

PUBLIC MEETING - PROPOSED REGULATIONS FOR
STATE COURTS AND AGENCIES IN INDIAN CHILD CUSTODY
PROCEEDINGS - "ICWA PROPOSED RULE" (25 CFR 23)
TULSA, OKLAHOMA
MAY 14, 2015

MR. ROBERTS: Good afternoon, everyone. We're going to get started in a few minutes, but there are a number of folks standing in the back. There are seats available up front here if anyone is interested and we're also looking into -- depending on how many people we have showing up, we're probably going to be moving one of these walls to expand capacity here. So bear with us as we work through that, but there are -- there are seats available here up front.

Okay. Good afternoon, everyone. My name is Larry Roberts. I'm the Principal Deputy Assistant Secretary for Indian Affairs at the Department of Interior.

I want to start off by saying thank you for everyone to attending this public meeting this afternoon on our proposed Indian Child Welfare Act regulations.

I want to sort of just go through some general rules of the road for the public meeting this

1 afternoon and talk a little bit about how we're going
2 to proceed this afternoon.

3 So first off, I know that there are a
4 number of people in the back. Some have chairs, some
5 do not. There are a handful of chairs up front and I
6 think we're working on opening up this room a little
7 bit to facilitate more seating. But there are some
8 seats up front here.

9 Second of all, I know that -- one, I know
10 that a number of you have come here from maybe a great
11 distance to provide comments today and so I want to
12 make sure that everyone that is here today has an
13 opportunity to provide comments. So I'm going to ask
14 everyone to -- out of respect for everyone, as part of
15 this public session, to just limit your comments to
16 five minutes. Once everyone who's had a chance to
17 speak has spoken, we'll open it up again and you can
18 make further comments. But I want to make sure that
19 everyone here has an opportunity to speak.

20 Secondly, I want everyone to provide their
21 comments to us, the -- the panel here. I want to make
22 sure that we have a forum where everyone is respectful
23 to one another and so this isn't an opportunity to --
24 this is not an opportunity to argue points among each
25 other. Your comments should be directed at us. And I

1 don't want this to be a forum where folks are either
2 clapping or criticizing other one's comments. I think
3 we need to be respectful of everyone's comments here.
4 I know that this is a very important issue to a lot of
5 people and to all of you, so let's treat everyone with
6 respect.

7 I want to -- so the purpose of the meeting
8 today is also to, obviously, hear comments from all of
9 you on the proposed rule. That's why we put our
10 proposed rule, to get input that we can approve --
11 approve the rule before we issue a final ruling.

12 So what's helpful for us is if you
13 identify areas where you think that the rule is not
14 clear, that's helpful, or ways that the rule can be
15 improved, which also helpful, though, is not only
16 saying, here's where it could be improved generally,
17 but then providing specific suggestions on how to
18 improve the rule.

19 Finally, so -- so we're here to gather
20 your comments and then what we will do once the
21 comment period closes next week, we will review all of
22 the comments. So we have a court reporter up here in
23 the front and so when you -- when you come to one of
24 those microphones to make a comment, please state your
25 name very clearly and the organization you're with if

1 you're with an organization and please be kind to our
2 court reporter and speak slowly so that she can get
3 everything because what we will do with these
4 transcripts is we'll put them on our website and make
5 them available for everybody as part of the rule
6 making process.

7 So with that, I'm going to -- we have a
8 very short PowerPoint presentation in the materials
9 you should have received as you -- as you came in the
10 door. We're going to go through the PowerPoint
11 presentation. It will take roughly 15 to 20 minutes.
12 And before we get started on that, I'm going to have
13 my team introduce themselves.

14 So I'm Larry Roberts, Principal Deputy
15 Assistant Secretary for Indian Affairs and I'm a
16 member of the Oneida Nation of Wisconsin.

17 MS. CAVE: I'm Rodina Cave. I'm Senior
18 Policy Advisor to the Assistant Secretary For the
19 Indian Affairs. I'm Quechua.

20 MS. JACKSON: Gina Jackson, Senior Fellow
21 with the Secretary's office of Indian Affairs and I'm
22 Western Shoshone

23 MS. ORTIZ: Good afternoon. My name is
24 Hankin Ortiz. I'm Kiowa, Caddo and Comanche from
25 Oklahoma and I'm the Deputy Bureau Director for the

1 Office of Indian Services for the Bureau of Indian
2 Affairs.

3 MS. KRISPINSKY: Good afternoon. My name
4 is Rebekah Krispinsky and I'm the Assistant Solicitor
5 with the Solicitor's Office, Division of Indian
6 Affairs in Washington, D.C.

7 MS. BURTON: Hi, I'm Debra Burton. I'm a
8 member of the Cherokee Nation and a social worker for
9 ICWA policy at the BIA Central Office.

10 MR. ROBERTS: Great. Okay. So everyone
11 should have a packet of their materials of the
12 PowerPoint. We'll also show it on the slides.

13 So by way of background, the Indian Child
14 Welfare Act was passed in 1978. Congress enacted ICWA
15 to protect the best interests of Indian children and
16 to promote the stability and security of Indian tribes
17 and families. They did this by establishing minimum
18 federal standards for the removal of Indian children
19 from their families and the placement of such children
20 in foster or adoptive homes and/or institutions that
21 reflect the values and culture of -- of the tribal
22 communities.

23 ICWA is a strong federal policy that,
24 where possible, that an Indian child remain in the
25 Indian community.

1 In 1979, shortly after the Act was passed,
2 the Department issued guidelines for state court
3 implementation of ICWA and it also issued regulations
4 on ICWA notice.

5 From 1979 to 2014, and today, the courts
6 have interpreted the provisions of ICWA in
7 implementing ICWA in a variety of ways.

8 In 2014, we, the Department, undertook
9 listening sessions with -- with tribes on the 79
10 guidelines, looking for how those guidelines could be
11 improved in getting comment from tribes.

12 The Attorney General's Advisory Committee
13 on Native Children Exposed to Violence also issued a
14 report and recommendations for the Department to
15 improve its guidelines and regulations.

16 And so this year, we issued updated
17 guidelines in February and we issued the proposed
18 rules in March that we're here to talk about today.

19 This next slide is -- basically just
20 provides a -- a very broad overview of the different
21 sections in the proposed ruling and the things that
22 we'll be talking about.

23 So in the proposed rule, we have added a
24 number of definitions for active efforts, continued
25 custody, and the physical danger or harm of a

1 voluntary placement. We've also revised several other
2 definitions.

3 And so we're looking for comment,
4 obviously, on the entire rule, but we're also seeking
5 your comment on the definitions.

6 Our goal in the rule making is to promote
7 consistent ICWA implementation in all states. And so
8 one of the things that the proposed rule makes clear
9 is that an Indian child that are -- is subject to a
10 child custody proceeding, that those proceedings
11 include status offenses in juvenile delinquency
12 proceedings if there's placement or a termination is
13 possible.

14 The proposed rule makes clear that there
15 is no so-called existing Indian family exception. The
16 proposed rule seeks to support early implementation of
17 the Indian Child Welfare Act. And so the proposed
18 rule talks about states and state agencies and state
19 courts, that they must ask whether the child is an
20 Indian child early on. And if there's a reason to
21 believe that the child is an Indian child, that they
22 should treat that child as an Indian child under the
23 Indian Child Welfare Act unless and until it's
24 determined that the child is not an Indian child.

25 In terms of voluntary placements, the

1 proposed rule provides that ICWA applies if the
2 parents consent to placement or termination, but that
3 ICWA does not apply if the parents or custodian may
4 regain custody of the child upon demand.

5 The proposed rule also provides steps to
6 contact the Tribe to provide notice or to verify
7 membership.

8 And so with our next section, we're going
9 to talk a little bit about pretrial requirements and
10 I'm going to turn it over to Rodina Cave.

11 MS. CAVE: Thank you. I'm going to come
12 around here.

13 I'm Rodina Cave and I'll be talking about
14 the proposed rule pretrial requirements.

15 And so the proposed rule has provisions
16 that agencies and state courts must ask if the child
17 is an Indian child. And if there's reason to believe
18 that the child is an Indian child, there is -- they --
19 they must, as -- as Larry said, they must treat the
20 child as an Indian child until it's determined that
21 the child is not an Indian child. And also that
22 there's examples provided in the proposed rule for
23 when there's reason to believe that a child is an
24 Indian child.

25 The proposed rule also has provisions

1 regarding for voluntary proceedings. If a consenting
2 parent wants anonymity, then the agency or court must
3 keep the relevant documents under seal, but still
4 provide notice to the tribe. And there is also a
5 requirement engage in active efforts. So when does
6 that requirement start? When is there the -- the duty
7 to engage in active effort?

8 The proposed rule provides that that
9 requirement starts as soon as the case or the
10 investigation may result in the placement of an Indian
11 child outside the custody of the parent or Indian
12 custodian and it applies while investigating whether
13 the child is an Indian child.

14 The proposed rule also provides that only
15 the tribe may determine whether a child is a member of
16 the tribe. It has provisions regarding notifying all
17 the tribes in which the child is potentially a member.
18 And after a tribe is designated and notice provisions
19 filing the designation with the court, sending the
20 designation to each party and person that receive
21 notice of the proceeding.

22 It also has a provision that the state
23 court must dismiss an action as soon as it determines
24 that it lacks jurisdiction. For example, that the
25 tribal court has jurisdiction.

1 The proposed rule also has provisions
2 regarding notice, when is notice required, what
3 proceeding those -- those provisions apply to, listed
4 here, and how notice is provided, by registered mail
5 with return receipt requested.

6 The proposed rule also provides for time
7 limit. That substantive, rulings or decision about
8 the child's placement or termination of parental
9 rights may occur until notice and waiting periods have
10 elapsed. And that additional extensions of time may
11 be granted.

12 The proceedings may not begin until ten
13 days after each parent and Indian custodian and the
14 tribe receives notice and that an additional 20 days
15 can be requested.

16 The proposed rule also has provisions
17 regarding emergency removal. And that an emergency
18 removal must be as short as possible. That the agency
19 or state court must document whether removal or
20 placement is proper and continues to be necessary to
21 prevent imminent physical damage or harm to the child.
22 Promptly hold a hearing to evaluate whether the
23 removal is -- continues to be necessary and
24 immediately terminate the placement or removal when
25 the emergency ends.

1 Emergency removal provisions continued
2 here. The agency must treat the child as an Indian
3 child until contrary to termination. Conduct active
4 efforts to prevent the breakup of the Indian family as
5 early as possible before removal, if possible.
6 Immediately take and document steps to confirm whether
7 the child is an Indian child and verify tribal
8 membership. Notification, again, and maintaining
9 records that notice was provided.

10 Continuing with the emergency removal
11 provision in the proposed rule. At any court hearing
12 on emergency removal or placement, the court must
13 decide if the removal or placement is no longer
14 necessary to prevent imminent physical damage or harm
15 to the child. Temporary emergency custody should be
16 less than 30 days unless there's a hearing with
17 testimony of a qualified expert witness or if there
18 are extraordinary circumstances. And that emergency
19 removal or placement must end as soon as imminent
20 physical damage or harm no longer exists or the tribe
21 exercises jurisdiction over the case.

22 And to talk about transfers to tribal
23 court, Debbie Burton from Indian Services is here to
24 do that.

25 Thank you.

1 MS. BURTON: The proposed rule clarifies
2 that the right to request transfer to tribal court
3 occurs with each proceeding and at any stage of the
4 proceeding. We've had state courts refuse to transfer
5 cases to tribal court because the state court ruled
6 that the transfer -- that the request came too late in
7 the case and the proposed rule clarifies that, that
8 the right to request transfer can occur at any stage,
9 even later stages. And the state court must transfer
10 the case unless either parent objects, the tribal
11 court declines, or a state court determines there's
12 good cause to deny the transfer.

