assistant secretary of Indian Affairs, Kevin Washburn.
7 The assistant secretary is sorry that he couldn't join us
8 here today. This is one of his top priorities and also, a
9 high priority for the administration. And, unfortunately,
10 a scheduling conflict didn't allow him to be here today,
11 but, you know, wanted to show everyone that we are
12 committed to move forward on this, and we're very happy to
13 have everyone here today to get additional input.

14 So I guess the first thing I'll do is I'll go
15 ahead and introduce our panel. We have Gina Jackson who
16 is a senior fellow for the assistant secretary for Indian
17 Affairs. We have Vanessa Ray-Hodge who is the senior
18 advisor to the solicitor to the Department of Interior.
19 We have Hankie Ortiz who is with Indian Services and the
20 Bureau of Indian Affairs. Myself, again, I'm Sarah
21 Harris. I'm the chief of staff for the assistant
22 secretary. We have Rodina Cave who is the senior policy
23 advisor for the assistant secretary of Indian Affairs, and
24 we have Debra Burton who is also from the Office of Indian
25 Services at the Bureau of Indian Affairs. Also, just as a

1 note, Sarah Walters who is the Counselor to the Assistant
2 Secretary is listed on the agenda. Unfortunately, she
3 could not make it today.

4 So we will go through a PowerPoint, and folks on
5 the panel will walk us through the PowerPoint. There are
6 hard copies outside. The PowerPoint just essentially lays
7 out some of the highlights of the proposed changes and --
8 or I'm sorry -- the proposed regulations.

9 But I guess first, I just wanted to say, you
10 know, Indian Country is a top priority for the President
11 and the First Lady and also, for the Department of
12 Interior. Another top priority of the administration is
13 making sure that government is functioning as effectively,
14 efficiently and transparently as possible. And these
15 regulations, as I'm sure most of you know, while there
16 were guidelines issued in 1979, it was just one year after
17 the Indian Child Welfare Act was passed in 1978. Since
18 that time, setting aside the guidelines that we've
19 recently released, the guidelines have not been touched.

20 And there's been significant developments and law
21 and in policies since that point in time, and I think that
22 we're very much of the perspective that we want to make
23 sure that anything that we're putting out ensures that
24 there is clarity, and that there is consistency, and that
25 there is transparency in how, you know, the statute is

1 being applied. And so that folks that are being impacted
2 by the statute will have clear expectations and a clear
3 understanding of how -- you know, how to proceed.

4 So with that, we're looking forward to hearing
5 all of your comments today. We ask that everyone limit
6 their comments to five minutes to ensure that everyone
7 that would like to speak has an opportunity to do so. If
8 folks are here wearing more than one hat for more than one
9 organization, we'd ask that you come up and present your
10 five minutes of comments, and then allow others to, you
11 know, present theirs and get back, you know, in line.

12 This is personally my first consultation that I
13 have attended on this topic, and so I've understood that
14 folks have sort of been forming a line, so, you know, at
15 the microphones, and in order of, you know, first come,
16 first served. So we'll do that. And so, if you do need
17 to get back out of line after you've given your comments,
18 just feel free to hop back at the end and, you know, go
19 through with your second round of comments. And if
20 there's additional time at the end, we'll allow the folks
21 that have already spoken in all of their capacities to
22 speak again.

23 We'd ask that you speak -- we do have a court
24 reporter here to record all of the comments that are given
25 verbally. If you'd like to submit written comments as

1 well, you can submit them to the court reporter in hard
2 copy if you have them here with you today. We'd ask that
3 you speak slowly, state your name, that you state the
4 organization that you're here representing. If your name,
5 you know, maybe doesn't spell quite the way it does
6 phonetically, if you can go ahead and spell it out, that
7 would be great. And if you'd like to submit comments
8 outside of, you know, today, they can be submitted at
9 comments@bia.gov from now until May 19th. And we really
10 look forward to, you know, having everyone's comments. We
11 want the rule to be as strong as possible, and we
12 certainly want everyone's input.

13 I think that, you know, for the purposes of these
14 listening sessions, we're really -- we are really hoping
15 to hear from you. So we would encourage you to -- you
16 know, to present your comments. But we'd also, you
17 know -- I'm not sure that we're in a position where we
18 want folks to be going back and forth amongst each other
19 and sort of, you know, litigating the issues here. We
20 just want to keep it, you know, as open and transparent as
21 possible, and we will take all these comments back and
22 consider them all as we move forward in promulgating our
23 final. And so, I guess we can go ahead and start with our
24 slides.

25 MS. CAVE: Hello. This is Rodina Cave. And we

1 have a PowerPoint presentation, and I think that you were
2 all given a copy of it.

3 And so as Sarah said earlier, the Indian Child
4 Welfare Act was passed in 1978, and it was to address an
5 alarmingly high percentage of Indian families that were
6 broken up by removal, often unwarranted, of their
7 children. And that Congress enacted ICWA to protect best
8 interests of Indian children and to promote stability and
9 security of tribes and families. It established minimum
10 Federal standards for removal and placement.

11 In 1979 also, as Sarah mentioned, the Department
12 published guidelines. The implementation of ICWA, and
13 also regulations regarding notice and the administration
14 of the grants. And between 1979 and 2014, there were many
15 court cases that in state courts interpreted ICWA. In
16 2014, the Department hosted a number of listening sessions
17 on the guidelines, and also between 2013 and 2014, the
18 Attorney General's task force on American Indian and
19 Alaska Native children exposed to violence, held hearings
20 across the United States and wrote a report and
21 recommendations that they submitted to the Attorney
22 General in November of 2014. And part of the
23 recommendations were that the -- the guidelines should be
24 published as regulations.

25 And so in 2015, February 25th, 2015, the

1 department published revised guidelines. These are
2 updated guidelines. And then, on March 20th, 2015, the
3 Department published a proposed rule, proposed
4 regulations. And as my colleagues will be explaining in
5 this presentation this morning, there are new and updated
6 definitions in the proposed rule. There is a new sub part
7 to 25 CFR 23. And these are the -- you know, the
8 provisions, the areas that are being added, and adding
9 definitions for active efforts, custody, domicile, revises
10 several other definitions.

11 And that the goal of the proposed rules, as Sarah
12 Harris mentioned a few minutes ago, is consistent ICWA
13 implementation in all states, and that, you know,
14 regarding applicability, that ICWA would apply whenever an
15 Indian child is the subject of a child-custody proceeding.
16 And that there is no so-called existing Indian family
17 exception, and also that the proposed rule has provisions
18 regarding state agencies, and state courts must ask
19 whether a child is an Indian child. And if there's reason
20 to believe that the child is an Indian child, that the
21 agencies and state courts must treat the child as an
22 Indian child unless and until it's determined that the
23 child is not an Indian child.

24 And also, the proposed rule has examples for when
25 an agency has reason to believe that a child is an Indian

1 child. And the proposed rule also, has provisions
2 regarding in a voluntary proceeding, if the consenting
3 parent wants anonymity, that the state court should keep
4 the relevant documents under seal, but still provide
5 notice to the tribe according to the proposed rule. And
6 there's a requirement regarding active efforts, so when
7 does that requirement begin? When does the requirement
8 for active efforts begin? And the proposed rule lays out
9 that it begins as soon as the case or the investigation
10 may result in placement of the Indian child outside of the
11 custody of the parent or Indian custodian.

12 There's provisions regarding designating the
13 child's tribe. Notably, only the tribe may determine
14 whether the child is a member or eligible for membership
15 in that tribe. There are other provisions regarding
16 notification of tribes, and, you know, once the tribe is
17 designated, the provisions for, you know, filing the
18 designation with the Court. And also, that the state
19 court must dismiss an action as soon as it determines that
20 it doesn't have jurisdiction over that action. For
21 example, if the tribe has jurisdiction.

22 The proposed rule contains provisions regarding
23 notice when the Court knows or has reason to believe that
24 the child is an Indian child in any proceeding, notice is
25 required. And, you know, what are the proceedings --

1 they're listed here in the proposed rule, and what form of
2 notice, also listed here, registered mail with return
3 receipt requested. And time limits, that no substantive
4 proceedings, rulings or decisions on the child's placement
5 or termination of parental rights may occur until notice
6 and waiting periods have elapsed, that the parents -- that
7 the proceeding can't start until 10 days after each parent
8 or Indian custodian receives notice, and that they can ask
9 for additional time, an additional 20 days.

10 And there's provisions regarding emergency
11 removal, and that emergency removal must be as short as
12 possible. That the agency or state court must document
13 whether removal or placement is proper, promptly hold a
14 hearing to evaluate whether it continues to be necessary,
15 and immediately terminate placement removal when the
16 emergency has ended. Continuing with emergency removal,
17 that the agency must treat the child as an Indian child
18 until contrary determination, conduct active efforts to
19 prevent the breakup of the Indian family as early as
20 possible before removal, if possible.

21 Also, notification, and maintaining records that
22 notice was provided. And continuing with emergency
23 removal, that at any court hearing on emergency removal or
24 placement, the court must decide if the removal or
25 placement is no longer necessary to prevent imminent

1 physical damage or harm to the child, and that temporary
2 emergency custody should be less than 30 days. Unless
3 there's a hearing, the testimony of an expert witness,
4 qualified expert witness, or extraordinary circumstances
5 exist, and that emergency removal must end -- I'm going to
6 go back there -- emergency removal must end -- or the
7 emergency placement -- must end as soon as the imminent
8 physical damage or harm no longer exists or the tribe
9 exercises jurisdiction.

10 And for transfers to tribal court, I'm going to
11 hand it over to Debra Burton of Indian Services.

12 MS. BURTON: Thanks. The proposed regulations
13 clarify that there is a right to request a transcript in
14 tribal court with each proceeding and at any stage of the
15 proceeding because some courts have found that -- or have
16 ruled -- that the transfer can't take place because the
17 request was made too late in the case. And the
18 regulations clarify that that is not acceptable, that
19 there's a right at any stage of the proceeding.

20 The state court must transfer unless either
21 parent objects, the tribal court declines, or the state
22 court determines good cause to deny the transfer. And the
23 proposed regulations and factors that the Court cannot
24 consider, is not allowed to consider, unwilling to
25 transfer a case. Whether the case is at an advanced

1 stage, the child's contacts with the tribe or reservation
2 in the tribal courts, prospective placement for the child,
3 and those factors are new to the proposed regulations.

4 The petition for placement or termination of
5 parental rights must demonstrate to the Court that active
6 efforts were made to avoid the removal, and that the
7 active efforts were unsuccessful. And what the proposed
8 rule clarifies is that these active efforts must be
9 documented in detail by the Court, and that the Court must
10 demonstrate that the resources of the extended family
11 tribe, Indian social service agencies, et cetera, were
12 explored to the extent possible.

13 Now, the proposed rule -- it's not new that
14 foster care placements may be ordered only with clear and
15 convincing evidence. That's in the statute. That's in
16 the prior guidelines, and that terminations of parental
17 rights may be ordered with a showing of evidence beyond a
18 reasonable doubt. And that both of these categories must
19 be supported by a qualified expert witness, and that
20 testimony must show that continued custody would result in
21 serious physical damage or harm.

22 Now, the rule clarifies what is and what is not
23 clear and convincing evidence, and that's something that
24 is new, the clarification. Okay. The rule gives more
25 detail to who a qualified expert witness should be, and it

1 gives four categories, and it specifies that these have to
2 be in descending order. So that the first is the first
3 order preference that the Court should consider. A member
4 of the child's tribe who is recognized by the tribal
5 community as knowledgeable in tribal customs is the first
6 preferred qualified expert witness. The second one is a
7 member of another tribe with similar qualifications. The
8 third one is a layperson who has substantial experience
9 and knowledge, child and family services to Indians and
10 tribal practices. And the fourth, and least preferred
11 qualified expert witness is a professional that has
12 education and experience in tribal child-rearing and
13 standards of child-rearing practices.

14 MS. JACKSON: Good afternoon. My name is Gina
15 Jackson, and I'll be talking about the proposed rules and
16 highlights in voluntary proceedings, disposition, and
17 post-trial rights. So in voluntary proceedings, the
18 proposed rule will require the agency and the state court
19 to ask whether the child is an Indian child, providing the
20 tribe with notice of the proceeding, including the notice
21 for the right to intervene.

22 In gaining a consent of a parent or Indian
23 custodian, it must be in writing recorded before the
24 Court. The Court must explain consequences and terms of
25 the consent in detail, and certify the consequences and

1 terms were explained and fully understood by the parent or
2 Indian custodian.

3 In dispositions, the agency must follow ICWA
4 placement preferences or tribal placement preferences even
5 if there's a request for anonymity, must provide clear and
6 convincing evidence that it conducted a diligent search To
7 meet those placement preferences, and explain if they
8 couldn't be met. Notifying parents and Indian custodians,
9 family members, tribe, et cetera, and maintain a
10 documentation of placements.

11 Departing from placement preference is only if
12 the Court finds good cause to depart. This good-cause
13 basis must be included on the record, and the party
14 asserting good cause has the burden to prove good cause by
15 the standard of clear and convincing evidence. In
16 dispositions of good cause to depart from placement
17 preferences, must be based on the parents' request, if
18 both attest they reviewed the placement options, the
19 child's request if they were able to understand the
20 decision, the child's extraordinary physical or emotional
21 needs as established by a qualified expert witness, which
22 does not include bonding and attachment from the placement
23 or the unavailability of a placement, and determination
24 that active efforts were made to find placements.

25 Good cause may not be based on the socio-economic

1 status on any placement relative to another placement.
2 The proposed rule sets out and clarifies procedures to
3 vacate an adoption if consent was obtained by fraud or
4 duress or that the proceeding violated ICWA.

5 It establishes who can invalidate an action based
6 on a violation of ICWA, the Indian child, parent, Indian
7 custodian, tribe, regardless of whether that particular
8 party's rights were violated.

9 It also establishes adult adoptees' rights to
10 learn their tribal affiliation, and encourages states to
11 designate someone to assist with the adult adoptees, and
12 requires notice of change in the child's status, such as
13 change in placement.

14 The proposed rule requires that states provide
15 BIA with a copy of the decree or any order in final
16 adoption including information on the child. States must
17 establish a single location for all records of voluntary
18 or involuntary foster care pre-adoptive placement and
19 adoptive placement that will be available within seven
20 days of request by the Indian child's tribe or the
21 Department of Interior. The records must contain, at a
22 minimum, the petition or complaint, all substantive orders
23 in the proceedings, and a record of placement
24 determination, including the findings in the court record,
25 and social worker statement.

1 We are here today to hear your comments specific
2 to this proposed rule on any of the provision of the rule.
3 We have an opportunity for you to share your thoughts and
4 comments here, verbally. Also, you can submit comments in
5 writing. We have several other opportunities coming up
6 other than today. We will be in Prior Lake, Minnesota,
7 this Thursday. Next week, we'll be having a national
8 teleconference that folks can call in and have an
9 opportunity to share, as well as on May 14th, another
10 hearing -- or public meeting -- in Tulsa, Oklahoma.

11 The important date to remember, May 19th is the
12 deadline to submit your comments. E-mail is a great way
13 to submit your comments at comments@bia.gov. It's not the
14 only way, and many folks who will speak up today, you also
15 can submit comments both verbally, and also in writing.

16 We are very interested in specific language and
17 detail related to your comments, and the specific details
18 will be very helpful to us. Thank you.

19 MS. HARRIS: So now we'll move on to the public
20 comment portion. And I guess I just wanted to remind
21 everybody one more time, there are a lot of people here.
22 and I would just ask everyone that everyone be respectful
23 of everyone else's ability and time to provide comments,
24 and limit your comments to five minutes, at least
25 initially. If there's additional time, we'll allow a

1 second go-around to folks that have already had an
2 opportunity to comment.

3 I have the unenviable job of trying to keep us
4 moving, so I do apologize that if you've gone over five
5 minutes, I may have to, you know, just let you know that
6 you've gone over a little over time, and make sure that we
7 allow everyone an opportunity. So apologies in advance if
8 I have to interrupt because I don't like to have to do
9 that. But I just wanted to let everyone know that that's
10 the case. And I think with that, we can go ahead -- and
11 also, please try to speak clearly, slowly, and, you know,
12 state your name and affiliation for the court reporter.

13 MR. NEELLEY: Hi. My name is Chuck Neelley. I'm
14 the chief children's court attorney for the Children Youth
15 and Families Department in New Mexico. And this is really
16 a question that relates to slide 18. I don't know if it
17 would be important to put slide 18 up there, but this is
18 the one that says that the -- there needs to be clear and
19 convincing evidence for a foster care placement, and
20 evidence beyond a reasonable doubt for termination of
21 parental rights to show imminent risk of physical --
22 serious physical damage or imminent risk of physical harm.
23 Let me look at your slide.

24 And there is the deletion of the phrase,
25 "emotional," which is in the statute. Yes. So there has

1 to be evidence that these two stages, that these two
2 events, that continued custody is likely to result in
3 serious physical damage or harm to the child. And I
4 believe ICWA, the statute says, "serious emotional or
5 physical damage." And the same thing as the termination
6 of the parental rights stage, this summary slide derives
7 from section 23.121 of the proposed regulations. And it's
8 pretty much capturing what's said in subsections A and B.
9 But if you look at subsections C and D, that the same
10 section, the phrase, "emotional or" is reinserted.

11 So the question arises: Was it intentional? So
12 the question is: Was "emotional" deleted intentionally
13 from that stage of the proceedings, which seems to be a
14 significant substantive change to the act itself, or was
15 that just more in the nature of a typographical error,
16 because the evidence at that stage would track the
17 language of the statute, which is, "emotional or physical
18 damage to the child." So that's the question.

19 It's -- if it -- if the question is answered that
20 it was -- we were, intentionally in the regulations,
21 taking out the possibility of showing by these standards
22 clear and convincing evidence or beyond a reasonable
23 doubt, the existence of emotional -- serious emotional
24 harm, that would possibly leave some people to make a
25 comment, which is: Is that -- can a regulation actually

1 change the statute substantively?

2 MS. HARRIS: Right. So let me just say first,
3 I'm going to let Vanessa answer this question.
4 Substantively, as far as like sort of asking questions
5 like that, we are going to be limited in some of the
6 answers that we can provide just because it is -- we're in
7 the proposed rule-making phase.

8 And so we do want things like this to come out,
9 so that we can have them highlighted, and flush them out
10 and, you know, be deliberative. So I think we can answer
11 this one substantively, but I don't -- you know, if there
12 are other questions, I don't want it to be perceived as us
13 trying to evade answering the question. It's just that --
14 and we would love for you to suggest things like this.
15 That way we can see, you know, what we may have missed or
16 other things. But I will defer to Vanessa on this.

17 MS. RAY-HODGE: This is Vanessa Ray-Hodge. I'm
18 in the solicitor's office. I can tell you specifically
19 for this question, that there's been no intent on the
20 Interior's side to not follow the explicit requirements of
21 the act itself. So I think comments like this are very
22 helpful, especially if -- you said it here orally, but
23 also having written comments where you see, perhaps,
24 inconsistencies like that. Because the intent of the
25 regulations for specific terms that are provided by in the

1 statute are that the regulations match what's required in
2 the statute itself.

3 MR. NEELLEY: Okay. And so I don't know if I get
4 to go on or if I should just sit down.

5 MS. HARRIS: Well, you have another minute. I'm
6 not trying to be -- you have additional time if you'd
7 like.

8 MR. NEELLEY: This does relate to -- assuming
9 that the "emotional or" will be put back in, in terms of
10 the, you know, the final -- the way you do the trials, the
11 actual trials, it does lead to a second question, which is
12 the emergency removals, which is the "emotional" is
13 deleted from that, also. So the question -- one of the
14 questions that occurred to me was: Was it intentional
15 that there can't be an emergency removal on the basis of
16 serious emotional harm? So the same question applies at
17 that stage as well.

18 MS. HARRIS: Thank you.

19 MR. JOHNSON: Good afternoon, everybody. My
20 name is William Johnson. I'm a tribal judge, attorney,
21 and a member of the Pueblo of Isleta, the valley here.
22 And I'm speaking on behalf of the National American Indian
23 Court Judges Association. I'm a board member. I'm also
24 here with another board member. And first, I just want to
25 say, despite the progress made of the past 35 years, a

1 wide-range of inconsistent application exists.

2 These proposed regulations will implement uniform
3 practices for all state and child welfare agencies,
4 adoption agencies, and courts. I am in support of this.
5 Also, the proposed regulations are helpful because they
6 explain the difference between active efforts, which are a
7 best-practice required by ICWA, and also reasonable
8 efforts. Also, the notice language in the proposed
9 regulation ensures that tribes have an opportunity to
10 fully participate in proceedings affecting their citizens.

11 The regulations will ensure that tribes receive
12 notice at all phases of a case. Further, opposing groups'
13 concerns about best interests being ignored are misguided
14 because if there is full compliance with active efforts
15 and placement preferences, ICWA assures that the health,
16 safety and best interest of tribal children are met.

17 Finally, for these points, these proposed
18 regulations help uphold the political status and rights of
19 each Indian child. A child has its own independent set of
20 rights, and cannot be waived by a parent, the guardians,
21 or even the tribe. The child has a right to safety and
22 the right to thrive as a member of their tribal community.

23 I also want to read into the record a letter from
24 the president of the National American Indian Court Judges
25 Association.

1 "The Board of Directors of National American
2 Indian Court Judges Association submits this letter in
3 support of the Bureau of Indian Affairs." It's been
4 mailed to you already, which is published. "The Indian
5 Child Welfare Act enacted to stem the tide with the
6 alarming high percentage of Indian families broken up by
7 removal and often unwarranted, of their children from
8 non-tribal public and private agencies, and the alarmingly
9 high percentage of women and children being placed in
10 non-Indian foster and adoptive homes and institutions,
11 which occur.

12 Following ICWA's enactment in '79, the Department
13 of Interior has issued, as you've mentioned, these
14 regulations. But 36 years after the enactment of the BIA
15 guidelines, after engaging in several listening sessions
16 across the U.S. and receiving comments, and considering
17 the Attorney General's Advisory Committee and American
18 Indian Alaskan Native children exposed to violence, an
19 updated set of guidelines has been published, as you've
20 mentioned.

21 These guidelines represent the BIA's
22 interpretations of the act, and are useful in
23 interpreting its provisions. The guidelines should be
24 promulgated as binding regulations. As regulations state,
25 courts, state and private agencies cannot ignore the

1 procedures and best practices directives that are
2 contained therein.

3 The proposed rules incorporate many of the
4 positive changes made to the guidelines established in the
5 Department's interpretation that ICWA's binding, and will
6 help to ensure consistency and state implementation and
7 compliance with ICWA. Consistency is crucial to ensuring
8 that the Congressional intent of ICWA is carried out. The
9 rule is necessary for the United States to be able to
10 fulfill its trust responsibility to the Indian people, and
11 ensure that the best interest of Indian children, and the
12 stability and security of Indian tribes and families are
13 protected.

14 The overriding purpose of ICWA in the proposed
15 rule is to effectuate Congressional policy by the
16 establishment of minimum federal standards for removal of
17 Indian children from their families and replacing such
18 children in foster or adoptive homes that should and will
19 reflect the unique boundaries of Indian culture, but
20 providing foster and adoptive homes, which are reflecting
21 unique values of Indian culture.

22 These federal standards and mandates apply to
23 state and private agencies, not to tribal courts. There
24 is a list of jurisdiction and authority in tribal courts.
25 And Indian child custody proceedings are also addressed by

1 ICWA in the proposed rule.

2 In the Mississippi Band of Choctaw v. Holyfield
3 case, 1989, it stated, "At the heart of ICWA are its
4 provisions concerning jurisdiction over Indian child
5 custody proceedings." One of the most significant
6 benefits of the Act of ICWA was the clarification of
7 tribal courts' exclusive jurisdiction in proceedings
8 concerning Indian children who reside or are domiciled
9 within the reservation of his or her tribe, as well as
10 being wards of tribal courts regardless of domicile.

11 MS. HARRIS: You're just a little bit over time,
12 so I just wanted to give you a heads-up.

13 MR. NEELLEY: Let me -- I'll conclude this.

14 Since the enactment of ICWA almost four decades
15 ago, no comprehensive regulation giving guidance to state
16 courts has been adopted. These guidances from 1979 are
17 obsolete. Those in the 2015 guidelines, correct many of
18 the errors and omissions. Nevertheless, they merely are
19 advisory. They do not carry the force of law.

20 The adoption of legally sound regulations and
21 implementation of best child welfare practices is an
22 important, long-overdue step in fulfilling ICWA's promise
23 to our American Indian and Alaskan Native children,
24 families and tribes. For these reasons, NAICJA, National
25 American Indian Courts Association (sic), supports and

1 urges adoption of the proposed rule in its entirety.

2 Thank you.

3 MS. HARRIS: Thank you so much.

4 I just wanted to remind folks, too, that, you
5 know, if you do have written comments, you can submit them
6 for the record, and they'll be considered, just the same
7 as anything you say here orally today. So if you want to
8 diverge from the written comments, you know, on your oral,
9 that's completely fine, if you need to limit time. So
10 just wanted to let folks know.

11 MR. JENKINS: Thank you. My name is Larry
12 Jenkins. I'm an attorney from Salt Lake City, Utah. I'm
13 also a member of the American Academy of Adoption, and I'm
14 here representing the Academy today. I'm a past trustee
15 of the Academy. I'm a current member of the Academy's
16 ICWA Committee, and I'm going with principal authors of
17 the Academy's comments that were submitted in writing just
18 a couple of weeks ago. I've actually brought several
19 copies of those; if anybody would like a copy, I'd be
20 happy to e-mail them to anybody that gives me a card.

21 Quad A definitely supports the purposes of the
22 intent of ICWA. it really does. But we don't believe
23 that the Bureau has the power to violate administrative
24 ruling to control state Courts. ICWA was clear in setting
25 out that the state courts would define how ICWA would be

1 carried out in their states.

2 I'll just highlight a couple of concerns that the
3 academy has about some of the rules, and I'm just going to
4 touch on some highlights. First of all, we're concerned
5 that the proposed rules violate the rights of Indian
6 children for protection and due process. The first
7 speaker pointed out the way the rule's written, you can
8 only remove a child in emergency circumstances if there's
9 "impending risk of serious bodily injury or death."

10 Now, it's interesting, that standard removes
11 "emotional," as the first speaker mentioned, but it also
12 would probably exclude a lot of state and federal crimes
13 that would otherwise normally justify protection of that
14 child. So our position would be that the proposed rule
15 actually provides less protection for the Indian children.

16 Another example of that, as the first speaker
17 indicated, removing "emotional harm" as the basis for
18 supporting removal from a continuing custody or situation
19 like that. We think that also violates a child's right to
20 protection.

21 We're really concerned about the issue of bonding
22 and it has been replaced by preferences or it specifically
23 says the bonding/attachment evidence isn't relevant, and
24 there has to be extraordinary circumstances. Again, that
25 provides less protection for an Indian child than other

1 children typically in society, and the panel may be aware
2 that just last Friday, the Oklahoma Court of Civil Appeals
3 rejected the guidelines provision that says, "best
4 interest of the child is not relevant in a placement
5 preference situation where the kids have been in a foster
6 parent situation for a long time." And that court said
7 they're not going to go by the guidelines of the Court's
8 interpretation.

9 We're concerned about the definition of what
10 qualified expert testimony is as well. It's implicit in
11 that that best interest of the child isn't relevant. The
12 only thing that appears to be relevant is tribal culture
13 when there's a lot of Indian children who meet the
14 definition of Indian child by the statute, but have never
15 had any connection to the tribe or the culture, things
16 like that. And yet, that's the only thing that appears to
17 be relevant under the rules.

18 We're also concerned that the rules will violate
19 a biological parent's right to privacy, and their
20 constitutional right to determine where their children --
21 you know, who will raise the child. ICWA does not require
22 notice involving voluntary proceedings. There's over 35
23 years of judicial interpretations of that, and every court
24 that's ever looked at the issue has said that ICWA doesn't
25 require notice involving voluntary proceedings.

1 The bureau actually agreed with that in 1979
2 guidelines. Congress has known that that's been the
3 interpretation of the courts throughout the years, and no
4 attempts have been made to mandate a court to include a
5 requirement of notice in voluntary proceedings. Congress
6 has never done that yet, and we think it violates the
7 mom's rights to privacy and anonymity in those kinds of
8 situations.

9 And then the placement preference provisions, the
10 Supreme Court, just two years ago, ruled that the way the
11 statute is written, those don't even apply unless somebody
12 listed on the list of preferences has asserted the right
13 to adopt a child. And yet the rules, would override what
14 the Supreme Court has already interpreted the statute to
15 mean, and would require the placement preferences be
16 followed, and would require that, and make it very
17 difficult to find good cause in these preferences.

18 Again, as I say quad A, the American Academy of
19 Adoption Attorneys supports the purposes and the intent of
20 the Indian Child Welfare Act, but we have serious concerns
21 about the way some of these rules work, and actually
22 denying rights and privileges to biological parents and
23 Indian children. Thank you.

24 MS. CLYDE: Good afternoon. For the record, my
25 name is Melissa Clyde. I am a resident of Denver,

1 Colorado. I am domiciled from Tohatchi, New Mexico.
2 (Native American spoken). The purpose of my verbal
3 remarks is to express to you that I support the proposed
4 regulations to enforce compliance with the Indian Child
5 Welfare Act.

6 Despite the guidance promulgated and promise made
7 through tribal state collaboration over the past 35 years,
8 a wide range of inconsistent application exists. These
9 proposed regulations implement best practices for all
10 state child welfare agencies, adoption agencies and
11 courts. I support the proposed regulations requiring that
12 agencies and courts ask in every proceeding whether a
13 child is Indian. This will help ensure that all Indian
14 children are identified and afforded ICWA protections.

15 I am a Navajo woman. I am the mother to Nevaeh
16 Asdzaan Atsa Woods. She is 18 months old. I developed a
17 natural bond and attachment to my daughter over the past
18 27 months, which includes the nine months I carried her
19 during pregnancy. She has always been surrounded by
20 immediate family members. She has been in my physical
21 custody for 27 months. I support the proposed
22 regulations' revised definitions.

23 I am the daughter to Danny and Doris Clyde. I
24 have four brothers, two sisters. I have 11 nieces and
25 nephews from my siblings. That's my immediate family, but

1 I have a much larger family of that made up of
2 grandparents, aunts, uncles and cousins on both sides of
3 my parents who live on and off the Navajo Nation in
4 various parts of the United States. It's an endless
5 number of relatives.

6 I support the proposed regulations and
7 definitions of active efforts to prevent the breakup of
8 Indian families and requiring that such efforts begin
9 immediately. The proposed regulations are helpful because
10 they explain the difference between active efforts, which
11 are a best practice required by ICWA and reasonable
12 efforts.

13 I also recommend a change in language related to
14 genograms or ancestry charts to be a must requirement.
15 The use of a genogram or ancestry chart supports good
16 social work practice and skills developed in a formal
17 Western social work education and training. This
18 provision is vitally important in keeping Indian families
19 together, and an essential and critical purpose to the
20 Indian Child Welfare Act.

21 My maternal grandmother emphasized in her
22 teachings to me to live by basic Navajo principles and
23 values in life. She taught me to love and take care of
24 our children and family, learn the Navajo language, and to
25 know where I come from. I'm fortunate to have a strong

1 grandmother and parents to role-model those basic Navajo
2 principles and values in life. To me, these principles
3 and values have provided resilient foundation for me to
4 overcome the challenges I faced.

5 As an adult and parent, I certainly believe that
6 the Navajo culture has provided a backbone, stability and
7 strength to me to make sense of the world. The Navajo
8 principals and values I've learned, set high standards in
9 my parenting and child-rearing practices implemented with
10 my daughter. I treat her as a sacred being.

11 You would be surprised to know that at 18 months
12 old, she knows basic Navajo words and phrases that teach
13 her love, respect, to develop relationships, to understand
14 right from wrong, and to perform simple skills at her age
15 level. Because she was a protected and taught that her
16 Navajo culture is important, I know she will thrive as a
17 future tribal citizen, elected leader and mother.

18 I believe all Indian children deserve every
19 opportunity to access their culture, language and
20 ceremonies. These proposed regulations help uphold the
21 political status and rights of Indian children. Indian
22 children have a right to safety, and a right to thrive as
23 a member of their tribal community.

24 I would like to add my strong support to the
25 following: The rejection of the existing Indian family

1 exception. This section ensures that the Indian Child
2 Welfare Act will be applied to all Indian children in any
3 child-custody proceeding.

4 The emphasis to follow the placement preferences
5 and limiting the ability of agencies to deviate from the
6 preferences, it has been apparent that state courts and
7 agencies have failed to place Indian children in relative
8 tribal and Indian homes. It is one of the biggest
9 problems with the Act's implementation.

10 Recognition of a tribe's exclusive authority to
11 determine tribal membership, notice to tribes in voluntary
12 cases. By providing notice, this ensures that we will be
13 able to assist -- be able to assert tribal jurisdiction
14 and/or intervene in the case, if necessary. Notice to the
15 tribe is critical if the state court is to confirm, as it
16 is required to do, whether the child is an Indian child
17 and covered by ICWA.

18 Qualified expert witnesses should be -- should
19 have specific knowledge of the child's tribe, culture and
20 customs, with a preference for members or individuals
21 recognized by the child's tribe.

22 In closing, I urge you to adopt strong
23 regulations to ensure that ICWA fulfills its essential
24 purposes of protecting the rights of Indian children,
25 families and tribes. Thank you.

1 MS. HARRIS: And if anyone would like to leave a
2 hard copy of your comments today, please give them to the
3 court reporter. Thank you.

4 MR. ROMERO: Good afternoon. My name is John
5 Romero, and I'm going to present three different
6 perspectives. First, as a juvenile court judge, here in
7 Albuquerque, I preside over private adoptions, adoptions
8 arising out of the neglected abuse system, and many other
9 cases involving juveniles, including delinquency matters,
10 which I hope to make a comment about at the very end.

11 First, I am a member of the National Council of
12 Juvenile Family Court Judges. I'm on the Board of
13 Directors now, beginning my second term this July. The
14 National Council is a 78-year-old member organization of
15 juvenile and family court judges who deal day in and day
16 out with ICWA issues.

17 In 2013, the National Council adopted a
18 resolution in support of full implementation of the Indian
19 Child Welfare Act, and without going into a whole lot of
20 detail, it defined full implementation as inquiry into the
21 child's Indian ancestry, that is asking: "Is this an
22 Indian child?", after every hearing, because we know that
23 gets disclosed late in the hearing, even sometimes post
24 termination of parental rights.

25 The full implementation that the Council supports

1 is also the requirement that there be a high standard of
2 proof, including the testimony of qualified expert
3 witnesses in both 1912 D, E, and F provisions, as they
4 apply in the neglect and abuse proceedings. And finally,
5 as summarized in the resolution of the National Council, a
6 requirement that active efforts be made to identify those
7 families that meet the placement priorities from the very
8 beginning, and not just indicating that we have no ICWA-
9 compliant foster families with whom the child can be
10 placed.

11 I also speak to you as the chair of the new
12 Mexico Tribal State Judicial Consortium ICWA Committee.
13 Just one thing that the regs and the -- the proposed
14 regulations and that the guidelines address is the issue
15 of notice. 36 years, 35 years after the passage of ICWA,
16 the notice rule in our state was inadequate. It was about
17 a half-a-page long.

18 It wasn't until requests were made to look into
19 what was required in the actual notice that the tribal
20 state judicial consortium submitted a proposal that was
21 probably three-and-a-half-pages long that covered all of
22 the requirements of the code of federal regulations. What
23 was subsequently passed and adopted by our Supreme Court
24 is better than what we had. In my humble opinion as an
25 individual, it still needs more.

1 The proposed rule regarding placement sources, I
2 understand that in many states resources are very scarce.
3 I understand that for many other reasons there are no
4 native American families who are jumping up and down
5 saying, "I want to be a foster family." The question is
6 why?

7 But in places where we have inadequate placement
8 resources, foster families that are not qualified as
9 foster because they're not Native, what do we need to do
10 about that? But if that's the reason, and the rules sort
11 of suggest that unavailability of a placement is
12 appropriate, but there must be a determination that active
13 efforts have been made. And very often, that's not done.

14 In many courts throughout the country, according
15 to my colleagues, active efforts and reasonable efforts
16 are very often melded into one without distinguishing the
17 difference. The new guidelines for state courts and
18 agencies help with that. Implementation of a rule that
19 includes that distinction would be extremely helpful in
20 support of that rule.

21 The regulations, old and revised alike, make the
22 distinction or make the point that in delinquency matters,
23 that that's not a child-custody proceeding, consequently
24 at first blush, ICWA does not apply. However, if that
25 child is going to be placed in a foster home as part of

1 the behavioral health or treatment services, particularly,
2 treatment foster care, the guidelines are very clear that
3 ICWA does apply. There's a lack of education among
4 juvenile justice professionals and those on the bench to
5 recognize that that's a requirement.

6 To the extent that the rule proposed amplifies on
7 that, and underscores the need to consider that, I would
8 be personally in support of the rule that would
9 accommodate that and include that. Thank you.

10 MS. HARRIS: Thank you.

11 MS. BLANCHARD: Good afternoon. My name is
12 Evelyn Blanchard. I'm an independent consultant, and I
13 have worked with this law since the time of its birth, and
14 I have retained a deep interest in it.

15 My comments are concerned with -- primarily with
16 the active efforts. I -- it's my opinion that the
17 definition of active efforts in the guidelines is
18 insufficient. Active efforts -- in the practice of social
19 work, the first moment of contact, the work begins. And
20 one must have a clear understanding of what the
21 requirements of the work are as one steps into the
22 situation.

23 Now, the law requires that the children -- if a
24 child is removed, that he or she be returned immediately
25 when the threat of harm has been removed. I'm currently

1 working on -- assisting a family whose grandmother, whose
2 grandchildren are in state custody. They came into
3 custody as a consequence of a bruise on the buttocks of a
4 two-year-old boy that was observed at daycare.

5 CYFD was called immediately. The decision was
6 made to remove, not only that child, but his four-year-old
7 sister who had no -- there was no evidence of any harm or
8 damage to the sister, but the department made the decision
9 to immediately remove both children.

10 When the mother learned of the child's -- that
11 the children were in state custody two days later, she
12 contacted CYFD to say, "I am the grandmother. I am
13 available to take these children into care." The
14 department refused to place the children with her. The
15 justification for the refusal was that she lived too far
16 from Albuquerque, 45 miles away at Laguna Pueblo. And she
17 would not be able to -- therefore, she would not be able
18 to attend to the particular children's particular medical
19 needs.

20 This is a grandmother who has frequent contact
21 with these grandchildren. She is unaware that there any
22 medical problems with either of these children, and, of
23 course, she would question, as do I, what kind of
24 examination, evaluation, whatever, was CYFD able to
25 conduct in a two-day period that would determine that

1 particular medical needs could not be met by a woman who
2 travels back and forth almost daily from Laguna to attend
3 school.

4 Also, the children were placed separately. These
5 are children who have never been separated in their lives.
6 And they -- the parents are undergoing a lot of stress.
7 This older child, the four-year-old, is very protective of
8 her little brother. And when they were placed separately,
9 the four-year-old acted out, chased the other kids in
10 foster care, tried to bite them, do all kinds of things.

11 Those of us who have been in the practice for
12 many years know that acting-out behavior is not unusual
13 when children are placed, especially when the crisis is
14 compounded by separation. That four-year-old
15 girl wasn't -- was -- the foster family would not cope
16 with this behavior, returned her to CYFD. CYFD then
17 placed her 250 miles away in Las Cruces. None of this
18 makes sense, but it happened.

19 But my point is, that an active effort has to be
20 begun immediately upon contact with the family when there
21 is any threat of removal. The way that the guidelines are
22 written, and as it was stated earlier in the presentation,
23 active efforts don't kick in until the department or
24 whomever has made the decision that this child is going
25 into foster placement. That is way too late.

1 I worked on the development of this law many
2 years ago, and that particular problem was one of the most
3 serious, that children would be taken into care for
4 whatever reason, and there was no effort to contact the
5 parents, make any effort to reunite the family. The kids
6 languished in foster care or temporary shelters or
7 wherever they were placed for a very long time.

8 And in my view, the failure to define active
9 efforts as beginning at the moment of contact, tends to
10 continue that practice. And regrettably, we see it
11 repeatedly, repeatedly, repeatedly, not just in New
12 Mexico, but throughout the country.

13 So those are my primary comments, and I think
14 that the definition of active efforts is better than or
15 more than. Reasonable efforts is completely insufficient.
16 There are many workers who can't define "reasonable." So
17 we need to -- that's -- those are my comments.

18 And when they are all straightened out and
19 responsive to the needs of the people, I, too, support
20 that these be in regulation form, as opposed to
21 guidelines, which are totally unenforceable.

22 MS. HARRIS: Thank you.

23 MS. FAIRBANKS: Thank you. Good afternoon. My
24 name is Cheryl Demmert Fairbanks, and I'm Tlingit-
25 Tsimpshian from Alaska, and I make my home here in New

1 Mexico. I'm a lawyer and have a national practice, and
2 have argued and defended many Indian child welfare cases.
3 I also serve as an appellate justice for the Indian Tribal
4 Court of Appeals for Nevada and the White Earth Nation. I
5 will be speaking here on behalf of NAICJA, and NAICJA is
6 the National American Indian Tribal Court Judges
7 Association will be, and have submitted comments in
8 writing.

9 I will also be speaking personally as an advocate
10 for Native American children, families, and tribes. I am
11 here in support of the proposed regulations to enforce and
12 ensure compliance with ICWA because over the years there
13 has been a wide range of inconsistencies, and these rules
14 will provide consistency necessary in all of the states.

15 NAICJA, the Native American Indian Court Judges
16 Association is not quite as old as ICWA. It was
17 established in 1979, and we provide a national voice for
18 tribal justice systems, and we strive to strengthen those
19 systems. And as a member of the board, we totally support
20 the promulgation of the proposed rules as being necessary.

21 We specifically applaud the rejection of the EIF,
22 the existing Indian family exception, as contrary to the
23 plain language of ICWA. We do need these regulations as
24 Ms. Blanchard stated, not just as guidelines, because
25 these regulations will provide the uniform best practices

1 in the best interest of our Indian children.

2 We support the definition of active efforts. We
3 also support the notice of having the certified letter go
4 to the tribe with return receipt, and asking if there --
5 if this child is an Indian child early on. It's simple,
6 it's reasonable, and ensures compliance.

7 We support 2311 -- 23115, which clarifies that
8 either the parent, the Indian tribe's custodian or Indian
9 child's tribe may request orally on the record or in
10 writing, that the state court transfer each distinct
11 Indian child-custody proceeding to the Indian child's
12 tribal court. This rule will effectuate the fulfillment
13 of the presumptive intent that cases being transferred by
14 removing the form of barriers that some state courts have
15 erected.

16 The rule also clarifies the right to transfer at
17 any available -- right to transfer is available at any
18 stage of an Indian child-custody proceeding, including the
19 period of emergency. Important is that the regulations
20 have reframed what constitutes good cause. Currently,
21 there is broad discretion given to state court judges to
22 find good cause to deny a transfer.

23 This proposed rule requires state courts to focus
24 on the narrow issues of exercise of tribal court
25 jurisdictions, and leaves all other determinations

1 regarding the best interest of the Indian child to the
2 tribal court. The rule also -- the proposed rule also
3 aligns with Supreme Court precedent as stated in Holyfield,
4 and the Supreme Court properly deferred to the experience,
5 wisdom, and compassion of the Choctaw Tribal Court.

6 The new rule governing the process by which the
7 state court should determine whether there is good cause
8 to deny a petition of transfer squarely aligns with the
9 Holyfield, that tribal courts are vested with the
10 responsibility, and ensuring the best interest of the
11 Indian child, and are to be trusted to act with
12 competence, experience, wisdom, and compassion.

13 In closing, as a legal practitioner and a judge,
14 I have witnessed many cases whereby our Indian children
15 were moved from a non-Indian home to a non-Indian home
16 foster care. I have also witnessed our own tribal kids in
17 Alaska, for example, graduating out of foster care with no
18 connection to their family or tribes. This has to stop.
19 We can prevent this tragedy from reoccurring by the
20 promulgation of these much-needed regulations.

21 The Bureau of Indian Affairs, as our trustee in
22 the Department of Interior, has the authority to
23 promulgate these regulations as a federal entity, and ICWA
24 specifically provides the statutory language to do so.

25 NAICJA particularly supports the active efforts,

1 as I said, and I also want to applaud Sandy White Hawk who
2 was an adoptee into a non-Indian home. She openly shares
3 her story. As tragic as it is, she gives us hope to make
4 sure our children are not deprived of their political
5 status.

6 It's not just about culture and tradition.
7 It's -- our kids deserve to have their rights as citizens
8 of the tribe. These regs are consistent, also, with
9 United Nation's Declaration of Human rights of Indigenous
10 People in their support of federal self-determination.

11 I leave with these words, advice from elders, we
12 can't lose our Indian children, not even one. Thank you.

13 MS. HARRIS: Thank you.

14 MR. RAEL: Hello. My name is Jason Rael. I'm a
15 manger in training for the Juvenile Division of the Office
16 of the Public Defender, so I work primarily in the
17 delinquency area. Well, entirely in the delinquency area.
18 And I've got to confess my ignorance of ICWA. And I think
19 that's a sad thing because I'm ignorant of it because of
20 its lack of availability or lack of news or even
21 recognition in the delinquency courts. And I think we
22 need to think about that. I can give a little story
23 that's happening right now.

24 We have a Native child in custody in the D home
25 right down the street, and she is going before a panel of

1 people to help decide where she's going to be placed. And
2 our lawyer asked that panel before meeting today whether
3 or not the tribe was notified for ICWA, and the panel told
4 her, at least the probation officer told here, "They were
5 not notified because they don't care."

6 And that seems to be a common theme is that we
7 don't bother with the implementation of ICWA or look at
8 the ideals of ICWA because it's a belief that the tribes
9 simply don't care. So I think that making this a mandate
10 enforceable by law is a good thing, and I think it'll have
11 a positive outcome.

12 My comments are going to be kind of narrow
13 because, as I said, I deal primarily or entirely in
14 delinquency matters. I would like to see just one mention
15 of delinquency in here -- it's where it speaks about ICWA
16 applies in juvenile delinquency proceedings if any part of
17 the proceedings result in the need for placement for a
18 child in foster care.

19 I think that that puts the burden a little too
20 far down the road. In other words, that provision is
21 looking at the moment when it's decided that the child is
22 going to go into placement outside the house, and that can
23 happen at any time during the delinquency matter.

24 If we are looking at notification or even
25 investigation into the child's tribal affiliation, at that

1 point, we're waiting too long. The child may be in
2 custody. And to help -- to wait to determine whether or
3 not somebody's going to be responsive or to make a
4 determination at that point is going to prolong a child's
5 being in custody, which would obviously be detrimental to
6 that child.

7 What I would propose is the rule saying something
8 along the lines of, you know, "In a juvenile delinquency
9 proceeding, if any part of the proceeding could result in
10 a placement outside the house."

11 That would put the burden at the beginning of the
12 case, at the inception of the case rather than at the time
13 when there's a potential for placement outside the house,
14 outside the household.

15 The other thing I would look at is, again,
16 working in criminal defense, I see all sorts of rules out
17 there, and I know that they matter little unless there's
18 some kind of remedy for violation. I'm looking at the
19 section that talks about the implementation of these rules
20 and when those are supposed to be given, and how it's
21 going to be given, I don't see anything specifically that
22 says what the penalty is for violation. And I think that
23 there should be some sort of penalty or some sort of
24 remedy if a child can come forward and say, "My rights
25 here were violated. This was not looked into. This was

1 not addressed for me," and, therefore, something should
2 happen. I think that a remedy section would be
3 appropriate.

4 Also, more clearly defining when these matters
5 apply to delinquency placement. And finally, I would be a
6 little hesitant to apply agency -- the requirements of
7 agency -- of agencies to the child's defense attorney. As
8 a member of the law, a public defender, and Chairman
9 Lujan's a public defender, technically, I'm in a state
10 agency. However, my primary duty isn't to my agency or to
11 my boss over there. It's to my child. My child is
12 sitting right there.

13 So if that child tells me, "I don't want my tribe
14 notified." I have an immediate response to that child to
15 do what he bids -- he or she bids. And I think that
16 making us reporting agents would, in time, at times, maybe
17 conflict with what a child's stated interest is.

18 In the proceeding, I am the only person up there
19 that speaks what the child -- I am the voice of the child,
20 and I think that putting limitations on that or
21 requirements to make me act contrary to that, would be
22 detrimental. So again, a narrower term -- a narrowing of
23 the definition of the term "agency" to exclude defense
24 attorneys in delinquency matters. Thank you. It's Jason
25 Rael, R-A-E-L.

1 DR. STRAITS: Good afternoon. Thank you for
2 allowing me to speak. I am Dr. Kee Straits. I am a
3 clinical psychologist in the Albuquerque area. I work
4 primarily with Native American communities and immigrant
5 communities with a focus on children and families. And I
6 was not necessarily aware of the changes in ICWA until I
7 came on the Society of Indians and Colleges LISTSERV,
8 which is a national organization of all Native Americans
9 and colleges. And there was a discussion pursuant from
10 that where I started listening more because this is not my
11 area of specialty. But I have a personal interest because
12 I, myself, am adopted. I am Quechua. Quechua is the
13 largest indigenous nation in South America. I was adopted
14 into a family in Denver, Colorado. My mother is
15 Caucasian, and I also recently adopted my little girl,
16 Maria-Fernanda. She is also from Peru.

17 And I see a lot of similarities in indigenous
18 communities throughout the world as far as what has been
19 negotiated through colonization, through historical
20 traumas, through the systemic things that have affected
21 all of our communities throughout the world. So I know
22 this is a very sticky issue you all are confronting, and
23 there are multiple perspectives to look at.

24 The two pieces that come to mind for me that I
25 wanted to bring up that came up on the LISTSERV among my

1 colleagues, other psychologists, was regarding the issue
2 of best interest of the child, that it was not necessarily
3 stated in the document this time around, so people were
4 questioning: What does that mean then? Does that mean
5 it's the only way to prioritize the tribe's rights?

6 And I think a lawyer, adoption lawyer, talked
7 about that as well here. And then the bonding and
8 attachment issue. So those are things I just want you all
9 to think about very carefully because I don't have an
10 answer for you, but how crucial they are in the document
11 itself that that best interest of child, I do feel like
12 there's a different perspective. Everyone will have a
13 different perspective on what best interest of the child
14 is that maybe we do need to look to the child, themselves,
15 to be able to speak up for what they think their best
16 interest is.

17 If they are a member of a tribe or could be a
18 member of the tribe, that the tribe does have that say in
19 it. There's multiple people who can have that say and
20 have a perspective, and I feel like you're trying to bring
21 forward a voice that was not brought forward before, which
22 is the tribal community. But to really think about that,
23 and that inherently in -- throughout the world -- there
24 has been a bias against indigenous peoples. It is one of
25 my biggest fears waking up every day after having adopted

1 my own child, that the systems that we live in are biased
2 against indigenous families.

3 And so the best interest of child, as defined
4 previously, has always been by the dominant culture. And
5 I feel that's something this is trying to address. But at
6 the same time, we do not want to forget the actual child
7 and what is the best interest. So to really think about
8 that language very carefully in how you're conveying it
9 and how it's coming across.

10 And then as far as the bonding and attachment,
11 that's another issue of contention among the Native
12 psychologists when we were discussing it on the LISTSERV,
13 because we know how crucial it is in order to have healthy
14 children, that that bonding and attachment is so
15 important. And the way it's brought into the document
16 right now, it does seem like it's irrelevant. But at the
17 same time, I feel like Western approaches regarding
18 bonding and attachment really applies with the
19 mother/child bond, and don't think about the other aspects
20 of bonding and attachment that we have. Usually, we have
21 a connection with our mother, if it's our birth mother,
22 we're allowed to stay in our community, that they connect
23 us to the larger community, and that is really a crucial
24 bonding and attachment as well.

25 But when you are brought into an adoptive family

1 that may not be your own tribe, you may have that bonding
2 and attachment with that parent figure that adopted you.
3 But it doesn't necessarily extend that bonding and
4 attachment to the larger community. And as Native people
5 around the world, we know how important that bonding and
6 attachment is to community and culture.

7 I -- and most adoptees that I know of, regardless
8 of whether they're Native going into White families and
9 White adoptees going into White families, it's really hard
10 to do that, identity development, but just that bonding
11 and attachment to your own culture is even that much more
12 crucial for Native peoples. And that maybe if you
13 re-include that language, but expand the definitions, so
14 that people understand what they really need to look at
15 when they're talking about bonding and attachment, that
16 it's not just, you know, the words we were taught in
17 psychology 101 around bonding and attachment, that it's
18 much broader than that.

19 And that if a family exists for an Indian child,
20 that may be Native or non-Native, but can also do that
21 piece of attachment to their community, which I know I
22 will be working on with my daughter to continue that
23 attachment since we live here in the states, that that's a
24 piece to really look at in our language.

25 And then someone asked why don't we have Native

1 families jumping up and down to be foster families, and
2 again, I always go back to the systemic biases that our
3 communities have been subjected to that make it that much
4 more difficult to reach that point where we are able to.

5 My husband and I were actually hoping to adopt --
6 my husband is Navajo -- Navajo child, but there are such
7 extraordinary hoops to jump through. And we are very
8 educated, middle class, and we've got like so much more
9 ability, and as far as jumping through those state hoops
10 that there's so many Native families that do not have some
11 of those extra advantages that have to jump through those
12 Western hoops.

13 And so I really appreciate things like, the
14 statement in the document that SDS should not be under
15 consideration because that's an inherent bias in our
16 system that Native peoples are just the perspective of
17 that you are not going to be as good a parent if you don't
18 have a certain socio-economic standard, you don't have a
19 certain level of education, or you don't have what we're
20 already sort of set up in that position to begin with.

21 MS. HARRIS: Thank you so much.

22 The Director of BIA Mike Black has joined us over
23 there in the back, and then Regional Director Bill Walker
24 is also here now as well.

25 MR. SANCHEZ: Hello. My name is Little Bear

1 Sanchez. And I'm a member of the Mescalero Apache Tribe.
2 I'm providing testimony today in support of the proposed
3 ICWA regulations to ensure that Native children, like
4 myself, are connected to their families and cultures.

5 These proposed regulations will assist in the
6 legal interpretation to provide uniform enforcement and
7 direct state courts and agencies to promote the highest
8 aspiration of ICWA to protect the well-being of Indian
9 children. I would like to share my story.

10 I entered into state custody in Texas at 15 years
11 old. At no fault of my own, I was in custody for about
12 two years in total, and with the extended placement in a
13 shelter home for about six months, then being placed in a
14 non-Indian foster home for a short period of time before I
15 was again placed in a shelter home following another group
16 home placement.

17 In total I was placed in a residential setting
18 for one month and of the total of being in custody, I was
19 told I was supposed to be in the least restrictive
20 setting. Later, I learned that the placement preferences
21 that what happened here, with any family, tribe and Indian
22 families has a place to live. However, those provisions
23 were, obviously, not followed in my case.

24 This is important because I see that many
25 ethnicities have opportunities to learn their languages

1 and cultures in the most natural settings, their homes.
2 It was unfortunate that I was in custody and not in my
3 family's home or observing all that's good about being
4 Native and all that's good about being me.

5 I eventually made the fateful decision to run
6 away from the placement in the new home, and I actually
7 ran to my grandmother's house. After I was located by my
8 caseworker at my grandmother's house, it was then
9 determined her home was the viable placement, and I was
10 able to be with my family again.

11 Shortly thereafter, I received my GED and I took
12 some college courses at tribal college. My journeys have
13 taken me from many places throughout the country, both
14 near and far, and both urban and reservation.

15 Now, I currently work for an Indian program in
16 Lincoln, Nebraska, because it is important for me to
17 advocate and listen to Indian youth. I suspect that the
18 court, however, that heard my case, will say they were
19 doing what's in their best interest -- oh, in my best
20 interest. However, they failed to consider my interest of
21 being with my loving family members and being in the
22 tribal community, and then taking active efforts to make
23 sure I have those connections.

24 My Native identity means many things to me. One
25 of those things is resiliency. Being Apache means

1 learning in survival environments and climates. I believe
2 that may be imprinted in my DNA.

3 I come before you today to support the BIA
4 proposed ICWA regulations to help the next Native American
5 kid survive the child welfare system. Thank you.

6 MR. CROW: Good afternoon. Hello. My name is
7 Conquering Bear Crow from Hualapai Supai Tribe, Pine Ridge
8 Reservation in South Dakota.

9 I'm a product of the failed implementation of the
10 Indian Child Welfare Act. I'm before you today to voice
11 my support for the proposed ICWA regulations because of
12 the opportunity of increasing the likelihood and
13 meaningful cultural connections through clarifying good
14 cause, exceptions and placement preferences.

15 I want to share my ICWA story to help you
16 understand the importance of the placement preference, and
17 the need for active efforts. I entered foster care at the
18 young age of two, and I was moved back and forth from the
19 reservation to the state of Colorado.

20 At the age of 12, I was separated from my
21 siblings and went on to live in two group homes and two
22 foster homes until I aged out of care. In the next hour,
23 45 kids will be placed in care.

24 It was through this experience that I lost ties
25 and connection to loved ones on the reservation. My

1 second foster home, I was 11, Hispanic and Native couple.
2 My foster parents believed that families needed to be
3 together, so they invited my brother to come live with us.
4 If there had been active efforts to identify the families
5 members, they would have discovered that my aunt only
6 lived 15 minutes away from my placement in a group home.

7 During my junior year in high school, we
8 advocated to have my other siblings to come live with us
9 as well. So in my senior year in high school, I had the
10 opportunity to have them all back in any life. It was
11 great to be a big brother again.

12 Looking back, I believe life in foster care was
13 hard for me because I wanted many opportunities that
14 normal Native American kids experience in their Native
15 American culture. Sun dances, naming ceremonies, powwows,
16 sweats, cultural activities.

17 I believe I did not receive these opportunities
18 because of the lack of funds in the foster care system to
19 support these cultural connections and activities or the
20 ignorance of the state. There is also a lack of training
21 and awareness of Native American customs from my state
22 child welfare agency.

23 As a result, I aged out of foster care lacking
24 the tribal community and family support in my own culture.
25 As an adult, I am still asking many questions about my

1 identity and my culture. These questions are only being
2 slowly answered. I want more than anything to do
3 something to change this so that Native youth in foster
4 care are able to experience the sacred passages of Native
5 American life while they grow up.

6 Additionally, I want to reemphasize, my research
7 or recommendations from the Congressional Coalition of
8 Adoption Institute's 2012 Foster Youth Internship Report
9 regarding the lack of data, systems of tracking compliance
10 and accountability of the Indian Child Welfare Act. There
11 is a need for data collection to check the
12 disproportionality of Indian children in the child welfare
13 system, and most importantly, to check the compliance with
14 state systems.

15 Many state court systems do not have the ability
16 to check some of the basic aspects of the Indian Child
17 Welfare Act, such as making some of the initial findings
18 of an ICWA case like activity efforts. In some cases, the
19 ability to make the core finding of whether there is an
20 Indian child.

21 During the time of my recommendations to
22 Congress, I asked that there was Congressional action that
23 Health and Human Services would include questions about
24 ICWA implementation and compliance with the CFRs that
25 Child Family Service reviews.

1 I have come full circle. I am now working at the
2 Denver New Family Resource Center as a youth engagement
3 family specialist. It is very important that we keep
4 these youth together. It is very important in their
5 culture to be there. Thank you, BIA, for taking time to
6 listen to the many voices throughout Indian Country. I
7 urge BIA to uphold the proposed rules.

8 Those proposed regulations won't help me, won't
9 help Baby Veronica, or those Native children in care now.
10 But it'll help those children that enter after us.
11 Hopefully, they don't have the word "foster care."

12 The seventh generation of young Native leaders
13 are waiting, waiting for the BIA to act. Cousins, aunts,
14 uncles, grandparents, are waiting to be reunited with
15 their loved ones in care. Don't let down our future
16 tribal leaders.

17 In conclusion, I support both regulations.
18 Please don't let the drumbeat die for the youth to come.
19 Thank you.

20 MS. HARRIS: We are halfway through our time
21 here. I know this gentleman is waiting, but I think - I
22 was hoping you could take a quick 10-minute break now so
23 folks can stretch or use the restroom if they need to.

24 MR. GORMAN: I was hoping you could say that
25 after my presentation.

1 MS. HARRIS: I mean, unless -- if you have a
2 meeting or something we can try to squeeze you in
3 beforehand. If not, I prefer we take a break.

4 MR. GORMAN: I have a five-minute speech, but for
5 the benefit of the reporter, it's 10 minutes. Well, for
6 introduction purposes. I'm the executive director of the
7 Navajo Nation Human Rights Commission, and we have four
8 mandates: To educate Navajos about their human rights,
9 assist written complaints by investigating, thirdly,
10 interface with International Human Rights organizations in
11 which we advocate for Navajo human rights, and then
12 finally to attend public hearings to assess race relations
13 in border towns.

14 The reason why my office is here today, is in
15 two-part. One, to learn about what ICWA is about and the
16 proposed rules; and secondly, is our role as a human
17 rights agency, to assess the United States' efforts to
18 fulfill and implement its commitments at the international
19 level towards human rights that are applicable to all
20 peoples of the United States.

21 Our experience has been in two-part. One is that
22 the number of complaints that have been filed with my
23 office is in two-part. One, guardian ad litem are
24 extremely authoritative and have an excessive amount of
25 authority to regulate and manage Indian children. I think

1 it's important to look at the feasibility of assuring that
2 these capacities have the ability and have insurmountable
3 and a significant amount of understanding of indigenous
4 cultures and traditions so that they can interface with
5 the children.

6 Secondly, family, parents, community, extended
7 families members are not represented at all. It's true
8 that most of this policy centers on the right of the
9 child. But the child comes with a lot of different
10 things. That, doesn't seem to be accommodated. This is a
11 financially-exhausting process for families and parents
12 and extended families.

13 So looking at this policy, we're examining it
14 from the human rights' standpoint. The United States has
15 made a commitment in several areas. In particular, the
16 covenant that talks about the right of individuals in
17 which they have inalienable right to exercise their
18 traditional ancient customs as a minority in the
19 community.

20 Secondly, under -- as was mentioned earlier --
21 the United Nations Declaration of the Rights of Indigenous
22 Peoples. This is a collective-right issue. Article III,
23 talks about indigenous peoples have the right of self-
24 determination. By virtue of the right, we freely
25 determine the political status in pursuit of our economic

1 social and cultural development. This is the crux of the
2 concern.

3 There is an ongoing discussion at an
4 international level. We're trying to craft a particular
5 language that applies to Indian children. There's a
6 particular verbiage that's being used out of the covenant
7 on the right of a child.

8 I realize the United States is not a party to
9 that covenant, but it's really nice, the language is
10 really nice. So when you read that language it says, "In
11 those states in which ethnic and religious and linguistic
12 minorities or persons of indigenous origin exist, a child
13 who along with such a minority or who is indigenous shall
14 not be denied the right in community with other members of
15 his or her group to enjoy his or her own culture, to
16 profess and practice his or her religion or to use his or
17 her own language.

18 I mean, that is the standard that, of course, the
19 United States refuses to sign on to. It's a really good
20 standard to use here.

21 So turning to the rules, I've got several
22 comments on the proposed rules language-wise. It's rather
23 interesting. We recommend that you delete words "intended
24 primarily," so it reads that, "we" -- this is the purpose
25 of the rule. And also at the end of that word in the

1 paragraph, it's really unclear if this is intended to be
2 an exhaustive list.

3 If it's not intended to be an exhaustive list,
4 then it should say something to the effect, "but not
5 limited to" or in subparagraph two, strike the words "take
6 any steps necessary," so it should just read "to keep
7 siblings together" or "to keep families together."

8 Subparagraph three, after word "parent," add,
9 "comma, extended family, custodian, and community." And
10 it could also include "nation." And at the end, including
11 "legal" --

12 MS. RAY-HODGE: Could you let us know which
13 number that you're reading from, which sub parts? And we
14 do appreciate it, but we need the number.

15 MR. GORMAN: 23.3, is it?

16 MS. RAY-HODGE: 23.2 in the definition of active
17 efforts.

18 MR. GORMAN: So where was I? Oh, okay.
19 Subparagraph three, after "parents," add "comma, extended
20 family, custodian," and it could also include "nation."
21 And at the end of the paragraph -- subparagraph -- it
22 should also say, "including legal representation."

23 MS. HARRIS: Just so you know, we are close to
24 time.

25 MR. GORMAN: Okay. And then subparagraph six the

1 term, "prevailing social and cultural conditions," why not
2 just say, "prevailing culture and traditions and customs"?

3 And then subparagraph seven, clarify the term
4 "all available." If that is intended to include
5 non-indigenous family preservation strategies. But I
6 think it's intended to mean, "all available indigenous
7 family preservation strategies to also exclude
8 non-indigenous family strategies, family issues."

9 Then finally the three remedies, there are three
10 issues. In the best interest of a child, it's often
11 convoluted. It should have it as a caveat to dignify the
12 meaning of that term "in accordance with the child's
13 culture, indigenous culture, traditions and customs."

14 Same as child safety, which can also be too
15 convoluted, which should also be included "in accordance
16 with the child's culture, traditions, and customs," and
17 then the remedy aspect that was mentioned earlier. Thank
18 you.

19 MS. HARRIS: Thank you. All right. So I guess
20 we'll go ahead and take a 10-minute break now and just
21 back come here just a little bit for -- 2:48.

22 (A break was taken at 2:38 PM.)

23 MS. HARRIS: All right. So we can get started
24 here with whoever is our next commenter.

25 MR. KING: (Native American spoken). I said my

1 name is Holy White Horse. I come from War Veterans tribal
2 leaders and spiritual leaders. My government name is
3 Tracy King, also known as Jay. I just want to say that I
4 do support the comments that are proposed by the BIA, and
5 I just want to tell the gentleman that was speaking that
6 he does not speak for me or my tribe.

7 And I get offended when people like you try to
8 say what I am. Next thing you know, you'll be in the
9 Asian market trying to tell them how to be better Asians.

10 So, just for the record, I get upset when people
11 are like that, that tell me who I am as a symbol in their
12 way. It's always these lawyers that hate my guts, but
13 that's all right.