13 Now, the proposed rule says that this good
14 cause -- the basis for the good cause finding must be
15 stated in the court records and that there are three
16 factors that the court may not consider under the
17 proposed regulation to deny a transfer to tribal
18 court.

19 The first factor is whether the case is at
20 an advanced stage, the child contact -- the child and
21 nature of the contacts with the tribe or reservation
22 and the tribal court's perspective placement for the
23 child. And these three factors cannot be considered
24 for transfer under the -- as good cause not to
25 transfer under this proposed rule.

1 Now, any petition for placement or
2 termination of parental rights must demonstrate to the
3 court that active efforts were made to avoid the needs
4 to remove the child and that these active efforts were
5 made before and until commencement of the proceeding
6 and that the active efforts were unsuccessful. And
7 the new -- the new provision in the proposed
8 regulation is that the proposed regulation makes clear
9 that these active efforts must be documented in detail
10 in the court records and that there must be
11 documentation that the resources of the extended
12 family tribe, Indian Social Service agencies, and
13 Indian -- and Indian caregivers were explored and used
14 to the extent possible.

15 Now, the court may order foster care
16 placement only if there's clear and convincing
17 evidence supported by the testimony of qualified
18 expert witness that continued custody with the parent,
19 Indian custodian is likely to result in serious
20 physical damage or harm to the child and the court may
21 order a termination of parental rights only if there's
22 evidence beyond a reasonable doubt, again supported by
23 the testimony of an expert witness, with the risk of
24 serious physical damage or harm to the child.

25 Now, this isn't new. This is in the

1 statute, but what is new is that the rule clarifies
2 what is and what is not clear and convincing evidence.

3 Now, the new proposed rule sets up four
4 categories of qualified expert witness and these
5 categories are put in preferential order so that the
6 first category is the most preferred.

7 A member of the child's tribe who's
8 recognized by the tribal community as knowledgeable in
9 the tribal customs of the child's tribe in
10 childrearing and family organization.

11 Now, that is set as the first order of
12 preference for the qualified expert witness under the
13 proposed rule.

14 The second preferred category is a member
15 of another tribe who's recognized by the child's tribe
16 as an expert based on their knowledge of delivery of
17 services to Indians and the child's tribe

18 The third preferred is a layperson who's
19 recognized as having substantial experience in
20 delivering family services to Indians and has a
21 knowledge of their social and cultural standards.

22 MR. TAHSEQUAH: Excuse me. We have about
23 50 people who are waiting here and we're -- we're
24 representing different tribes. We'd like to hear
25 this, too, but you're not speaking loud enough for

1 them. Is there any way we can get the chairs in here?

2 MR. ROBERTS: Yes, sir. We are working on
3 opening up this room.

4 MR. TAHSEQUAH: Thank you very much.

5 MS. BURTON: Okay. Sorry, I'll try to
6 speak louder.

7 And the fourth category, and the least
8 preferred qualified expert witness, is a professional
9 that has education and experience in a specialty who
10 can demonstrate the knowledge of prevailing social and
11 cultural standards of the childrearing practices
12 within the child's tribe.

13 And now I'm going to turn it over to Gina
14 Jackson.

15 MS. JACKSON: Hi, everyone. I'm going to
16 go kind of quickly because we do have so many folks
17 here who want to have an opportunity to speak and so
18 I'm going to hit some of the high points in the
19 following areas.

20 Voluntary -- voluntary proceedings,
21 disposition, and post-trial rights.

22 So in voluntary proceedings, the proposed
23 rule clarifies that the agency and the state court
24 must ask if the child is an Indian child, providing
25 the tribe with notice of a voluntary proceeding, and

1 notice of the right to intervene.

2 Consent of the parent or Indian custodian
3 must be in writing, recorded before the Court,
4 explain consequences and terms of consent in detail,
5 and certify the consequences and terms are explained
6 and fully understood by the parent or Indian
7 custodian.

8 In this position, the agency must follow
9 ICWA placement preferences or tribal placement
10 preferences even if there is a request for anonymity.
11 It must provide clear and convincing evidence that a
12 diligent search was made to meet the preferences and
13 explain if it couldn't be met. Notifying parents,
14 Indian custodians, family members, tribes and maintain
15 documentation of the records.

16 MR. ROBERTS: Okay. We're just going to
17 take -- they're ready -- the folks are ready to open
18 up this -- this wall right here. So we're going to go
19 on and do that. It's noisy, so we're going to just
20 take a two-minute pause or however long it takes.

21 MR. TAHSEQUAH: Thank you very much. We
22 appreciate it.

23 MR. ROBERTS: And the PowerPoint -- the
24 PowerPoint is with the materials itself.

25 (Break was taken at 1:24 p.m.)

1 MS. JACKSON: Okay. So I had left off at
2 disposition, that parents and Indian custodians -- oh,
3 wait, no.

4 That clear and convincing evidence must be
5 used to conduct the diligent search to meet the
6 placement preferences and explain if they couldn't be
7 met. Notifying parents, Indian custodians, family
8 members, the tribes, and maintaining documentation of
9 placement.

10 Departure from placement preferences can
11 only be if the court finds good cause to depart and
12 the good cause basis must be included in the record.
13 The party asserting good cause has the burden to prove
14 good cause by clear and convincing evidence.

15 So continuing with good cause to depart
16 from placement preferences, it must be based on the
17 parents' request, if both attest they've reviewed the
18 placement options, the child's request, if able to
19 understand the decision, the child's extraordinary
20 physical or emotional needs as established by a
21 qualified expert witness.

22 What it doesn't include is bonding and
23 attachment from the placement or just the
24 unavailability of the -- of a placement and
25 determination that -- by the court that active efforts

1 were made.

2 Good cause may not be based upon the
3 socioeconomic status of any placement relative to
4 another placement.

5 In post-trial rights, the proposed rule
6 establishes procedures to vacate an adoption if
7 consent was obtained by fraud or duress or if the
8 proceeding violated ICWA. It establishes who can
9 invalidate an action based on a violation of ICWA,
10 which is the Indian child, the parent, Indian
11 custodian, the tribe, regardless of that particular --
12 whether that particular party's rights were violated.

13 It establishes adult adoptee's rights to
14 learn their tribal affiliation and encourages States
15 to designate someone to assist with adult adoptees.
16 It requires notice of any change in the child's
17 status, such as change in placement.

18 The proposed rule clarifies -- and this is
19 part of the ICWA already, so the part that I want to
20 highlight is that States must provide BIA -- or States
21 must, first of all, establish a single location for
22 all records of voluntary and involuntary foster care,
23 pre-adoptive placement and adoptive placement. That
24 information will be available within seven days of
25 request by the child's tribe or the Department of

1 Interior. The records must contain, at a minimum, the
2 petitioner complaint, all specific orders in the
3 proceeding, and record of placement determination,
4 including findings in the court records and the social
5 worker statement.

6 So we're excited to have such a full house
7 today and looking forward to the comments on any
8 provision of the proposed rule.

9 The -- we have done public meetings and
10 tribal consultations almost every week for the past
11 four weeks. This is the final public meeting.

12 The important date to remember is May
13 19th. That will be the final date to submit comments

14 As folks are making comments today, we are
15 excited to hear from you, but you can also submit the
16 comments in writing as well. So verbally and in
17 writing or either/or is fine.

18 So we look forward to hearing from you.

19 MR. ROBERTS: Thanks, Gina. So a number
20 of folks have joined us since we started the session
21 this afternoon. I'm just going to quickly
22 reiterate -- reiterate the ground rules for today's
23 public meeting.

24 One is please limit your initial comments
25 to five minutes. I'm going to keep track of the time.

1 I'm going to try to be the timekeeper, so help me out
2 with that. The reason I'm doing it is because we have
3 a full house here and I want to make sure that
4 everybody that wants to provide comment can do so.

5 Once everyone has had an opportunity to
6 provide comments, we'll open up the floor again for
7 additional comments.

8 This is an extremely important issue and
9 that's reflected by the fact that all of you are here
10 this afternoon. So let's be mindful of everyone's
11 time. Let's be respectful of everyone's comments here
12 today.

13 Please direct your comments to us. And in
14 terms of your comments, the more specific they are,
15 the more helpful they are to us as we're going back
16 and looking at how we'll improve the proposed rule.

17 And, finally, when you come to the
18 microphone, please state your name clearly, please
19 speak slowly so that everyone's kind to our court
20 reporter and that she can get down everything that
21 you're saying so that we have that as a part of the
22 record and that we can review that as we're going
23 through the rulemaking process.

24 So with that, I will open up the
25 microphone to public comment.

1 MS. ROSS-NIMMO: Hello. My name is
2 Chrissi Ross-Nimmo. I'm the mother of Indian children
3 and a citizen of the Cherokee Nation. Also, Assistant
4 Attorney General for Cherokee Nation.

5 Both on a personal and in a professional
6 capacity, I absolutely support these regulation. The
7 Cherokee Nation will be submitting written comments.

8 Briefly, though, today, I want to share
9 with you a short story. I want to tell the BIA why
10 the regulations are needed. I want to tell you what
11 the modern day forced removal of an Indian child from
12 her family and her tribe will look like.

13 On September 23rd, 2014, Veronica Brown
14 was forcefully removed from her biological Cherokee --
15 Cherokee family and her tribe. After four long years
16 of litigation, on September 20th, Cherokee Nation and
17 Dusten Brown finally had, what we believed, a final
18 agreement after a week-long mediation that would allow
19 custody to the adoptive couple and continued and
20 substantial visitation with Veronica's father and her
21 tribe. We signed documents at the courthouse and
22 thought that we had concluded what was an extremely
23 difficult case. We got a call an hour later from the
24 judge saying the adoptive couple refused to sign the
25 agreement and were ordered to return Monday morning.

1 That Saturday, in the Cherokee Nation,
2 surrounded by her friends and family, Veronica Brown
3 celebrated her fourth birthday complete with bounce
4 house castle and cupcakes.

5 We all returned to the courthouse that
6 Monday morning where we were formally dismissed from
7 mediation. That afternoon, we received word that
8 state court had provided a pickup order that by any
9 means or force necessary to return Veronica Brown to
10 the custody of the adoptive couple.

11 The Brown family had been staying on
12 Cherokee Nation trust land in a guest house and our
13 team quickly descended on the Jack Brown House. The
14 Brown family was there. Veronica was there. Dusten's
15 attorney, myself, the Attorney General for the
16 Cherokee Nation, the chief, other elected tribal
17 officials, the Cherokee Marshal Service came and went.

18 I sat on the floor and played a game of
19 match with Veronica. She was unaware of what was
20 happening around her. After several hours of talking,
21 praying and crying, Dusten decided that he would
22 comply with the state court and turn Veronica over to
23 the Capobiancas.

24 We asked for two hours to allow the family
25 to say goodbye to her and pack her belongings. The

1 answer from the attorney for the adoptive couple was
2 that we had one hour. So one hour, Veronica was told
3 she was going to live with the Capobiancas. She
4 packed two suitcases, one with clothes and one with --
5 one with birthday presents.

6 It was recommended that I physically
7 transfer Veronica. Everyone agreed that the two
8 families in the same room would not be a good idea and
9 Veronica knew and trusted me. So arrangements were
10 made.

11 During the time, Veronica's grandfather,
12 Tommy Brown, had an episode. We believed at the time
13 it was a heart attack. An ambulance was called and he
14 was taken to the hospital. We learned -- thankfully,
15 we later learned that it was simply an anxiety attack,
16 but we all knew it was a broken heart.

17 I went into the house and took Veronica
18 from the arms of her father and carried her to an
19 awaiting car where we drove a half a mile down the
20 road to deliver her to the adoptive couple. I told
21 her that her dad loves her and he would see her again.

22 After only two years of living with her
23 father, the Cherokee Nation -- in the heart of the
24 Cherokee Nation, where she did a Pow Wow of the Stomp,
25 where she had been given a name in a naming ceremony,

1 where she was attending a childcare facility run by
2 the Cherokee Nation and learning the Cherokee
3 language, where she proudly showed me her citizenship
4 photo ID, referred to it as her Indian card, and
5 identified herself as Cherokee, Veronica was being
6 handed off to non-relatives, non-Indian people simply
7 because they wanted her.

8 The adoptive couple reported to the media
9 that Veronica didn't cry that night and that is false.
10 I saw a broken-hearted child that night. We've all
11 seen four-year-olds upset who cry and throw a fit.
12 Veronica sat in my lap with her head down as tears
13 rolled down her cheek.

14 What happened that night was forced
15 removal. It wasn't physical force, but that was only
16 because Dusten Brown chose to comply with the court
17 order. It was legal for us and it was opposite
18 everything that the Indian Child Welfare Act was
19 intended to prevent. A four-year-old Cherokee child
20 was taken away from an unquestionable Cherokee father
21 in the middle of her community surrounded by hundreds
22 of tribal members and placed in a home with a
23 non-Indian, non-relative couple because they wanted
24 her and the law allowed it.

25 I believe that we could have kept Veronica

1 in Indian country that night, maybe for a day, maybe
2 for a year. Who knows, but what we couldn't have done
3 is kept her father out of jail or kept him from having
4 various criminal charges pressed against him.

5 I think it's important that the BIA hear
6 these stories because when we talk about forced
7 removal of Indian children, we're not talking about
8 things that happened in the '30s and '40s and '50s.
9 We're talking about things that still happen every
10 day.

11 Hundreds of thousands of children a year
12 are taken away from their tribe and their family. The
13 proposed regulations will absolutely protect Indian
14 children and Indian tribes.

15 If the regulations had been in place or
16 even if the spirit -- the spirit and letter of ICWA
17 had been followed, Veronica never would have left the
18 Cherokee Nation.

19 I briefly want to say that you will hear
20 today people specifically commenting on best interests
21 of Indian children and emotional attachment. Some of
22 those very same people sit before the Oklahoma Supreme
23 Court and the South Carolina Supreme Court and the
24 media across this state and country and said, After
25 two years of living with her father, Veronica's bond

1 to her dad didn't matter, Veronica's bond to her tribe
2 didn't matter, and her best interests didn't matter.

3 So when we're talking about best interest,
4 we have to consider whose best interest we're talking
5 about.

6 Thank you so much for your time.

7 (Audience claps.)

8 MR. ROBERTS: Okay. So, I'm sorry, folks,
9 but we're not -- we're not going to do clapping or
10 booing at a -- at a public meeting. Okay. Because
11 it's not -- I know you might agree with folks and
12 that's fine, but I -- I want to make sure that it's a
13 productive environment for receiving public comment
14 today. And so I would just -- we need -- we have a
15 lot of folks already at the microphone who are wanting
16 to provide comment and so I want to make sure that
17 this runs as efficiently as possible.

18 So we'll go with the next commentary.

19 MS. KERN: Thank you. First of all, for
20 the panelist, I want to thank you for the work that
21 you do for all of the country's citizens. It's very
22 important and I appreciate it.

23 I'm an Oklahoma licensed attorney. My
24 practice is concentrated in adoption. I served on the
25 Oklahoma Legislative Adoption Review Task Force with

1 lawmakers, laypersons, judges, tribal representatives,
2 and others -- other attorneys. I volunteer for the
3 Tulsa Lawyers for Children Representing Children.

4 I'm respectfully presenting to you today
5 the following letters in opposition to the proposed
6 federal regulations from the following individuals:
7 Gretchen Patterson, Steven Patterson, Cheryl Ping,
8 Angela Pinrose, Caterina Pinrose, Phillip Ron Pinrose,
9 Scott Pinrose, Ebony Perkins, Mark Peters, Lisa
10 Peterson, Alyssa -- Alyssa Penny, Felicia Fam, Susan
11 Phillips, Catherine Polisino, Eve Pernell, Thomas
12 Pertwallow and Christine Priest. These folks were
13 unable to attend today and their letters will -- you
14 know, I just want their comments incorporated if I may
15 submit those.

16 MR. ROBERTS: Can we get your name,
17 please?

18 MS. KERN: Yes, I apologize. My name is
19 Jennifer Kern and I have signed that for you. So
20 thank you allowing me to do that.

21 The objection that I personally have to
22 the regulations is not focused necessarily on the same
23 reasons of those letters. Those letters are focused
24 on the fact that there were no hearings held, public
25 hearings, east of the Mississippi. And so those folks

1 are all from states that were not used for public
2 comment, which we understand. But over 20 of the most
3 populous states, also their citizens were not able to
4 come to the public meetings for that.

5 So I oppose the regulations and believe
6 they should be withdrawn because they're not
7 authorized under ICWA. That's my comment to you.

8 I -- Congress did not give the Department
9 of Interior power to control the state courts because
10 that would violate the constitution's fundamental
11 concepts of federalism. And back in 1978, the BIA
12 itself said, That nothing in the language or
13 legislative history of the rules and regulation
14 provisions of ICWA compels the conclusion that
15 Congress intended to vest the Department of Interior
16 with such extraordinary power as to promulgate
17 regulations with binding legislative effect with
18 respect to all provisions of ICWA.

19 So the legislative history has not
20 changed. The legislative history is the same today as
21 it was back in 1978 and in '79. And the BIA does not
22 have any authority to promulgate the proposed
23 regulation 979, as itself acknowledged, and it does
24 not have any authority now.

25 For that reason, I believe the proposed

1 regulations should be withdrawn.

2 Thank you for your time.

3 MS. CROTTY: (Greeting in Native
4 language.) I am Amber Crotty. I'm a Navajo Nation
5 Council delegate representing the Great Navajo Nation.

6 I want to extend appreciation to Larry
7 Roberts, Ms. Cade, Ms. Jackson, Hankin Ortiz,
8 Ms. Burton for giving us the opportunity to express
9 the official statement of the Navajo Nation council
10 who supports the regulations to increase and provide a
11 sound justified way to -- to capture our children who
12 now are lost in the foster system.

13 The recommendations we wanted to make,
14 we're -- we're concerned about the child's rights.
15 The child's rights to be enrolled into their nation as
16 citizens and how this affects the child when sealed
17 documents are -- are ordered by the courts. And when
18 the child grows up and the child wants to know who
19 they are and where their roots are, because of the
20 system, they're not allowed to know who family they
21 come from, what clan they come from, what heritage
22 they come from and who they are as individual.

23 Our second concern as the Navajo Nation is
24 the role of social workers determining who -- who
25 complies under ICWA. We've learned from our local

1 workforce that social workers are now -- are now
2 deciding who's culturally -- Navajo culturally native.
3 And as a nation we reject the notion that a social --
4 that a social worker would have the ability and be
5 empowered to tell our -- our Navajo nation citizens
6 who -- who they are and who they represent.

7 Our third and final official stance are
8 the consequences. Consequences for attorneys and
9 lawyers who ignore these requirements. Consequences
10 for the adoption agencies who continue to manipulate
11 and go through the loopholes. We stand firm that we
12 will no longer sit from the wayside while our children
13 go through the system. We stand here to let everyone
14 in this room know and everyone in Indian County know
15 we are fighting for our children. We want them back
16 home. We have adoptive families waiting for them back
17 home on and off our -- off our nation.

18 And from a personal standpoint, as an
19 Navajo mother, when I introduced myself and I said who
20 I was, those clans mean something. Those mean --
21 those give me -- back to me who I am as an identity.
22 That grounds me to the roots. My umbilical cord then
23 is connected to whom I am. And when we talk about
24 who's connected and how it increases bonds, it's
25 really through that clan system that's encompassed.

1 And we know through the federal policies, federal
2 regulations has continued to disenfranchise the
3 family, the breakdown of the native family and we're
4 no -- and I will no longer tolerate such type of
5 regulations or such type of -- of arguments.

6 We learned in the '20s the friend of
7 Indians fought brazen bullets for us, the Natives, but
8 it's us who know. It's the mother who knows. It's
9 the Nation who knows. And when you have a mother
10 who's in a situation where she's willing to give up
11 her baby, then you need to look to that outside strong
12 extended family and be able to capture that baby and
13 return that baby back home.

14 So, thank you. (Native language.)

15 MR. ROBERTS: Thank you.

16 MS. SMITH: Osiyo. My name is Angel
17 Smith. I am a six-generation member of Cherokee
18 Nation of the Soynie [phonetically] District. My
19 family coming from the Nunong Hickup [phonetically]
20 line.

21 I'm also welcoming you as to my ground as
22 an ICWA child. You guys are talking about issues that
23 have impacted me and as an attorney, impacted my
24 clients.

25 I was born in '78. The youngest of four

1 children, all of us in custody.

2 My case by, I believe, in '80, and I see
3 some faces here who I recognize from my case, was
4 already being in the middle of litigation. It went up
5 on writ and unpublished opinion and then closed
6 sometime around '88.

7 I have grown up under the Federal Indian
8 Child Welfare Act. I have grown up under the state
9 interpretations. I have friends on all sides of the
10 aisle here today, flat out. So I believe that there's
11 times that the Creator puts us in a place to speak and
12 I'm going to speak today.

13 Here's what I have to say: When I went
14 into custody, I had a bond with my grandparents. My
15 natural parent, unfortunately, was not a fit
16 placement, but I was placed back there. I have
17 experienced every kind of abuse that any of you want
18 to raise up here. Every one of them. And I am still
19 supporting the proposed regulation for ICWA.

20 ICWA eventually placed me back into a
21 foster placement with my own family where I remained
22 until I was 18. I am not in another place right now
23 working on my grandmother's home who raised me because
24 I'm here. But I will be leaving here and driving to
25 her house, but I want to come in here today and say

1 this, I also represented Veronica in Oklahoma.

2 I've had a lot people accusing me of a lot
3 of things and none of you knew me or knew my life
4 story. But let me tell you this: An ICWA success is
5 me. An ICWA failure is what happened to that poor
6 child. And I'm the person that she called from
7 school. I'm the person she called her Angel, or
8 whatever. It doesn't matter. The point is this, is
9 that there are Indian children who have rights, which
10 I have articulated earlier and I will submit my own
11 written statement.

12 Indian children have rights that are
13 theirs as needed as Indians and members of indigenous
14 Native nations. Those rights are encapsulated in the
15 Indian Child Welfare Act. These regulations support
16 and I support the regulations.

17 I would also like to acknowledge that I am
18 very blessed because I did have people on all sides of
19 the aisle, including my fost adopt parents and my fost
20 adopt Indian parents. But casting stones isn't going
21 to solve the problem, but the proposal is there. It
22 supports ICWA and the realty is is that ICWA
23 encompasses hundreds of years of
24 government-to-government relationships. And I can say
25 that having walked the ICWA road on every case that

1 you want to bring up to me.

2 So I support the regulations and I thank
3 everybody for your compassion, concern and active
4 efforts for children.

5 MR. ROBERTS: Thank you.

6 MS. RUSSELL: Hi, I want to thank the
7 panel for being here. I really, really appreciate
8 this input because many times, I've wondered who do
9 you talk to.