14 MS. HARRIS: Sir, I appreciate that completely,
15 and we're happy to hear your comments. We're going to try
16 to limit you to providing comments to us, and be sensitive
17 to your comments.

18 MR. KING: Yeah. These comments are for the
19 record. These comments are for the record, so --

20 MS. HARRIS: Okay.

21 MR. KING: I just want to be honest, and that's
22 who I am. if people don't like me, that's fine.

23 But, you know, too many times our -- we have a
24 lot of our children that are in a failing system that have
25 always been some non-Indians or non-tribal members that

1 try to do the best for who we are, and then they end up
2 becoming screwed up in the system.

3 So I was talking to a young man last week in
4 Poplar, Montana. He was taken away from his home. He's
5 19 years old, and he has a number of foster care -- foster
6 homes, non-Indian. And he finally made it home after he
7 was out of the system. And he had this low self-esteem
8 about himself because he was not raised by his culture.

9 And so we talked for about a half hour. I gave
10 him a ride from Poplar to Wolf Point. And so those kind
11 of things show proof that a system fails. And so I
12 believe these -- this proposed language will put teeth
13 into the state workers that are racist. That's the only
14 way I can put it. We have a lot of racists in Montana
15 that hate Indian people. So they want to destroy our
16 family life. The only way they're going to destroy me is
17 shoot me.

18 So I think that the way that these rules are will
19 help -- help strengthen families in unifying them.
20 Because I practice my culture, and there's a lot of people
21 that come in that are spiritual leaders that help families
22 that have -- that have been taken away, and since birth.
23 And my -- one of my relatives was stolen from the nuns way
24 back about 35, 40 years ago as a newborn, and she was only
25 20 miles away.

1 We've been tracking her down for forever until
2 about 12 years ago that she realized that she was treated
3 different, so she needed a connection to who she was. And
4 so she -- she takes a lot of depressant pills to deal. So
5 I have a lot of talks with her to understand where she
6 comes from as a symbol and who she is.

7 And so I see her back and forth trying to be
8 accepted by her non-Indian family, and this side saying --
9 you know, you just see it back and forth.

10 And so, you know, after 10 years, she finally is
11 settling down to be who she is, but I also thank Sandy
12 White Hawk for her efforts, her and the late and great
13 spiritual leader, Chris Leaf, who helped develop a program
14 to -- for connection with families, and that were adopted
15 out, and that's the good thing.

16 There are a lot of good programs out -- I mean, a
17 lot of people out there that do things to help their
18 people to find out who they really are. And that's what I
19 like about it, because our -- my family structure -- we
20 practice today, and it makes our family more strong
21 because of who we are as the family. King's a government
22 name.

23 And so one of the things that my grandfather in
24 the mid 1890s was sent to Carlisle Indian School, 1,980
25 miles away at five years old, and he ran away from that.

1 So when he ran away, he made it all the way home, and they
2 tried to take his culture, but they couldn't. They beat
3 him up till he quit talking her language.

4 So I'm a product of a strong background that
5 says, "It's time for us to do this, to protect our
6 children." And I don't apologize for what I had to say,
7 because it needs to be said. Thank you.

8 MS. PAQUET: My name is Susan Paquet. And I'm
9 here just because I'm here. I'm an attorney. I'm a
10 member of the American Academy of Adoption Attorneys, and
11 I am also a member of ICWA, and I'm also of very strong
12 Cherokee heritage.

13 And what I want to say is a lot of the comments
14 have been very, very good, but they deal with words. And
15 as long we're just talking about words, we're not going to
16 get anyplace. We have to -- both, Native and
17 non-Native -- start respecting each other as people.

18 Our system -- the child welfare system is broken.
19 Two children in Albuquerque in the last three years were
20 murdered by their parents. One was smothered in a
21 playground in a sand pile, and then Amaree was just kicked
22 to death by his mother. And everybody said, "Where was
23 Child Protective Services? Where were the Police
24 Department?"

25 And I think a lot of it has to do with training

1 and overwork, and we just really need to look at everybody
2 as people. And I'd like to -- this is totally unrelated
3 to child welfare, but this is how I see the universe, so
4 I'll tell this story to you.

5 My husband is a runner, and we participated, not
6 this last year, but the year before, in the Pope Run at
7 the Pueblo Indian Cultural Center. And I thought with my
8 walker, you know, I can do the fun one-mile walk, and it
9 was all kids, and they all ran ahead. And there I was,
10 but I had my own cheering session. And they were Natives.
11 They were cheering me on with these signs, "Run like you
12 sell frybread." And they were all so nice to me, and we
13 had such a good time. And then we were taking pictures,
14 and this young man -- they were trying to buy a statue of
15 Pope. And this young pueblo Native boy, probably 20 years
16 old, was a runner, and he wanted his picture taken by the
17 statue, and he posed in the same pose.

18 And for the first time, I really understood
19 culture, and I understood how that young man was a part of
20 that culture. But I guess my prayer and my plea is we
21 don't think just about words, but we think about how we're
22 going to make these words work.

23 If I am to give the tribes notice, I need to hear
24 back. I need their help. If I have a Native child, I
25 need their help. We need to work as a team. Let us not

1 be divided by this, but united by this. Thank you.

2 MR. GALLEGOS: (Native American spoken). My name
3 is Joaquin Ray Gallegos from the Jicarilla Apache Nation.
4 I am of the Pueblo of Santa Ana.

5 I applaud and appreciate the smart work of the
6 Bureau of Indian Affairs to strengthen the Indian Child
7 Welfare Act and find solutions to improve the lives of
8 American Indian and Alaskan Native children and families
9 through the proposed federal regulations.

10 In my work at the Center for American Indian and
11 Alaska Native Health at the Colorado School of Public
12 Health, the Center for Native American Youth at the Aspen
13 institute and the President's White House Generation
14 Initiative. I engage over 7,000 Native children,
15 witnessing their trauma and their resilience, many of whom
16 experience the child welfare system.

17 The impact child welfare has on many Native
18 youth, including members of my own family, guide my work
19 in public health and Indian health policy to improve the
20 health outcomes of tribal nations and Indian children. As
21 a young Native person and health advocate, I fully support
22 the proposed regulations for state courts and agencies in
23 Indian child-custody proceedings.

24 I distinctly know and think these regulations
25 will elevate the physical, mental, emotional, and social

1 well-being of Indian children and their respective tribal
2 nations. My detailed written comments will address the
3 reasoning for my endorsement of the regulations.

4 Briefly, I especially support the pieces
5 involving active efforts. The dispelling of a so-called
6 existing Indian family idea, and placement priorities.

7 I kindly and firmly advise the BIA to stay true
8 to its purpose and mission, to fulfill its legal trust
9 responsibility and legal obligations to strengthen tribal
10 nations. These proposed regulations do just that.

11 I encourage the Bureau of Indian Affairs to
12 remember that opponents of the Indian Child Welfare Act
13 and these proposed regulations, like quad A, do not have
14 the best interest and understanding of the children of
15 their regional nations of these territories and waters.

16 The misguided and intentional quest to weaken the
17 inherent self-determination of tribal nations and the
18 attempt to capture our children cannot impede or slow down
19 the collective work underway to advance Indian child
20 well-being.

21 The Indian Child Welfare Act is an important
22 treatment that is healing Indian children and tribal
23 nations. These regulations are the needed public health
24 tool to sew up and further enhance the well-being of our
25 children. Together, we will strengthen and empower Indian

1 children to lead full and meaningful lives that they
2 deserve. Adopt the regulations. Thank you.

3 MR. ATENCIO: Hello. My name is Hal Atencio.
4 I'm an attorney. My office is here in Albuquerque, New
5 Mexico. I practice in the area of adoption law as well as
6 assisted reproductive technology law, and I'm also a
7 member of the American Academy of Adoption.

8 I'm not here to speak for them today. They sent
9 Larry Jenkins here.

10 I do support the comments that Larry made and the
11 written comments that were provided by the Academy, but
12 I'm here speaking for myself. I have been practicing law
13 for 27 years, 22 of those years in the area and in
14 children's court. I share the concerns that were raised
15 by Susan Paquet about we need to get beyond the words. We
16 need to focus on what this is that we're dealing with, and
17 the children that are going to be affected by these
18 regulations that are proposed. I'm concerned, even the
19 environment where the meeting is held. I'm concerned
20 because I'm not sure if I can say the words in a way that
21 will make you understand that my first and foremost
22 concerns are for the children that are involved in the
23 cases that I take. I've heard so much that makes it sound
24 like this is just going to be a hostile environment, and
25 it shouldn't be.

1 We really should be putting the needs of children
2 before anything else. I mean, appear before Judge Romero
3 on a regular basis, and he usually rules against me, but
4 the fact -- but the fact that he's here -- I respect
5 greatly. I also see CYFD representatives in the room.
6 I'm almost always fighting CYFD when I'm in court, and I
7 see Kandis working in the room, who I have a huge amount
8 of respect for, and she's usually on the other side of the
9 ICWA case if I'm on it. So please forgive me. I'm not
10 trying to be hostile to any of those individuals. But I
11 am very concerned about children.

12 There was a time, for example, when usually, see,
13 I'm brought in by a foster parent who's had a Native
14 American child for several years, and they want to keep
15 that child because that child has not known anybody else
16 as their parents by this point, even they're not Native
17 American.

18 There was a time, I think it was about a year
19 back, maybe even two, when I called Kandis up. And I
20 said, "Kandis, I just got a call from a Native American
21 woman" who was sitting at her grandchild's bedside at UNMH
22 Hospital -- the child had cancer -- this grandmother was
23 right there taking care of this child.

24 And CYFD -- sorry, CYFD, if this doesn't make you
25 look good -- CYFD decided they were going to take that

1 child away from the biological parents who were not able
2 to meet the child's special needs for this medical care
3 because of the cancer.

4 But instead of placing the child with the
5 grandmother who was there every day at this child's
6 bedside, they decided to place the child someplace else.
7 There are provisions that CYFD can follow so that they can
8 place a child with a family member even if that family
9 member has not gone through the home-study process or
10 licensing process. There's still ways that they can do
11 it. They didn't want to do it.

12 So I called Kandis up and I said, "Kandis, rather
13 than fighting me two years from now when this child's been
14 with a non-Native American family for all that time and
15 has bonded to that family, this is a case where your
16 office needs to get involved now because this is a case
17 you're going to win right now. In a few years down the
18 road, maybe you're not because of the bonding."

19 Now, I won't speak to all of the regulations, but
20 23.131 provides that in seeking good cause to deviate from
21 the placement preferences, one of the considerations is
22 the extraordinary physical needs of the child. But then
23 that states, "Extraordinary or emotional needs of the
24 child does not include ordinary bonding or attachment that
25 may have occurred as a result of a placement or the fact

1 that the child has for an extended amount of time been in
2 another placement that does not comply with ICWA."

3 If we're about protecting children, how can that
4 be part of these proposed regulations? How can we say
5 specifically, it doesn't matter that the child is attached
6 or bonded to a new family. Cases that I have won, I've
7 won because the child was bonded or attached to a family,
8 and they really knew nobody else as a family. And some of
9 these families were terrific families that did more to
10 make sure that the child knew of his or her cultural
11 heritage than the child's own tribe did.

12 In one of these cases that I won, part of the
13 evidence was that nobody from the child's tribe had even
14 come to see the child in two years, not even once, to
15 check on the child, not once to say, you know, "CYFD is
16 supposed to be in charge of making sure that we're
17 concerned with cultural heritage." What are they doing?
18 Nothing. But this family did.

19 This family took the child to the reservation and
20 sought out people from the tribe that could help teach the
21 child. They learned things about when the first haircut
22 should be, even though they were not Native. That family,
23 under these regulations, if the Court were to follow these
24 regulations, because again, they're guidelines, right?
25 That family wouldn't have been able to adopt the child,

1 and the child would have been taken away.

2 Now, even under our current regulations, we do
3 not always have a situation where the child remains. So I
4 don't think we need to go to more stringent regulations.
5 Here's --

6 MS. HARRIS: Just letting you know that you are
7 over time. So --

8 MR. ATENCIO: Is my time over?

9 MS. HARRIS: You are over, but if you need to
10 wrap up, that's fine.

11 MR. ATENCIO: Okay. I'd like to leave you with a
12 letter. This is -- I'll wrap up.

13 MS. HARRIS: Of course.

14 MR. ATENCIO: This is a letter from a client of
15 mine who did not get to adopt the child even though she
16 had had this child three years, and had offered to adopt
17 four children from this child's family. But instead, the
18 Court ruled that they could not even intervene to present
19 their position, and the Department raced the family to the
20 child's school to take the child away before the parent
21 could even say good-bye. We don't need to make it more
22 difficult to protect children. That's what this is about.

23 If protecting the children is keeping the child
24 with the grandmother, then let's do that. But if the way
25 to protect the child is to allow a deviation because there

1 really is good cause based on bonding, well, then, let's
2 do that. Let's protect the child. Thank you for letting
3 me have a little extra time.

4 MS. HARRIS: You can leave the comment to the
5 court reporter.

6 MR. ATENCIO: Thank you.

7 MS. HARRIS: Thank you.

8 MS. CLYDE: Good afternoon, everyone. I'm going
9 to say my clan in Navajo (Native American spoken). Okay.
10 For the record, my name is Doris Clyde. I'm a Navajo.
11 I'm originally from Tohatchi, New Mexico, and the side of
12 Gallup, New Mexico. I'm a mother and a grandma.

13 I have done my best to ensure that I raise and
14 teach my children and my grandchildren the importance of
15 their Navajo ways. I have always been available and
16 willing to step forward to take care of my grandchildren.
17 If they ever need me -- today, I am providing you
18 verbally, testimony to support the proposed regulation to
19 enforce the Indian Child Welfare Act because it's been
20 due. It has been long overdue.

21 There is a great need for the federal government
22 to provide binding regulation to ensure the Indian Child
23 Welfare Act is enforced and applied properly in the state,
24 so that our Indian children and families are fully
25 protected. These proposed regulations implement uniform

1 best practices for all state, child welfare agencies,
2 adoption agencies, and the courts. I support the
3 clarification in the proposed regulation. I strongly
4 support the proposed regulation because it explains the
5 difference between the active efforts, and efforts which
6 are in the best practice required by ICWA and minimal
7 efforts.

8 I support that clarification on a qualified
9 expert witness. A qualified expert witness should have
10 knowledge of Indian child tribe culture and custom. I
11 fully -- I strongly support placement preference proposing
12 groups' concerns of best interest being ignored or
13 misguided because there is fully -- was full of compliance
14 active efforts and placement preference.

15 ICWA ensures that the health and safety and best
16 interest of tribal children are met. As a grandma, as a
17 grandparent, I want to be notified and allowed first
18 priority to take care of my grandchildren if they should
19 ever need me to keep them safe.

20 I support the clarification on notice
21 requirements. Overall, as a tribal citizen, mother,
22 grandmother, daughter, sister, aunt, uncle, I suppose
23 these binding regulations to provide (sic) the breakup of
24 Indian families. I urge you to adopt strong ICWA
25 regulations to ensure that ICWA fulfill its essential

1 purpose proposed, of protecting the rights of Indian
2 children, family, and the tribes. Thank you.

3 MS. CLYDE: Good afternoon. I would like to make
4 some comments in response to the references to ordinary
5 attachment and non-Indian.

6 MS. HARRIS: Let me just make sure first before
7 we continue. I know you've already had a chance to speak.
8 So I just want to make sure there's no one that hasn't had
9 a chance to speak yet. I just want to make sure everyone
10 has an opportunity.

11 MS. HANNA: Hi. I'm Jessica Hanna. I'm part of
12 the Seldovia Native Association and a part of the Kenaitze
13 Tribe in Alaska. So I have a suggestion that the rules
14 don't cover, and it's kind of coming out from my personal
15 experience. My husband and I -- we've been foster parents
16 eight years. In our last case was Yakama Nation little
17 girl. And because I'm not part of the Yakama Nation
18 Tribe, I'm not allowed to advocate on her behalf.

19 And my husband's in medical school, and we're
20 wanting to move. And there has been no relatives that
21 have come forward. So what about the children that no
22 one's coming forth to take them, take care of them? What
23 do we do with those children? That's where my big concern
24 is. So I would suggest that -- and I am in no place to
25 give you the time limit -- but once this child has been

1 given -- you know, has been claimed as a Native child, is
2 there an adequate amount of time that, you know, we're
3 seeking, and seeking, and seeking, for a tribe to come
4 forward or even family members? Where do we go from
5 there? So I'm not sure if there's anything you can add
6 into it, but just for the children that have no one that
7 wants to take care of them.

8 MS. MARTINE: Good afternoon. My name is Kandis
9 Martine. It's K-A-N-D-I-S. I just want to make sure you
10 spell it right. Just kidding.

11 I am actually an attorney from the Navajo Nation,
12 but I'm speaking on my personal behalf right now because I
13 applaud and thank everybody that works in the child
14 welfare system, even the states. They are overworked,
15 overburdened, and they are trying their best to look out
16 for the best interest of all children, and I thank them
17 for that.

18 I've been working with -- in child welfare for
19 close to 17 years now, and I've seen many situations, many
20 experiences, had many experiences in many cases. One of
21 the first cases I ever had was in the state of Washington.
22 We went down -- me and a social worker from the state of
23 Washington went down to the state of California to pick up
24 a child. California was very surprised to actually see us
25 there, and they found out the tribe showed up. Everybody

1 that could come, came to the courtroom, and they were just
2 surprised that we were there. And they were asking, "Why
3 are they here?"

4 "We're here to pick up this child."

5 We were able to advocate to that state court to
6 say that this child has relatives in the state of
7 Washington, and we want to take that child back. That
8 afternoon, the social worker and I traveled back with that
9 child. He was two years old. We took him back to
10 Washington and placed him with relatives up there. That's
11 the purpose of ICWA is to say that these children have a
12 place whether it's family members or with the tribe
13 itself, or even with other Native families, because that's
14 the whole purpose of it.

15 I understand good intentions. Good intentions
16 are always, like we say, literally we say, "They are
17 good." But we have to think beyond that. Good intentions
18 in these types of case are what they believe is the best
19 interest of children presently. But I think for Native
20 people we think about whether -- what is the best interest
21 of this child when he or she grows up. Who are they -- do
22 they believe they're going to be? Who are they supposed
23 to look after?

24 Living in Gallup, New Mexico, we, in Navajo, have
25 a newspaper, the Navajo Times. In those papers, there's

1 letters to the editor always asking, "Can somebody tell me
2 where I come from? I was adopted out when I was this
3 small. I was raised by a very well-intended family. I
4 mean, they raised me. They brought me up right. But I
5 don't know who I am. I don't know where I come from."
6 Just generally saying, "Okay. This is where I believe my
7 family came from. Can somebody help me?"

8 I believe that if you are truly looking out for
9 the best interest of children, you look out for their
10 whole being. Meaning, where they are, where they come
11 from, who they are, who their people are, because that's
12 what's in their best interest.

13 When I go to court, that's what I say. I'm not
14 looking out for today. I'm looking out for tomorrow. Or
15 we say in the seven generations later, "I'm looking out
16 for that." And I think that if we truly all believe that
17 we're going to do that, we all need to take that same
18 approach to it. Thank you.

19 MS. SARRACINO: (Native American spoken). Good
20 afternoon, everybody. My name is Donalyn Sarracino, and
21 I'm from the Pueblo of Acoma. I am the director of the
22 Pueblo of Acoma Social Services and a co-chair for the New
23 Mexico Tribal ICWA Consortium. I made my comments
24 earlier this morning in my role as director and co-chair.
25 And this afternoon, I would like to make my comments as a

1 Acoma woman, a mother, an auntie, and in our culture, even
2 a grandmother.

3 And I think that is one thing that we have to
4 keep in mind, that family is beyond for Natives. Family
5 is beyond mom and dad and grandma and grandpa and brother
6 and sister. Family is clans. Family is what -- how
7 children come into our families through initiation, and we
8 have to take that into consideration.

9 One of the things that I would like to share is a
10 personal story. I have a niece who several years back,
11 aged out of the state system, and this would be on my
12 maternal side. And my grandmother and my grandfather have
13 11 living children. There are 34 of us grandchildren, 41
14 great grandchildren, and two great, great grandchildren.
15 And so the importance of active efforts to state to
16 placement preference, you can't tell me you're not going
17 to find a family member who is not willing to take a
18 child. And that's just on my maternal side.

19 In regards to -- also in regards to placement
20 preferences, I think that one of the things that we have
21 to do is make sure that that is really enforced and that
22 there's accountability for that, for placement
23 preferences, and there has to be accountability for it.

24 Because like I said, there's no reason you
25 shouldn't find somebody on the family side, whether it's

1 immediate family, extended family, somebody in the tribe.
2 I have relatives in different tribes because of my clan
3 relationships. And if we stick with placement
4 preferences, we're not going to be having these
5 discussions about bonding with non-Native, non-relative
6 family members because the bonding will happen initially
7 from the beginning.

8 And with bonding, yesterday -- earlier, I had
9 shared that we were in court yesterday, and that was one
10 of the things that was being argued is that the children
11 are currently bonded with their current placement. But if
12 we're able to put these children in with Native, their
13 relatives who want them, and you give them that same
14 amount of time, they're going to bond. They may not know
15 the family now, but they didn't know the family they got
16 placed with. So we have to take that into consideration
17 as well, and allow our children to come home and to form
18 those bonds. Thank you.

19 MR. CODY: (Native American spoken). My name is
20 Thomas Cody. (Native American spoken).

21 So I am Navajo. I work on Navajo. And one of
22 the things that I hope the words that my tribal leaders,
23 other tribal leaders have spoken to you this morning, the
24 words actually came from our heart are not just words to
25 you. As stated by, I think it was Susan and the other

1 attorney that's sitting behind me, I hope they're not just
2 words to you, because they actually come deep from my
3 heart, from our hearts, from our roots where we grew up
4 in. So I think that's the difference.

5 When you really see -- when you really come down
6 to being Native American, being a tribal member, they're
7 not just words to you. So that's how I would like to
8 start.

9 As I was sitting there, I was thinking: How can
10 it just be words? To me, individuals speaking on behalf
11 of their kids, their tribal children. They weren't just
12 words, to me. So that's part of the reason why I
13 really -- actually, I strongly support and recommend that
14 we have these approved. We make sure the state people,
15 the state courts, also the adoption agencies, they follow
16 the regulations. If they follow the regulations, and they
17 truly have our kids as a priority, again, like the young
18 lady said before me, we wouldn't be having these
19 discussions, and we would all be following the rules.
20 There wouldn't be a need for rules. ICWA would be
21 followed. We would be in this happy world.

22 It's not happening. Our kids are being used as a
23 way to buy the little white picket fence houses down the
24 street. That's the main thing. That's the purpose that a
25 lot of these people that you see, I read -- the poster

1 comments. That's basically it.

2 The other thing is, I am so glad the regulations
3 are out because there's a difference between active effort
4 and reasonable effort that we can deal that. The other
5 part would be -- is basically us, as children, as people,
6 with generations of -- that came from generations, just
7 like Kandis said before me, I guess, it's the bad thing
8 about sitting by somebody when you're thinking about --
9 well, actually, I think we think a lot too, is that when
10 you -- when you go to the Gallup Independent or the Navajo
11 Times, you see pictures of elders that were adopted when
12 they were young. And they've come home. "What's my clan?
13 Do you know where this person is? I heard they lived in
14 certain areas of Navajo."

15 So you hear that. We're currently going through
16 archives to make that as an attachment to my official
17 submittal of my comments to you, so you will get that.
18 There's other -- there's people -- once they turn 18, what
19 happens? Once they age out of the foster care, that's
20 what we're trying to address. It's not while they're
21 growing up. While they're growing up, they should be with
22 us. But now these individuals are 18. They live
23 elsewhere.

24 I grew up in Flagstaff, Arizona. I grew up with
25 a nice White family. But I always knew my grandparents

1 were down the road. I always knew I could run off from
2 school, which I did, and hitchhike back out to the
3 reservation to be with my grandparents. But some kids
4 don't have that luxury because they were taken as a little
5 kid, and they grow up, age 50, 40, 50, 60. They come back
6 to Navajo saying, "Do you know who my parents are? Do you
7 know who my grandparents are?"

8 So in conclusion, I think, again, I support the
9 regulations. I support what you're doing, and thank you.
10 And I think it's about time that we abide -- the states
11 abide by the regulations, the adoption agencies, and the
12 courts. Thank you very much.

13 MS. MILLER: Hello. I'm sorry. I have a plane
14 to catch, so --

15 MS. HARRIS: I apologize. I was just focused.

16 MS. MILLER: My name is Allison Miller. I'm Pima
17 Maricopa, P-I-M-A M-A-R-I-C-O-P-A. I come from the Salt
18 River Pima Maricopa Indian Community, which is about 17
19 miles east of Phoenix, Arizona.

20 I've been doing ICWA for over -- it's actually
21 going to be close to 18 years. And I'm not speaking on
22 behalf of my tribe because they are going to submit
23 something. That's my understanding. We're actually going
24 to be working on this very closely. Mostly going to be
25 working with my adoptive parents who work for my tribe,

1 and we have been able to successfully place kids from out
2 of state and in the state of Arizona.

3 So I could have -- I was really reluctant to
4 speak at ICWA. I was there. I was at the hearing. I
5 talked to Secretary of Interior Washburn after his
6 session, his first session, he had there at ICWA. And I
7 guess, I honestly have to say that our tribe motions to
8 intervene in every case where our children are eligible to
9 be enrolled or are enrolled anywhere in any one of the 50
10 states.

11 I have been to California, and I honestly have to
12 say LA County is probably the worst county I've ever been
13 to in all the years that I've been doing this, the most
14 prejudice and the most bias, but we got our kids. We took
15 them that day.

16 So up and down the northwest, Oregon, Washington,
17 Wyoming, Iowa -- we lost that case -- I'm trying to
18 remember -- Colorado and Alaska, recently. But I have to
19 say that I'm in support of the regulations. I am glad
20 that it's going to get a little bit more -- it's going to
21 get tighter. The reins are going to be pulled in a little
22 bit harder.

23 But I also believe the only way that we -- and we
24 have a good working relationship with Maricopa County. We
25 live in that county. A lot of our cases are out of that

1 county. We have a good working relationship, but it
2 wasn't always like that in the very beginning.

3 I inform the different states. I can honestly
4 say, those judges, Oklahoma, we've had a good relationship
5 with, very tiny county. And all the attorneys and all the
6 people that could come, the DHS workers that showed up in
7 that little, tiny, informal courtroom were so impressed
8 that number one, we hired an attorney. And they said we
9 personally appeared at every single hearing in person with
10 our attorney. But here's the tricky part.

11 I have to give credit where credit is due, and
12 that's with our tribal council, who truly believes that
13 the only way we carry on our lineage -- most of you
14 non-Native people don't understand this -- is through our
15 kids, is through our children. They're our future.

16 The two gentlemen that stood up here, they're
17 absolutely right. They're our future. The only way we
18 can do that is to try to be involved. And I'm saddened
19 because we have the luxury and the resources to do that.
20 But try to make that available for these smaller tribes,
21 whether that's one attorney that BIA can hire and contract
22 with. Maybe that is a suggestion. I don't know what the
23 answer is.

24 I do know that I've tried to help other tribes.
25 We've tried to get on board with better communication with

1 the state of Arizona. We have quarterly meetings with
2 them. We've shared numbers with them to make sure that
3 we're not missing kids, and they're not missing our kids,
4 and it has worked very well. But it's communication that
5 works back and forth all the time. That's how it works
6 for us. I can only speak on behalf of our ICWA unit in
7 the Salt River Indian Community.

8 I give tremendous thanks to our tribal council,
9 our president, and our vice president who make it a
10 priority, because these are our future leaders. Thank
11 you.

12 MR. SHIRCEL: Good afternoon. My name is Don
13 Shircel, and for the last 31 years, I've been the director
14 of the Family Services and Client Development Division of
15 the Tanana Chiefs Conference in Alaska, a regional Native,
16 non-profit organization, providing a wide-range of health
17 and social services under the direction of 37 federally-
18 recognized tribes in Alaska's interior.

19 The Tanana Chiefs Conference and its member
20 tribes will be submitting written comments regarding the
21 proposed rule, but since I happened to be in the
22 neighborhood, I decided that I'd register for this public
23 meeting. I'm testifying as a private citizen and a career
24 social worker, who, like all of us in this room, are
25 seriously and deeply concerned about the health and safety

1 and welfare of all children and families and, who, like
2 some of those of you, and some of us in this room, are
3 deeply and seriously concerned about the inability or
4 unwillingness of many state agencies and courts and
5 private adoption agencies to follow the spirit and intent
6 of the Indian Child Welfare Act.

7 As such, I am speaking in strong support of the
8 proposed regulations to enforce the Indian Child Welfare
9 Act. The proposed regulations will implement a uniform
10 best practices for all state child welfare agencies,
11 adoption agencies and courts.

12 The active efforts, the definition and examples
13 included in the proposed regulations, give clear direction
14 to states and their program administrators and workers in
15 the field as to what they need to do to assure the best
16 interests of tribal children are being met before a child
17 is removed from their home, when they're placing a child
18 outside the home, and before parental rights can be
19 terminated.

20 The proposed regulations emphasize the need to
21 follow the placement preferences and limit the ability of
22 agencies to deviate from placement preferences. One of
23 the primary purposes of the Indian Child Welfare Act is to
24 keep Indian children connected with their families, tribal
25 communities and culture. Yet after 35 years since the

1 passage of the act, more than 50 percent of Native
2 children adopted are placed in non-Native homes.

3 The proposed regulations provide requirements
4 that will promote the placement in accordance with the
5 language and intent of the law. Section 23.131 of the
6 proposed regulations state that extraordinary physical,
7 emotional needs of the child may qualify as good cause to
8 depart from the ICWA placement preferences provided that
9 extraordinary physical and emotional needs of the child
10 does not include ordinary bonding or attachment that may
11 have occurred as a result of a placement.

12 The proposed section acts as a preventative
13 measure to encourage compliance with ICWA. Without this
14 provision, those advocating for the departure from the
15 placement preferences may be rewarded for the attachment
16 or bonding that occurs from intentional or non-intentional
17 non-compliance with ICWA. If more children are placed in
18 preferred placements by reason of this proposal, then many
19 more children will have been placed consistent with their
20 best interests.

21 The language in the proposed regulations
22 regarding notice to tribes ensures that tribe have the
23 opportunity to actively participate in all voluntary and
24 involuntary custody proceedings that involve their
25 citizens. The proposed regulations ensure that tribes

1 will receive notice at all phases of a case so that they
2 can participate in every important juncture of the court
3 process.

4 Such participation will also serve to assist
5 courts in complying with the law, and limit the potential
6 for the disruption of placements by providing tribes
7 multiple opportunities to verify that a child is ICWA
8 eligible.

9 Section 23.108 of the proposed regulations simply
10 affirms that tribes and sovereign governments are the only
11 entity with the legal responsibility to determine
12 membership of the tribe, and combined with Section 23.133
13 helps to uphold the political status and rights of each
14 Indian child. Under the proposed regulations, the child
15 has their own independent sets of rights that cannot be
16 waived by parents, guardians, or even their tribe.

17 Section 23.133 is minors, three to five years
18 after they turn 18, to sue for violation of rights under
19 ICWA, include for malpractice on the part of unscrupulous
20 adoption attorneys. As such, the proposed regulations
21 offer real protection for the rights of American Indians
22 and Alaskan Native children, and send a clear message to
23 those who are not diligent in this important work or who
24 would intentionally attempt to usurp the law.

25 As a social worker professional who spent my

1 career working closely with the state and tribal welfare
2 child agencies, and who has personally seen the positive
3 outcomes for children, families, and tribes, that were
4 directly related to compliance with the spirit and intent
5 of the Indian Child Welfare Act, and was also seeing many
6 times that the deleterious outcomes related to those
7 children and families and communities in cases where the
8 state agencies and courts failed to meet those standards,
9 I'm particularly encouraged by the issuance of the
10 proposed resolutions, including those which I have
11 specifically noted today.

12 Thank you for this opportunity to testify. I do
13 have one other brief comment about subsection 23.113, and
14 it's in -- under I, which states the court should allow if
15 it possess the cabability, alternative methods of
16 participation in state court proceedings by family
17 members, tribes, such as participation by telephone, video
18 conferencing or other methods.

19 I would suggest that if they had that capacity
20 that we strengthen the language that they must, and
21 certainly for the villages, the far-flung villages in
22 Alaska, 300 and 400 miles away from the district court
23 offices, from the villages that are isolated and spread
24 out over 235 square miles in Alaska's interior, this would
25 certainly be a help. Thank you.

1 MS. VALLO: Good afternoon. My name is Marsha
2 Vallo from the Pueblo of Acoma. I did make some comments
3 earlier this morning, and I'm representing as a community
4 member, and always as a human service provider for our
5 community.

6 I wanted to share a couple of stories why ICWA
7 needs to be implemented, and that it does work. Again,
8 I'm talking about the intervening and the tribes
9 intervention. We brought home a child about three years
10 ago that was in Tennessee. Because of the ICWA and us
11 intervening, we were able to bring home our child, and
12 that child is thriving now, learning the culture and is
13 living a good life.