10 My name is Diane M.D. Cooper-Russell and
11 this is my husband, LaValle Russell. I'm an enrolled
12 member of the Muscogee Creek Nation. I'm also of the
13 Yuchi Tribe of Oklahoma. My husband is Cheyenne and
14 Arapahoe.

15 We are here because we support the
16 regulations to enforce the Child Welfare Act because
17 we are currently a foster adopt home to Cheyenne and
18 Arapahoe Tribe of Oklahoma. I have been a foster
19 adopt home to the Sac and Fox Nation and the Kickapoo
20 Tribe since 1998. I've had a total of 16 children in
21 my home. I've completed adoption on two of them and
22 we're currently waiting to adopt four more.

23 Our issue today is that although we
24 qualify, we've done all kinds of background checks,
25 I'm a government employee. My husband is a Vietnam

1 veteran. We're all respectable in the community, yet
2 we challenge -- Oklahoma County will not allow us to
3 have my son -- my husband's grandson.

4 What they've done is fast track his
5 adoption. He's only been in their custody six months.
6 They have already terminated on the dad.
7 Unfortunately, both parents are incarcerated. The mom
8 is going to face termination on May 28.

9 We went to court on March 30. We stood in
10 a courtroom expecting to be heard to be allowed
11 standing in the case. They asked us to walk out
12 because there were other cases that they were going to
13 hear. They actually completed the hearing with us
14 outside of the door and walked away not even having
15 the decency to say, We're not going to allow you
16 standing in this case.

17 I have gone through several different
18 persons with DHS and the State of Oklahoma. Nobody
19 wants to listen to us.

20 We're coming before you today because this
21 is our child. This child should not be fast tracked
22 to a non-tribal home. I understand that she has ties
23 with people that are willing to do this and there's --
24 as I'm speaking right now, they're doing everything
25 they can to get this child adopted, probably having

1 knowledge of these changes that are -- are coming
2 about.

3 So one of the things that I want to
4 present today, many times when you have legislation,
5 it becomes effective the date that it's passed. But I
6 want this legislation to remember the children that
7 are already coming down the pike. They still count.
8 I don't know what can be done to retro anything, but
9 something needs to be there to continue the fight for
10 these children and not let them be taken away from
11 their family and their home.

12 I also want to ask the Committee to
13 consider strongly ways that children -- my two older
14 children, who have already been adopted, are not in --
15 and they have another sibling that went to a
16 non-tribal home. Nobody can do anything to allow
17 these children to have contact and that is just wrong.
18 They hurt. They should never have separated, those
19 children, to begin with.

20 When I first came forward as a foster
21 parent, it was for sibling groups and I made it quite
22 clear that I did not want to take on any children that
23 would be separated and it was done anyway. So I want
24 something in the provision to address those children
25 that have already been in the system and have these

1 wrongs done to them already. I want something to
2 address the children that are currently, right now, in
3 the system because I fear, not only with our grandson,
4 that maybe someone is fast forwarding something right
5 now having knowledge of this, that something can be
6 done to stop it and -- and make them subject to these
7 impending rules and regulations that are being
8 proposed today.

9 MR. ROBERTS: Thank you.

10 MR. RUSSELL: Yeah. I would like to
11 reiterate that our -- our children belong to the
12 family and agree with the regulations.

13 Thank you.

14 MR. ROBERTS: Thank you.

15 MR. SWAIN: My name is Paul Swain. I'm an
16 attorney in Tulsa. I've been practicing in Oklahoma
17 for 33 years. I've been involved in adoption cases
18 for almost 28 years. My -- I have three children. My
19 wife and my son are members of a federally-recognized
20 tribe. My daughters are not because they're adopted.
21 They would not qualify. I have two -- two of my four
22 grandsons are eligible for tribal membership and I
23 I've got six nieces and nephews that are tribal
24 members.

25 My grandsons and the children of my nieces

1 and nephews will probably not be enrolled because
2 they -- the family does not want a possible situation
3 down the road where if some child has to be placed in
4 a foster home or up for adoption, or something else,
5 that the tribe would interfere in a family decision.

6 Now, as an adoptive -- as an adoption
7 attorney, the proposed regulations -- I agree with
8 Jennifer's comments about the Department not having
9 the authority of Congress to make these regulations.
10 Agencies are -- have very limited power. They can
11 only do what's been delegated to them by Congress and
12 there has not been a delegation of authority in this
13 case for these regulations.

14 Now, assuming, for the sake of this --
15 this discussion, that that delegation was made, still
16 an agency does not have the authority to override an
17 act of Congress or override a decision of the United
18 States Supreme Court. And virtually everything that
19 is proposed in these regulations has either been
20 already rejected by Congress in the initial enactment
21 of the law or during the discussions. There were five
22 or six years, I think, where there were amendments
23 that were proposed and they were voted down. And
24 during those discussions, everything has already been
25 considered and rejected by Congress.

1 There are several things that violate the
2 rulings of the United States Supreme Court and an
3 agency does not have the authority to make laws out of
4 thin air and that's exactly what they're doing.
5 The vein of the proposed regulations violate the
6 original ICWA Act and it's never been amended.

7 The -- specifically, the things that I
8 think are incorrect, the regulations essentially
9 re-define what is an Indian child and the -- the
10 closed rules on voluntary adoptions do not exist in
11 ICWA. The confidentiality requests of the biological
12 parents are essentially ignored in these -- in these
13 regulations. The placement, which is of the
14 biological parents, are ignored. They are removing
15 the best interests of the child and consideration by
16 the court in any of these proceedings. That is
17 completely against any rule of law that has to do with
18 children in custody proceedings. The -- I think it
19 places the Indian children at much greater risk of
20 abuse and neglect because it makes it more difficult
21 to remove them from an abusive situation.

22 The restrictions on the termination of
23 parental rights on unwed fathers is completely
24 contrary to the United States Supreme Court decisions.
25 The -- the removal of bonding attachment -- bonding

1 and attachment consideration from the court is again
2 completely against all child welfare laws and research
3 that has been done over the years and I'm just amazed
4 that the Bureau would -- would do such a thing like
5 the -- I -- I -- I really don't think that the Bureau
6 of Indian Affairs consulted with child welfare experts
7 before these were written up because some of the
8 things in here, I'm -- I'm just amazed that they're
9 there. But I think these regulations ought to be
10 withdrawn.

11 Thank you.

12 MR. ROBERTS: Thank you.

13 MR. MILLER: (Greeting in native language)
14 my name is Jerrid Lee Miller and I have a heavy burden
15 as being boots-on-the-ground tribal social worker for
16 the Cherokee Nation Indian Child Welfare. And I would
17 like to tell you a little bit about what I see as
18 boots on the ground, as a United States Army veteran
19 having seen the other side and in coming to a
20 different sword fight.

21 I don't know if this is true or not, but
22 the experiences that I've had in and out of the
23 courtroom in Kansas for Cherokee Nation demand that
24 the new ICWA guide -- regulations need to be adopted
25 into law so that our Cherokee families have a fighting

1 chance for reunification in an otherwise dominant
2 society who often overlook those families who suffer
3 from historic and continued generational trauma.

4 Let me first set the tone as to why I feel
5 this way about the need to adopt the new ICWA
6 regulations into law. It is often overlooked if a
7 child is Indian when they come into custody by the
8 social workers, attorneys and court officials who are
9 handling their cases. Reasons have been given to me
10 by those workers to include the child did not look
11 Indian. They did not think to ask the parents. They
12 did not think to ask -- or they felt the child was not
13 Indian enough. Other times, the parents have provided
14 the certified degree of Indian blood and proof of
15 tribal citizenship only to be told it would go easier
16 on them if they did not involve the tribe. One social
17 worker has even made the comment to me that ICWA is
18 optional and that she does not have to contact the
19 tribe if she so chooses not to. Of course, why would
20 she have to if there are no repercussions for her for
21 not following the law.

22 In the most extreme case I have witnessed,
23 Cherokee Nation was not contacted by the social worker
24 and the agency for two years despite knowing the
25 child's parent was an enrolled citizen. No

1 explanation was given.

2 The new regulations provide hope for the
3 boots-on-the-ground tribal social worker, myself, who
4 has to wade into the muck of coming into a case at the
5 last possible second by clarifying that courts and
6 agencies must ask if the child is Indian or has reason
7 to believe a child is Indian at the earliest possible
8 time in the case.

9 I am of the opinion if the tribe has an
10 earlier chance to intervene, Indian families have a
11 greater chance at being reunified through
12 accountability of genuine active efforts.

13 What are these act of efforts tribal
14 social worker and ICWA speak of? By virtue of the
15 uninitiated and uninformed judge or social worker, it
16 is just as a synonym for reasonable efforts. Even
17 when explained to the uninformed and uninitiated, the
18 two terms become interchangeable and remedial services
19 such as case management and analysis seem good enough
20 as the only services that are needed to be provided in
21 an ICWA case.

22 The word active denotes an energetic
23 inertial pursuit rather than a moderate action taken
24 within the system whose paradigm centers around the
25 definitive word of reasonable.

1 The new BIA regulations provide a clear
2 definition and a fresh paradigm shift into what active
3 efforts are and provide a basic 15-points gap that
4 could be understood and implemented with a little bit
5 of thought and initiative. This paradigm shift can
6 lead to not only one thing with regard to ICWA and how
7 it bridges into the code of social work ethics.

8 A more protective standard for Indian
9 families with regard to promoting social justice
10 through direct change by the social worker and the
11 system as a whole. Contacting the tribe when an
12 Indian child is in custody and providing the family
13 active efforts is only half the battle in the overall
14 attempt to reunify an Indian family through ICWA.

15 Somewhere the court battle becomes murky
16 with so-called expert witnesses who deem themselves to
17 be self-proclaimed experts in the childrearing
18 practices of the tribal culture they are providing
19 testimony to. More often than not, they lack any
20 insight needed for such testimony and rely on flawed
21 and biased insight gathered from websites to make a
22 paid interpretation. Their testimony can only lead to
23 the demise of an Indian family without understanding
24 it's holistic connection and reap local monetary
25 assets of an already strapped judicial system.

1 The new ICWA guidelines define these.
2 Advanced expertise in the fundamental social and
3 cultural standards for family or organization and
4 childrearing practices in the child's tribe is
5 necessary to not only provide testimony to a judge
6 that is a relying on this information for their
7 judicial opinion through the proceedings, but it is
8 also necessary in that it provides an insight into the
9 historic and generational trauma that is occurring in
10 the family ecosystem and how it should look once it is
11 healed.

12 Understanding family ecosystems are a
13 necessity in aiding the reunification of an Indian
14 family. Part of the understanding comes from why the
15 Indian child was initially brought into custody.
16 Oftentimes, I have seen the child come into custody
17 under the guise of emergency placement when one either
18 may not exist or has existed, but has either subsided
19 or manifested into other issues that could be based
20 with simply a safety plan. Rather than placing the
21 child with a local relative at the immediate request
22 of a parent or relative, the child is placed in the
23 home of a non-Indian foster home. Months may exist
24 before the agency actually moves the Indian child or
25 even informs the Indian family their relative is in

1 the custody of the state.

2 By placing the Indian child directly into
3 the home of a relative or tribal citizen, an unbroken
4 connection for that child to their tribe is maintained
5 and a wealth of cultural insight, traditions and
6 customs are perpetuated.

7 MR. ROBERTS: Mr. Miller --

8 MR. MILLER: Yes, sir.

9 MR. ROBERTS: -- I -- I appreciate your
10 comments. You're going a little bit over the time
11 period here, so I would just ask if you could either
12 just wrap up or --

13 MR. MILLER: I'll wrap it. Let me give
14 this last little bit.

15 As a culturally distinct people with a
16 unique domestic and sovereignty status, ICWA is needed
17 as a broker between two sovereigns whose citizens may
18 reside outside of their own borders, but have been
19 taken into custody by the other sovereign and whose
20 compact appears blurred by a lack of knowledge. It's
21 important a beefed-up version of ICWA in effect clears
22 the air as to how the sovereigns should act and also
23 honors the unique sovereignty status that exist
24 between the United States and it's 56 -- 567-odd
25 indigenous governments.

1 I support the new BIA-proposed regulations
2 as ICWA as they clarify the intended ICWA, minimize
3 inconsistent interpretations and create uniformity.

4 Please consider my comments on the
5 following regulations. (Native tongue). Thank you.

6 MS. MONSOUR: Good afternoon. My name is
7 Megan Monsour. I'm an adoption attorney in Kansas,
8 actually practicing in Wichita. I -- again, as
9 everyone has stated, I appreciate the opportunity to
10 provide comments and I would like to start out by
11 saying that the -- the tribes and the members have my
12 utmost -- utmost respect; however, I'm here today to
13 voice my comments in opposition.

14 I start out by saying I think it is
15 appropriate that Ms. Nimmo started by speaking about
16 the Baby Veronica case. Most of us are, you know,
17 painfully aware of those unfortunate facts and I -- I
18 think it's appropriate to start out with that because
19 it's my position that these guidelines may be just an
20 overreaction to that case. And what kept going
21 through my mind was that bad facts make bad law and
22 that ICWA -- ICWA may be in need of some changes, but
23 that it's time to go back to the drawing board and
24 take from our comments and, hopefully, rework what
25 you're doing. But I do respect what your work is.

1 I participated in the conference call that
2 was, I believe, on Tuesday and I wanted to kind of
3 pickup on something that wasn't on the record in that
4 call.

5 First of all, it was overwhelmingly
6 statements of opposition. There were a few statements
7 that mentioned some comments on motivation by some of
8 the attorneys that were speaking.

9 I am a member of the American Academy of
10 Adoption Attorneys. Most of us are aware of -- of the
11 Academy's oppositions as well. But I wanted to point
12 out that those of us who do adoption work, although,
13 we may not be coming from the same point that the
14 tribal members are, I wanted to put on the record that
15 I do the work I do because I do truly care about
16 children. And I -- and I have foster families that I
17 work for and with, and I speak for a lot of my
18 colleagues when I say that a lot of this work is done
19 pro bono or as -- it's -- it's not for financial gain.
20 So I think those are red herrings and what we're all
21 here is to focus on the best interests of the children
22 and women's rights. And I just wanted to make that
23 comment for the record.

24 The -- I'll just hit the highlights of
25 the -- the specific reasons that I'm in opposition of

1 it. First, I believe these overall will hurt women
2 and children. This is a state court issue that should
3 be allowed for the courts. These new regulations
4 would violate the due process rights of children,
5 specifically regarding the best interests and of the
6 attachment and bonding. The BIA, again, as another
7 colleague of mine stated on the authority to adopt
8 these regulations, this process has been flawed, in my
9 view. The input has not been there for -- from the --
10 I talk of the bonding, but psychologists, child
11 welfare experts, it seems as though it has been fairly
12 one-sided. There has not been any input on half of --
13 almost half of the United States.

14 And -- and, finally, I think I'll end it
15 with this portion, the fact that this violates women's
16 constitutional rights to privacy. And -- and I -- and
17 I will -- will harken back to you what one of your
18 tribal members stated when she said, A mother who
19 knows should make the decision for her children.
20 These would not only regulate and change foster
21 children, but it would also regulate and change
22 voluntary placement. So what that is going to do
23 is -- is prevent women who don't want her whole family
24 to know or the tribe to know, it's going to prevent
25 her from deciding adoption maybe what's in the best

1 interest of her child. She has a constitutional
2 right, as I -- I agree with the member that spoke
3 earlier that she has a right, a constitutional right,
4 to decide what is best for her child. And -- and what
5 we're doing is saying to her, Well, we're sorry,
6 because of your heritage or maybe even the father's
7 heritage, it may not even be hers because this would
8 apply to the child, not just her, she doesn't have
9 that right. That -- that her whole family is going to
10 know. The tribe is going to know and -- and, you
11 know, as a woman and a mother, I have a real concern
12 with that. For my clients who I work with that I see
13 on a daily basis that struggle and -- and have
14 heartbreak and heartache to decide what is best for
15 her children. Excuse me.

16 So that is -- that is a huge concern of
17 mine and what it would mean for a voluntary
18 placements.

19 And I'll just wrap up by talking again
20 about the bonding and attachment because my work is
21 also with foster families and I have seen foster
22 parents and -- and been awakened by their research and
23 science and -- and understanding behind what
24 attachment does in that these kids we're talking about
25 have already suffered one attachment disruption

1 because they have been taken away from their
2 biological setting. And what we're talking about
3 doing is not, at least, considering -- I'm not saying
4 it's always going to the -- the -- the end result may
5 be different and it should be, but not considering the
6 best interests of a child, to me is completely
7 contrary to what ICWA was enacted for. It is to -- it
8 is supposed to -- it is there to protect the children.
9 And not being able to, at least, consider best
10 interests, which I -- I believe then you can extend to
11 the bonding and the -- the -- what would happen to a
12 child for attachment. Attachment disruption is
13 serious. It is a long permanent effect on a child's
14 life. And I think that there may be circumstances
15 where that's not always the most important or, you
16 know, it's going to be different, but not -- not, at
17 least, considering that is contrary to the goal of
18 ICWA.

19 Finally, I will just end, this time I mean
20 it, with the fact that I have represented foster
21 families who may not be enrollable or don't have the
22 quantum to be enrolled or are not considered Indian in
23 the legal sense or the tribe sense, but they have been
24 the ones to embrace the culture and to -- I have
25 clients that I love dearly that have had -- that had a

1 child for two and a half years. They wanted to remove
2 the child and we stated that the child should remain.
3 They drove down to the tribe in -- in Oklahoma,
4 visited the tribe, visited the Nation. They go to Pow
5 Wows every week. So I feel like, to me, that they did
6 embrace it and -- and -- and I feel like sometimes,
7 maybe not every time, but sometimes that would be,
8 yes, thank you, more than what the biological family
9 was going to do.

10 So I realize that not everyone here agrees
11 with this, but I do thank you for the opportunity to
12 provide my comment and I would request that these
13 regulations are withdrawn.

14 Thank you.

15 MR. ROBERTS: Thank you.

16 MR. ECHOHAWK: My name is John Echohawk.
17 I'm a citizen of the Pawnee Nation of Oklahoma. I'm a
18 lawyer and I'm the Executive Director of the Native
19 American Rights Fund.

20 The Native American Rights Fund is the
21 National Indian Legal Defense Fund and since we were
22 organized 45 years ago, we've been involved in
23 thousands of cases on behalf of Indian people across
24 the country asserting their rights to sovereignty, the
25 right to their homelands, the right to their cultures,

1 their religions and some of these cases have -- have
2 also involved the Indian Child Welfare Act.

3 In all of these cases that we have been
4 involved over all of these years, the biggest problem
5 that we face is the ignorance of the American public
6 about American Indians. And this includes judges,
7 state court judges, state agencies, and even United
8 States Supreme Court justices. They do not understand
9 the United States Constitution recognizes three
10 sovereigns, the federal government, the state
11 government, and the tribal governments.

12 The Indian Child Welfare Act is very
13 important to us because what it does is enable us, to
14 protect our citizens, our young citizens coming up.
15 That's our future.

16 Congress, under the Constitution, has
17 exclusive authority over states and tribal affairs.
18 And pursuant to that authority, they enacted the
19 Indian Child Welfare Act to stop the wholesale loss of
20 our kids. But because of this ignorance, we still
21 have problems with implementation of that law. And
22 these regulations, which I support, would fix that
23 and -- and educate state judges and state agencies
24 about these issues in a way that would make the Indian
25 Child Welfare Act effective and we wouldn't have so

1 many fights anymore.

2 So I fully support the adoption of the
3 regulations.

4 I also speak as a member of the Board of
5 Directors of the Association on American Indian
6 Affairs. The Association has been taking up the cause
7 of Indian people in major issues since 1922, long
8 before the Native American rights law started. They
9 took up this issue of protecting Indian children and
10 they were primarily responsible for the passage of the
11 Indian Child Welfare Act in 1978. They continued to
12 work on implementation of that Act. I'm here as a
13 member of the Board of Directors for the Association
14 on American Indian Affairs. I also want to state
15 their support for these proposed ICWA regulations.

16 Thank you to all of you.

17 MR. ROBERTS: Thank you.

18 MR. FELTY: Good afternoon. My name is
19 Kyle Felty and I'm the Director of the Juvenile
20 Division for the Tulsa County District Attorney's
21 Office. I'm joined here today by Mr. Steve
22 Kunzweiler, the newly elected District Attorney for
23 Tulsa County, as well as Timothy Michael Johnson, a
24 Senior ADA prosecuting juvenile deprived proceedings.

25 Let me start out by thanking the panel and

1 everybody that's here today. I'm not here to speak
2 about the emotional implications behind these
3 guidelines or ICWA or the regulations in general.
4 Many other people have been speaking eloquently enough
5 about that.

6 There are a lot of positions, a wide array
7 of positions from tribes, parents, foster parents,
8 both Indian and non-Indian, and no matter what your
9 position is with regard to these guidelines, I hope
10 that all of the parties here can recognize that there
11 is a place for both a recognition for the protection
12 of the dignity, sovereignty and stability of Indian
13 tribes as well as maintaining the safety and welfare
14 of children in these cases.

15 What I would like to address specifically
16 are some of these guidelines and the confusion that it
17 will create and implications that it means
18 specifically for the states to have to abide by these
19 guidelines.

20 And going in numerical order,
21 specifically, Section 23.111, the notice requirement
22 that states that specifically we have to send notice
23 to tribes and to parents in ICWA cases any time there
24 is a proceeding that deals with foster placement.
25 That is every proceeding. Every single proceeding

1 that we have deals with foster placement. Every court
2 hearing deals with foster placement. That requirement
3 would mean that we would have to send notice to tribes
4 and to parents by registered mail for every single
5 hearing. My rough calculations, based upon the
6 numbers that have been compiled by Tulsa County's
7 excellent court case managers, including that of
8 Ms. Kim Rebsamen, who stands two people behind me,
9 would mean that essentially there would be a \$7,000
10 cost to send notice to every party in every -- in all
11 of our ICWA cases as they currently stand.

12 So that would mean \$7,000 a year for any
13 Indian tribe involved in a case. \$7,000 a year for
14 any parent involved in an Indian case, which could be
15 multiple tribes, multiple parents. That is a huge
16 financial burden on a state agency that is already
17 having extreme budgetary restrictions. We do not have
18 the means to send that type of notice out to all of
19 these parties as is prescribed by this guideline.

20 What I would suggest to the panel is that
21 actual notice be an exception to this rule. Many of
22 the tribes that we have involved in these cases
23 intervene and are regularly in court. They are
24 recognized back by the judge in that case. They are
25 aware of every proceeding that's going to take place.

1 Under that circumstance, it seems excessive, to say
2 the least, that we would have to then send additional
3 notices to them by registered mail.

4 Next, we have 23.112, specifically Section
5 F. This is also a specific guideline that will be
6 addressed by Ms. Rebsamen as it was a concern for our
7 district judge as well, but it has huge implications
8 for the District Attorney's office in prosecuting
9 these cases.