14 Also, here in the state of New Mexico, my first
15 case was actually with Mr. Judge John Romero. So I came
16 over here earlier and introduced myself to him, again,
17 because I'm sure he sees a lot of our cases. And I
18 reminded him that the first kid that I did bring home in
19 the state of New Mexico was from his courts. And I told
20 him how heartfelt that was that I was taking home our
21 community member.

22 I remember driving from the Second Judicial Court
23 to CYFD to pick up our child. I was so happy. I was
24 smiling, waving at random people. I missed the turn, got
25 back. And just that elation of knowing that this

1 community member is going to be in touch with their
2 culture, this is where they belong. This is who they are.
3 She's now thriving. She practices the traditional ways.

4 So again, these are some good things about ICWA
5 that does take place. And then again, I want to go to the
6 active efforts when we do practice ICWA. I had a case
7 just recently in Colorado, as well. I had to come in.
8 The social worker on this, from day one, she did have
9 active efforts with the tribe -- notification. She was
10 constantly calling me. We were in conversation the whole
11 time. Within eight months, the kids were reunified with
12 the parents. So it is doable. It is possible.

13 We talk about collaboration, and about how we
14 should work together. While I like to say that some state
15 judges or some state lawyers, when the tribes do
16 intervene, that we not be told we shouldn't intervene
17 because we're lawyers, but we should be told, "How can we
18 help your child go back into your community?" Thank you.

19 MR. JACKSON: Good afternoon. My name is Ron
20 Jackson. While I am an in-house tribal counsel for Ysleta
21 Del Sur Pueblo in El Paso, Texas, I speak here today on my
22 behalf and a group of attorneys who are preparing a
23 response to the Quadruple A memorandum.

24 I'll make my comments brief because I imagine
25 Evelyn is carrying a lot more fire than I am. I will

1 first direct your attention to the proposed definition of
2 "custody," which means physical and/or legal custody under
3 any applicable tribal law or tribal custom. I think this
4 is critical. In the Justin Brown case, the trial court
5 found grounds for termination based on abandonment. And
6 in the Supreme Court, the Court found that Justin's
7 absence of physical and/or legal custody, made certain
8 provisions of ICWA inapplicable.

9 The Court did not know that the grandmother had
10 to have formally filed something, in order to be
11 considered for a preferential placement. In that case,
12 the Supreme Court clearly understood that this case was
13 going back down to the trial level. The guardian for the
14 child said it was. It got back down to the Supreme Court
15 of South Carolina. If you don't know it, private
16 adoptions is a cottage industry in that state. They
17 decided on its own to terminate the guardian, and the
18 Supreme Court said it was going to the tribal court.

19 On the petition to review the termination, the
20 guardian for the child opposed it. That's the sort of
21 chicanery that state courts employ when there's an ICWA
22 case. I think every tribal court should adopt a law, a
23 statute or provision that says like, "No action of either
24 biological parent before the six-month anniversary of the
25 child shall be considered evidence of, or construed as

1 abandonment or relinquishment of physical or legal custody
2 except as provided in the ICWA process." That would keep
3 the Justin Brown case from happening again.

4 Secondly, there is a provision in ICWA that says
5 it does not apply to cases -- custody cases-- in divorce.
6 That was the era back in the seventies where people, and
7 still believed by certain Supreme Court justices, that
8 people didn't have sex outside of marriage and certainly
9 didn't have children outside of marriage. Well, they do.
10 And I have -- most of my cases are unmarried couples.
11 Does that mean ICWA applies to them? No. There's always
12 a chance that one of the biological parents is going to
13 end up with the child.

14 If the state has taken any sort of action
15 involving an Indian child where there's a possibility that
16 neither parent is going to end up with that child, then
17 that is an ICWA case. I would like to see some work on
18 the definitions of proceedings and actions to indicate if
19 you're using state power to take a child away, and there's
20 a chance it will not go back to a biological parent, that
21 is an ICWA case.

22 In that respect, I would like to point out a
23 difference in terminology we use in practice between
24 voluntary proceeding and voluntary placement. In my
25 state, voluntary placement is when a parent, at the very

1 strong suggestion of CPS that the child is going to be
2 taken away, is to put that child with a relative, a
3 kinship placement.

4 In that case -- and then the CPS will whip out
5 one of their forms, a Power of Attorney, authorizing the
6 other person to act on behalf of the child. Since a judge
7 is never going to sign a piece of paper, nothing's ever
8 filed, the state considers that a non-ICWA case. My
9 attitude is a coercive use of state force to place a child
10 away from a parent is an ICWA case. That is a voluntary
11 placement, and that needs to be noticed to the tribe.

12 We have had CPS people place a child with a
13 sister or a relative, that once the tribe found out about
14 it, contacted CPS and said, "No, no, no, no, no. You
15 don't want to do that. We've got somebody else better."

16 Of course, they say, "Well, you're not licensed,"
17 and yada, yada. They never -- and we'll go on.

18 What I would like to say is to clear up that any
19 case where there's a possibility that the biological
20 parent is not going to get that child, that is an ICWA
21 case, and notice needs to be provided.

22 Finally, I'd like to talk about best interests.
23 It is not true -- if you say it long enough, you'll sound
24 precocious -- that you need only to once say, "Best
25 interests is the paramount purpose of ICWA to sound

1 atrocious." In that respect, all the state court cases
2 are saying, "The paramount purpose of ICWA is the best
3 interest of the child are wrong."

4 We need nothing more than the decision this week
5 of Oklahoma deciding to not follow the guidelines to
6 realize again, as the Supreme Court said over 150 years
7 ago, states are the most dangerous of the Indian tribes.

8 Now, let's talk about best interests, and let's
9 talk purpose. Congress hereby declares that it is the
10 policy of the nation to protect the one best interest of
11 Indian children. You know what? It keeps going after
12 that. And two, promote the stability and the security of
13 Indian tribes and families. They are two purposes, which
14 Congress has combined into one act. Congress has struck a
15 delicate balance between protecting the best interest of
16 the child and promoting the security and stability of
17 Indian tribes and families.

18 Except as Congress provides in ICWA, the states
19 are not to use best-interest analysis in anything. Best
20 interest is found in Section 1912(b), Appointment of
21 Counsel. Congress doesn't put any limitations on the use
22 of best interests here, but why should they? This is
23 bread and butter for our trial court. Every criminal case
24 that's fell on you or major misdemeanor, if you're
25 indigent, I've got to appoint counsel. They know how to

1 appoint counsel when they need it.

2 Also, why should Congress be concerned? This is
3 a Eurocentric proceeding with a Eurocentric judge who grew
4 up in a Eurocentric society applying Eurocentric laws, he
5 knows whether the child needs an attorney or not.

6 But let's look at the second place, where
7 Congress says, "Best interests are to be" -- excuse me --
8 specifically, employed. Well, now I don't have it. Let
9 me tell you what it is. Is when adoption is reversed.
10 And it says that if an adoption is reversed, the child's
11 custodian or guardian or parent can petition to have it
12 back, and that the Court shall is in the best interest --
13 that shall go back, according to the proceedings found in
14 Section 1912, unless the Court decides it's in the best
15 interest not to.

16 If you go back to 1912(f), what do you find?
17 Clear and convincing evidence based on a qualified expert
18 witness that the reunification does not constitute a
19 threat of substantial, physical or emotional harm.
20 Congress has defined what best interest is. If it doesn't
21 result in serious, physical, emotional harm, then you
22 don't get to take the child. It stops there.

23 Congress and the work of ICWA is bound to promote
24 the stability and security of Indian nations and the
25 protection of the best interests of children. And when

1 the courts go in there willy-nilly, applying best
2 interests, all they're doing is taking subjective
3 normative values of their society to reach a whack-the-dog
4 decision, which they knew they were doing in going in. It
5 is not in the interest of the child. It is in the
6 interest of that society. It is a political tool, not a
7 legal concept. Thank you.

8 MS. HARRIS: If we don't have anyone else, then
9 we'll take Ms. Blanchard, and then we'll go from there.

10 MS. TORRES: Hi. My name is Tanya Devon Torres,
11 and I'm from Cochiti Pueblo, also Hopi and Laguna Pueblo.
12 I'm here in support of the proposed regulations, and the
13 regulations provide clear and concise clarification as to
14 ICWA Act of 1978.

15 And let's see -- the proposed regulations assist
16 in the establishment of a collaborative effort for the
17 children as a whole. In regards to the bonding and
18 attachment argument by the adoption agencies and lawyers,
19 when these arguments are successful, they incentivize
20 non-compliance with the law; and, therefore, promote
21 placement insecurity for our children.

22 The other concern that I have is it boils down to
23 supply and demand. The major people who are against this
24 are adoption agencies. And what it boils down to is, you
25 know, our children are a form of capitalism. Supply and

1 demand. And so they put money upon a child, and they can
2 make more money off an Indian child, than they can on
3 Black or Hispanic child. And unfortunately, that's really
4 sad. And as a whole, I think we really need to rethink,
5 you know, our children are worth more than money. They
6 deserve to have the right to go to their homes, and have
7 their traditions and their customs, and being taken care
8 of by their families and their relatives. And this is
9 what ICWA supports, the rights of the child. And so that
10 is why I am in support of the proposed regulations.

11 The other concern was the placement preferences
12 that someone brought up about attachment and bonding. If
13 you follow the placement preferences at the initial time
14 of placement, you're not going to run into those issues
15 because then that child is put with a family, which is a
16 relative by kinship. So that's what I have to say. Thank
17 you.

18 MS. HARRIS: Thank you.

19 MS. GARCIA: (Native American spoken). Good
20 afternoon. My name is Monica Garcia. I work for the
21 Pueblo of Acoma Social Services. I just introduced myself
22 in my Native language, which provides self-identity in my
23 Native culture. I support the proposed regulations of
24 ICWA. Yes, many families have the ability to care and
25 raise a child. However, there are different aspects to

1 being born and raised as a Native child in their
2 community. General rules, clan rules, and self-identity
3 are a few of many. We're just not a people of feast days
4 and powwows. Everything we do has meaning and prayer,
5 teaches, which we do to share with generations after
6 myself. Let that sink in.

7 So with that, may we open our hearts and minds to
8 see what our Native children deserve. Thank you. (Native
9 American spoken).

10 MS. BLANCHARD: I need to say something about
11 this phrase, "ordinary attachment and bonding." That
12 phrase is not dismissive of the seriousness of those
13 concepts. But it has a deep historical meaning in the
14 history of the Indian Child Welfare Act, and its
15 implementation.

16 As I said earlier, I was in on the groundwork of
17 the development and passage of this law many years ago.
18 And one of the most serious and, frankly, the most
19 frequent problems that we were confronted with regard to
20 the unwarranted, primarily, removal of Indian children
21 from their families, was that for various and sundry
22 reasons, if you will go back -- look up the 1974 testimony
23 at the hearings -- the Congressional hearings -- that
24 instigated the effort, you will find the many reasons that
25 Indian children were in placement in non-Indian families.

1 One out of every four kids had been removed. 85
2 percent of those were non-Indian families. And when -- if
3 you are -- if you are familiar with the whole process of
4 child removal, removal of the child from the family is one
5 of the most frightening experiences that this little being
6 will ever have. And we know from the practice -- I'm a
7 social worker -- we know from the field of social work,
8 psychiatry and psychology, that what the child does is it
9 tries to figure out in this very confused and threatening
10 moment, why am I here? What happened to me? The child is
11 very, very confused.

12 And when he or she finally resolves this, most
13 frequently, children end up blaming themselves for what
14 happened. And that is a very, very serious dynamic to
15 experience, as I think about this two-year-old and
16 four-year-old that I discussed earlier.

17 But what we found, as we examined these -- the
18 placements -- these out-of-home placements -- was that
19 the -- there were very various mechanisms used by state
20 agencies to prevent contact with -- between the children
21 and the parents and their people, so that these children
22 had nowhere to turn for security but to their caretakers.
23 And as all humans will do, as even our dogs do, and
24 everybody else, all things do that. They will attach, and
25 these children did.

1 And -- but when we attempted to return these
2 children to their families and tribes, that was the
3 defense that was used. "These children are attached. If
4 you remove these children, they're going to experience
5 irreparable harm and damage."

6 Well, we know from experience, that is not the
7 case, and that was the position of state departments
8 across the country. And so the word "ordinary" is not
9 used in an exclusive way, but to say that this is par for
10 the course kind of attachment. And I hope that's
11 appreciated. Because as we sit -- speak right here -- and
12 talk together here, those two children, that I described
13 earlier, are undergoing that very process. Thank you.

14 MS. HARRIS: We can go a few minutes over. I
15 think the court reporter's available for a few more
16 minutes for folks that haven't had a chance to speak.

17 MS. YAZZIE: Good afternoon. My name is Regina
18 Yazzie, R-E-G-I-N-A Y-A-Z-Z-I-E. This morning, Navajo
19 Nation already provided comment in support of the
20 regulations. I'm not here to speak about that, but I'm
21 here as a citizen, as a Native American, as a Navajo. I'm
22 a grandma to two relative children, who my husband and I
23 were relative care providers. So that's where my comment
24 is coming from. My relative children came into our care
25 five years ago, and they weren't an ICWA case, thank

1 goodness. They were just victims of just bad parenting by
2 a relative, and that's really the core of a lot of our
3 issues is, bad parenting.

4 And I think that if things were addressed
5 initially in the home by parents and relatives, because as
6 Native communities, our children belong to our community,
7 as you heard throughout the day, so everybody has a role
8 in that one particular child. So when we're talking about
9 ICWA, we're talking about a community. We're talking
10 about a nation. We're talking about tribes, a village.
11 So everybody has a role in it.

12 Navajo Nation Supreme Court said that. Navajo
13 Nation Supreme Court says, "Navajo children belong to
14 everybody, maternal and paternal side." So I know that
15 Native children, across the board, across the nation, here
16 in the U.S., they're sought after, not only on one side of
17 the family, but on both sides.

18 So my comment really comes to
19 government-to-government relationship building. Now, I'm
20 talking about government to government, not only from the
21 federal to the tribe, as the federal government is
22 entrusted to do, but also from private agencies at the
23 state level, also from the state agencies that work
24 specifically with tribes, that government-to-government
25 building is what I'm talking about.

1 It takes a great deal of effort and work. It's
2 not something that's a quick fix within a day or a week or
3 what have you. It's very lengthy, time consuming and
4 burdensome to come to the table to address child
5 placement, child needs, family needs, parent needs, and so
6 on.

7 So I'm just -- I see in the room, and throughout
8 the day, this morning, and throughout this afternoon, I'm
9 very enlightened, and I learned a great deal from
10 comments. And I appreciate BIA, your commitment and your
11 entrusted commitment to help tribes continue with this
12 process.

13 But I also want to just make my comment known to
14 state officials. I know -- I see Mr. Brownsville here.

15 Thank you for being here.

16 And I really want to acknowledge the judges, too.

17 Judge Romero, Judge Johnson, that was here
18 earlier.

19 And also, the attorneys that are in the room,
20 private and state attorneys. Some of you have spoken this
21 morning. Some of you spoke this afternoon. I appreciate
22 that.

23 And I think that it really comes down to opening
24 our eyes and ears to each other. I think that a couple of
25 people have already said that earlier, and I appreciate

1 those types of comments and sentiments that are expressed.
2 And I think that it really -- from my personal
3 perspective -- from -- thank goodness, again, my two
4 relative children were not ICWA-related. But if they
5 were, of course, I would do everything possible in my
6 power to take in my own relative children.

7 And as mentioned earlier here by this young lady,
8 where are the relatives that don't come forward, children
9 that don't have relatives coming forward. I have a
10 daughter saying, "I'm going to take my children."

11 Let me just say that relationship building is
12 everywhere. So you have tribes, such as Navajo Nation,
13 that have certified adoptive families that can take in
14 children. So if it's not with one particular tribe, you
15 have other tribes. Geez, you know. How many -- over 500
16 tribes nationally in the U.S. that are recognized by the
17 federal government.

18 So I'm not saying contact all 500. I'm just
19 saying that there are tribes that you can also continue to
20 work with to identify, perhaps, a relative -- not a
21 relative -- but an adoptive home for those children and so
22 on. So that relationship building is a continual process.
23 And to say that this is what I've done. I made my
24 efforts. These are my active efforts I've done. I've
25 called this one tribe. I called that tribe. No, you need

1 to go further.

2 So that relationship building is really what my
3 comment is, and I think that all children matter, no
4 matter whether they're Native or non-Native, they all
5 matter, and that's why we're here today. So I appreciate
6 all that -- all those comments that were made -- and I
7 appreciate you-all coming out and hearing us out. Thank
8 you.

9 MS. HARRIS: I think we're wrapping up. So --

10 MS. BEGAY: I'd like to wrap up for you. My name
11 is Sharon Begay McCabe. I'm Navajo. (Native American
12 spoken). And I'm from Wheatfields on the Navajo Nation.

13 And I just want to bring forward to the federal
14 government, thank you very much for listening to us, the
15 pros, the cons, up and down. However, I think that -- I
16 hope you take away that with Native people, particularly,
17 Navajo, I say, "My clan," because when I say, "My clan,"
18 there's going to be another clan in the room that's almost
19 the same as mine. So we become relatives, and that's how
20 we say who we are, and what we are, and be proud of who we
21 are. Because I think that when I was doing -- I'm doing
22 research -- and when I look through that, I take away from
23 thinking about what my late grandfather said to me when I
24 was a little girl. He said, "Don't let our people suffer
25 for nothing."

1 And I didn't know what that meant until I started
2 reading my history books, and I think about the long walk
3 that the Navajo did. They walked 300 miles, and then they
4 were imprisoned for four years before they were released
5 to walk back to the reservation, again.

6 And during this process, there was children that
7 died along the way. There were children that were left
8 with other Indian tribes and said, "Can you watch my child
9 while we go to prison? And when we get out, we can pick
10 up our child on the way home," and many of them did that.
11 And even with a clan, we have the Mexican clan, we have
12 the Pueblo clan. And it goes back to where we really
13 believe in who we are. We're supposed to take care of our
14 family, our children. And in Navajo court that was
15 brought up, it's not just a responsibility. It's a duty.
16 It's a duty that we not leave any of our children behind.

17 And, yes, on the reservation, and like many
18 reservations, the economy there is very poor, and then we
19 have families that move off reservation, and for some
20 reason or another, children are picked up. But back on
21 the reservation, they're still grandma, grandpa, uncles,
22 that still wonder what happened to these children.

23 So when you go back and you look at the
24 foundation of what it means to be a Native American,
25 that's what we're saying here, when you push aside all the

1 laws. Because I've been there. I've seen as a
2 prosecutor, as a defense counsel, as a judge, I've seen
3 even with our Native people. We may have changed a
4 little, but we're still Native American. We still have to
5 relearn.

6 I have this story that 16 years ago, I was a
7 prosecutor. And when children were picked up, I always
8 had grandma or grandpa waiting for the children to be
9 placed at their home, and then when I came back as a
10 prosecutor, nobody asked for them. So my journey was --
11 and my question was: Why? It's because a lot of the ways
12 on the reservation, too, has changed. We don't have
13 farms. We don't have sheep. We're looking for
14 employment, because we're looking for a way we're going to
15 support ourself and support our children.

16 But it's in your heart. It's what we are as
17 Native Americans that we need to continue to advocate for
18 our children, bring them home and work with them.

19 And another story I have is I met this one woman
20 who is a lot older than me. I have this story that my
21 daughter didn't want to marry a Navajo, so she marries
22 another nationality. And the mother came and she said
23 that, "I came to see my son to tell him he's half Navajo."
24 And she said that, "I wanted him to know that." And she
25 said that -- when I talked with her, she said, "All my

1 life I've been searching for who I am, the Navajo portion
2 of it."

3 But I told her that, "If you're Navajo, you're
4 part of us. You're my sister or maybe you're another
5 relative. But for us, as a Navajo woman, we have to
6 accept that portion of you back."

7 And this woman, she suffered from cancer, and
8 when she found out that she was Navajo, and she went
9 back -- you know, her cancer, she went into remission --
10 But the fact that she learned who she was, gave her the
11 strength to fight that. So it goes more than that.

12 So we have to have these regulations pass. And
13 as long as we follow them -- we follow them and we know
14 what all the avenues are, we follow them. Yes, off
15 reservation, these big attorneys asking for them. Follow
16 the regulations.

17 But you're going to see these children. They're
18 going to come back. Mr. Cody had to hitchhike back to his
19 grandma's house. I've seen that on the reservation. I've
20 seen children who are on the road, and it's true. You
21 stop and you ask them, "Why are you hitchhiking?"

22 "Well, I'm running away from home, and I want to
23 see my grandma," you know. And when you drive on the
24 reservation, even though the vehicle is old there and it's
25 smoking and making noise. One day I was looking at an old

1 vehicle. Everybody that got out of that vehicle were
2 laughing. They were happy, and that's what you want these
3 children to know; who they are. It doesn't matter if
4 there's poverty. It matters that they belong there, and
5 you have that sense of belonging.

6 And I think with Native Americans, we try to push
7 that. And even when you go back to your roots, you know,
8 if you go back. I was looking at the immigrants, those
9 immigrants that came oversea (sic). The first thing they
10 saw is the Statue of Liberty. But when they go back and
11 they find their roots there, too, I've seen that, that
12 made them a stronger person, too.

13 So it works both ways. So I ask you to take all
14 the comments by the Native Americans here who support it,
15 and the children, too. Because it takes a lot. I've seen
16 these children practice. I've seen these children prepare
17 to be before you. So I ask that you take those into
18 consideration, and take these comments to heart. We need
19 those regulations. Thank you.

20 MS. HARRIS: Thank you. So I guess thanks,
21 everyone, for coming and for sharing your comments with
22 us, and we'll take them under consideration while we're
23 doing our -- reviewing the final rule. And also just a
24 reminder to submit written comments to comments@bia.gov
25 prior to May 19th. And there should also be a written

1 place to submit comments to, and the address is there for
2 you to send written comments in.

3 And for the record, the time is 4:19. Thank you.

4 (The Public Meeting concluded at 4:19 PM.)

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C E R T I F I C A T E

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

I, MICHELE NELSON, working under the direction
and direct supervision of Yvonne Gonzales, New Mexico CCR
License Number 62, hereby certify that I reported the
attached proceedings; that pages 1-115, inclusive, are a
true and correct transcript of my stenographic notes.

Dated at Albuquerque, New Mexico, this 1st day
of June, 2015.

Michele Nelson

Yvonne Gonzales

YVONNE GONZALES
Certified Court Reporter #62
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A	actions 97:18 active 9:9, 10:6 10:8, 11:18, 13:5 13:7, 13:8, 15:24 22:6, 22:14, 31:7 31:10, 35:6, 36:12 36:15, 37:16, 37:17 37:18, 39:19, 39:23 40:8, 40:14, 42:2 43:25, 54:22, 55:17 56:4, 62:16, 70:5 77:5, 77:14, 82:15 85:3, 90:12, 95:6 95:9, 108:24 actively 91:23 activities 56:16 56:19 activity 57:18 acts 91:12 actual 21:11, 35:19 50:6 ad 59:23 add 32:24, 62:8 62:19, 79:5 added 9:8 adding 9:8 additional 4:13 6:20, 11:9, 11:9 17:25, 21:6 Additionally 57:6 address 8:4, 35:14 50:5, 70:2, 85:20 107:4, 114:1 addressed 24:25 47:1, 106:4 adequate 79:2 Adjourn 3:6 administration 4:9 5:12, 8:13 administrative 26:23 administrators 90:14 adopt 29:13, 33:22 52:5, 71:2, 74:25 75:15, 75:16, 77:24 96:22 adopted 25:16 34:17, 35:23, 48:12 48:13, 48:15, 49:25 51:2, 66:14, 81:2 85:11, 91:2 adopter 44:2	adoptees 16:9 16:11, 51:7, 51:9 adoption 16:3 16:16, 22:4, 25:20 26:1, 26:13, 29:19 30:10, 49:6, 57:8 67:10, 71:5, 71:7 77:2, 84:15, 86:11 90:5, 90:11, 92:20 100:9, 100:10 101:18, 101:24 adoptions 34:7, 34:7 96:16 adoptive 16:19 23:10, 24:18, 24:20 50:25, 86:25 108:13, 108:21 adult 16:9, 16:11 32:5, 56:25 advance 18:7, 70:19 advanced 12:25 advantages 52:11 advice 44:11 advise 70:7 advisor 2:5, 4:18 4:23 advisory 23:17 25:19 advocate 41:9 54:17, 59:11, 69:21 78:18, 80:5, 111:17 advocated 56:8 advocating 91:14 Affairs 1:1, 4:6 4:17, 4:20, 4:23 4:25, 23:3, 43:21 69:6, 70:11 affiliation 16:10 18:12, 45:25 affirms 92:10 afforded 30:14 afternoon 14:14 21:19, 29:24, 34:4 37:11, 40:23, 48:1 55:6, 76:8, 78:3 79:8, 80:8, 81:20 81:25, 89:12, 94:1 95:19, 102:20 105:17, 107:8 107:21 age 32:14, 55:18 55:20, 85:19, 86:5 aged 55:22, 56:23	82:11 agencies 1:2, 9:18 9:21, 13:11, 22:3 22:4, 23:8, 23:25 24:23, 30:10, 30:10 30:12, 33:5, 33:7 36:18, 47:7, 53:7 69:22, 77:1, 77:2 84:15, 86:11, 90:4 90:5, 90:10, 90:11 90:22, 93:2, 93:8 101:18, 101:24 104:20, 106:22 106:23 agency 9:25, 11:12 11:17, 14:18, 15:3 47:6, 47:7, 47:10 47:10, 47:23, 56:22 59:17 agenda 5:2 agents 47:16 ago 9:12, 25:15 26:18, 29:10, 40:2 65:24, 66:2, 94:10 99:7, 103:17 105:25, 111:6 agreed 29:1 ahead 4:1, 4:15, 7:6 7:23, 18:10, 63:20 68:9 alarming 23:6 alarmingly 8:5, 23:8 Alaska 8:19, 40:25 43:17, 69:11, 78:13 87:18, 89:15, 93:22 Alaska's 89:18 93:24 Alaskan 23:18 25:23, 69:8, 92:22 Albuquerque 1:6 4:3, 34:7, 38:16 48:3, 67:19, 71:4 115:12 aligns 43:3, 43:8 alike 36:21 Allison 2:9, 2:20 86:16 allow 4:10, 6:10 6:20, 17:25, 18:7 75:25, 83:17, 93:14 allowed 12:24 50:22, 77:17, 78:18 allowing 48:2	alternative 93:15 Alvarado 2:13 Amaree 67:21 Amber 2:22 America 48:13 American 8:18 21:22, 22:24, 23:1 23:17, 25:23, 25:25 26:13, 29:18, 30:2 36:4, 41:6, 41:10 41:15, 48:4, 55:4 56:14, 56:15, 56:21 57:5, 63:25, 67:10 69:2, 69:8, 69:10 69:12, 71:7, 72:14 72:17, 72:20, 73:14 76:9, 81:19, 83:19 83:20, 84:6, 92:21 102:19, 103:9 105:21, 109:11 110:24, 111:4 Americans 48:8 111:17, 113:6 113:14 amount 59:24, 60:3 72:7, 74:1, 79:2 83:14 amplifies 37:6 Ana 69:4 analysis 99:19 ancestry 31:14 31:15, 34:21 ancient 60:18 and/or 33:14, 96:2 96:7 Anita 2:22 Annamarie 2:14 anniversary 96:24 anonymity 10:3 15:5, 29:7 answer 20:3, 20:10 49:10, 88:23 answered 19:19 57:2 answering 20:13 answers 20:6 anybody 26:19 26:20, 72:15 anyplace 67:16 Apache 53:1, 54:25 69:3 apologies 18:7 apologize 18:4, 67:6
----------	--	--	---	---

86:15 apparent 33:6 Appeals 28:2, 41:4 appear 72:2 appeared 88:9 appears 28:12 28:16 appellate 41:3 applaud 41:21, 44:1 69:5, 79:13 applicability 9:14 applicable 59:19 96:3 application 22:1 30:8 applied 6:1, 33:2 76:23 applies 21:16, 45:16 50:18, 61:5, 97:11 apply 9:14, 24:22 29:11, 35:4, 36:24 37:3, 47:5, 47:6 97:5 applying 100:4 101:1 appoint 99:25 100:1 Appointment 99:20 appreciate 52:13 62:14, 64:14, 69:5 107:10, 107:21 107:25, 109:5 109:7 appreciated 105:11 approach 81:18 approaches 50:17 appropriate 36:12 47:3 approved 84:14 archives 85:16 area 44:17, 44:17 48:3, 48:11, 71:5 71:13 areas 9:8, 60:15 85:14 argued 41:2, 83:10 argument 101:18 arguments 101:19 arises 19:11 arising 34:8 Arizona 85:24 86:19, 87:2, 89:1 Article 60:22	Asdzaan 30:16 Asian 64:9 Asians 64:9 aside 5:18, 110:25 asked 45:2, 51:25 57:22, 111:10 asking 20:4, 34:21 42:4, 56:25, 80:2 81:1, 112:15 aspect 63:17 aspects 50:19, 57:16 102:25 Aspen 69:12 aspiration 53:8 assert 33:13 asserted 29:12 asserting 15:14 assess 59:12, 59:17 assist 16:11, 33:13 53:5, 59:9, 92:4 101:15 assistant 2:4, 2:5 4:6, 4:7, 4:16, 4:21 4:23, 5:1 assisted 71:6 assisting 38:1 Association 21:23 22:25, 23:2, 25:25 41:7, 41:16, 78:12 assuming 21:8 assure 90:15 assures 22:15 assuring 60:1 Atencio 2:19, 3:15 71:3, 71:3, 75:8 75:11, 75:14, 76:6 atrocious 99:1 Atsa 30:16 attach 104:24 attached 74:5, 74:7 105:3, 115:9 attachment 15:22 30:17, 49:8, 50:10 50:14, 50:18, 50:20 50:24, 51:2, 51:4 51:6, 51:11, 51:15 51:17, 51:21, 51:23 73:24, 78:5, 85:16 91:10, 91:15 101:18, 102:12 103:11, 105:10 attempt 70:18 92:24	attempted 105:1 attempts 29:4 attend 38:18, 39:2 59:12 attended 6:13 attention 96:1 attest 15:18 attitude 98:9 attorney 8:18, 8:21 18:14, 21:20, 23:17 26:12, 47:7, 67:9 71:4, 79:11, 84:1 88:8, 88:10, 88:21 98:5, 100:5 attorneys 29:19 47:24, 67:10, 88:5 92:20, 95:22 107:19, 107:20 112:15 aunt 56:5, 77:22 auntie 82:1 aunts 31:2, 58:13 authoritative 59:24 authority 24:24 33:10, 43:22, 59:25 authorizing 98:5 authors 26:16 availability 44:20 available 16:19 38:13, 42:17, 42:17 63:4, 63:6, 76:15 88:20, 105:15 avenues 112:14 avoid 13:6 aware 28:1, 48:6 awareness 56:21	100:16, 103:22 110:5, 110:12 110:20, 110:23 111:9, 112:6, 112:9 112:18, 112:18 113:7, 113:8 113:10 backbone 32:6 background 67:4 bad 85:7, 106:1 106:3 Bailon 2:17 balance 99:15 Band 25:2 barriers 42:14 based 15:17, 15:25 16:5, 76:1, 96:5 100:17 basic 31:22, 32:1 32:12, 57:16 basically 85:1, 85:5 basis 15:13, 21:15 27:17, 72:3 Bear 2:20, 3:12 52:25, 55:7 beat 67:2 becoming 65:2 bedside 72:21, 73:6 Begay 3:22, 109:10 109:11 beginning 34:13 35:8, 40:9, 46:11 83:7, 88:2 begins 10:9, 37:19 begun 39:20 behalf 21:22, 41:5 78:18, 79:12, 84:10 86:22, 89:6, 95:22 98:6 behavior 39:12 39:16 behavioral 37:1 belief 45:8 believe 9:20, 9:25 10:23, 19:4, 26:22 32:5, 32:18, 55:1 56:12, 56:17, 65:12 80:18, 80:22, 81:6 81:8, 81:16, 87:23 110:13 believed 56:2, 97:7 believes 88:12 belong 95:2, 106:6	106:13, 113:4 belonging 113:5 bench 37:4 benefit 59:5 benefits 25:6 Berginhcal 2:19 Bernal 2:18 BERNALILLO 115:4 best 8:7, 22:13 22:16, 24:1, 24:11 25:21, 28:3, 28:11 30:9, 31:11, 41:25 42:1, 43:1, 43:10 49:2, 49:11, 49:13 49:15, 50:3, 50:7 54:19, 54:19, 63:10 65:1, 70:14, 76:13 77:1, 77:6, 77:12 77:15, 79:15, 79:16 80:18, 80:20, 81:9 81:12, 90:10, 90:15 91:20, 98:22, 98:24 99:2, 99:8, 99:10 99:15, 99:19, 99:22 100:7, 100:12 100:14, 100:20 100:25, 101:1 best-interest 99:19 best-practice 22:7 better 35:24, 40:14 64:9, 88:25, 98:15 beyond 13:17, 18:20 19:22, 71:15, 80:17 82:4, 82:5 BIA 2:3, 2:6, 2:6 16:15, 23:14, 52:22 55:3, 58:5, 58:7 58:13, 64:4, 70:7 88:21, 107:10 BIA's 23:21 bias 49:24, 52:15 87:14 biased 50:1 biases 52:2 bids 47:15, 47:15 big 56:11, 78:23 112:15 biggest 33:8, 49:25 Bill 52:23 binding 23:24, 24:5 76:22, 77:23 biological 28:19
B				
		Baby 58:9 Baca-Hodroff 2:19 back 6:11, 6:17 6:18, 7:18, 7:21 12:6, 21:9, 39:2 52:2, 52:23, 55:18 56:10, 56:12, 63:21 65:24, 66:7, 66:9 68:24, 72:19, 80:7 80:8, 80:9, 82:10 86:2, 86:5, 89:5 94:25, 95:18, 96:13 96:14, 97:6, 97:20 100:12, 100:13		

29:22, 73:1, 96:24 97:12, 97:20, 98:19 birth 37:13, 50:21 65:22 bit 25:11, 63:21 87:20, 87:22 bite 39:10 Black 2:23, 52:22 102:3 blaming 104:13 Blanchard 2:12 3:10, 37:11, 37:12 41:24, 101:9 103:10 blush 36:24 board 21:23, 21:24 23:1, 34:12, 41:19 88:25, 106:15 bodily 27:9 boils 101:22, 101:24 bond 30:17, 50:19 83:14 bonded 73:15, 74:6 74:7, 83:11 bonding 15:22 27:21, 49:7, 50:10 50:14, 50:18, 50:20 50:24, 51:1, 51:3 51:5, 51:10, 51:15 51:17, 73:18, 73:24 76:1, 83:5, 83:6 83:8, 91:10, 91:16 101:17, 102:12 103:11 bonding/attachment 27:23 bonds 83:18 books 110:2 border 59:13 born 103:1 boss 47:11 bother 45:7 bound 100:23 boundaries 24:19 boy 38:4, 68:15 bread 99:23 break 58:22, 59:3 63:20, 63:22 breakup 11:19, 31:7 77:23 Brenda 2:16 Brewer 2:12 brief 93:13, 95:24	Briefly 70:4 bring 48:25, 49:20 94:11, 94:18 109:13, 111:18 broad 42:21 broader 51:18 broken 8:6, 23:6 67:18 brother 39:8, 56:3 56:11, 82:5 brothers 30:24 brought 26:18 49:21, 50:15, 50:25 72:13, 81:4, 94:9 102:12, 110:15 Brown 96:4, 97:3 Brownsville 107:14 bruise 38:3 Buchanan 2:9 building 106:19 106:25, 108:11 108:22, 109:2 burden 15:14, 45:19 46:11 burdensome 107:4 bureau 1:1, 4:20 4:25, 23:3, 26:23 29:1, 43:21, 69:6 70:11 Burton 2:6, 4:24 12:11, 12:12 butter 99:23 buttocks 38:3 buy 68:14, 84:23	care 13:14, 16:18 18:19, 31:23, 37:2 38:13, 39:10, 40:3 40:6, 43:16, 43:17 45:5, 45:9, 45:18 55:17, 55:22, 55:23 56:12, 56:18, 56:23 57:4, 58:9, 58:11 58:15, 65:5, 72:23 73:2, 76:16, 77:18 78:22, 79:7, 85:19 102:7, 102:24 105:23, 105:24 110:13 career 89:23, 93:1 carefully 49:9, 50:8 caretakers 104:22 Carlisle 66:24 Carolina 96:15 carried 24:8, 27:1 30:18 Carrillo 2:22 carry 25:19, 88:13 carrying 95:25 case 10:9, 12:17 12:25, 12:25, 18:10 22:12, 25:3, 33:14 46:12, 46:12, 53:23 54:18, 57:18, 72:9 73:15, 73:16, 78:16 80:18, 87:8, 87:17 92:1, 94:15, 95:6 96:4, 96:11, 96:12 96:22, 97:3, 97:17 97:21, 98:4, 98:8 98:10, 98:19, 98:21 99:23, 105:7 105:25 cases 8:15, 33:12 34:9, 41:2, 42:13 43:14, 57:18, 71:23 74:6, 74:12, 79:20 79:21, 87:25, 93:7 94:17, 97:5, 97:5 97:10, 99:1 caseworker 54:8 catch 86:14 categories 13:18 14:1 Caucasian 48:15 Cauley 2:11 cause 12:22, 15:12 15:14, 15:14, 15:16	15:25, 29:17, 42:20 42:22, 43:7, 55:14 73:20, 76:1, 91:7 Cave 2:5, 4:22, 7:25 7:25 caveat 63:11 CCR 115:7 Center 1:6, 58:2 68:7, 69:10, 69:12 centers 60:8 ceremonies 32:20 56:15 certain 52:18, 52:19 85:14, 96:7, 97:7 certainly 7:12, 32:5 93:21, 93:25, 97:8 certified 42:3 108:13, 115:18 certify 14:25, 115:8 cetera 13:11, 15:9 CFR 1:3, 9:7 CFRs 57:24 chair 35:11 Chairman 47:8 challenges 32:4 chance 78:7, 78:9 97:12, 97:20 105:16 change 16:12, 16:13 19:14, 20:1, 31:13 57:3 changed 111:3 111:12 changes 5:7, 24:4 48:6 charge 74:16 Charles 2:15 chart 31:15 charts 31:14 chased 39:9 Chavarria 2:17 Chavez 2:10 check 57:11, 57:13 57:16, 74:15 cheering 68:10 68:11 Cherokee 67:12 Cheryl 3:10, 40:24 chicanery 96:21 chief 2:4, 4:5, 4:21 18:14 Chiefs 89:15, 89:19 child 1:3, 2:5, 5:17	8:3, 9:15, 9:19, 9:19 9:20, 9:20, 9:21 9:22, 9:23, 9:23 9:25, 10:1, 10:10 10:14, 10:24, 10:24 11:17, 11:17, 12:1 13:2, 14:9, 14:19 14:19, 16:6, 16:16 19:3, 19:18, 22:3 22:19, 22:19, 22:21 23:5, 24:25, 25:4 25:21, 27:8, 27:14 27:25, 28:4, 28:11 28:14, 28:21, 29:13 29:20, 30:4, 30:10 30:13, 31:20, 33:1 33:16, 33:16, 34:19 34:22, 35:9, 36:25 37:24, 38:6, 39:7 39:24, 41:2, 42:5 42:5, 43:1, 43:11 44:24, 45:18, 45:21 46:1, 46:6, 46:24 47:11, 47:11, 47:13 47:14, 47:19, 47:19 49:2, 49:11, 49:13 49:14, 50:1, 50:3 50:6, 51:19, 52:6 55:5, 55:10, 56:22 57:10, 57:12, 57:16 57:20, 57:25, 60:9 60:9, 61:7, 61:12 63:10, 63:14, 67:18 67:23, 68:3, 68:24 69:6, 69:16, 69:17 70:12, 70:19, 70:21 72:14, 72:15, 72:15 72:22, 72:23, 73:1 73:4, 73:6, 73:8 73:22, 73:24, 74:1 74:5, 74:7, 74:10 74:14, 74:15, 74:19 74:21, 74:25, 75:1 75:3, 75:15, 75:16 75:20, 75:23, 75:25 76:2, 76:19, 76:22 77:1, 77:10, 78:25 79:1, 79:13, 79:18 79:24, 80:4, 80:6 80:7, 80:9, 80:21 82:18, 90:6, 90:8 90:10, 90:16, 90:17 90:23, 91:7, 91:9
C				
	cabability 93:15 California 79:23 79:24, 87:11 call 17:8, 72:20 called 38:5, 72:19 73:12, 108:25 108:25 calling 95:10 cancer 72:22, 73:3 112:7, 112:9 capacities 6:21, 60:2 capacity 93:19 capitalism 101:25 capture 70:18 capturing 19:8 card 26:20			

92:7, 92:14, 92:14 93:2, 93:5, 94:9 94:11, 94:12, 94:23 95:18, 96:14, 96:20 96:25, 97:13, 97:15 97:16, 97:19, 98:1 98:2, 98:6, 98:9 98:12, 98:20, 99:3 99:16, 100:5 100:22, 101:5 102:1, 102:2, 102:3 102:9, 102:15 102:25, 103:1 103:14, 104:4 104:4, 104:8 104:10, 106:8 107:4, 107:5, 110:8 110:10 child's 10:13, 11:4 13:1, 14:4, 15:19 15:20, 16:12, 16:20 27:19, 33:19, 33:21 34:21, 38:10, 42:9 42:11, 45:25, 46:4 47:7, 47:17, 63:12 63:16, 73:2, 73:5 73:13, 74:11, 74:13 75:17, 75:20 100:10 child-custody 9:15 33:3, 36:23, 42:11 42:18, 69:23 child-rearing 14:12 14:13, 32:9 children 8:7, 8:8 8:19, 18:14, 22:16 23:7, 23:9, 23:18 24:11, 24:17, 24:18 25:8, 25:23, 27:6 27:15, 28:1, 28:13 28:20, 29:23, 30:14 31:24, 32:18, 32:21 32:22, 33:2, 33:7 33:24, 37:23, 38:9 38:11, 38:13, 38:14 38:22, 39:4, 39:5 39:13, 40:3, 41:10 42:1, 43:14, 44:4 44:12, 48:5, 50:14 53:3, 53:9, 57:12 58:9, 58:10, 59:25 60:5, 61:5, 64:24 67:6, 67:19, 69:8	69:14, 69:20, 70:1 70:14, 70:18, 70:22 70:25, 71:1, 71:17 71:22, 72:1, 72:11 74:3, 75:17, 75:22 75:23, 76:14, 76:24 77:16, 78:2, 78:21 78:23, 79:6, 79:16 80:11, 80:19, 81:9 82:7, 82:13, 83:10 83:12, 83:17, 84:11 85:5, 87:8, 88:15 90:1, 90:16, 90:24 91:2, 91:17, 91:19 92:22, 93:3, 93:7 97:9, 99:11, 100:25 101:17, 101:21 101:25, 102:5 103:8, 103:20 103:25, 104:13 104:20, 104:21 104:25, 105:2 105:3, 105:4 105:12, 105:22 105:24, 106:6 106:13, 106:15 108:4, 108:6, 108:8 108:10, 108:14 108:21, 109:3 110:6, 110:7 110:14, 110:16 110:20, 110:22 111:7, 111:8 111:15, 111:18 112:17, 112:20 113:3, 113:15 113:16, 113:16 children's 18:14 38:18, 71:14 Choctaw 25:2, 43:5 Chris 66:13 Chuck 3:8, 18:13 circle 58:1 circumstances 12:4 27:8, 27:24 citizen 32:17, 77:21 89:23, 105:21 citizens 22:10, 44:7 91:25 City 26:12 Civil 28:2 claimed 79:1 clan 76:9, 83:2	85:12, 103:2 109:17, 109:17 109:18, 110:11 110:11, 110:12 clans 82:6 clarification 13:24 25:6, 77:3, 77:8 77:20, 101:13 clarifies 13:8, 13:22 16:2, 42:7, 42:16 clarify 12:13, 12:18 63:3 clarifying 55:13 clarity 5:24 class 52:8 clear 6:2, 6:2, 13:14 13:23, 15:5, 15:15 18:18, 19:22, 26:24 37:2, 37:20, 90:13 92:22, 98:18 100:17, 101:13 clearly 18:11, 47:4 96:12 client 75:14, 89:14 climates 55:1 clinical 48:3 close 62:23, 79:19 86:21 closely 86:24, 93:1 closing 33:22, 43:13 Clyde 2:18, 3:9 3:16, 29:24, 29:25 30:23, 76:8, 76:10 78:3 co-chair 81:22 81:24 Coalition 57:7 Cochiti 101:11 code 35:22 Cody 2:11, 3:18 83:19, 83:20 112:18 coercive 98:9 collaboration 30:7 95:13 collaborative 101:16 colleagues 9:4 36:15, 49:1 collection 57:11 collective 70:19 collective-right 60:22	Colleen 2:24 college 54:12, 54:12 colleges 48:7, 48:9 colonization 48:19 Colorado 30:1 48:14, 55:19, 69:11 87:18, 95:7 combined 92:12 99:14 come 6:9, 6:15, 20:8 31:25, 46:24, 48:24 55:3, 56:3, 56:8 58:1, 58:18, 63:21 64:1, 65:21, 74:14 78:21, 79:3, 80:1 81:2, 81:5, 81:10 82:7, 83:17, 84:2 84:5, 85:12, 86:5 86:17, 88:6, 95:7 107:4, 108:8 112:18 comes 60:9, 66:6 106:18, 107:23 coming 17:5, 50:9 78:14, 78:22 105:24, 108:9 109:7, 113:21 comma 62:9, 62:19 comment 17:20 18:2, 19:25, 34:10 76:4, 93:13, 105:19 105:23, 106:18 107:13, 109:3 commenter 63:24 comments 3:7, 6:5 6:6, 6:10, 6:17, 6:19 6:24, 6:25, 7:7, 7:10 7:16, 7:21, 17:1 17:4, 17:4, 17:12 17:13, 17:15, 17:17 17:23, 17:24, 20:21 20:23, 23:16, 26:5 26:8, 26:17, 34:2 37:15, 40:13, 40:17 41:7, 45:12, 61:22 64:4, 64:15, 64:16 64:17, 64:18, 64:19 67:13, 70:2, 71:10 71:11, 78:4, 81:23 81:25, 85:1, 85:17 89:20, 94:2, 95:24 107:10, 108:1 109:6, 113:14	113:18, 113:21 113:24, 114:1 114:2 comments@bia.gov 7:9, 17:13, 113:24 Commission 59:7 commitment 60:15 107:10, 107:11 commitments 59:18 committed 4:12 Committee 23:17 26:16, 35:12 common 45:6 communication 88:25, 89:4 communities 48:4 48:5, 48:18, 48:21 52:3, 90:25, 93:7 106:6 community 14:5 22:22, 32:23, 49:22 50:22, 50:23, 51:4 51:6, 51:21, 54:22 56:24, 60:6, 60:19 61:14, 62:9, 86:18 89:7, 94:3, 94:5 94:21, 95:1, 95:18 103:2, 106:6, 106:9 compassion 43:5 43:12 competence 43:12 complaint 16:22 complaints 59:9 59:22 completely 26:9 40:15, 64:14 compliance 22:14 24:7, 30:4, 41:12 42:6, 57:9, 57:13 57:24, 77:13, 91:13 93:4 compliant 35:9 comply 74:2 complying 92:5 compounded 39:14 comprehensive 25:15 concept 101:7 concepts 103:13 concern 61:2, 78:23 101:22, 102:11 concerned 27:4 27:21, 28:9, 28:18
---	---	---	---	--

37:15, 71:18, 71:19 72:11, 74:17, 89:25 90:3, 100:2 concerning 25:4 25:8 concerns 22:13 27:2, 29:20, 71:14 71:22, 77:12 concise 101:13 conclude 25:13 concluded 114:4 conclusion 58:17 86:8 conditions 63:1 conduct 11:18 38:25 conducted 15:6 Conference 89:15 89:19 conferencing 93:18 confess 44:18 confirm 33:15 conflict 4:10, 47:17 confronted 103:19 confronting 48:22 confused 104:9 104:11 Congress 8:7, 29:2 29:5, 57:22, 99:9 99:14, 99:14, 99:18 99:21, 100:2, 100:7 100:20, 100:23 Congressional 24:8 24:15, 57:7, 57:22 103:23 connect 50:22 connected 53:4 90:24 connection 28:15 43:18, 50:21, 55:25 66:3, 66:14 connections 54:23 55:13, 56:19 Conquering 2:20 3:12, 55:7 cons 109:15 consent 14:22 14:25, 16:3 consenting 10:2 consequence 38:3 consequences 14:24 14:25 consequently 36:23	consider 7:22, 12:24 12:24, 14:3, 37:7 54:20 consideration 52:15 82:8, 83:16, 113:18 113:22 considerations 73:21 considered 26:6 96:11, 96:25 considering 23:16 considers 98:8 consistency 5:24 24:6, 24:7, 41:14 consistent 9:12 44:8, 91:19 consortium 35:12 35:20, 81:23 constantly 95:10 constitute 100:18 constitutes 42:20 constitutional 28:20 construed 96:25 consultant 37:12 consultation 4:3 6:12 consuming 107:3 contact 37:19, 38:20 39:20, 40:4, 40:9 104:20, 108:18 contacted 38:12 98:14 contacts 13:1 contain 16:21 contained 24:2 contains 10:22 contention 50:11 continual 108:22 continue 40:10 51:22, 78:7, 107:11 108:19, 111:17 continued 13:20 19:2 continues 11:14 continuing 11:16 11:22, 27:18 contract 88:21 contrary 11:18 41:22, 47:21 control 26:24 conversation 95:10 conveying 50:8 convincing 13:15	13:23, 15:6, 15:15 18:19, 19:22 100:17 convoluted 63:11 63:15 cope 39:15 copies 5:6, 26:19 copy 7:2, 8:2, 16:15 26:19, 34:2 core 57:19, 106:2 correct 25:17 115:10 cottage 96:16 council 34:11, 34:14 34:17, 34:25, 35:5 88:12, 89:8 counsel 95:20, 99:21 99:25, 100:1, 111:2 Counselor 5:1 country 5:10, 36:14 40:12, 54:13, 58:6 105:8 county 87:12, 87:12 87:24, 87:25, 88:1 88:5, 115:4 couple 26:18, 27:2 56:1, 94:6, 107:24 couples 97:10 course 38:23, 61:18 75:13, 98:16 105:10, 108:5 courses 54:12 court 1:19, 6:23, 7:1 8:15, 10:3, 10:18 10:19, 10:23, 11:12 11:23, 11:24, 12:10 12:14, 12:20, 12:21 12:22, 12:23, 13:5 13:9, 13:9, 14:3 14:18, 14:24, 14:24 15:12, 16:24, 18:12 18:14, 21:23, 22:24 23:2, 28:2, 28:6 28:23, 29:4, 29:10 29:14, 33:15, 34:3 34:6, 34:12, 34:15 35:23, 41:4, 41:6 41:15, 42:10, 42:12 42:21, 42:24, 43:2 43:3, 43:4, 43:5 43:7, 54:18, 57:15 71:14, 72:6, 74:23 75:18, 76:5, 80:5	81:13, 83:9, 92:2 93:14, 93:16, 93:22 94:22, 96:4, 96:6 96:6, 96:9, 96:12 96:14, 96:18, 96:18 96:22, 97:7, 99:1 99:6, 99:23, 100:12 100:14, 105:15 106:12, 106:13 110:14, 115:18 Court's 28:7 courtroom 80:1 88:7 courts 1:2, 8:15 9:18, 9:21, 12:15 13:2, 22:4, 23:25 24:23, 24:24, 25:7 25:10, 25:16, 25:25 26:24, 26:25, 29:3 30:11, 30:12, 33:6 36:14, 36:17, 42:14 42:23, 43:9, 44:21 53:7, 69:22, 77:2 84:15, 86:12, 90:4 90:11, 92:5, 93:8 94:19, 96:21, 101:1 cousins 31:2, 58:13 covenant 60:16 61:6, 61:9 cover 78:14 covered 33:17 35:21 CPS 98:1, 98:4 98:12, 98:14 craft 61:4 credit 88:11, 88:11 crimes 27:12 criminal 46:16 99:23 crisis 39:13 Cristen 2:11 critical 31:19, 33:15 96:4 Crow 3:12, 55:6 55:7 Cruces 39:17 crucial 24:7, 49:10 50:13, 50:23, 51:12 crux 61:1 cultural 55:13 56:16, 56:19, 61:1 63:1, 68:7, 74:10 74:17	culture 24:19, 24:21 28:12, 28:15, 32:6 32:16, 32:19, 33:19 44:6, 50:4, 51:6 51:11, 56:15, 56:24 57:1, 58:5, 61:15 63:2, 63:13, 63:13 63:16, 65:8, 65:20 67:2, 68:19, 68:20 77:10, 82:1, 90:25 94:12, 95:2, 102:23 cultures 53:4, 54:1 60:4 current 26:15, 75:2 83:11 currently 37:25 42:20, 54:15, 83:11 85:15 custodian 10:11 11:8, 14:23, 15:2 16:7, 42:8, 62:9 62:20, 100:11 custodians 15:8 custody 1:3, 9:9 10:11, 12:2, 13:20 19:2, 24:25, 25:5 27:18, 30:21, 38:2 38:3, 38:11, 44:24 46:2, 46:5, 53:10 53:11, 53:18, 54:2 91:24, 96:2, 96:2 96:7, 97:1, 97:5 custom 77:10, 96:3 customs 14:5, 33:20 56:21, 60:18, 63:2 63:13, 63:16, 102:7 CYFD 38:5, 38:12 38:24, 39:16, 39:16 72:5, 72:6, 72:24 72:24, 72:25, 73:7 74:15, 94:23 Cynthia 2:10
D				
dad 82:5 daily 39:2 Dakota 55:8 damage 12:1, 12:8 13:21, 18:22, 19:3 19:5, 19:18, 38:8 105:5 dances 56:15				

dangerous 99:7 Danny 30:23 Daryle 2:20 data 57:9, 57:11 date 17:11 Dated 115:12 daughter 30:17 30:23, 32:10, 51:22 77:22, 108:10 111:21 day 34:15, 34:15 49:25, 73:5, 87:15 95:8, 106:7, 107:2 107:8, 112:25 115:12 daycare 38:4 days 11:7, 11:9 12:2, 16:20, 38:11 103:3 deadline 17:12 deal 34:15, 45:13 66:4, 67:14, 85:4 107:1, 107:9 dealing 71:16 death 27:9, 67:22 Debra 2:6, 4:24 12:11 decades 25:14 decide 11:24, 45:1 decided 45:21 72:25, 73:6, 89:22 96:17 decides 100:14 deciding 99:5 decision 15:20, 38:5 38:8, 39:24, 54:5 99:4, 101:4 decisions 11:4 Declaration 44:9 60:21 declares 99:9 declines 12:21 decree 16:15 deep 37:14, 84:2 103:13 deeply 89:25, 90:3 defended 41:2 defender 44:16 47:8, 47:9 defense 46:16, 47:7 47:23, 105:3, 111:2 defer 20:16 deferred 43:4	define 26:25, 40:8 40:16 defined 34:20, 50:3 100:20 defining 47:4 definitely 26:21 definition 28:9 28:14, 37:17, 40:14 42:2, 47:23, 62:16 90:12, 96:1 definitions 9:6, 9:9 9:10, 30:22, 31:7 51:13, 97:18 Del 95:21 delete 61:23 deleted 19:12, 21:13 deleterious 93:6 deletion 18:24 deliberative 20:10 delicate 99:15 delinquency 34:9 36:22, 44:17, 44:17 44:21, 45:14, 45:15 45:16, 45:23, 46:8 47:5, 47:24 demand 101:23 102:1 Demmert 40:24 demonstrate 13:5 13:10 denied 61:14 Dennis 2:16 Denver 29:25, 48:14 58:2 deny 12:22, 42:22 43:8 denying 29:22 depart 15:12, 15:16 91:8 Departing 15:11 department 4:4 4:18, 5:11, 8:11 8:16, 9:1, 9:3, 16:21 18:15, 23:12, 38:8 38:14, 39:23, 43:22 67:24, 75:19 Department's 24:5 departments 105:7 departure 91:14 depressant 66:4 deprived 44:4 derives 19:6 descending 14:2	described 105:12 deserve 32:18, 44:7 71:2, 102:6, 103:8 designate 16:11 designated 10:17 designating 10:12 designation 10:18 despite 21:25, 30:6 destroy 65:15, 65:16 detail 13:9, 13:25 14:25, 17:17, 34:20 detailed 70:2 details 17:17 determination 11:18, 15:23, 16:24 36:12, 46:4, 60:24 determinations 42:25 determine 10:13 28:20, 33:11, 38:25 43:7, 46:2, 60:25 92:11 determined 9:22 54:9 determines 10:19 12:22 detrimental 46:5 47:22 develop 32:13 66:13 developed 30:16 31:16 development 40:1 51:10, 61:1, 89:14 103:17 developments 5:20 deviate 33:5, 73:20 90:22 deviation 75:25 Devon 101:10 DHS 88:6 die 58:18 died 110:7 difference 22:6 31:10, 36:17, 77:5 84:4, 85:3, 97:23 different 34:5 49:12, 49:13, 60:9 66:3, 83:2, 88:3 102:25 difficult 29:17, 52:4 75:22 dignify 63:11	diligent 15:6, 92:23 direct 53:7, 96:1 115:7 direction 89:17 90:13, 115:6 directives 24:1 directly 93:4 director 52:22 52:23, 59:6, 81:21 81:24, 89:13 Directors 23:1 34:13 disclosed 34:23 discovered 56:5 discretion 42:21 discussed 104:16 discussing 50:12 discussion 48:9 61:3 discussions 83:5 84:19 dismiss 10:19 dismissive 103:12 dispelling 70:5 disposition 14:16 dispositions 15:3 15:16 disproportionality 57:12 disruption 92:6 distinct 42:10 distinction 36:19 36:22 distinctly 69:24 distinguishing 36:16 district 93:22 diverge 26:8 divided 69:1 Division 44:15 89:14 divorce 97:5 DNA 55:2 doable 95:12 document 11:12 49:3, 49:10, 50:15 52:14 documentation 15:10 documented 13:9 documents 10:4 dogs 104:23 DOI 1:6	doing 54:19, 74:17 86:9, 86:20, 87:13 101:2, 101:4 109:21, 109:21 113:23 domicile 9:9, 25:10 domiciled 25:8, 30:1 dominant 50:4 Don 2:13, 3:18 89:12 Donalyn 2:13, 3:17 81:20 Doris 2:17, 2:18 3:16, 30:23, 76:10 doubt 13:18, 18:20 19:23 Dr 3:11, 48:1, 48:2 drive 112:23 driving 94:22 drumbeat 58:18 due 27:6, 76:20 88:11 Duran 3:21 duress 16:4 duty 47:10, 110:15 110:16 dynamic 104:14
E				
e-mail 17:12, 26:20 earlier 8:3, 39:22 60:20, 63:17, 81:24 83:8, 94:3, 94:16 103:16, 104:16 105:13, 107:18 107:25, 108:7 early 11:19, 42:5 ears 107:24 Earth 41:4 east 86:19 economic 60:25 economy 110:18 editor 81:1 educate 59:8 educated 52:8 education 14:12 31:17, 37:3, 52:19 effect 62:4 effectively 5:13 effectuate 24:15 42:12 efficiently 5:14				

<p>effort 39:19, 40:4 40:5, 85:3, 85:4 101:16, 103:24 107:1</p> <p>efforts 9:9, 10:6 10:8, 11:18, 13:6 13:7, 13:8, 15:24 22:6, 22:8, 22:14 31:7, 31:8, 31:10 31:12, 35:6, 36:13 36:15, 36:15, 37:16 37:17, 37:18, 39:23 40:9, 40:14, 40:15 42:2, 43:25, 54:22 55:17, 56:4, 57:18 59:17, 62:17, 66:12 70:5, 77:5, 77:5 77:7, 77:14, 82:15 90:12, 95:6, 95:9 108:24, 108:24</p> <p>EIF 41:21</p> <p>eight 78:16, 95:11</p> <p>either 12:20, 38:22 42:8, 96:23</p> <p>EI 95:21</p> <p>elapsed 11:6</p> <p>elation 94:25</p> <p>elders 44:11, 85:11</p> <p>elected 32:17</p> <p>elevate 69:25</p> <p>eligible 10:14, 87:8 92:8</p> <p>Elizabeth 3:21</p> <p>Ellen 2:23</p> <p>else's 17:23</p> <p>emergency 11:10 11:11, 11:16, 11:16 11:22, 11:23, 12:2 12:5, 12:6, 12:7 21:12, 21:15, 27:8 42:19</p> <p>emotional 15:20 18:25, 19:4, 19:10 19:12, 19:17, 19:23 19:23, 21:9, 21:12 21:16, 27:11, 27:17 69:25, 73:23, 91:7 91:9, 100:19 100:21</p> <p>emphasis 33:4</p> <p>emphasize 90:20</p> <p>emphasized 31:21</p> <p>employ 96:21</p>	<p>employed 100:8</p> <p>employment 111:14</p> <p>empower 70:25</p> <p>enacted 8:7, 23:5</p> <p>enactment 23:12 23:14, 25:14</p> <p>encourage 7:15 70:11, 91:13</p> <p>encouraged 93:9</p> <p>encourages 16:10</p> <p>ended 11:16</p> <p>endless 31:4</p> <p>endorsement 70:3</p> <p>enforce 30:4, 41:11 76:19, 90:8</p> <p>enforceable 45:10</p> <p>enforced 76:23 82:21</p> <p>enforcement 53:6</p> <p>engage 69:14</p> <p>engagement 58:2</p> <p>engaging 23:15</p> <p>enhance 70:24</p> <p>enjoy 61:15</p> <p>enlightened 107:9</p> <p>enrolled 87:9, 87:9</p> <p>ensure 6:6, 22:11 24:6, 24:11, 30:13 33:23, 41:12, 53:3 76:13, 76:22, 77:25 91:25</p> <p>ensures 5:23, 22:9 33:1, 33:12, 42:6 77:15, 91:22</p> <p>ensuring 24:7 43:10</p> <p>enter 58:10</p> <p>entered 53:10 55:17</p> <p>entirely 44:17 45:13</p> <p>entirety 26:1</p> <p>entity 43:23, 92:11</p> <p>entrusted 106:22 107:11</p> <p>environment 71:19 71:24</p> <p>environments 55:1</p> <p>era 97:6</p> <p>erected 42:15</p> <p>error 19:15</p> <p>errors 25:18</p> <p>especially 20:22</p>	<p>39:13, 70:4</p> <p>essential 31:19 33:23, 77:25</p> <p>essentially 5:6</p> <p>establish 16:17</p> <p>established 8:9 15:21, 24:4, 41:17</p> <p>establishes 16:5 16:9</p> <p>establishment 24:16 101:16</p> <p>et 13:11, 15:9</p> <p>ethnic 61:11</p> <p>ethnicities 53:25</p> <p>Eurocentric 100:3 100:3, 100:4, 100:4</p> <p>evade 20:13</p> <p>evaluate 11:14</p> <p>evaluation 38:24</p> <p>Evelyn 2:12, 3:10 37:12, 95:25</p> <p>events 19:2</p> <p>eventually 54:5</p> <p>everybody 17:21 21:19, 67:22, 68:1 79:13, 79:25, 81:20 104:24, 106:7 106:11, 106:14 113:1</p> <p>everyone's 7:10 7:12</p> <p>evidence 13:15 13:17, 13:23, 15:6 15:15, 18:19, 18:20 19:1, 19:16, 19:22 27:23, 38:7, 74:13 96:25, 100:17</p> <p>examination 38:24</p> <p>examined 104:17</p> <p>examining 60:13</p> <p>example 10:21 27:16, 43:17, 72:12</p> <p>examples 9:24 90:12</p> <p>exception 9:17, 33:1 41:22</p> <p>exceptions 55:14</p> <p>excessive 59:24</p> <p>exclude 27:12 47:23, 63:7</p> <p>exclusive 25:7 33:10, 105:9</p> <p>excuse 100:7</p>	<p>executive 59:6</p> <p>exercise 42:24 60:17</p> <p>exercises 12:9</p> <p>exhaustive 62:2 62:3</p> <p>exist 12:5, 61:12</p> <p>existence 19:23</p> <p>existing 9:16, 32:25 41:22, 70:6</p> <p>exists 12:8, 22:1 30:8, 51:19</p> <p>expand 51:13</p> <p>expectations 6:2</p> <p>experience 14:8 14:12, 43:4, 43:12 55:24, 56:14, 57:4 59:21, 69:16, 78:15 104:15, 105:4 105:6</p> <p>experiences 79:20 79:20, 104:5</p> <p>expert 12:3, 12:4 13:19, 13:25, 14:6 14:11, 15:21, 28:10 33:18, 35:2, 77:9 77:9, 100:17</p> <p>Expires 115:18</p> <p>explain 14:24, 15:7 22:6, 31:10</p> <p>explained 15:1</p> <p>explaining 9:4</p> <p>explains 77:4</p> <p>explicit 20:20</p> <p>explored 13:12</p> <p>exposed 8:19, 23:18</p> <p>express 30:3</p> <p>expressed 108:1</p> <p>extend 51:3</p> <p>extended 13:10 53:12, 60:6, 60:12 62:9, 62:19, 74:1 83:1</p> <p>extent 13:12, 37:6</p> <p>extra 52:11, 76:3</p> <p>extraordinary 12:4 15:20, 27:24, 52:7 73:22, 73:23, 91:6 91:9</p> <p>extremely 36:19 59:24</p> <p>eyes 107:24</p>	<p style="text-align: center;">F</p> <p>faced 32:4</p> <p>fact 72:4, 72:4 73:25, 112:10</p> <p>factors 12:23, 13:3</p> <p>failed 33:7, 54:20 55:9, 93:8</p> <p>failing 64:24</p> <p>fails 65:11</p> <p>failure 40:8</p> <p>Fairbanks 3:10 40:23, 40:24</p> <p>familiar 104:3</p> <p>families 8:5, 8:9 18:15, 23:6, 24:12 24:17, 25:24, 31:8 31:18, 33:25, 35:7 35:9, 36:4, 36:8 41:10, 48:5, 50:2 51:8, 51:9, 52:1 52:1, 52:10, 53:4 53:22, 56:2, 56:4 60:7, 60:11, 60:12 62:7, 65:19, 65:21 66:14, 69:8, 74:9 74:9, 76:24, 77:24 80:13, 82:7, 90:1 90:24, 93:3, 93:7 99:13, 99:17, 102:8 102:24, 103:21 103:25, 104:2 105:2, 108:13 110:19</p> <p>family 9:16, 11:19 13:10, 14:9, 15:9 30:20, 30:25, 31:1 31:24, 32:25, 34:12 34:15, 36:5, 38:1 39:15, 39:20, 40:5 41:22, 43:18, 48:14 50:25, 51:19, 53:21 54:10, 54:21, 56:24 57:25, 58:2, 58:3 60:6, 62:9, 62:20 63:5, 63:7, 63:8 63:8, 65:16, 66:8 66:19, 66:20, 66:21 69:18, 70:6, 73:8 73:8, 73:14, 73:15 74:6, 74:7, 74:8 74:18, 74:19, 74:22 74:25, 75:17, 75:19</p>
---	--	--	---	--