10 It has a requirement that we must have
11 testimony within 30 days of initiating these
12 proceedings, that we need to continue custody of these
13 children in emergency custody. That is unrealistic
14 given that we have to -- we have to notice the tribe
15 within 10 days and they have 20 days to respond to
16 that. So essentially this guideline is requiring us
17 to have testimony in court on the same day that we
18 have to except a reply back from the tribe. That's
19 unreasonable.

20 The next sort of joint concerns with
21 regard to 23.121 and 23.122, the -- the burden with
22 regard to the expert testimony. Specifically you cite
23 language that says that we must have expert testimony
24 with regard to continued custody with a parent, being
25 likely to result in serious physical damage or harm to

1 the child. And you cite that specifically for both
2 continued custody and foster care, as well as
3 termination of parental rights; however, the statute
4 specifically says that it can be serious emotional or
5 physical harm. So if we're going to have these
6 guidelines, I think it's important that we cite
7 specific language from the statute that actually
8 applies.

9 When you only specifically cite physical
10 damage and leave out emotional harm, it -- it implies
11 that essentially, unless you can prove that sending a
12 child back to their parent would cause physical harm,
13 then you cannot terminate parental rights. You can
14 not continue custody in foster care. I think that
15 that's a gross oversight.

16 Additionally, in 23.112, which
17 specifically addresses who may be qualified as an
18 expert witness, you -- you -- you cite, A qualified
19 expert witness should have specific knowledge of
20 Indian tribal culture and customs. Persons with the
21 following characteristics in descending order for a
22 person to meet the requirements.

23 A member of the Indian child's tribe who
24 is recognized by the tribal community as knowledgeable
25 in tribal customs as they pertain to family

1 organization and childrearing practices. A member of
2 another tribe who is recognized to be a qualified
3 expert witness by the Indian child's tribe based on
4 their knowledge of the delivery of child and family
5 services to Indians and the Indian child's tribe. A
6 layperson who is recognized by the Indian child's
7 tribe as having substantial experience in the delivery
8 of child and family services to Indians and
9 knowledgeable of prevailing social and cultural
10 standards of childrearing practices within -- within
11 the Indian child's tribe and a professional person
12 having substantial education and experience in the
13 area of his or her specialty who can demonstrate
14 knowledge of prevailing social and cultural standards
15 and childrearing practices within the Indian child's
16 tribe.

17 Now, in and of itself, I would not have
18 any opposition to that being a qualified expert for
19 ICWA cases; however, the specific expert testimony
20 that they are to provide with regard to serious
21 emotional or physical harm being caused to a child.
22 My question would be, how is a person that is
23 qualified specifically in these areas with knowledge
24 of tribal customs pertaining to childrearing able to
25 give expert testimony in relation to serious emotional

1 or physical harm befalling the child should they
2 return to the care of the parent? Those seem --
3 seemingly are unrelated. Although, I will note that
4 many of the tribal officials that are in this room,
5 and I've worked closely with them, are also qualified
6 as experts in that area as they are social workers and
7 are familiar with what would cause emotional or
8 physical harm to a child if they were returned, and I
9 have no objection to those people giving expert
10 testimony in that area; however, this specific
11 guideline that requires that an expert witness under
12 ICWA be somebody that is familiar with childrearing
13 practices within the tribe seems to ignore the fact
14 that people outside of the tribe and that may be
15 unfamiliar with tribal customs could also be experts
16 with regard to that specific testimony that's required
17 for continued foster care or termination proceedings.

18 For those reasons, I believe that that
19 guideline needs to be revised.

20 MR. ROBERTS: Okay. Thank you.

21 MR. FELTY: Thank you.

22 MS. STRETCH: Hello, I'm Lou Stretch. I'm
23 a Program Manager for the Cherokee Nation, but right
24 now I'm here under a different hat. I also am
25 president of the Oklahoma Indian Child Welfare

1 Association and as an association, we do support that
2 there's a legal basis for this regulatory action.

3 The statute provides that the secretary
4 shall promulgate such rules and regulations that are
5 necessary to carry out the provision of this Act. We
6 also are aware that there are many other bureaus and
7 agencies that do set out regulations and we do not see
8 why this would be an exception. We have met as
9 different tribal members coming together and worked on
10 some comments that will be submitted through the
11 website, but I would like to go over a few of those.

12 23.214, supporting regular visits and
13 trial home visits with Indian child during any period
14 of removal consistent with the need and to insure the
15 safety of the child. ICWA supports this definition,
16 but we would recommend that the word from visits to
17 parent/child visits to include sibling visits and
18 extended family as defined by the tribe.

19 Our tribal families have a different
20 concept of who their family is and it's a larger
21 definition than the non-Indian community. Those
22 families are deprived of those children during the
23 time they're in custody and while we're trying to get
24 those placed with an appropriate family member.

25 23.2, child custody proceeding means and

1 includes any proceeding or action that involves, and
2 it lists several there, but ICWA supports this
3 definition, but we would recommend additional
4 definition added for guardianship if resulting from
5 placement involving an agency or private adoption
6 attorney as a -- as Number 5 to be added.

7 Agencies have instructed placement
8 families to obtain guardianship of Indian children,
9 thereby avoiding notice to the tribes for a period of
10 time. I do think there's certain wording within the
11 current regulations that would make that more
12 difficult, but that will keep those children and maybe
13 six months later, then move for an adoption placement.
14 I would like to request that a guardianship petition
15 for Indian children should also address, if it were
16 not the intention of it, is for a pre-adoptive
17 placement and documentation to the tribal notice be
18 included. And both of those should be signed by not
19 only the petitioner, but by the attorney.

20 Definition, continued custody, we would
21 ask that -- we support the definition, but we're
22 recommend you add the word, according to tribal custom
23 or law, so that each specific tribe could have their
24 input and what they recognize as domicile. We are
25 dealing with a lot of cross-jurisdictional issues in

1 Indian County and so we believe those tribes should
2 have that right.

3 We would ask under domicile that the
4 definition with the wording would include the
5 residence of the mother on a reservation, unless the
6 father had custody, resides with the mother, or
7 according to tribal custom or law.

8 We further request the wording on the
9 February 2015 guidelines be added to the definition of
10 regulations. Domicile means for a parent or any
11 person over the age of 18, physical presence in a
12 placement with the intention to remain there.

13 For an Indian child with domicile of
14 Indian child, the parents -- in the case that an
15 Indian child's parents are not married to each other,
16 the domicile of the child -- Indian child's mother.
17 Under the principle of determining domicile with an
18 Indian child, it is entirely logical that on occasion,
19 a child's domicile will be in a place that the child
20 has never been. And that was under the Supreme Court
21 finding of Holyfield.

22 USC 1911 was not meant to be defeated by
23 the actions of individual members of the tribe because
24 Congress was concerned not solely about the
25 interests -- interests of Indian child and family, but

1 also about the impact of large numbers of Indian
2 children being adopted by non-Indians or the tribes
3 themselves. We think this clarification would protect
4 the findings of the Federal Supreme Court.

5 Under the definition of upon demand, it
6 means the parent or Indian child can regain custody
7 simply upon request without any contingencies, such as
8 paying the child's expenses.

9 The definition, upon demand, OICWA would
10 recommend adding the wording after, Any Indian parent
11 can regain custody simply upon request without any
12 contingency to add, such as repaying child's expenses
13 or child being placed into custody if returned to the
14 Indian parent or custodian or parents or Indian
15 custodian.

16 Some jurisdictions issue the parents large
17 fees for care for the child and services provided to
18 them prior to the unification. On return of the
19 child, those fees are levied on the parents
20 challenging the stability which has been attained.
21 Safety planning to prevent removal are seen as
22 voluntary, but true return of the child to the parent
23 or the bank is not a reality when the end result is
24 the child being removed by the investigating agency.

25 MR. ROBERTS: Ms. Stretch, your --

1 MS. STRETCH: My time is running out.

2 MR. ROBERTS: Yes.

3 MS. STRETCH: And you will be receiving
4 these by -- we'll submit them on the website, but I
5 would just like to -- to end by saying that our
6 children are not property. They're not to be sold.
7 They're not to be bartered. They're not to be bought.
8 And that they are indigenous individuals with rights
9 and they have the right to know who they are as adults
10 and have children and to remain with their tribe. And
11 I thank you very much.

12 MR. ROBERTS: Thank you.

13 MS. CRABTREE: Hi, my name is Felecity
14 Crabtree and I am not an Indian child, but my sister
15 is and I would like to read my story about that.

16 This is terrifying, everything that we're
17 going through. No, it's not my responsibility to
18 worry about this, but this shouldn't be happening.
19 This is not -- not only affecting me, but it is
20 affecting my sister and our family.

21 We have had Maddy since she was three
22 months and now she's almost two. I have no idea what
23 I would do without her. She is my sister and I
24 would -- I want to be there for her when she starts
25 school and when she has problems or needs help with

1 her homework. I want to be her role model. One of
2 those people she looks up to. I say one of those
3 people she looks up too because the other person would
4 be Brandy.

5 Brandy is an amazing person. She is the
6 person I look up to. She's the person I talk to about
7 my problems. She didn't know me when I started
8 school, but if she did, I know she would -- she
9 wouldn't miss it, miss my first day of school or
10 anything else. I know that -- I know that because she
11 has been to everything I have -- since I have been
12 with her. I play softball and she has never missed
13 one of my games or practices and she never will. She
14 is the best mom anyone could ask for. Anyone -- I'm
15 sorry. Anyone could ask for so she -- she helps me
16 and Natalie excel in everything we do. She doesn't
17 let us quit. She loves us and this is happening right
18 when we're going to adopt her is so disappointing,
19 crazy, unfair, heartbreaking, evil, etcetera.

20 The point is, I love my sister. Brandy
21 loves and treats her like her own children. Not a lot
22 of people would do that. Actually, she's the only
23 person I know who would do that.

24 Maddy calls me sissy and Brandy momma and
25 we're all she knows. What is she going to do if she

1 gets taken away? Scream for us when we won't be
2 there. That's the point of this is for children to be
3 safe, happy, and loved. That's exactly what she is
4 and so much more.

5 Why waste your time trying to find a new
6 home for a child that's already happy, safe, loved and
7 so much more when there are children out there being
8 abused or even worse.

9 If Maddy got taken away for no reason,
10 then that would kill a part of me and Brandy and we
11 would never be the same. Maddy is my sister and I
12 love her and that will never change.

13 Now, saying all of that doesn't even come
14 close to how I feel. My sister is my life. This is
15 the first time I feel stable and I am safe. And Maddy
16 and I owe that to Brandy. I haven't been able to
17 sleep and when I do, I cry myself to sleep. This has
18 a huge impact on how I live my life. I'm -- when I'm
19 talking to people, I always talk about my sister,
20 Maddy, and Maddy is my best friend.

21 I just want her to stay here with me and
22 never leave. This is -- this has an impact on my
23 schoolwork because this happening is all I think
24 about. I have been -- I've had -- I have had times
25 where all I do is cry or I'll be just fine and then

1 I'll burst into tears. What 13-year-old needs to
2 worry about when their sister is going to be taken
3 away when all I want to do is post a picture on -- on
4 social media with her. But, no, I have to wait even
5 longer to share how beautiful, funny, gorgeous my
6 sister is. I don't want her to leave and she doesn't
7 need to go anywhere.

8 If they take her, I will be angry, sad,
9 disappointed, different and I will feel like she will
10 think we just left her for -- left her and no one will
11 tell her the truth. I want this to just be over and
12 with her -- with us to be adopted. Thank you.

13 MR. ROBERTS: Thank you.

14 MS. HURT: (Greeting in Native language)
15 My name is Johnna Payne-Hurt and I'm enrolled as a
16 Chickasaw member. I'm an ICWA adoptee. I'm a former
17 ICWA foster placement, an ICWA case worker, the Region
18 Two Tribal Co-Chair ICWA Workforce for the State of
19 Oklahoma, a board member of the seven clan
20 (inaudible), a member of ICWA, a member of NICWA, a
21 member of OICWA and I am the co-founder of Standing
22 Our Ground For Children, formerly known as Standing
23 Our Ground for Veronica Brown, a national movement
24 that helps Native families be reunited.

25 I want to commend the Department of

1 Interior and the Bureau of Indian Affairs on the
2 release of their ICWA guidelines, In re: February
3 2015. I also want to provide my comments on the
4 Notice of Public Rule Making regarding regulations for
5 state courts and agencies in Indian child custody that
6 was published on the Federal Register Journal, March
7 20th, 2015.

8 These regulations and the proposed rules
9 are long overdue and will be instrumental in
10 developing uniformity into how, why and when ICWA
11 applies in court proceedings.

12 This morning, I offered my professional
13 opinion and right now, I would like to offer my
14 personal.

15 I was born in 1978, just a year before
16 ICWA to an Indian father and non-Indian mother. I was
17 raised the first eight years of my life in my culture.
18 My mother had a misunderstanding of this new ICWA law,
19 so she did not have me enrolled in my tribe.

20 When I found my culture, I admit that I
21 was raised around cultural events, cultural relevant
22 foods. My native grandmother made me my first
23 (inaudible) to make me a strong Native woman. I
24 believe it worked.

25 My first day of kindergarten, I walked in

1 the room and I stood in line with the other Indian
2 children from my school. I was devastated when I
3 found out my teacher didn't have a copy of my CIB
4 card. She told me I was not Indian and to take a
5 seat. It affected me in a way that affected the rest
6 of my life trying to prove to the world who I was.

7 At age eight years old after going back to
8 my father, my mother chose to remove me from all of my
9 family. At 12 years old, I got a new stepdad. At 18
10 and as an adult, I chose to allow him to adopt me.

11 I don't know that ICWA regulations at that
12 time would have stopped my adoption, but what they
13 would have done is they would have respected my rights
14 to my culture, tribe and my family ties.

15 I grew up and went to college and studied
16 ICWA. The law that I had once blamed for removing me,
17 I fell in love with it. I understood that my mom just
18 didn't understand it. I wish I would have been
19 respected in my situation. If my tribe had been
20 notice, they could have helped me on a journey that I
21 struggled through on my own. It was a journey for my
22 identity, because that's what (inaudible) did, is my
23 identity.

24 I also want to state that ICWA was not
25 about my race. It shows me about my status with an

1 Indian heritage and a member of a sovereign continuous
2 nation. And the right for my government to continue
3 through it's most precious assets is its children.

4 I can testify to the need of the proposed
5 rule as an adult adoptee and I ask that it be enacted.

6 Today I'm the mother of six children, the
7 wife of an Indian mission pastor. One of my children
8 is an ICWA child that I adopted. My husband is also a
9 foster child adopted out of the foster care system
10 along with his siblings.

11 That sibling would later require -- have a
12 child that required removal. Through the Choctaw
13 tribe's involvement, active efforts were made and my
14 husband was located. We were given kinship placement
15 under ICWA to a two-year-old that we had never met,
16 but besides our children, she was the only bond
17 biologically my -- my husband had. Placement was
18 never questionable for us. We later completed an
19 adoption.

20 She is now 11 and though her parents
21 aren't rehabilitated in a manner that would allow them
22 to raise her, they are in a place to have a healthy
23 relationship with her.

24 And though we've always provided her with
25 a safe and loving environment, there is still a

1 tremendous feeling that took place with her at the
2 point she was able to resume communication with her
3 parents. Her identify stems from the biological
4 parents and it always will. I can't possibly put into
5 words, although, I'm trying how necessary it is for a
6 child to maintain their maintain their ties to the
7 family.

8 While a case worker may not initially
9 understand that on the surface of the case, the
10 regulations require active efforts in these areas will
11 be life changing for native children and will be key
12 filling the generational trauma of separation that's
13 affecting our culture since the boarding school era.
14 It is crucial to the well-being of native children
15 that active efforts to determine membership in tribes
16 and active efforts to find the placement. And I can
17 testify to this as an adoptive mom.

18 I also want to address the cost of
19 submission of the proposed new guidelines. The cost
20 of the state to insure the best interests of the child
21 on notice to the tribe is minimal compared to the cost
22 to the state paid out later to really rehabilitate the
23 adult adoptees to a healthy state.

24 I also want to address the fact that there
25 are no current consequences for the violation of ICWA.

1 I say there is no consequences. There are no current
2 consequences to the business that may be involved. We
3 need some federal -- federal consequences, including
4 fines.

5 I will tell you, though, that there are
6 personal consequences. There are children that are
7 placed in noncompliant placements. The bond for these
8 noncompliant placements have been removed. ICWA is
9 blamed for this, but it's not ICWA. It's the revision
10 that causes. Not only does it affect that child, it
11 affects the rest of the child -- the children in the
12 home, it affects the rest of the family around that
13 child. ICWA is not the problem. The ignorance and
14 misunderstanding ICWA is the problem.

15 I would ask that these regulations be
16 enacted as soon as possible so that we can come
17 together and gain a better understanding of ICWA.
18 (Native language.)

19 MR. ROBERTS: Thank you.

20 MS. REBSAMEN: Yes. Hello. My name is
21 Kim Rebsamen. I'm one of the juvenile court case
22 managers in Tulsa County and I'm here on behalf of
23 myself as well as District Judge Doris Fransein who
24 could not be here due to a death in her family. And I
25 just have one quick point I want to raise and then one

1 question.

2 I think Kyle Felty earlier indicated
3 directly to 23.112, the concern with the timelines
4 that notice should be given in ten days -- no -- no
5 hearing for foster care or anything else should
6 proceed until at least ten days after the notice
7 requirement and then tribes have an additional 20 days
8 to respond. But yet the expert witness testimony to
9 continue, emergency foster care, any type of hearing
10 has to be held within 30 and we find that that is a
11 very, very difficult guideline to reach.

12 We would ask that the committee consider
13 going back to the way the previous guidelines under
14 the -- which would allow us an extension of no more
15 than 90 days. I would say that most -- within most
16 cases, we were able to achieve, with our -- with the
17 tribes that we participate regularly with, we usually
18 can obtain that testimony within 30. The difficulty
19 is those smaller tribes, tribes out of area, tribes
20 out of states where just sometimes the line of
21 communication becomes lengthy.

22 And so we would ask that the Committee
23 consider going back to the way it was previously under
24 the guidelines.

25 The second question, and I'm going to read

1 it since it's her question and I want to make sure I
2 get it right, Alaska's court determined that parental
3 rights could be terminated immediately in a matter
4 where abuse was so severe that it is doubtful that
5 active efforts could be made to remediate the family
6 for reunification. Other states have also determined
7 judicially that active efforts were unnecessary.
8 Efforts were made in previous proceeding addressing
9 other siblings and those efforts addressed ongoing
10 conditions.

11 Judge Fransein's question, Will the
12 regulations address those specific issues?

13 And that is all I have.

14 MR. ROBERTS: Great. Thank you.

15 So in terms of those kind of questions,
16 those are helpful. Those are something we will look
17 at as part of the rulemaking and it's also -- and one
18 of the reasons we put out a proposed rule is to get
19 comment from everybody on how the rule can be
20 improved. So appreciate your specific comments on
21 those sections as well.

22 MS. FERRILL: Hi, my name is Dawn Ferrill.
23 I have a masters in social work. I've also been a
24 foster mom for five years. My mother grew up on a
25 Navajo reservation in Gallup, New Mexico. My house is

1 filled with Indian artifacts. I grew up with a love
2 and respect for the Indian culture, even though myself
3 am not Native American. Probably one of the reasons
4 why I'm so sensitive to this issue.

5 I just found out about the meeting
6 yesterday, and so I copied off a letter that I had
7 written to the United States Supreme Court ruling
8 regarding little Veronica and I want to read that.

9 We must never forget what has caused this
10 mess for little Veronica -- and I -- I agree, it was a
11 mess and, unfortunate, as Ms. Nimmo talked about,
12 unfortunate that she was ripped from a family that she
13 had become very attached to.

14 We must never forget what has caused this
15 mess for Little Veronica and hundreds of other
16 children throughout the United States, the
17 implementation of the Indian Child Welfare Act.
18 Veronica should have never been removed from the
19 loving home where she had lived since birth for over
20 two years. It is wrong to apply ICWA to children who
21 are multi-racial, like Veronica, who is barely one
22 percent Cherokee Indian, who has never lived with an
23 Indian parent or had never lived with an Indian parent
24 at that point and who had never had ties with an
25 Indian tribe.

1 It is wrong to tell birth parents that
2 they must place the child only in an adoptive --
3 Indian adoptive home. Hundreds of Indian and part
4 Indian children throughout the United States have been
5 removed from loving homes after living with their
6 foster and adoptive families for many months and even
7 years. Why? Because the families that they are
8 living with are not Indian.

9 Chrissi Nimmo, Attorney General for the
10 Cherokee Nation, has been quoted as saying, and she
11 did today, that ICWA does take into account the best
12 interests of the child and that the wishes of the
13 birth parents are considered, but were Veronica's best
14 interests taken into account when she was originally
15 taken away from her adoptive family at age two from
16 the only home that she had ever known? Was the birth
17 mother's decision -- the birth's mother decision of
18 choosing an adoptive home respected? And I can
19 guarantee you that it -- it would not have mattered if
20 the birth father had all along been in agreement with
21 the adoption, the Cherokee Nation would have still
22 fought to have her removed from her home.

23 Ashlyn Towler from Oklahoma City is an
24 example. Both of her birth parents were in agreement
25 when they chose the Towlers to adopt her. When Ashlyn

1 was two years old, the Cherokee Nation was still
2 fighting to take her away from the Towlers to place
3 her in an Indian home. There was not concern for
4 Ashlyn's best interest or any care of the decision
5 that her birth parents had made.

6 Because of ICWA, hundreds of foster
7 children throughout America also face forced removal
8 with no concern for their best interests in my
9 opinion.

10 Preston lived with the Hart family in
11 Tulsa since the age of six months. When he was two
12 years old, his birth parents' rights were terminated,
13 leaving him with a need for a permanent adoptive home.
14 Ross and Pam and brother, Cameron, were the obvious
15 choice since this had been his family since he had
16 been a baby. But, instead, Preston was taken away
17 from his home to be adopted by an Indian family.

18 The Cherokee Nation will tell you that
19 this was in Preston -- Preston's best interest. How
20 was this in his best interest?

21 I have been told that I don't understand
22 this because I am not Indian.

23 Kent, also from Tulsa, spent over \$30,000
24 in court costs to prevent the Cherokee Nation from
25 taking their two-year-old foster boy who had lived

1 with them since birth. The child had already been
2 traumatized once by being taken away by the Cherokee
3 Nation and placed in an Indian home and later returned
4 to Kent's home because of the trauma, traumatic
5 situation of that child.

6 When the Cherokee Nation tried again to
7 remove him, Kent decided that was not going to happen
8 again and he hired a lawyer. He was successful in
9 court, but not after much cost and trauma to the whole
10 family.

11 I could go on and on telling stories and
12 telling how the ICWA and many tribes, although not
13 all, are traumatizing foster and adopted children.
14 This is wrong and it must stop.