78:2, 79:4, 80:12 81:3, 81:7, 82:4 82:4, 82:6, 82:6 82:17, 82:25, 83:1 83:1, 83:6, 83:15 83:15, 85:25, 89:14 93:16, 102:15 104:4, 106:17 107:5, 110:14 family's 54:3 far 20:4, 38:15 45:20, 48:18, 50:10 52:9, 54:14 far-flung 93:21 farms 111:13 fateful 54:5 fault 53:11 fears 49:25 feasibility 60:1 feast 103:3 February 8:25 federal 8:10, 24:16 24:22, 27:12, 35:22 43:23, 44:10, 69:9 76:21, 106:21 106:21, 108:17 109:13 federally 89:17 feel 6:18, 49:11 49:20, 50:5, 50:17 Felipta 2:11 fell 99:24 fellow 2:5, 4:16 fence 84:23 field 90:15, 104:7 fight 112:11 fighting 72:6, 73:13 figure 51:2, 104:9 filed 59:22, 96:10 98:8 filing 10:17 final 7:23, 16:15 21:10, 113:23 finally 22:17, 35:4 47:5, 59:12, 63:9 65:6, 66:10, 98:22 104:12 financially-exhaust... 60:11 find 15:24, 29:17 42:22, 66:18, 69:7 82:17, 82:25 100:16, 103:24	113:11 finding 57:19 findings 16:24 57:17 finds 15:12 fine 26:9, 64:22 75:10 Fineday 2:22 fire 95:25 firmly 70:7 first 4:14, 5:9, 5:11 6:12, 6:15, 6:16 14:2, 14:2, 14:5 20:2, 21:24, 27:4 27:6, 27:11, 27:16 34:6, 34:11, 36:24 37:19, 68:18, 71:21 74:21, 77:17, 78:6 79:21, 87:6, 94:14 94:18, 96:1, 113:9 five 6:6, 6:10, 17:24 18:4, 66:25, 92:17 105:25 five-minute 59:4 fix 107:2 Flagstaff 85:24 flush 20:9 focus 42:23, 48:5 71:16 focused 86:15 folks 5:4, 6:1, 6:8 6:14, 6:20, 7:18 17:8, 17:14, 18:1 26:4, 26:10, 58:23 105:16 follow 15:3, 20:20 33:4, 73:7, 74:23 84:15, 84:16, 90:5 90:21, 99:5, 102:13 112:13, 112:13 112:14, 112:15 followed 29:16 53:23, 84:21 following 23:12 32:25, 53:15, 84:19 force 8:18, 25:19 98:9 foremost 71:21 forever 66:1 forget 50:6 forgive 72:9 form 11:1, 40:20 42:14, 83:17	101:25 formal 31:16 formally 96:10 forming 6:14 forms 98:5 forth 7:18, 39:2 55:18, 66:7, 66:9 78:22, 89:5 fortunate 31:25 forward 4:12, 6:4 7:10, 7:22, 46:24 49:21, 49:21, 76:16 78:21, 79:4, 108:8 108:9, 109:13 foster 13:14, 16:18 18:19, 23:10, 24:18 24:20, 28:5, 35:9 36:5, 36:8, 36:9 36:25, 37:2, 39:10 39:15, 39:25, 40:6 43:16, 43:17, 45:18 52:1, 53:14, 55:17 55:22, 56:1, 56:2 56:12, 56:18, 56:23 57:3, 57:8, 58:11 65:5, 65:5, 72:13 78:15, 85:19 found 12:15, 79:25 96:5, 96:6, 98:13 99:20, 100:13 104:17, 112:8 foundation 32:3 110:24 four 14:1, 25:14 30:24, 59:7, 75:17 104:1, 110:4 four-year-old 38:6 39:7, 39:9, 39:14 104:16 fourth 14:10 frankly 103:18 fraud 16:3 free 6:18 freely 60:24 frequent 38:20 103:19 frequently 104:13 Friday 28:2 frightening 104:5 frybread 68:12 fulfill 24:10, 59:18 70:8, 77:25 fulfilling 25:22	fulfillment 42:12 fulfills 33:23 full 22:14, 34:18 34:20, 34:25, 58:1 71:1, 77:13 fully 15:1, 22:10 69:21, 76:24, 77:11 77:13 fun 68:8 functioning 5:13 funds 56:18 further 22:12, 70:24 109:1 future 32:17, 58:15 88:15, 88:17, 89:10	79:1 gives 13:24, 14:1 26:20, 44:3 giving 25:15 glad 85:2, 87:19 go 4:1, 4:14, 5:4 6:18, 7:6, 7:23, 12:6 18:10, 21:4, 28:7 42:3, 45:22, 52:2 63:20, 75:4, 79:4 81:13, 85:10, 95:5 95:18, 97:20, 98:17 100:13, 100:16 101:1, 101:9, 102:6 103:22, 105:14 109:1, 110:9 110:23, 113:7 113:8, 113:10 go-around 18:1 goal 9:11 goes 110:12, 112:11 going 7:18, 12:5 12:10, 20:3, 20:5 26:16, 27:3, 28:7 34:5, 34:19, 36:25 39:24, 44:25, 45:1 45:12, 45:22, 46:3 46:4, 46:21, 51:8 51:9, 52:17, 64:15 65:16, 67:15, 68:22 71:17, 71:24, 72:25 73:17, 76:8, 80:22 81:17, 82:16, 83:4 83:14, 85:15, 86:21 86:22, 86:23, 86:24 87:20, 87:20, 87:21 95:1, 96:13, 96:18 97:12, 97:16, 98:1 98:7, 98:20, 99:11 101:4, 102:14 105:4, 108:10 109:18, 111:14 112:17, 112:18 Gonzales 115:7 115:17 good 12:22, 14:14 15:12, 15:14, 15:14 15:16, 15:25, 21:19 29:17, 29:24, 31:15 34:4, 37:11, 40:23 42:20, 42:22, 43:7 45:10, 48:1, 52:17 54:3, 54:4, 55:6
G				
gaining 14:22 Gallegos 2:21, 3:15 69:2, 69:3 Gallup 76:12, 80:24 85:10 Garay 2:10 Garcia 2:15, 2:16 3:20, 102:19 102:20 GED 54:11 Geez 108:15 General 8:22, 103:2 General's 8:18 23:17 generally 81:6 generation 58:12 69:13 generations 81:15 85:6, 85:6, 103:5 Genne 2:23 genogram 31:15 genograms 31:14 gentleman 58:21 64:5 gentlemen 88:16 Gina 2:5, 4:15 14:14 girl 39:15, 48:15 78:17, 109:24 give 25:12, 34:2 44:22, 68:23, 78:25 83:13, 88:11, 89:8 90:13 given 6:17, 6:24, 8:2 42:21, 46:20, 46:21				

55:13, 61:19, 66:15 66:16, 67:14, 68:13 72:25, 73:20, 76:1 76:8, 78:3, 79:8 80:15, 80:15, 80:17 80:17, 81:19, 87:24 88:1, 88:4, 89:12 91:7, 94:1, 94:13 95:4, 95:19, 102:19 105:17 good-bye 75:21 good-cause 15:12 goodness 106:1 108:3 Gorman 3:13, 58:24 59:4, 62:15, 62:18 62:25 governing 43:6 government 5:13 64:2, 66:21, 76:21 106:20, 106:20 106:21, 108:17 109:14 government-to-gov... 106:19, 106:24 governments 92:10 Grace 2:21 graduating 43:17 grandchild's 72:21 grandchildren 38:2 38:21, 76:14, 76:16 77:18, 82:13, 82:14 82:14 grandfather 66:23 82:12, 109:23 grandma 76:12 77:16, 82:5, 105:22 110:21, 111:8 112:23 grandma's 112:19 grandmother 31:21 32:1, 38:1, 38:12 38:20, 72:22, 73:5 75:24, 77:22, 82:2 82:12, 96:9 grandmother's 54:7 54:8 grandpa 82:5 110:21, 111:8 grandparent 77:17 grandparents 31:2 58:14, 85:25, 86:3 86:7	grants 8:14 great 7:7, 17:12 56:11, 66:12, 76:21 82:14, 82:14, 82:14 107:1, 107:9 greatly 72:5 grew 84:3, 85:24 85:24, 100:3 grounds 96:5 groundwork 103:16 group 53:15, 55:21 56:6, 61:15, 95:22 groups 22:12, 77:12 grow 57:5, 86:5 growing 85:21 85:21 grows 80:21 guardian 59:23 96:13, 96:17, 96:20 100:11 guardians 22:20 92:16 guess 4:14, 5:9, 7:23 17:20, 63:19, 68:20 85:7, 87:7, 113:20 guidance 25:15 30:6 guidances 25:16 guide 69:18 guidelines 5:16 5:18, 5:19, 8:12 8:17, 8:23, 9:1, 9:2 13:16, 23:15, 23:19 23:21, 23:23, 24:4 25:17, 28:3, 28:7 29:2, 35:14, 36:17 37:2, 37:17, 39:21 40:21, 41:24, 74:24 99:5 guts 64:12	83:6 happened 39:18 53:21, 89:21 104:10, 104:14 110:22 happening 44:23 84:22, 97:3 happens 85:19 happy 4:12, 26:20 64:15, 84:21, 94:23 113:2 hard 5:6, 7:1, 34:2 51:9, 56:13 harder 87:22 harm 12:1, 12:8 13:21, 18:22, 19:3 19:24, 21:16, 27:17 37:25, 38:7, 100:19 100:21, 105:5 Harold 2:19 Harris 2:4, 4:1, 4:5 4:21, 9:12, 17:19 20:2, 21:5, 21:18 25:11, 26:3, 34:1 37:10, 40:22, 44:13 52:21, 58:20, 59:1 62:23, 63:19, 63:23 64:14, 64:20, 75:6 75:9, 75:13, 76:4 76:7, 78:6, 86:15 101:8, 102:18 105:14, 109:9 113:20 hat 6:8 hate 64:12, 65:15 Hawk 44:1, 66:12 heads-up 25:12 healing 70:22 health 22:15, 37:1 57:23, 69:11, 69:12 69:19, 69:19, 69:20 69:21, 70:23, 77:15 89:16, 89:25 healthy 50:13 hear 7:15, 17:1 64:15, 68:23, 85:15 heard 54:18, 71:23 85:13, 106:7 hearing 6:4, 11:14 11:23, 12:3, 17:10 34:22, 34:23, 87:4 88:9, 109:7 hearings 8:19, 59:12	103:23, 103:23 heart 25:3, 83:24 84:3, 111:16 113:18 heartfelt 94:20 hearts 84:3, 103:7 held 8:19, 71:19 Hello 7:25, 44:14 52:25, 55:6, 71:3 86:13 help 22:18, 24:6 30:13, 32:20, 36:18 45:1, 46:2, 55:4 55:15, 58:8, 58:9 58:10, 65:19, 65:19 65:21, 66:17, 68:24 68:25, 74:20, 81:7 88:24, 93:25, 95:18 107:11 helped 66:13 helpful 17:18, 20:22 22:5, 31:9, 36:19 helps 92:13 heritage 67:12 74:11, 74:17 hesitant 47:6 Hi 18:13, 78:11 101:10 high 4:9, 8:5, 23:6 23:9, 32:8, 35:1 56:7, 56:9 highest 53:7 highlight 27:2 highlighted 20:9 highlights 5:7 14:16, 27:4 hire 88:21 hired 88:8 Hispanic 56:1 102:3 historical 48:19 103:13 history 103:14 110:2 hitchhike 86:2 112:18 hitchhiking 112:21 hold 11:13 Holy 64:1 Holyfied 43:3 Holyfield 25:2, 43:9 home 36:25, 40:25 43:15, 43:15, 44:2	44:24, 53:13, 53:14 53:15, 53:16, 54:3 54:6, 54:9, 56:1 56:6, 65:4, 65:6 67:1, 83:17, 85:12 90:17, 90:18, 94:9 94:11, 94:18, 94:20 106:5, 108:21 110:10, 111:9 111:18, 112:22 home-study 73:9 homes 23:10, 24:18 24:20, 33:8, 54:1 55:21, 55:22, 65:6 91:2, 102:6 honest 64:21 honestly 87:7, 87:11 88:3 hoops 52:9, 52:12 hop 6:18 hope 34:10, 44:3 83:22, 84:1, 105:10 109:16 Hopefully 58:11 Hopi 101:11 hoping 7:14, 52:5 58:22, 58:24 Horse 64:1 Hospital 72:22 hosted 8:16 hostile 71:24, 72:10 hour 55:22, 65:9 house 45:22, 46:10 46:13, 54:7, 54:8 69:13, 112:19 household 46:14 houses 84:23 Howkumi 2:20 Hualapai 55:7 huge 72:7 human 44:9, 57:23 59:7, 59:8, 59:10 59:11, 59:16, 59:19 60:14, 94:4 humans 104:23 humble 35:24 husband 52:5, 52:6 68:5, 78:15, 105:22 husband's 78:19
	H			
	haircut 74:21 Hal 3:15, 71:3 half 65:9, 111:23 half-a-page 35:17 halfway 58:20 hand 12:11 Hankie 2:6, 4:19 Hanna 2:18, 2:21 3:16, 78:11, 78:11 happen 45:23, 47:2			
				I
				ICWA 1:3, 3:5, 4:4

8:7, 8:12, 8:15, 9:12 9:14, 15:3, 16:4 16:6, 19:4, 22:7 22:15, 24:7, 24:8 24:14, 25:1, 25:3 25:6, 25:14, 26:16 26:22, 26:24, 26:25 28:21, 28:24, 30:14 31:11, 33:17, 33:23 34:16, 35:8, 35:12 35:15, 36:24, 37:3 41:12, 41:16, 41:23 43:23, 44:18, 45:3 45:7, 45:8, 45:15 48:6, 53:3, 53:8 55:4, 55:11, 55:15 57:18, 57:24, 59:15 67:11, 72:9, 74:2 77:6, 77:15, 77:24 77:25, 80:11, 81:23 84:20, 86:20, 87:4 87:6, 89:6, 91:8 91:13, 91:17, 92:7 92:19, 94:6, 94:10 95:4, 95:6, 96:8 96:21, 97:2, 97:4 97:11, 97:17, 97:21 98:10, 98:20, 98:25 99:2, 99:18, 100:23 101:14, 102:9 102:24, 105:25 106:9 ICWA's 23:12, 24:5 25:22 ICWA-related 108:4 idea 70:6 ideals 45:8 identified 30:14 identify 35:6, 56:4 108:20 identity 51:10 54:24, 57:1 ignorance 44:18 56:20 ignorant 44:19 ignore 23:25 ignored 22:13 77:12 III 60:22 imagine 95:24 immediate 30:20 30:25, 47:14, 83:1	immediately 11:15 31:9, 37:24, 38:5 38:9, 39:20 immigrant 48:4 immigrants 113:8 113:9 imminent 11:25 12:7, 18:21, 18:22 impact 69:17 impacted 6:1 impede 70:18 impending 27:9 implement 22:2 30:9, 59:18, 76:25 90:9 implementation 8:12, 9:13, 24:6 25:21, 33:9, 34:18 34:20, 34:25, 36:18 45:7, 46:19, 55:9 57:24, 103:15 implemented 32:9 94:7 implicit 28:10 importance 55:16 76:14, 82:15 important 17:11 18:17, 25:22, 31:18 32:16, 42:19, 50:15 51:5, 53:24, 54:16 58:3, 58:4, 60:1 70:21, 92:2, 92:23 importantly 57:13 impressed 88:7 imprinted 55:2 imprisoned 110:4 improve 69:7, 69:19 in-house 95:20 inability 90:3 inadequate 35:16 36:7 inalienable 60:17 inapplicable 96:8 incentivize 101:19 inception 46:12 include 15:22, 29:4 37:9, 57:23, 62:10 62:20, 63:4, 73:24 91:10, 92:19 included 15:13 63:15, 90:13 includes 30:18 36:19	including 14:20 16:16, 16:24, 34:9 35:2, 42:18, 62:10 62:22, 69:18, 93:10 inclusive 115:9 inconsistencies 20:24, 41:13 inconsistent 22:1 30:8 incorporate 24:3 increasing 55:12 independent 1:19 22:19, 37:12, 85:10 92:15 Indian 1:1, 1:3, 1:6 2:5, 2:6, 2:6, 4:6 4:16, 4:19, 4:20 4:23, 4:24, 4:25 5:10, 5:17, 8:3, 8:5 8:8, 8:18, 9:15, 9:16 9:19, 9:20, 9:22 9:23, 9:25, 10:10 10:11, 10:24, 11:8 11:17, 11:19, 12:11 13:11, 14:19, 14:22 15:2, 15:8, 16:6 16:6, 16:20, 21:22 22:19, 22:24, 23:2 23:3, 23:4, 23:6 23:18, 24:10, 24:11 24:12, 24:17, 24:19 24:21, 24:25, 25:4 25:8, 25:23, 25:25 27:5, 27:15, 27:25 28:13, 28:14, 29:20 29:23, 30:4, 30:13 30:13, 31:8, 31:18 31:20, 32:18, 32:21 32:21, 32:25, 33:1 33:2, 33:7, 33:8 33:16, 33:24, 34:18 34:21, 34:22, 41:2 41:3, 41:6, 41:15 41:22, 42:1, 42:5 42:8, 42:8, 42:11 42:11, 42:18, 43:1 43:11, 43:14, 43:21 44:12, 51:19, 53:8 53:21, 54:15, 54:17 55:10, 57:10, 57:12 57:16, 57:20, 58:6 59:25, 61:5, 65:15 66:24, 68:7, 69:6	69:6, 69:8, 69:10 69:19, 69:20, 69:23 70:1, 70:6, 70:11 70:12, 70:19, 70:21 70:22, 70:25, 76:19 76:22, 76:24, 77:10 77:24, 78:1, 86:18 89:7, 90:6, 90:8 90:23, 90:24, 92:14 93:5, 97:15, 99:7 99:11, 99:13, 99:17 100:24, 102:2 103:14, 103:20 103:25, 110:8 Indians 14:9, 48:7 92:21 indicate 97:18 indicated 27:17 indicating 35:8 indigenous 44:9 48:13, 48:17, 49:24 50:2, 60:3, 60:21 60:23, 61:12, 61:13 63:6, 63:13 indigent 99:25 individual 35:25 individuals 33:20 60:16, 72:10, 84:10 85:22 industry 96:16 inform 88:3 informal 88:7 information 16:16 inherent 52:15 70:17 inherently 49:23 initial 57:17, 102:13 initially 17:25, 83:6 106:5 initiation 82:7 Initiative 69:14 injury 27:9 input 4:13, 7:12 inquiry 34:20 insecurity 101:21 instigated 103:24 institute 69:13 Institute's 57:8 institutions 23:10 insufficient 37:18 40:15 insurmountable 60:2	intended 61:23 62:1, 62:3, 63:4 63:6 intent 20:19, 20:24 24:8, 26:22, 29:19 42:13, 90:5, 91:5 93:4 intentional 19:11 21:14, 70:16, 91:16 intentionally 19:12 19:20, 92:24 intentions 80:15 80:15, 80:17 interest 22:16 24:11, 28:4, 28:11 37:14, 42:1, 43:1 43:10, 47:17, 48:11 49:2, 49:11, 49:13 49:16, 50:3, 50:7 54:19, 54:20, 54:20 63:10, 70:14, 77:12 77:16, 79:16, 80:19 80:20, 81:9, 81:12 99:3, 99:10, 99:15 99:20, 100:12 100:15, 100:20 101:5, 101:6 interested 17:16 interesting 27:10 61:23 interests 8:8, 22:13 90:16, 91:20, 98:22 98:25, 99:8, 99:22 100:7, 100:25 101:2 interface 59:10 60:4 interior 4:18, 5:12 16:21, 23:13, 43:22 87:5, 89:18, 93:24 Interior's 4:4, 20:20 international 59:10 59:18, 61:4 Internship 57:8 interpretation 24:5 28:8, 29:3, 53:6 interpretations 23:22, 28:23 interpreted 8:15 29:14 interpreting 23:23 interrupt 18:8 intervene 14:21
--	--	---	--	--

33:14, 75:18, 87:8 95:16, 95:16 intervening 94:8 94:11 intervention 94:9 introduce 4:15 introduced 94:16 102:21 introduction 3:4 59:6 invalidate 16:5 investigating 59:9 investigation 10:9 45:25 invited 56:3 involuntary 16:18 91:24 involve 91:24 involved 71:22 73:16, 88:18 involving 28:22 28:25, 34:9, 70:5 97:15 Iowa 87:17 IPA 2:5 irrelevant 50:16 irreparable 105:5 Isleta 21:21 isolated 93:23 issuance 93:9 issue 27:21, 28:24 35:14, 48:22, 49:1 49:8, 50:11, 60:22 issued 5:16, 23:13 issues 7:19, 34:16 42:24, 63:8, 63:10 102:14, 106:3 it'll 45:10, 58:10	Jicarilla 69:3 Joaquin 2:21, 3:15 69:3 job 18:3 John 2:19, 3:9, 34:4 94:15 Johnson 2:9, 21:19 21:20, 107:17 join 4:7 joined 52:22 Jorge 2:13 Joshua 2:14 journey 111:10 journeys 54:12 Jr 2:19 judge 21:20, 34:6 43:13, 72:2, 94:15 98:6, 100:3, 107:17 107:17, 111:2 judges 21:23, 22:24 23:2, 34:12, 34:15 41:6, 41:15, 42:21 88:4, 95:15, 107:16 judicial 28:23 35:12, 35:20, 94:22 July 34:13 jump 52:7, 52:11 jumping 36:4, 52:1 52:9 junction 92:2 June 115:13 junior 56:7 jurisdiction 10:20 10:21, 12:9, 24:24 25:4, 25:7, 33:13 jurisdictions 42:25 justice 37:4, 41:3 41:18 justices 97:7 justification 38:15 justify 27:13 Justin 96:4, 97:3 Justin's 96:6 juvenile 34:6, 34:12 34:15, 37:4, 44:15 45:16, 46:8 juveniles 34:9	73:12, 73:12, 79:8 85:7 Kathy 2:20 Keane 2:24 Kee 2:17, 3:11, 48:2 keep 7:20, 10:3 18:3, 58:3, 62:6 62:7, 72:14, 77:19 82:4, 90:24, 97:2 keeping 31:18 75:23 keeps 99:11 Kelley 2:23 Kenaitze 78:12 Kevin 4:6 kick 39:23 kicked 67:21 kid 55:5, 86:5, 94:18 kidding 79:10 kids 28:5, 39:9, 40:5 43:16, 44:7, 55:23 56:14, 68:9, 84:11 84:17, 84:22, 86:3 87:1, 87:14, 88:15 89:3, 89:3, 95:11 104:1 kind 38:23, 45:12 46:18, 65:10, 78:14 105:10 kindly 70:7 kinds 29:7, 39:10 King 2:10, 63:25 64:3, 64:18, 64:21 King's 66:21 kinship 98:3, 102:16 knew 74:8, 74:10 85:25, 86:1, 101:4 Knight 2:17 know 4:11, 5:10 5:15, 5:25, 6:3, 6:11 6:11, 6:14, 6:15 6:18, 7:5, 7:8, 7:10 7:13, 7:16, 7:17 7:19, 7:20, 9:7, 9:13 10:16, 10:17, 10:25 18:5, 18:5, 18:9 18:11, 18:16, 20:10 20:11, 20:15, 21:3 21:10, 26:5, 26:8 26:10, 28:21, 31:25 32:11, 32:16, 34:22 39:12, 46:8, 46:17 48:21, 50:13, 51:5	51:7, 51:16, 51:21 58:21, 62:12, 62:23 64:8, 64:23, 66:9 66:10, 68:8, 69:24 74:15, 75:6, 78:7 79:1, 79:2, 81:5 81:5, 83:14, 83:15 85:13, 86:6, 86:7 88:22, 88:24, 96:9 96:15, 99:11, 99:25 101:25, 102:5 104:6, 104:7, 105:6 106:14, 107:14 108:15, 110:1 111:24, 112:9 112:13, 112:23 113:3, 113:7 knowing 94:25 knowledge 14:9 33:19, 77:10 knowledgeable 14:5 known 29:2, 64:3 72:15, 107:13 knows 10:23, 32:12 100:5	largest 48:13 Larry 2:14, 3:8 26:11, 71:9, 71:10 Las 39:17 late 12:17, 34:23 39:25, 66:12 109:23 laughing 113:2 Lauren 2:18 law 5:20, 25:19 37:13, 37:23, 40:1 45:10, 47:8, 71:5 71:6, 71:12, 91:5 92:5, 92:24, 96:3 96:22, 101:20 103:17 laws 100:4, 111:1 lawyer 41:1, 45:2 49:6, 49:6 lawyers 64:12 95:15, 95:17 101:18 layperson 14:8 lays 5:6, 10:8 lead 21:11, 71:1 leader 32:17, 66:13 leaders 58:12, 58:16 64:2, 64:2, 65:21 83:22, 83:23, 89:10 Leaf 66:13 learn 16:10, 31:24 53:25, 59:15 learned 32:8, 38:10 53:20, 74:21, 107:9 112:10 learning 55:1, 94:12 leave 19:24, 34:1 44:11, 75:11, 76:4 110:16 leaves 42:25 left 110:7 legal 43:13, 53:6 62:11, 62:22, 70:8 70:9, 92:11, 96:2 96:7, 97:1, 101:7 legally 25:20 lengthy 107:3 Leonard 3:13 letter 22:23, 23:2 42:3, 75:12, 75:14 letters 81:1 letting 75:6, 76:2 level 32:15, 52:19
J			L	
Jacks 2:11 Jackson 2:5, 2:10 3:19, 4:15, 14:14 14:15, 95:19, 95:20 Jason 2:12, 3:11 44:14, 47:24 Jay 64:3 Jenkins 2:14, 3:8 26:11, 26:12, 71:9 Jennifer 2:12 Jessica 2:18, 3:16 78:11	K K-A-N-D-I-S 79:9 Kandis 2:9, 3:17 72:7, 72:19, 72:20		LA 87:12 lack 37:3, 44:20 44:20, 56:18, 56:20 57:9 lacking 56:23 lady 5:11, 84:18 108:7 Laguna 38:16, 39:2 101:11 Lake 17:6, 26:12 Lane 1:20 language 17:16 19:17, 22:8, 31:13 31:24, 32:19, 41:23 43:24, 50:8, 51:13 51:24, 61:5, 61:9 61:10, 61:17, 65:12 67:3, 91:5, 91:21 93:20, 102:22 language-wise 61:22 languages 53:25 languished 40:6 larger 31:1, 50:23 51:4	

59:19, 61:4, 96:13 106:23 Liberty 113:10 License 115:8 115:18 licensed 98:16 licensing 73:10 life 31:23, 32:2 56:10, 56:12, 57:5 65:16, 94:13, 112:1 likelihood 55:12 limit 6:5, 17:24 26:9, 64:16, 78:25 90:21, 92:5 limitations 47:20 99:21 limited 20:5, 62:5 limiting 33:5 limits 11:3 Lincoln 54:16 Linda 2:14 line 6:11, 6:14, 6:17 lineage 88:13 lines 46:8 linguistic 61:11 Lisa 2:15 list 24:24, 29:12 62:2, 62:3 listed 5:2, 11:1, 11:2 29:12 listen 54:17, 58:6 listening 7:14, 8:16 23:15, 48:10 109:14 LISTSERV 48:7 48:25, 50:12 litem 59:23 literally 80:16 litigating 7:19 little 18:6, 25:11 39:8, 44:22, 45:19 46:17, 47:6, 48:15 52:25, 63:21, 76:3 78:16, 84:23, 86:4 87:20, 87:21, 88:7 104:5, 109:24 111:4 Littlebear 2:21 3:12 live 31:3, 31:22 50:1, 51:23, 53:22 55:21, 56:3, 56:8 85:22, 87:25	lived 38:15, 56:6 85:13 lives 39:5, 69:7, 71:1 living 80:24, 82:13 94:13 located 54:7 location 16:17 long 28:6, 35:17 35:21, 40:7, 46:1 67:15, 76:20, 98:23 110:2, 112:13 long-overdue 25:22 longer 11:25, 12:8 look 7:10, 18:23 19:9, 35:18, 45:7 46:15, 48:23, 49:14 51:14, 51:24, 60:1 68:1, 72:25, 79:15 80:23, 81:9, 100:6 103:22, 109:22 110:23 looked 28:24, 46:25 looking 6:4, 45:21 45:24, 46:18, 56:12 60:13, 81:8, 81:14 81:14, 81:15 111:13, 111:14 112:25, 113:8 loops 52:7 Los 1:20 lose 44:12 lost 55:24, 87:17 lot 17:21, 27:12 28:13, 34:19, 39:6 48:17, 60:9, 64:24 65:14, 65:20, 66:4 66:5, 66:16, 66:17 67:13, 67:25, 84:25 85:9, 87:25, 94:17 95:25, 106:2 111:11, 111:20 113:15 love 20:14, 31:23 32:13 loved 55:25, 58:15 loving 54:21 low 65:7 Lujan's 47:9 Lunas 1:20 luxury 86:4, 88:19	M M-A-R-I-C-O-P-A 86:17 mail 11:2 mailed 23:4 main 84:24 maintain 15:9 maintaining 11:21 major 99:24, 101:23 making 5:13, 45:9 47:16, 57:17, 74:16 112:25 malpractice 92:19 man 65:3, 68:14 68:19 manage 59:25 mandate 29:4, 45:9 mandates 24:22 59:8 manger 44:15 Manus 2:16 March 9:2 Maria 2:16 Maria-Fernanda 48:16 Marial 2:22 Maricopa 86:17 86:18, 87:24 market 64:9 marriage 97:8, 97:9 marries 111:21 marry 111:21 Marsha 3:19, 94:1 Marshall 2:23 Martine 2:9, 3:17 79:8, 79:9 match 21:1 maternal 31:21 82:12, 82:18 106:14 matter 45:23, 46:17 74:5, 109:3, 109:4 109:5, 113:3 matters 34:9, 36:22 45:14, 47:4, 47:24 113:4 McCabe 3:22 109:11 McCook 2:22 mean 29:15, 49:4 49:4, 59:1, 61:18 63:6, 66:16, 72:2	81:4, 97:11 meaning 63:12 81:10, 103:4 103:13 meaningful 55:13 71:1 means 54:24, 54:25 96:2, 110:24 meant 110:1 measure 91:13 mechanisms 104:19 medical 38:18 38:22, 39:1, 73:2 78:19 meet 15:7, 28:13 35:7, 73:2, 93:8 meeting 1:2, 17:10 45:2, 59:2, 71:19 89:23, 114:4 meetings 89:1 melded 36:16 Melissa 3:9, 29:25 member 10:14, 14:3 14:7, 21:21, 21:23 21:24, 22:22, 26:13 26:15, 32:23, 34:11 34:14, 41:19, 47:8 49:17, 49:18, 53:1 67:10, 67:11, 71:7 73:8, 73:9, 82:17 84:6, 89:19, 94:4 94:21, 95:1 members 2:3, 2:8 15:9, 30:20, 33:20 54:21, 56:5, 60:7 61:14, 64:25, 69:18 79:4, 80:12, 83:6 93:17 membership 10:14 33:11, 92:12 memorandum 95:23 mental 69:25 mention 45:14 mentioned 8:11 9:12, 23:13, 23:20 27:11, 60:20, 63:17 108:7 merely 25:18 Mescalero 53:1 message 92:22 met 15:8, 22:16 39:1, 77:16, 90:16	111:19 methods 93:15 93:18 Mexican 110:11 Mexico 1:6, 1:20 18:15, 30:1, 35:12 40:12, 41:1, 71:5 76:11, 76:12, 80:24 81:23, 94:14, 94:19 115:3, 115:7 115:12 Michele 1:19, 115:6 115:15 microphones 6:15 mid 66:24 middle 52:8 Mike 2:23, 52:22 miles 38:16, 39:17 65:25, 66:25, 86:19 93:22, 93:24, 110:3 Miller 86:13, 86:16 86:16 mind 48:24, 82:4 minds 103:7 mine 75:15, 109:19 minimal 77:6 minimum 8:9, 16:22 24:16 Minnesota 17:6 minorities 61:12 minority 60:18 61:13 minors 92:17 minute 21:5 minutes 6:6, 6:10 9:12, 17:24, 18:5 56:6, 59:5, 105:14 105:16 misdemeanor 99:24 misguided 22:13 70:16, 77:13 missed 20:15, 94:24 missing 89:3, 89:3 mission 70:8 Mississippi 25:2 Moller 2:9 mom 82:5 mom's 29:7 moment 37:19, 40:9 45:21, 104:10 money 102:1, 102:2 102:5 Monica 3:20
---	---	---	--	---

102:20 Montana 65:4 65:14 month 53:18 months 30:16, 30:18 30:18, 30:21, 32:11 53:13, 95:11 morning 9:5, 81:24 83:23, 94:3, 105:18 107:8, 107:21 mother 30:15, 32:17 38:10, 48:14, 50:21 50:21, 67:22, 76:12 77:21, 82:1, 111:22 mother/child 50:19 motions 87:7 move 4:12, 7:22 17:19, 78:20 110:19 moved 43:15, 55:18 moving 18:4 much-needed 43:20 multiple 48:23 49:19, 92:7 murdered 67:20	106:15, 108:12 109:12 Nation's 44:9 national 17:7, 21:22 22:24, 23:1, 25:24 34:11, 34:14, 34:17 35:5, 41:1, 41:6 41:17, 48:8 nationality 111:22 nationally 108:16 nations 60:21, 69:20 70:2, 70:10, 70:15 70:17, 70:23 100:24 native 8:19, 23:18 25:23, 30:2, 36:4 36:9, 41:10, 41:15 44:24, 48:4, 48:8 50:11, 51:4, 51:8 51:12, 51:20, 51:25 52:10, 52:16, 53:3 54:4, 54:24, 55:4 56:1, 56:14, 56:14 56:21, 57:3, 57:4 58:9, 58:12, 63:25 67:16, 68:15, 68:24 69:2, 69:8, 69:11 69:12, 69:14, 69:17 69:21, 72:13, 72:16 72:20, 74:22, 76:9 78:12, 79:1, 80:13 80:19, 81:19, 83:12 83:19, 83:20, 84:6 89:15, 91:1, 92:22 102:19, 102:22 102:23, 103:1 103:8, 103:8 105:21, 106:6 106:15, 109:4 109:11, 109:16 110:24, 111:3 111:4, 111:17 113:6, 113:14 Natives 68:10, 82:4 natural 30:17, 54:1 nature 19:15 Navajo 30:15, 31:3 31:22, 31:24, 32:1 32:6, 32:7, 32:12 32:16, 52:6, 52:6 59:7, 59:11, 76:9 76:10, 76:15, 79:11 80:24, 80:25, 83:21	83:21, 85:10, 85:14 86:6, 105:18 105:21, 106:12 106:12, 106:13 108:12, 109:11 109:12, 109:17 110:3, 110:14 111:21, 111:23 112:1, 112:3, 112:5 112:8 Navajos 59:8 near 54:14 neat 71:16 Nebraska 54:16 necessarily 48:6 49:2, 51:3 necessary 11:14 11:25, 24:9, 33:14 41:14, 41:20, 62:6 need 6:16, 26:9 36:9, 37:7, 40:17 41:23, 44:22, 45:17 49:14, 51:14, 55:17 57:11, 58:23, 62:14 68:1, 68:23, 68:24 68:25, 68:25, 71:15 75:4, 75:9, 75:21 76:17, 76:21, 77:19 81:17, 84:20, 90:15 90:20, 98:24, 99:4 100:1, 102:4 103:10, 108:25 111:17, 113:18 needed 56:2, 66:3 70:23 needs 15:21, 18:18 35:25, 38:19, 39:1 40:19, 67:7, 72:1 73:2, 73:16, 73:22 73:23, 91:7, 91:9 94:7, 98:11, 98:21 100:5, 107:5, 107:5 107:5 Neelley 2:15, 3:8 18:13, 18:13, 21:3 21:8, 25:13 neglect 35:4 neglected 34:8 negotiated 48:19 neighborhood 89:22 neither 97:16 Nelson 1:19, 115:6 115:15	nephews 30:25 Nevada 41:4 Nevaeh 30:15 never 28:14, 29:6 39:5, 98:7, 98:17 Nevertheless 25:18 new 1:6, 1:20, 9:5 9:6, 13:3, 13:13 13:24, 18:15, 30:1 35:11, 36:17, 40:11 40:25, 43:6, 54:6 58:2, 71:4, 74:6 76:11, 76:12, 80:24 81:22, 94:14, 94:19 115:3, 115:7 115:12 newborn 65:24 news 44:20 newspaper 80:25 nice 61:9, 61:10 68:12, 85:25 Nicole 2:10 niece 82:10 nieces 30:24 nine 30:18 noise 112:25 non-compliance 91:17, 101:20 non-ICWA 98:8 non-Indian 23:10 43:15, 43:15, 44:2 53:14, 65:6, 66:8 78:5, 103:25, 104:2 non-Indians 64:25 non-indigenous 63:5, 63:8 non-intentional 91:16 non-Native 51:20 67:17, 73:14, 83:5 88:14, 91:2, 109:4 non-profit 89:16 non-relative 83:5 non-tribal 23:8 64:25 normal 56:14 normally 27:13 normative 101:3 northwest 87:16 Notably 10:13 note 5:1 noted 93:11 notes 115:10	nothing's 98:7 notice 8:13, 10:5 10:23, 10:24, 11:2 11:5, 11:8, 11:22 14:20, 14:20, 16:12 22:8, 22:12, 28:22 28:25, 29:5, 33:11 33:12, 33:14, 35:15 35:16, 35:19, 42:3 68:23, 77:20, 91:22 92:1, 98:21 noticed 98:11 notification 10:16 11:21, 45:24, 95:9 notified 45:3, 45:5 47:14, 77:17 Notifying 15:8 November 8:22 number 8:16, 31:5 59:22, 62:13, 62:14 65:5, 88:8, 115:8 numbers 89:2 nuns 65:23
N				O
NAICJA 2:11 25:24, 41:5, 41:5 41:15, 43:25 name 7:3, 7:4, 14:14 18:12, 18:13, 21:20 26:11, 29:25, 34:4 37:11, 40:24, 44:14 52:25, 55:6, 64:1 64:2, 66:22, 67:8 69:2, 71:3, 76:10 79:8, 81:20, 83:19 86:16, 89:12, 94:1 95:19, 101:10 102:20, 105:17 109:10 naming 56:15 narrow 42:24, 45:12 narrower 47:22 narrowing 47:22 nation 31:3, 41:4 48:13, 59:7, 62:10 62:20, 69:3, 78:16 78:17, 79:11, 99:10 105:19, 106:10 106:12, 106:13			objects 12:21 obligations 70:9 observed 38:4 observing 54:3 obsolete 25:17 obtained 16:3 obviously 46:5 53:23 occur 11:5, 23:11 occurred 21:14 73:25, 91:11 occurs 91:16 offended 64:7 offer 92:21 offered 75:16 office 2:6, 2:6, 2:7 4:24, 20:18, 44:15 59:14, 59:23, 71:4 73:16 officer 45:4 offices 93:23 official 85:16 officials 107:14 oh 54:19, 62:18 okay 13:24, 21:3 62:18, 62:25, 64:20 75:11, 76:9, 81:6	

Oklahoma 17:10 28:2, 88:4, 99:5 old 30:16, 32:12 36:21, 41:16, 53:11 65:5, 66:25, 68:16 80:9, 112:24 112:25 older 39:7, 111:20 Olewine 2:15 omissions 25:18 once 10:16, 74:14 74:15, 78:25, 85:18 85:19, 98:13, 98:24 one's 78:22 one-mile 68:8 ones 55:25, 58:15 ongoing 61:3 open 7:20, 103:7 opening 107:23 openly 44:2 opinion 35:24 37:16 opponents 70:12 opportunities 17:5 53:25, 56:13, 56:17 92:7 opportunity 4:2, 6:7 17:3, 17:9, 18:2 18:7, 22:9, 32:19 55:12, 56:10, 78:10 91:23, 93:12 opposed 40:20 96:20 opposing 22:12 options 15:18 oral 26:8 orally 20:22, 26:7 42:9 order 6:15, 14:2 14:3, 16:15, 50:13 96:10 ordered 13:14 13:17 orders 16:22 ordinary 73:24 78:4, 91:10, 103:11 105:8 Oregon 87:16 organization 6:9 7:4, 34:14, 48:8 89:16 organizations 59:10 origin 61:12	originally 76:11 Ortiz 2:6, 4:19 Oso 2:13 ourself 111:15 out-of-home 104:18 outcome 45:11 outcomes 69:20 93:3, 93:6 outside 5:6, 7:8 10:10, 45:22, 46:10 46:13, 46:14, 90:18 97:8, 97:9 Overall 77:21 overburdened 79:15 overcome 32:4 overdue 76:20 override 29:13 overriding 24:14 oversea 113:9 Overview 3:5 overwork 68:1 overworked 79:14	34:24, 90:18 parenting 32:9 106:1, 106:3 parents 11:6, 15:8 15:17, 29:22, 31:3 32:1, 39:6, 40:5 56:2, 60:6, 60:11 62:19, 67:20, 72:16 73:1, 78:15, 86:6 86:25, 92:16, 95:12 97:12, 104:21 106:5 part 8:22, 9:6, 36:25 45:16, 46:9, 68:19 74:4, 74:12, 78:11 78:12, 78:17, 84:12 85:5, 88:10, 92:19 112:4 participate 22:10 91:23, 92:2 participated 68:5 participation 92:4 93:16, 93:17 particular 16:7 38:18, 38:18, 39:1 40:2, 60:15, 61:4 61:6, 106:8, 108:14 particularly 37:1 43:25, 93:9, 109:16 parts 31:4, 62:13 party 15:13, 61:8 party's 16:8 Paso 95:21 pass 112:12 passage 35:15, 91:1 103:17 passages 57:4 passed 5:17, 8:4 35:23 paternal 106:14 penalty 46:22, 46:23 people 17:21, 19:24 24:10, 40:19, 44:10 45:1, 49:3, 49:19 51:4, 51:14, 64:7 64:10, 64:22, 65:15 65:20, 66:17, 66:18 67:17, 68:2, 74:20 80:20, 81:11, 84:14 84:25, 85:5, 85:18 88:6, 88:14, 94:24 97:6, 97:8, 98:12 101:23, 103:3	104:21, 107:25 109:16, 109:24 111:3 peoples 49:24, 51:12 52:16, 59:20, 60:22 60:23 perceived 20:12 percent 91:1, 104:2 percentage 8:5, 23:6 23:9 perform 32:14 period 38:25, 42:19 53:14 periods 11:6 person 47:18, 69:21 85:13, 88:9, 98:6 113:12 personal 48:11 78:14, 79:12, 82:10 108:2 personally 6:12 37:8, 41:9, 88:9 93:2 persons 61:12 perspective 5:22 49:12, 49:13, 49:20 52:16, 108:3 perspectives 34:6 48:23 Peru 48:16 petition 13:4, 16:22 43:8, 96:19, 100:11 Ph.D 2:17 phase 20:7 phases 22:12, 92:1 Phillips 2:20 Phoenix 86:19 phonetically 7:6 phrase 18:24, 19:10 103:11, 103:12 phrases 32:12 physical 12:1, 12:8 13:21, 15:20, 18:21 18:22, 18:22, 19:3 19:5, 19:17, 30:20 69:25, 73:22, 91:6 91:9, 96:2, 96:7 97:1, 100:19 100:21 pick 79:23, 80:4 94:23, 110:9 picked 110:20 111:7	picket 84:23 picture 68:16 pictures 68:13 85:11 piece 51:21, 51:24 98:7 pieces 48:24, 70:4 Pierson 2:20 pile 67:21 pills 66:4 Pima 86:16, 86:18 Pine 55:7 place 12:16, 33:7 38:14, 53:22, 73:6 73:8, 78:24, 80:12 87:1, 95:5, 98:9 98:12, 100:6, 114:1 placed 23:9, 35:10 36:25, 39:4, 39:8 39:13, 39:17, 40:7 45:1, 53:13, 53:15 53:17, 55:23, 80:10 83:16, 91:2, 91:17 91:19, 111:9 placement 8:10 10:10, 11:4, 11:13 11:15, 11:24, 11:25 12:7, 13:2, 13:4 15:4, 15:4, 15:7 15:11, 15:16, 15:18 15:22, 15:23, 16:1 16:1, 16:13, 16:18 16:19, 16:23, 18:19 22:15, 28:4, 29:9 29:15, 33:4, 35:7 36:1, 36:7, 36:11 39:25, 45:17, 45:22 46:10, 46:13, 47:5 53:12, 53:16, 53:20 54:6, 54:9, 55:14 55:16, 56:6, 70:6 73:21, 73:25, 74:2 77:11, 77:14, 82:16 82:19, 82:22, 83:3 83:11, 90:21, 90:22 91:4, 91:8, 91:11 91:15, 96:11, 97:24 97:25, 98:3, 98:11 101:21, 102:11 102:13, 102:14 103:25, 107:5 placements 13:14 15:10, 15:24, 91:18
	P			
	P-I-M-A 86:17 PAGE 3:2 pages 115:9 panel 2:3, 3:4, 4:15 5:5, 28:1, 44:25 45:2, 45:3 paper 98:7 papers 80:25 Paquet 2:14, 3:13 67:8, 67:8, 71:15 par 105:9 paragraph 62:1 62:21 paramount 98:25 99:2 parent 10:3, 10:11 11:7, 12:21, 14:22 15:1, 16:6, 22:20 28:6, 32:5, 42:8 51:2, 52:17, 62:8 72:13, 75:20, 96:24 97:16, 97:20, 97:25 98:10, 98:20 100:11, 107:5 parent's 28:19 parental 11:5, 13:5 13:16, 18:21, 19:6			

92:6, 104:18 104:18 places 36:7, 54:13 placing 73:4, 90:17 plain 41:23 plane 86:13 playground 67:21 plea 68:20 please 18:11, 34:2 58:18, 72:9 PM 1:7, 63:22 114:4 point 5:21, 36:22 39:19, 46:1, 46:4 52:4, 65:10, 72:16 97:22 pointed 27:7 points 22:17 Police 67:23 policies 5:21 policy 4:22, 24:15 60:8, 60:13, 69:19 99:10 political 22:18 32:21, 44:4, 60:25 92:13, 101:6 poor 110:18 Pope 68:6, 68:15 Poplar 65:4, 65:10 portion 17:20, 112:1 112:6 pose 68:17 posed 68:17 position 7:17, 27:14 52:20, 75:19, 105:7 positive 24:4, 45:11 93:2 possess 93:15 possibility 19:21 97:15, 98:19 possible 5:14, 7:11 7:21, 11:12, 11:20 11:20, 13:12, 95:12 108:5 possibly 19:24 post 34:23 post-trial 14:17 poster 84:25 potential 46:13 92:5 poverty 113:4 power 26:23, 97:19 98:5, 108:6	PowerPoint 5:4, 5:5 5:6, 8:1 powwows 56:15 103:4 practice 31:11 31:16, 37:18, 39:11 40:10, 41:1, 61:16 65:20, 66:20, 71:5 77:6, 95:6, 97:23 104:6, 113:16 practices 14:10 14:13, 22:3, 24:1 25:21, 30:9, 32:9 41:25, 77:1, 90:10 95:3 practicing 71:12 practitioner 43:13 prayer 68:20, 103:4 pre-adoptive 16:18 precedent 43:3 precocious 98:24 prefer 59:3 preference 14:3 15:11, 28:5, 29:9 33:20, 55:16, 77:11 77:14, 82:16 preferences 15:4 15:4, 15:7, 15:17 22:15, 27:22, 29:12 29:15, 29:17, 33:4 33:6, 53:20, 55:14 73:21, 82:20, 82:23 83:4, 90:21, 90:22 91:8, 91:15, 102:11 102:13 preferential 96:11 preferred 14:6 14:10, 91:18 pregnancy 30:19 prejudice 87:14 prepare 113:16 preparing 95:22 present 6:9, 6:11 7:16, 34:5, 75:18 presentation 8:1 9:5, 39:22, 58:25 presently 80:19 preservation 63:5 63:7 preside 34:7 president 5:10 22:24, 89:9, 89:9 President's 69:13	presumptive 42:13 pretty 19:8 prevailing 63:1 63:2 prevent 11:19 11:25, 31:7, 43:19 104:20 preventative 91:12 previously 50:4 primarily 37:15 44:16, 45:13, 48:4 61:24, 103:20 primary 40:13 47:10, 90:23 principal 26:16 principals 32:8 principles 31:22 32:2, 32:2 prior 13:16, 17:6 113:25 priorities 4:8, 35:7 70:6 prioritize 49:5 priority 4:9, 5:10 5:12, 77:18, 84:17 89:10 prison 110:9 privacy 28:19, 29:7 private 23:8, 23:25 24:23, 34:7, 89:23 90:5, 96:15, 106:22 107:20 privileges 29:22 probably 27:12 35:21, 68:15, 87:12 probation 45:4 problem 40:2 problems 33:9 38:22, 103:19 procedures 16:2 24:1 proceed 6:3 proceeding 9:15 10:2, 10:24, 11:7 12:14, 12:15, 12:19 14:20, 16:4, 30:12 33:3, 36:23, 42:11 42:18, 46:9, 46:9 47:18, 97:24, 100:3 proceedings 1:3 10:25, 11:4, 14:16 14:17, 16:23, 19:13 22:10, 24:25, 25:5	25:7, 28:22, 28:25 29:5, 35:4, 45:16 45:17, 69:23, 91:24 93:16, 97:18 100:13, 115:9 process 27:6, 43:6 60:11, 73:9, 73:10 92:3, 97:2, 104:3 105:13, 107:12 108:22, 110:6 product 55:9, 67:4 profess 61:16 professional 14:11 92:25 professionals 37:4 program 54:15 66:13, 90:14 programs 1:6, 66:16 progress 21:25 prolong 46:4 promise 25:22, 30:6 promote 8:8, 53:7 91:4, 99:12, 100:23 101:20 promoting 99:16 promptly 11:13 promulgate 43:23 promulgated 23:24 30:6 promulgating 7:22 promulgation 41:20 43:20 proof 35:2, 65:11 proper 11:13 properly 43:4 76:23 proposal 35:20 91:18 propose 46:7 proposed 1:2, 1:3 3:5, 4:4, 5:7, 5:8 9:3, 9:3, 9:6, 9:11 9:17, 9:24, 10:1 10:5, 10:8, 10:22 11:1, 12:12, 12:23 13:3, 13:7, 13:13 14:15, 14:18, 16:2 16:14, 17:2, 19:7 20:7, 22:2, 22:5 22:8, 22:17, 24:3 24:14, 25:1, 26:1 27:5, 27:14, 30:3 30:9, 30:11, 30:21	31:6, 31:9, 32:20 35:13, 36:1, 37:6 41:11, 41:20, 42:23 43:2, 53:2, 53:5 55:4, 55:11, 58:7 58:8, 59:16, 61:22 64:4, 65:12, 69:9 69:22, 70:10, 70:13 71:18, 74:4, 76:18 76:25, 77:3, 77:4 78:1, 89:21, 90:8 90:9, 90:13, 90:20 91:3, 91:6, 91:12 91:21, 91:25, 92:9 92:14, 92:20, 93:10 96:1, 101:12 101:15, 102:10 102:23 proposing 77:11 pros 109:15 prosecutor 111:2 111:7, 111:10 prospective 13:2 protect 8:7, 53:8 67:5, 75:22, 75:25 76:2, 99:10 protected 24:13 32:15, 76:25 protecting 33:24 74:3, 75:23, 78:1 99:15 protection 27:6 27:13, 27:15, 27:20 27:25, 92:21 100:25 protections 30:14 protective 39:7 67:23 proud 109:20 prove 15:14 provide 10:4, 15:5 16:14, 17:23, 20:6 41:14, 41:17, 41:25 53:6, 76:22, 77:23 91:3, 101:13 provided 11:22 20:25, 32:3, 32:6 71:11, 91:8, 97:2 98:21, 105:19 provider 94:4 providers 105:23 provides 27:15 27:25, 43:24, 73:20
---	--	---	---	---

99:18, 102:22 providing 14:19 24:20, 33:12, 53:2 64:16, 76:17, 89:16 92:6 provision 17:2, 28:3 31:18, 45:20, 91:14 96:23, 97:4 provisions 9:8, 9:17 10:1, 10:12, 10:15 10:17, 10:22, 11:10 23:23, 25:4, 29:9 35:3, 53:22, 73:7 96:8 psychiatry 104:8 psychologist 48:3 psychologists 49:1 50:12 psychology 51:17 104:8 public 1:2, 2:8, 3:7 17:10, 17:19, 23:8 44:16, 47:8, 47:9 59:12, 69:11, 69:19 70:23, 89:22, 114:4 published 8:12, 8:24 9:1, 9:3, 23:4, 23:19 pueblo 21:21, 38:16 68:7, 68:15, 69:4 81:21, 81:22, 94:2 95:21, 101:11 101:11, 102:21 110:12 pulled 87:21 purpose 24:14, 30:2 31:19, 61:24, 70:8 78:1, 80:11, 80:14 84:24, 98:25, 99:2 99:9 purposes 7:13 26:21, 29:19, 33:24 59:6, 90:23, 99:13 pursuant 48:9 pursuit 60:25 push 110:25, 113:6 put 18:17, 21:9 46:11, 65:12, 65:14 83:12, 98:2, 99:21 102:1, 102:15 puts 45:19 putting 5:23, 47:20 72:1	Q	4:17, 20:17, 20:17 62:12, 62:16 re-include 51:13 reach 52:4, 101:3 read 22:23, 61:10 62:6, 84:25 reading 62:13 110:2 reads 61:24 real 92:21 realize 61:8, 99:6 realized 66:2 really 7:9, 7:14 7:14, 18:15, 26:22 27:21, 49:22, 50:7 50:18, 50:23, 51:9 51:14, 51:24, 52:13 61:9, 61:10, 61:19 62:1, 66:18, 68:1 68:18, 72:1, 74:8 76:1, 82:21, 84:5 84:5, 84:13, 87:3 102:3, 102:4, 106:2 106:18, 107:16 107:23, 108:2 109:2, 110:12 reason 9:19, 9:25 10:23, 36:10, 40:4 59:14, 82:24, 84:12 91:18, 110:20 reasonable 13:18 18:20, 19:22, 22:7 31:11, 36:15, 40:15 40:16, 42:6, 85:4 reasoning 70:3 reasons 25:24, 36:3 103:22, 103:24 receipt 11:3, 42:4 receive 22:11, 56:17 92:1 received 54:11 receives 11:8 receiving 23:16 recognition 33:10 44:21 recognize 37:5 recognized 14:4 33:21, 89:18 108:16 recommend 31:13 61:23, 84:13 recommendations 8:21, 8:23, 57:7	57:21 record 6:24, 15:13 16:23, 16:24, 22:23 26:6, 29:24, 42:9 64:10, 64:19, 64:19 76:10, 114:3 recorded 14:23 records 11:21 16:17, 16:21 reemphasize 57:6 references 78:4 reflect 24:19 reflecting 24:20 reframed 42:20 refusal 38:15 refused 38:14 refuses 61:19 regard 103:19 regarding 8:13 9:14, 9:18, 10:2 10:6, 10:12, 10:15 10:22, 11:10, 36:1 43:1, 49:1, 50:17 57:9, 89:20, 91:22 regardless 16:7 25:10, 51:7 regards 82:19 82:19, 101:17 Regina 3:21, 105:17 regional 52:23 70:15, 89:15 register 89:22 registered 11:2 regrettably 40:10 regs 35:13, 44:8 regular 72:3 regulate 59:25 regulation 19:25 22:9, 25:15, 40:20 76:18, 76:22, 77:3 77:4 regulations 1:2, 4:4 5:8, 5:15, 8:13, 8:24 9:4, 12:12, 12:18 12:23, 13:3, 19:7 19:20, 20:25, 21:1 22:2, 22:5, 22:11 22:18, 23:14, 23:24 23:24, 25:20, 30:4 30:9, 30:11, 30:22 31:6, 31:9, 32:20 33:23, 35:14, 35:22 36:21, 41:11, 41:23	41:25, 42:19, 43:20 43:23, 53:3, 53:5 55:4, 55:11, 58:8 58:17, 69:9, 69:22 69:24, 70:3, 70:10 70:13, 70:23, 71:2 71:18, 73:19, 74:4 74:23, 74:24, 75:2 75:4, 76:25, 77:23 77:25, 84:16, 84:16 85:2, 86:9, 86:11 87:19, 90:8, 90:9 90:13, 90:20, 91:3 91:6, 91:21, 91:25 92:9, 92:14, 92:20 101:12, 101:13 101:15, 102:10 102:23, 105:20 112:12, 112:16 113:19 reins 87:21 reinserted 19:10 rejected 28:3 rejection 32:25 41:21 relate 21:8 related 17:17, 31:13 93:4, 93:6 relates 18:16 relations 59:12 relationship 87:24 88:1, 88:4, 106:19 108:11, 108:22 109:2 relationships 32:13 83:3 relative 16:1, 33:7 98:2, 98:13, 102:16 105:22, 105:23 105:24, 106:2 108:4, 108:6 108:20, 108:21 112:5 relatives 31:5, 65:23 78:20, 80:6, 80:10 83:2, 83:13, 102:8 106:5, 108:8, 108:9 109:19 relearn 111:5 released 5:19, 110:4 relevant 10:4, 27:23 28:4, 28:11, 28:12 28:17
	R			
	R-A-E-L 47:25 R-E-G-I-N-A 105:18 race 59:12 raced 75:19 racist 65:13 racists 65:14 Rael 2:12, 3:11 44:14, 44:14, 47:25 raise 28:21, 76:13 102:25 raised 65:8, 71:14 81:3, 81:4, 103:1 Ramona 2:19 ran 54:7, 66:25 67:1, 68:9 random 94:24 range 30:8, 41:13 Ray 3:15, 69:3 Ray-Hodge 2:7			

religion 61:16 religious 61:11 relinquishment 97:1 reluctant 87:3 remains 75:3 remarks 30:3 remedies 63:9 remedy 46:18 46:24, 47:2, 63:17 remember 17:11 70:12, 87:18, 94:22 remind 17:20, 26:4 reminded 94:18 reminder 113:24 remission 112:9 removal 8:6, 8:10 11:11, 11:11, 11:13 11:15, 11:16, 11:20 11:23, 11:23, 11:24 12:5, 12:6, 13:6 21:15, 23:7, 24:16 27:18, 39:21 103:20, 104:4 104:4 removals 21:12 remove 27:8, 38:6 38:9, 105:4 removed 37:24 37:25, 90:17, 104:1 removes 27:10 removing 27:17 42:14 Renee 2:18 reoccurring 43:19 repeatedly 40:11 40:11, 40:11 replaced 27:22 replacing 24:17 report 8:20, 57:8 reported 1:19 115:8 reporter 6:24, 7:1 18:12, 34:3, 59:5 76:5, 115:18 reporter's 105:15 REPORTERS 1:19 reporting 47:16 represent 23:21 representation 62:22 representatives 72:5	represented 60:7 representing 7:4 26:14, 94:3 reproductive 71:6 request 12:13, 12:17 15:5, 15:17, 15:19 16:20, 42:9 requested 11:3 requests 35:18 require 14:18, 28:21 28:25, 29:15, 29:16 required 10:25 21:1, 22:7, 31:11 33:16, 35:19, 77:6 requirement 10:6 10:7, 10:7, 29:5 31:14, 35:1, 35:6 37:5 requirements 20:20 35:22, 37:21, 47:6 47:21, 77:21, 91:3 requires 16:12 16:14, 37:23, 42:23 requiring 30:11 31:8 research 57:6 109:22 reservation 13:1 25:9, 54:14, 55:8 55:19, 55:25, 74:19 86:3, 110:5, 110:17 110:19, 110:21 111:12, 112:15 112:19, 112:24 reservations 110:18 reside 25:8 resident 29:25 residential 53:17 resilience 69:15 resiliency 54:25 resilient 32:3 resolution 34:18 35:5 resolutions 93:10 resolves 104:12 Resource 58:2 resources 13:10 36:2, 36:8, 88:19 respect 32:13, 72:4 72:8, 97:22, 99:1 respectful 17:22 respecting 67:17 respective 70:1	response 47:14 78:4, 95:23 responsibility 24:10 43:10, 70:9, 92:11 110:15 responsive 40:19 46:3 restrictive 53:19 restroom 58:23 result 10:10, 13:20 19:2, 45:17, 46:9 56:23, 73:25, 91:11 100:21 retained 37:14 rethink 102:4 return 11:2, 42:4 105:1 returned 37:24 39:16 reunification 100:18 reunified 95:11 reunite 40:5 reunited 58:14 reversed 100:9 100:10 review 96:19 reviewed 15:18 reviewing 113:23 reviews 57:25 revised 9:1, 30:22 36:21 revises 9:9 rewarded 91:15 ride 65:10 Ridge 55:7 right 12:13, 12:19 14:21, 20:2, 22:21 22:22, 27:19, 28:19 28:20, 29:12, 32:14 32:22, 32:22, 42:16 42:17, 44:23, 44:25 47:12, 50:16, 60:8 60:16, 60:17, 60:23 60:24, 61:7, 61:14 63:19, 63:23, 64:13 72:23, 73:17, 74:24 79:10, 79:12, 81:4 88:17, 102:6 105:11 rights 11:5, 13:5 13:17, 14:17, 16:8 16:9, 18:21, 19:6	22:18, 22:20, 27:5 29:7, 29:22, 32:21 33:24, 34:24, 44:7 44:9, 46:24, 49:5 59:7, 59:8, 59:10 59:11, 59:17, 59:19 60:14, 60:21, 78:1 90:18, 92:13, 92:15 92:18, 92:21, 102:9 risk 18:21, 18:22 27:9 River 86:18, 89:7 road 45:20, 73:18 86:1, 112:20 Robbs 2:15 Rochelle 2:16 Rodina 2:5, 4:22 7:25 role 59:16, 81:24 106:7, 106:11 role-model 32:1 Romero 2:19, 3:9 34:4, 34:5, 72:2 94:15, 107:17 Ron 2:10, 3:19 95:19 room 72:5, 72:7 89:24, 90:2, 107:7 107:19, 109:18 roots 84:3, 113:7 113:11 round 6:19 rule 1:3, 3:5, 7:11 9:3, 9:6, 9:17, 9:24 10:1, 10:5, 10:8 10:22, 11:1, 13:8 13:13, 13:22, 13:24 14:18, 16:2, 16:14 17:2, 17:2, 24:9 24:15, 25:1, 26:1 27:14, 35:16, 36:1 36:18, 36:20, 37:6 37:8, 42:12, 42:16 42:23, 43:2, 43:2 43:6, 46:7, 61:25 89:21, 113:23 rule's 27:7 rule-making 20:7 ruled 12:16, 29:10 75:18 rules 9:11, 14:15 24:3, 27:3, 27:5 28:17, 28:18, 29:13	29:21, 36:10, 41:13 41:20, 46:16, 46:19 58:7, 59:16, 61:21 61:22, 65:18, 72:3 78:13, 84:19, 84:20 103:2, 103:2 ruling 26:24 rulings 11:4 run 54:5, 68:6 68:11, 86:1, 102:14 runner 68:5, 68:16 running 112:22
S				
				sacred 32:10, 57:4 sad 44:19, 102:4 saddened 88:18 safe 77:19 safety 22:16, 22:21 32:22, 63:14, 77:15 89:25 Salt 26:12, 86:17 89:7 Sanchez 2:14, 2:21 3:12, 52:25, 53:1 sand 67:21 Sandra 2:22 Sandy 44:1, 66:11 Santa 69:4 Sarah 2:4, 4:5, 4:20 5:1, 8:3, 8:11, 9:11 Sarracino 2:13 3:17, 81:19, 81:20 saw 113:10 saying 36:5, 46:7 66:8, 81:6, 86:6 99:2, 108:10 108:18, 108:19 110:25 says 18:18, 19:4 27:23, 28:3, 46:22 61:10, 67:5, 96:23 97:4, 100:7, 100:10 106:13 scarce 36:2 scheduling 4:10 school 39:3, 56:7 56:9, 66:24, 69:11 75:20, 78:19, 86:2 screwed 65:2 SDS 52:14 seal 10:4

search 15:6	sentiments 108:1	89:12, 89:13	smaller 88:20	41:5, 41:9, 64:5
searching 112:1	separated 39:5	Shonto 2:17	smart 69:5	71:12, 79:12, 84:10
second 6:19, 14:6	55:20	shoot 65:17	smiling 94:24	86:21, 90:7
18:1, 21:11, 34:13	separately 39:4	short 11:11, 53:14	smoking 112:25	speaks 45:15, 47:19
56:1, 94:22, 100:6	39:8	Shortly 54:11	smothered 67:20	special 73:2
secondly 59:16, 60:6	separation 39:14	show 4:11, 13:20	so-called 9:16, 70:5	specialist 58:3
60:20, 97:4	serious 13:21, 18:22	18:21, 65:11	social 13:11, 16:25	specialty 48:11
secretary 2:4, 2:5	19:3, 19:4, 19:23	showed 79:25, 88:6	31:16, 31:17, 37:18	specific 17:1, 17:16
4:6, 4:7, 4:16, 4:22	21:16, 27:9, 29:20	showing 13:17	61:1, 63:1, 69:25	17:17, 20:25, 33:19
4:23, 5:2, 87:5	40:3, 100:21	19:21	79:22, 80:8, 81:22	specifically 20:18
section 19:7, 19:10	103:18, 104:14	siblings 30:25	89:17, 89:24, 92:25	27:22, 41:21, 43:24
33:1, 46:19, 47:2	seriously 89:25	55:21, 56:8, 62:7	95:8, 102:21, 104:7	46:21, 74:5, 93:11
91:5, 91:12, 92:9	90:3	sic 25:25, 77:23	104:7	100:8, 106:24
92:12, 92:17, 99:20	seriousness 103:12	113:9	society 28:1, 48:7	specifies 14:1
100:14	serve 41:3, 92:4	side 20:20, 66:8	100:4, 101:3, 101:6	speech 59:4
security 8:9, 24:12	served 6:16	72:8, 76:11, 82:12	socio-economic	spell 7:5, 7:6, 79:10
99:12, 99:16	service 13:11, 57:25	82:18, 82:25	15:25, 52:18	spent 92:25
100:24, 104:22	94:4	106:14, 106:16	solicitor 2:7, 4:18	spirit 90:5, 93:4
see 20:15, 20:23	services 2:6, 2:6	sides 31:2, 106:17	solicitor's 20:18	spiritual 64:2, 65:21
40:10, 45:14, 46:16	4:19, 4:25, 12:11	sign 61:19, 98:7	solutions 69:7	66:13
46:21, 48:17, 53:24	14:9, 37:1, 57:23	significant 5:20	somebody 29:11	spoke 107:21
66:7, 66:9, 68:3	67:23, 81:22, 89:14	19:14, 25:5, 60:3	81:1, 81:7, 82:25	spoken 6:21, 30:2
72:5, 72:7, 72:12	89:17, 102:21	signs 68:11	83:1, 85:8, 98:15	63:25, 69:2, 76:9
74:14, 79:24, 84:5	session 68:10, 87:6	Silva 2:16	somebody's 46:3	81:19, 83:19, 83:20
84:25, 85:11, 97:17	87:6	similar 14:7	someplace 73:6	83:23, 102:19
101:15, 103:8	sessions 7:14, 8:16	similarities 48:17	son 111:23	103:9, 107:20
107:7, 107:14	23:15	simple 32:14, 42:5	soon 10:9, 10:19	109:12
111:23, 112:17	set 22:19, 23:19	simply 45:9, 92:9	12:7	spread 93:23
112:23	32:8, 52:20	single 16:17, 88:9	sorry 4:7, 5:8, 72:24	Spulab 2:21
seeing 93:5	sets 16:2, 92:15	sink 103:6	86:13	square 93:24
seeking 73:20, 79:3	setting 5:18, 26:24	Sir 64:14	sort 6:14, 7:19, 20:4	squarely 43:8
79:3, 79:3	53:17, 53:20	sister 38:7, 38:8	36:10, 46:23, 46:23	squeeze 59:2
seen 79:19, 93:2	settings 54:1	77:22, 82:6, 98:13	52:20, 96:20, 97:14	Sr 2:17
111:1, 111:2	settling 66:11	112:4	sorts 46:16	stability 8:8, 24:12
112:19, 112:20	seven 16:19, 63:3	sisters 30:24	sought 74:20	32:6, 99:12, 99:16
113:11, 113:15	81:15	sit 21:4, 105:11	106:16	100:24
113:16	seventh 58:12	sitting 47:12, 72:21	sound 25:20, 71:23	Stacie 2:9, 2:13
sees 94:17	seventies 97:6	84:1, 84:9, 85:8	98:23, 98:25	staff 2:4, 4:5, 4:21
Seldovia 78:12	sew 70:24	situation 27:18	sources 36:1	stage 12:14, 12:19
self 60:23	sex 97:8	28:5, 28:6, 37:22	South 48:13, 55:8	13:1, 19:6, 19:13
self-determination	share 17:3, 17:9	75:3	96:15	19:16, 21:17, 42:18
44:10, 70:17	53:9, 55:15, 71:14	situations 29:8	sovereign 92:10	stages 19:1
self-esteem 65:7	82:9, 94:6, 103:5	79:19	speak 4:2, 6:7, 6:22	standard 15:15
self-identity 102:22	shared 83:9, 89:2	six 53:13, 62:25	6:23, 7:3, 17:14	27:10, 35:1, 52:18
103:2	shares 44:2	six-month 96:24	18:11, 35:11, 48:2	61:18, 61:20
sell 68:12	sharing 113:21	skills 31:16, 32:14	49:15, 64:6, 71:8	standards 8:10
send 92:22, 114:2	Sharon 2:19, 3:22	slide 18:16, 18:17	73:19, 78:7, 78:9	14:13, 19:21, 24:16
senior 2:5, 2:5, 4:16	109:11	18:23, 19:6	87:4, 89:6, 95:21	24:22, 32:8, 93:8
4:17, 4:22, 56:9	Shawn 1:20	slides 7:24	105:11, 105:16	standpoint 60:14
sense 32:7, 39:18	sheep 111:13	slow 70:18	105:20	start 7:23, 11:7
113:5	shelter 53:13, 53:15	slowly 7:3, 18:11	speaker 27:7, 27:11	67:17, 84:8
sensitive 64:16	shelters 40:6	57:2	27:16	started 4:1, 48:10
sent 66:24, 71:8	Shircel 2:13, 3:18	small 81:3	speaking 21:22	63:23, 110:1

<p>state 1:2, 7:3, 7:3 8:15, 9:18, 9:18 9:21, 10:3, 10:18 11:12, 12:20, 12:21 14:18, 18:12, 22:3 23:24, 23:25, 24:6 24:23, 25:15, 26:24 26:25, 27:12, 30:7 30:10, 33:6, 33:15 35:12, 35:16, 35:20 36:17, 38:2, 38:11 42:10, 42:14, 42:21 42:23, 43:7, 47:9 52:9, 53:7, 53:10 55:19, 56:20, 56:21 57:14, 57:15, 65:13 69:22, 76:23, 77:1 79:21, 79:22, 79:23 80:5, 80:6, 82:11 82:15, 84:14, 84:15 87:2, 87:2, 89:1 90:4, 90:10, 91:6 93:1, 93:8, 93:16 94:14, 94:19, 95:14 95:15, 96:16, 96:21 97:14, 97:19, 97:25 98:8, 98:9, 99:1 104:19, 105:7 106:23, 106:23 107:14, 107:20 115:3</p> <p>stated 25:3, 39:22 41:24, 43:3, 47:17 49:3, 83:25</p> <p>statement 16:25 52:14</p> <p>states 8:20, 9:13 16:10, 16:14, 16:16 24:9, 27:1, 31:4 36:2, 41:14, 51:23 59:17, 59:20, 60:14 61:8, 61:11, 61:19 73:23, 79:14, 86:10 87:10, 88:3, 90:14 93:14, 99:7, 99:18</p> <p>statue 68:14, 68:17 113:10</p> <p>status 16:1, 16:12 22:18, 32:21, 44:5 60:25, 92:13</p> <p>statute 5:25, 6:2 13:15, 18:25, 19:4 19:17, 20:1, 21:1</p>	<p>21:2, 28:14, 29:11 29:14, 96:23</p> <p>statutory 43:24</p> <p>stay 50:22, 70:7</p> <p>stem 23:5</p> <p>stenographic 115:10</p> <p>step 25:22, 76:16</p> <p>Stephanie 2:23</p> <p>steps 37:21, 62:6</p> <p>stick 83:3</p> <p>sticky 48:22</p> <p>stolen 65:23</p> <p>stood 88:16</p> <p>stop 43:18, 112:21</p> <p>stops 100:22</p> <p>stories 94:6</p> <p>story 44:3, 44:22 53:9, 55:15, 68:4 82:10, 111:6 111:19, 111:20</p> <p>straightened 40:18</p> <p>Straits 3:11, 48:1 48:2</p> <p>strategies 63:5, 63:7 63:8</p> <p>street 44:25, 84:24</p> <p>strength 32:7 112:11</p> <p>strengthen 41:18 65:19, 69:6, 70:9 70:25, 93:20</p> <p>stress 39:6</p> <p>stretch 58:23</p> <p>strike 62:5</p> <p>stringent 75:4</p> <p>strive 41:18</p> <p>strong 7:11, 31:25 32:24, 33:22, 66:20 67:4, 67:11, 77:24 90:7, 98:1</p> <p>stronger 113:12</p> <p>strongly 77:3, 77:11 84:13</p> <p>struck 99:14</p> <p>structure 66:19</p> <p>sub 9:6, 62:13</p> <p>subject 9:15</p> <p>subjected 52:3</p> <p>subjective 101:2</p> <p>submit 6:25, 7:1 7:7, 17:4, 17:12 17:13, 17:15, 26:5</p>	<p>86:22, 113:24 114:1</p> <p>submits 23:2</p> <p>submittal 85:17</p> <p>submitted 7:8, 8:21 26:17, 35:20, 41:7</p> <p>submitting 89:20</p> <p>subparagraph 62:5 62:8, 62:19, 62:21 62:25, 63:3</p> <p>subsection 93:13</p> <p>subsections 19:8 19:9</p> <p>subsequently 35:23</p> <p>substantial 14:8 100:19</p> <p>substantive 11:3 16:22, 19:14</p> <p>substantively 20:1 20:4, 20:11</p> <p>successful 101:19</p> <p>successfully 87:1</p> <p>sue 92:18</p> <p>suffer 109:24</p> <p>suffered 112:7</p> <p>suggest 20:14, 36:11 78:24, 93:19</p> <p>suggestion 78:13 88:22, 98:1</p> <p>summarized 35:5</p> <p>summary 19:6</p> <p>Sun 56:15</p> <p>sundry 103:21</p> <p>Supai 55:7</p> <p>supervision 115:7</p> <p>supply 101:23 101:25</p> <p>support 22:4, 23:3 30:3, 30:11, 30:21 31:6, 32:24, 34:18 36:20, 37:8, 40:19 41:11, 41:19, 42:2 42:3, 42:7, 44:10 53:2, 55:3, 55:11 56:19, 56:24, 58:17 64:4, 69:21, 70:4 71:10, 76:18, 77:2 77:4, 77:8, 77:11 77:20, 84:13, 86:8 86:9, 87:19, 90:7 101:12, 102:10 102:23, 105:19 111:15, 111:15</p>	<p>113:14</p> <p>supported 13:19</p> <p>supporting 27:18</p> <p>supports 25:25 26:21, 29:19, 31:15 34:25, 43:25, 102:9</p> <p>suppose 77:22</p> <p>supposed 46:20 53:19, 74:16, 80:22 110:13</p> <p>Supreme 29:10 29:14, 35:23, 43:3 43:4, 96:6, 96:12 96:14, 96:18, 97:7 99:6, 106:12 106:13</p> <p>Sur 95:21</p> <p>sure 4:2, 5:13, 5:15 5:23, 7:17, 18:6 44:4, 54:23, 71:20 74:10, 74:16, 78:6 78:8, 78:9, 79:5 79:9, 82:21, 84:14 89:2, 94:17</p> <p>surprised 32:11 79:24, 80:2</p> <p>surrounded 30:19</p> <p>survival 55:1</p> <p>survive 55:5</p> <p>Susan 2:14, 2:15 3:13, 67:8, 71:15 83:25</p> <p>suspect 54:17</p> <p>Suzette 2:12</p> <p>sweats 56:16</p> <p>symbol 64:11, 66:6 55:5, 56:18, 57:13 64:24, 65:2, 65:7 65:11, 67:18, 67:18 69:16, 79:14, 82:11</p> <p>systemic 48:20, 52:2</p> <p>systems 41:18 41:19, 50:1, 57:9 57:14, 57:15</p>	<p>75:20, 76:16, 77:18 78:22, 78:22, 79:7 80:7, 81:17, 82:8 82:17, 83:16, 95:5 97:19, 100:22 101:9, 108:6 108:10, 108:13 109:16, 109:22 110:13, 113:13 113:17, 113:18 113:22</p> <p>taken 40:3, 54:13 63:22, 65:4, 65:22 68:16, 75:1, 86:4 97:14, 98:2, 102:7</p> <p>takes 66:4, 107:1 113:15</p> <p>talk 95:13, 98:22 99:8, 99:9, 105:12</p> <p>talked 49:6, 65:9 87:5, 111:25</p> <p>talking 14:15, 51:15 65:3, 67:3, 67:15 94:8, 106:8, 106:9 106:9, 106:10 106:20, 106:25</p> <p>talks 46:19, 60:16 60:23, 66:5</p> <p>Tanana 89:15 89:19</p> <p>Tanya 3:20, 101:10</p> <p>task 8:18</p> <p>taught 31:23, 32:15 51:16</p> <p>teach 32:12, 74:20 76:14</p> <p>teaches 103:5</p> <p>teachings 31:22</p> <p>team 68:25</p> <p>technically 47:9</p> <p>technology 71:6</p> <p>teeth 65:12</p> <p>teleconference 17:8</p> <p>telephone 93:17</p> <p>tell 20:18, 64:5, 64:9 64:11, 68:4, 81:1 82:16, 100:9 111:23</p> <p>tells 47:13</p> <p>temporary 12:1 40:6</p> <p>tends 40:9</p> <p>Tennessee 94:10</p>
T				
<p>table 107:4</p> <p>take 7:21, 12:16 31:23, 38:13, 58:22 59:3, 62:5, 63:20 67:2, 71:23, 72:25</p>				

<p>term 34:13, 47:22 47:23, 63:1, 63:3 63:12</p> <p>terminate 11:15 96:17</p> <p>terminated 90:19</p> <p>termination 11:5 13:4, 18:20, 19:5 34:24, 96:5, 96:19</p> <p>terminations 13:16</p> <p>terminology 97:23</p> <p>terms 14:24, 15:1 20:25, 21:9</p> <p>Terrie 2:17</p> <p>terrific 74:9</p> <p>territories 70:15</p> <p>testify 93:12</p> <p>testifying 89:23</p> <p>testimony 12:3 13:20, 28:10, 35:2 53:2, 76:18, 103:22</p> <p>Texas 53:10, 95:21</p> <p>thank 17:18, 21:18 26:2, 26:3, 26:11 29:23, 33:25, 34:3 37:9, 37:10, 40:22 40:23, 44:12, 44:13 47:24, 48:1, 52:21 55:5, 58:5, 58:19 63:17, 63:19, 66:11 67:7, 69:1, 71:2 76:2, 76:6, 76:7 78:2, 79:13, 79:16 81:18, 83:18, 86:9 86:12, 89:10, 93:12 93:25, 95:18, 101:7 102:16, 102:18 103:8, 105:13 105:25, 107:15 108:3, 109:7 109:14, 113:19 113:20, 114:3</p> <p>thanks 12:12, 89:8 113:20</p> <p>theirs 6:11</p> <p>theme 45:6</p> <p>thing 4:14, 19:5 28:12, 28:16, 35:13 44:19, 45:10, 46:15 64:8, 66:15, 82:3 84:24, 85:2, 85:7 113:9</p> <p>things 20:8, 20:14</p>	<p>20:16, 28:15, 39:10 48:20, 49:8, 52:13 54:24, 54:25, 60:10 65:11, 66:17, 66:23 74:21, 82:9, 82:20 83:10, 83:22, 95:4 104:24, 106:4</p> <p>think 5:21, 7:13, 8:1 18:10, 20:10, 20:21 27:19, 29:6, 40:13 44:18, 44:21, 44:22 45:9, 45:10, 45:19 46:22, 47:2, 47:15 47:20, 49:6, 49:9 49:15, 49:22, 50:7 50:19, 58:21, 59:25 63:6, 65:18, 67:25 68:21, 68:21, 69:24 72:18, 75:4, 80:17 80:19, 80:20, 81:16 82:3, 82:20, 83:25 84:4, 85:9, 85:9 86:8, 86:10, 96:3 96:22, 102:4 104:15, 105:15 106:4, 107:23 107:24, 108:2 109:3, 109:9 109:15, 109:21 110:2, 113:6</p> <p>thinking 84:9, 85:8 109:23</p> <p>third 14:8</p> <p>thirdly 59:9</p> <p>Thomas 2:11, 3:18 83:20</p> <p>Thompson 2:16</p> <p>thought 68:7</p> <p>thoughts 17:3</p> <p>threat 37:25, 39:21 100:19</p> <p>threatening 104:9</p> <p>three 34:5, 62:8 62:19, 63:9, 63:9 67:19, 75:16, 92:17 94:9</p> <p>three-and-a-half-p... 35:21</p> <p>thrive 22:22, 32:16 32:22</p> <p>thriving 94:12, 95:3</p> <p>Thursday 17:7</p> <p>tide 23:5</p>	<p>ties 55:24</p> <p>tighter 87:21</p> <p>till 67:3</p> <p>time 5:18, 5:21, 6:20 11:3, 11:9, 17:21 17:23, 17:25, 18:6 21:6, 25:11, 26:9 28:6, 37:13, 40:7 45:23, 46:12, 47:16 49:3, 50:6, 50:17 53:14, 57:21, 58:5 58:20, 62:24, 67:5 68:13, 68:18, 72:12 72:18, 73:14, 74:1 75:7, 75:8, 76:3 78:25, 79:2, 83:14 86:10, 89:5, 95:11 102:13, 107:3 114:3</p> <p>times 47:16, 64:23 80:25, 85:11, 93:6</p> <p>tiny 88:5, 88:7</p> <p>Tlingit 40:24</p> <p>today 4:8, 4:10, 4:13 5:3, 6:5, 7:2, 7:8 17:1, 17:6, 17:14 26:7, 26:14, 34:2 45:2, 53:2, 55:3 55:10, 59:14, 66:20 71:8, 76:17, 81:14 93:11, 95:21, 109:5</p> <p>Tohatchi 30:1 76:11</p> <p>told 45:3, 45:4 53:19, 94:19, 95:16 95:17, 112:3</p> <p>Tom 2:21</p> <p>tomorrow 81:14</p> <p>tool 70:24, 101:6</p> <p>top 4:8, 5:10, 5:12</p> <p>topic 6:13</p> <p>Torres 2:18, 3:20 101:10, 101:10</p> <p>total 53:12, 53:17 53:18</p> <p>totally 40:21, 41:19 68:2</p> <p>touch 27:4, 95:1</p> <p>touched 5:19</p> <p>towns 59:13</p> <p>track 19:16</p> <p>tracking 57:9, 66:1</p> <p>Tracy 2:10, 64:3</p>	<p>tradition 44:6</p> <p>traditional 60:18 95:3</p> <p>traditions 60:4, 63:2 63:13, 63:16, 102:7</p> <p>tragedy 43:19</p> <p>tragic 44:3</p> <p>training 1:6, 31:17 44:15, 56:20, 67:25</p> <p>transcript 12:13 115:10</p> <p>transfer 12:16 12:20, 12:22, 12:25 42:10, 42:16, 42:17 42:22, 43:8</p> <p>transferred 42:13</p> <p>transfers 12:10</p> <p>transparency 5:25</p> <p>transparent 7:20</p> <p>transparently 5:14</p> <p>trauma 69:15</p> <p>traumas 48:20</p> <p>traveled 80:8</p> <p>travels 39:2</p> <p>treat 9:21, 11:17 32:10</p> <p>treated 66:2</p> <p>treatment 37:1 37:2, 70:22</p> <p>tremendous 89:8</p> <p>trial 96:4, 96:13 99:23</p> <p>trials 21:10, 21:11</p> <p>tribal 12:10, 12:14 12:21, 13:2, 14:4 14:5, 14:10, 14:12 15:4, 16:10, 21:20 22:16, 22:22, 24:23 24:24, 25:7, 25:10 28:12, 30:7, 32:17 32:23, 33:8, 33:11 33:13, 35:12, 35:19 41:3, 41:6, 41:18 42:12, 42:24, 43:2 43:5, 43:9, 43:16 45:25, 49:22, 54:12 54:22, 56:24, 58:16 64:1, 69:20, 70:1 70:9, 70:17, 70:22 77:16, 77:21, 81:23 83:22, 83:23, 84:6 84:11, 88:12, 89:8 90:16, 90:24, 93:1</p>	<p>95:20, 96:3, 96:3 96:18, 96:22</p> <p>tribe 10:5, 10:13 10:13, 10:15, 10:16 10:21, 12:8, 13:1 13:11, 14:4, 14:7 14:20, 15:9, 16:7 16:20, 22:21, 25:9 28:15, 33:15, 33:19 33:21, 42:4, 42:9 44:8, 45:3, 47:13 49:17, 49:18, 49:18 51:1, 53:1, 53:21 55:7, 64:6, 74:11 74:13, 74:20, 77:10 78:13, 78:18, 79:3 79:25, 80:12, 83:1 86:22, 86:25, 87:7 91:22, 92:12, 92:16 95:9, 98:11, 98:13 106:21, 108:14 108:25, 108:25</p> <p>tribe's 33:10, 42:8 49:5</p> <p>tribes 8:9, 10:16 22:9, 22:11, 24:12 25:24, 33:11, 33:25 41:10, 43:18, 45:8 68:23, 78:2, 83:2 88:20, 88:24, 89:18 89:20, 91:22, 91:25 92:6, 92:10, 93:3 93:17, 94:8, 95:15 99:7, 99:13, 99:17 105:2, 106:10 106:24, 107:11 108:12, 108:15 108:16, 108:19 110:8</p> <p>tricky 88:10</p> <p>tried 39:10, 67:2 88:24, 88:25</p> <p>tries 104:9</p> <p>true 60:7, 70:7 98:23, 112:20 115:10</p> <p>truly 81:8, 81:16 84:17, 88:12</p> <p>trust 24:10, 70:8</p> <p>trusted 43:11</p> <p>trustee 26:14, 43:21</p> <p>try 18:11, 59:2, 64:7 64:15, 65:1, 88:18</p>
--	--	---	--	--

88:20, 113:6 trying 18:3, 20:13 21:6, 49:20, 50:5 61:4, 64:9, 66:7 68:14, 72:10, 79:15 85:20, 87:17 Tsimpshian 40:25 Tulsa 17:10 turn 85:18, 92:18 94:24, 104:22 turning 61:21 two 19:1, 19:1 29:10, 30:24, 38:11 48:24, 53:12, 55:18 55:21, 55:21, 62:5 67:19, 72:19, 73:13 74:14, 80:9, 82:14 88:16, 99:12, 99:13 105:12, 105:22 108:3 two-day 38:25 two-part 59:15 59:21, 59:23 two-year-old 38:4 104:15 types 80:18, 108:1 typically 28:1 typographical 19:15	40:21 unenviable 18:3 unfortunate 54:2 unfortunately 4:9 5:2, 102:3 uniform 22:2, 41:25 53:6, 76:25, 90:9 unifying 65:19 unique 24:19, 24:21 unit 89:6 united 8:20, 24:9 31:4, 44:9, 59:17 59:20, 60:14, 60:21 61:8, 61:19, 69:1 universe 68:3 University/National 1:6 unmarried 97:10 UNMH 72:21 unrelated 68:2 unscrupulous 92:19 unsuccessful 13:7 unusual 39:12 unwarranted 8:6 23:7, 103:20 unwilling 12:24 unwillingness 90:4 updated 9:2, 9:5 23:19 uphold 22:18, 32:20 58:7, 92:13 upset 64:10 urban 54:14 urge 33:22, 58:7 77:24 urges 26:1 use 31:15, 58:23 61:16, 61:20, 97:23 98:9, 99:19, 99:21 useful 23:22 usually 50:20, 72:3 72:8, 72:12 usurp 92:24 Utah 26:12	32:2, 32:3, 32:8 101:3 Vanara 2:20 Vanessa 2:7, 4:17 20:3, 20:16, 20:17 various 31:4, 103:21 104:19 vehicle 112:24 113:1, 113:1 verbal 30:2 verbally 6:25, 17:4 17:15, 76:18 verbiage 61:6 verify 92:7 Veronica 58:9 vested 43:9 Veterans 64:1 viable 54:9 vice 89:9 victims 106:1 video 93:17 view 40:8 village 106:10 villages 93:21, 93:21 93:23 Vincent 2:17 violate 26:23, 27:5 28:18 violated 16:4, 16:8 46:25 violates 27:19, 29:6 violation 16:6 46:18, 46:22, 92:18 violence 8:19, 23:18 virtue 60:24 vitally 31:18 voice 41:17, 47:19 49:21, 55:10 voices 58:6 voluntary 10:2 14:16, 14:17, 16:17 28:22, 28:25, 29:5 33:11, 91:23, 97:24 97:24, 97:25, 98:10	walk 5:5, 68:8 110:2, 110:5 walked 110:3 walker 52:23, 68:8 Walters 5:1 want 4:2, 5:22, 7:11 7:12, 7:18, 7:20 20:8, 20:12, 21:24 22:23, 26:7, 36:5 44:1, 47:13, 49:8 50:6, 55:15, 57:2 57:6, 64:3, 64:5 64:21, 65:15, 67:13 72:14, 73:11, 77:17 78:8, 78:9, 79:9 80:7, 83:13, 95:5 98:15, 107:13 107:16, 109:13 111:21, 112:22 113:2 wanted 4:11, 5:9 17:20, 18:9, 25:12 26:4, 26:10, 48:25 56:13, 68:16, 94:6 111:24 wanting 78:20 wants 10:3, 79:7 War 64:1 wards 25:10 Washburn 4:6, 87:5 Washington 79:21 79:23, 80:7, 80:10 87:16 watch 110:8 waters 70:15 waving 94:24 way 7:5, 17:12 17:14, 20:15, 21:10 27:7, 29:10, 29:21 39:21, 39:25, 49:5 50:15, 64:12, 65:14 65:16, 65:18, 65:23 67:1, 71:20, 75:24 84:23, 87:23, 88:13 88:17, 105:9, 110:7 110:10, 111:14 ways 73:10, 76:15 95:3, 111:11 113:13 we've 5:18, 52:8 66:1, 78:15, 88:4 88:25, 89:2, 98:15 weaken 70:16	wearing 6:8 week 17:7, 65:3 99:4, 107:2 weeks 26:18 welcome 3:3, 4:3 welfare 2:5, 5:17 8:4, 22:3, 23:5 25:21, 29:20, 30:5 30:10, 31:20, 33:2 34:19, 41:2, 55:5 55:10, 56:22, 57:10 57:12, 57:17, 67:18 68:3, 69:7, 69:16 69:17, 70:12, 70:21 76:19, 76:23, 77:1 79:14, 79:18, 90:1 90:6, 90:8, 90:10 90:23, 93:1, 93:5 103:14 well-being 53:8 70:1, 70:20, 70:24 well-intended 81:3 went 55:21, 79:22 79:23, 112:8, 112:9 Western 31:17 50:17, 52:12 whack-the-dog 101:3 Wheatfields 109:12 whip 98:4 white 41:4, 44:1 51:8, 51:9, 51:9 64:1, 66:12, 69:13 84:23, 85:25 wide 30:8, 41:13 wide-range 22:1 89:16 William 2:9, 21:20 Willie 2:23 willing 76:16, 82:17 willy-nilly 101:1 win 73:17 wisdom 43:5, 43:12 witness 12:3, 12:4 13:19, 13:25, 14:6 14:11, 15:21, 77:9 77:9, 100:18 witnessed 43:14 43:16 witnesses 33:18 35:3 witnessing 69:15 Wolf 65:10
U				
unavailability 15:23 36:11 unaware 38:21 uncle 77:22 unclear 62:1 uncles 31:2, 58:14 110:21 undergoing 39:6 105:13 underscores 37:7 understand 15:19 32:13, 36:2, 36:3 51:14, 55:16, 66:5 71:21, 80:15, 88:14 understanding 6:3 37:20, 60:3, 70:14 86:23 understood 6:13 15:1, 68:18, 68:19 96:12 underway 70:19 unenforceable	vacate 16:3 Valdo 2:12 valley 21:21 Vallo 3:19, 94:1 94:2 values 24:21, 31:23	V	W	
		wait 46:2 waiting 11:6, 46:1 58:13, 58:13, 58:14 58:21, 111:8 waived 22:20, 92:16 waking 49:25		

woman 30:15, 39:1 72:21, 82:1, 111:19 112:5, 112:7	written 6:25, 20:23 26:5, 26:8, 27:7 29:11, 39:22, 59:9 70:2, 71:11, 89:20 113:24, 113:25 114:2	Z	68:15	5
women 23:9	wrong 32:14, 99:3	Zachary 2:15	2012 57:8	5 1:7
won 74:6, 74:7 74:12	wrote 8:20	1	2013 8:17, 34:17	50 86:5, 86:5, 87:9 91:1
wonder 110:22	Wyoming 87:17	1 3:3	2014 8:14, 8:16 8:17, 8:22	500 108:15, 108:18
Woods 30:16	Y	1,980 66:24	2015 1:7, 8:25, 8:25 9:2, 25:17, 115:13	53 3:12
word 58:11, 61:25 62:8, 105:8	Y-A-Z-Z-I-E 105:18	10 11:7, 59:5, 66:10	20th 9:2	55 3:12
words 32:12, 44:11 45:20, 51:16, 61:23 62:5, 67:14, 67:15 68:21, 68:22, 71:15 71:20, 83:22, 83:24 83:24, 84:2, 84:7 84:10, 84:12	yada 98:17, 98:17	101 3:20, 51:17	22 71:13	59 3:13
work 29:21, 31:16 31:17, 37:19, 37:19 37:21, 44:16, 48:3 54:15, 68:22, 68:25 69:5, 69:10, 69:18 70:19, 83:21, 86:25 92:23, 94:7, 95:14 97:17, 100:23 102:20, 104:7 106:23, 107:1 108:20, 111:18	Yakama 78:16 78:17	102 3:20	23 1:3, 9:7	6
worked 37:13, 40:1 89:4	Yazzie 3:21, 105:17 105:18	103 3:21	23.108 92:9	60 86:5
worker 16:25, 79:22 80:8, 89:24, 92:25 95:8, 104:7	Yeah 64:18	105 3:21	23.113 93:13	62 115:8, 115:18
workers 40:16 65:13, 88:6, 90:14	year 5:16, 56:7, 56:9 68:6, 68:6, 72:18	109 3:22	23.121 19:7	67 3:13
working 38:1, 46:16 51:22, 58:1, 72:7 79:18, 86:24, 86:25 87:24, 88:1, 93:1 115:6	years 21:25, 23:14 28:23, 29:3, 29:10 30:7, 35:15, 35:15 39:12, 40:2, 41:12 53:10, 53:12, 65:5 65:24, 66:2, 66:10 66:25, 67:19, 68:15 71:13, 71:13, 72:14 73:13, 73:17, 74:14 75:16, 78:16, 79:19 80:9, 82:10, 86:21 87:13, 89:13, 90:25 92:17, 94:9, 99:6 103:17, 105:25 110:4, 111:6	10-minute 58:22 63:20	23.131 73:20, 91:5	69 3:15
works 79:13, 89:5 89:5, 113:13	yesterday 83:8, 83:9	11 30:24, 56:1 82:13	23.2 62:16	7
world 32:7, 48:18 48:21, 49:23, 51:5 84:21	you-all 109:7	1-115 115:9	23.3 62:15	7,000 69:14
worst 87:12	young 55:18, 58:12 65:3, 68:14, 68:15 68:19, 69:21, 84:17 85:12, 108:7	114 3:6	2311 42:7	71 3:15
worth 102:5	youth 18:14, 54:17 57:3, 57:8, 58:2 58:4, 58:18, 69:12 69:18	12 55:20, 66:2	23115 42:7	76 3:16
wrap 75:10, 75:12 109:10	Ysleta 95:20	12/31/15 115:18	25 1:3, 9:7	78 3:16
wrapping 109:9	Yvonne 115:7 115:17	12:48 1:7	25th 8:25	78-year-old 34:14
writing 14:23, 17:5 17:15, 26:17, 41:8 42:10		14th 17:9	26 3:8	79 3:17, 23:12
		15 53:10, 56:6	27 30:18, 30:21 71:13	8
		16 111:6	29 3:9	8 3:5
		17 79:19, 86:18	3	81 3:17
		18 3:8, 18:16, 18:17 30:16, 32:11, 85:18 85:22, 86:21, 92:18	3 3:5	83 3:18
		1890s 66:24	30 12:2	85 104:1
		19 65:5	300 93:22, 110:3	87031 1:20
		1912 35:3, 100:14	31 89:13	89 3:18
		1912(b) 99:20	34 3:9, 82:13	9
		1912(f) 100:16	35 21:25, 28:22 30:7, 35:15, 65:24 90:25	94 3:19
		1974 103:22	36 23:14, 35:15	95 3:19
		1978 5:17, 8:4 101:14	37 3:10, 89:17	
		1979 5:16, 8:11 8:14, 25:16, 29:1 41:17	4	
		1989 25:3	4 3:3, 3:4, 3:6	
		19th 7:9, 17:11 113:25	4:19 114:3, 114:4	
		1st 115:12	40 3:10, 65:24, 86:5	
		2	400 93:22	
		2 3:4	41 82:13	
		2:38 63:22	44 3:11	
		2:48 63:21	45 38:16, 55:23	
		20 11:9, 65:25	46 1:20	
			48 3:11	