15 And so I ask in considering all these
16 proposals, I don't understand them very well, but I
17 ask that you would respect, number one, the right of
18 birth parents to choose the home that they want to
19 place their children into. I believe that is their
20 right to choose without fear that their child will
21 someday be taken away from that adoptive home. Also,
22 I ask that you make decisions based upon the child's
23 best interest, allow them to remain in the home that
24 they have become attached to.

25 Thank you.

1 MR. ROBERTS: Thank you.

2 MS. HARROLD: Osiyo. My name is Dianne
3 Barker Harrold. I'm a member of the Cherokee Nation.
4 I'm a mother, grandmother and great grandmother of
5 Cherokee children and the daughter of a Cherokee
6 historian.

7 As an attorney, I have served as an
8 elected state D.A. for eight years and also a tribal
9 attorney and also served tribal court judges and CFR
10 court judges over the years. Plus, currently, I'm the
11 chief judge for the Pawnee Nation. In addition, I'm
12 also the attorney for the tribal council of the
13 Cherokee Nation and this week, they passed a
14 resolution to support the BIA proposed ICWA rules
15 and -- which are family culture, time frames and
16 notice to tribes, which is a significant issue, and
17 the best interests of the tribal children. And it is
18 a benefit for our tribal communities and our tribes to
19 have these and respect for the tribal courts because
20 provisions referencing the tribal courts. And I would
21 say also that our Principal Chief, Bill John Baker,
22 and our Deputy Chief, S. Joe Crittenden, have both
23 expressed their support of this. We had a Tribal
24 Council member here today, Denise Taylor, who also was
25 expressing her support.

1 But there is a point I would like to make
2 about costs, which is when tribes are noticed, given
3 notice by state courts or even out of state courts,
4 that is a cost that tribes impact sometimes when they
5 go to these hearings. And I don't know if we'll have
6 very many tribes that say they complain about this
7 cost because it is to the best interests of their
8 tribal children to be able to respond in some way or
9 another in sometimes going to these.

10 So I want to thank the Bureau of Indian
11 Affairs for their concentration on doing these and how
12 it gives much respect and better procedures to protect
13 our tribal children who -- and in the best interests
14 of our tribal children because our tribal children are
15 the future for all of our tribes all over the country.
16 And so I say thank you in Cherokee (Native language.)

17 MR. ROBERTS: Thank you.

18 MS. KATZ: My name is Lindsey Katz. I am
19 a non -- I'm from a Native family. I married into the
20 Cherokee family. I have a daughter who's Cherokee and
21 two grandchildren who are Cherokee and a niece and a
22 nephew.

23 This is very important to me and I want to
24 let you know that I am in support of this, the BIA
25 regulations, not only as a doctorate in doing a lot of

1 research in the area of adoption, but also as a child
2 therapist. I also have been an expert witness in
3 attachment and adoption trial cases. And there's no
4 question, no matter what anybody says and no matter
5 what else happens, adoption is trauma, whether a child
6 is placed from their home that they were born in or
7 whether a child has been in a home for a while and
8 then placed again, it's all trauma.

9 So anything that will help keep children
10 in their family, and vis-à-vis their tribe necessary
11 because the family can't support it, I believe is
12 something that is in the child's best interest.

13 I also believe that children need to be in
14 their families regardless of whether they're Indian,
15 Native American, Caucasian or whatever and I really do
16 feel like I need to say, within the family confines.

17 And so finding the relatives and the
18 family members that can help them achieve that goal
19 because they, too, have rights to be able to know who
20 they are. I think that it's extremely important and I
21 see these guidelines, these regulations, support that
22 for the native children.

23 And I see trauma in my office. I work
24 with foster parents. I work with adoptive parents. I
25 work with birth parents and I work with children and

1 adult adoptees. I see what happens. I see the
2 attachment issues and I see the bonding challenges and
3 I do see the problem that we have with an extreme lack
4 of education, particularly with people who are
5 involved in doing adoptions as well as adoptive
6 families and foster families and birth parents. They
7 don't understand a lot of times what's happening.

8 So I believe this is a great effort to go
9 forward supporting these regulations. Hopefully, we
10 can begin to educate as well so that we don't have to
11 continue with the trauma that adoption continues to
12 give these children.

13 Thank you.

14 MR. ROBERTS: Thank you.

15 MR. NOMARA: I want to thank the panel for
16 the opportunity to comment. My name is Michael Nomara
17 and I'm a lifelong Okie. I have lived here all my
18 life. I have worked for 40 years as a social worker
19 and as an adoption practitioner. I'm also an adoption
20 attorney.

21 I do think that after four decades from
22 the time that ICWA was initially adopted and the
23 guidelines were first published by the BIA, that it's
24 not inappropriate at all to consider some updating to
25 the guidelines; however, I do think in some areas,

1 specific areas, these proposed regulations go far
2 beyond either the congressional intent or the
3 guidelines that have been in place for nearly four
4 decades.

5 I specifically want to talk today about
6 23.122, about who may serve as a qualified expert
7 witness. In the 1979 guidelines, the BIA said that
8 removal of an Indian child from his or her family must
9 be based on competent testimony from one or more
10 experts, quote, qualified to speak specifically to the
11 issue of whether continued custody by the parents or
12 Indian custodians is likely to result in the serious
13 physical or emotional damage to the child.

14 I agree with the comments made earlier by
15 the Tulsa County D.A.'s office. This is the heart of
16 what the expert needs to testify on and I would
17 encourage the BIA to go back and put this in place of
18 23.122A. It's not the tribe's cultural or customs
19 that's at issue. It's whether the child is at risk of
20 serious physical or emotional harm and whether the
21 expert can establish that either by clear and
22 convincing evidence or if it's termination, beyond a
23 reasonable doubt. And that should be the area of the
24 expert's qualifications.

25 Here you've taken and put these in ranking

1 of preference, rather than just listing the
2 qualifications, and previously that was not the case.
3 In the 1979 guidelines, you listed three classes of
4 people who could qualify as an expert. Here you
5 listed four, expanding it to include a layperson,
6 which is fine, to include a layperson, but you've
7 ranked them in preference. And it seems to me that it
8 should be at the discretion of the finder of the fact,
9 the judge or the jury to determine what weight to give
10 to the testimony of an expert witness. And by ranking
11 them in preference, it implies that the testimony of
12 one is somehow better or more preferred than the
13 other -- than someone further down the list and that
14 may or may not be the case. It should be up to the
15 trier of fact to put weight on the evidence that is
16 given, the testimony that is given by that expert.
17 And it could be that someone that you put down the
18 list may, in fact, give better, more weighty testimony
19 to the issue of whether the child is at risk or not.

20 So I don't think that ranking these in
21 preference is correct. I think that takes away
22 discretion from the court and from the finder of
23 facts.

24 Furthermore, I would encourage you -- I
25 don't object to Number 4 in these new regulations,

1 23.1224, where you have a professional person who's
2 knowledgeable about prevailing in social and cultural
3 standards, but I could encourage to go back and take
4 the definition from the previous standards or
5 guidelines that includes a professional person having
6 substantial education and experience in the area of
7 his or her specialty as one who should be in the list.

8 In other words, add a fifth category for
9 other kinds of experts because the four that you've
10 listed are all people who, by your proposal, people
11 who are qualified in knowledge of the social and
12 cultural customs of the tribe, but there are other
13 issues that need to be considered.

14 One of the things that you have pointed
15 out as an impetus for this updating of these
16 provisions, these regulations, is the Attorney
17 General's Advisory Committee findings about the impact
18 of domestic violence on Native American children. And
19 I think that one thing that would -- your current
20 definitions of an expert include would be people like
21 my wife, Debbie, who's worked as -- 38 years as a
22 social worker with experience in child abuse and
23 neglect or other people who have expertise in domestic
24 violence and the effect of that on children. Unless
25 they could demonstrate specific knowledge of the

1 social and cultural norms of the child's tribe, they
2 wouldn't meet the definitions. They would be excluded
3 as an expert witness.

4 So I think that your definitions are too
5 narrow. I think they're wrong to be ranked in
6 preference because that implies somebody's testimony
7 is better than someone further down the list. And so
8 for all of those reasons, I encourage you to redo this
9 Section 23.122 and make it more appropriate to include
10 other kinds of experts and to not rank them by an
11 implied preference of one expert's testimony over
12 another.

13 I'll make further comments that I'll
14 submit in writing.

15 MR. ROBERTS: Thank you.

16 MR. NOMARA: One thing I'll say in ending,
17 as someone who's worked in the area of adoption for 40
18 years and having done all of that for decades here in
19 Oklahoma where we are privileged to have so many
20 Native American tribes, I think it's incumbent on
21 anyone who works in the area of adoption or in the
22 area of adoption law to give the utmost respect to the
23 tribes and to their relationship with their children
24 and to the importance of understanding ICWA and
25 following it. I think it's an important law and one

1 that we need to recognize and support, but I do think
2 in some areas, these proposed regulations go too far.

3 Thank you.

4 MR. ROBERTS: Thank you.

5 MR. SMITH: Good afternoon. My name is
6 Chad Smith. I'm a citizen of the Cherokee Nation and
7 I would like to introduce Cara Cowan Watts, one of the
8 council people who I believe, as myself, is in full
9 support of these regulations.

10 I am also an attorney for 35 years and I
11 was the Principal Chief for the Cherokee Nation from
12 1999 to 2011. And I heard testimony earlier about the
13 Cherokee Nation intervening in cases. I certainly
14 hope that was during my tenure.

15 I want to tell you there's a case
16 regarding Robert Lloyd Morrow. He was my client in
17 1996. He made the mistake of getting his ex-wife
18 pregnant. Serious, man. The ex-wife wanted the child
19 adopted out. The first opportunity at the first
20 hearing, he objected. He wanted his baby girl.

21 We were in front of Judge Winslow and if
22 you know Judge Winslow from decades back, he's a fine
23 gentleman and judge.

24 We went into his chambers and there it was
25 decorated with all sorts of Indian stuff, paintings

1 and feathers and staffs. And he was a great Boy Scout
2 advocate, too. And there was Eagle Scouts and we had
3 a lot to talk about.

4 And he says, You know, I've read this
5 Indian Child Welfare Act and I don't care. I'm going
6 to do what's in the best interest of this child. And
7 I sort of got a little contrary with him. And he
8 said, You can sue me, you can writ me, you can do
9 whatever you want to, but I'm going to do what's in
10 the best interest of this child.

11 So I took him on his offer. I went across
12 the street to the federal court and I sued him for
13 failing to follow the requirements of the Indian Child
14 Welfare Act.

15 We went to the Tenth Circuit and the Tenth
16 Circuit did something very unusual back in 1996. They
17 invoked the doctrine of et seq [phonetically].

18 And basically what they said, We don't
19 want to deal with appeals of adoptions and sent it
20 back to the state. And they had to go through
21 tremendous hoops to get to that conclusion.

22 However, there was one dissenting judge
23 and he said this, in reciting the -- referring to
24 Section 1902 of the Indian Child Welfare Act. He
25 said, Congress has thus imposed federal standards in

1 custody disputes involving Indian children, which
2 overrides the otherwise traditional area of standing
3 concerns precisely because the states have not been
4 sensitive to the unique circumstances arising from the
5 custody when Indian children is involved.

6 The state court that's traditionally nice,
7 we will suggested today, has not been the friend of
8 Indian County. And what we have is a federal cause of
9 action when the state fails to follow ICWA.

10 That's not the matter before this body,
11 but I can suggest to you that I support wholeheartedly
12 that the passage of these rules is the least that can
13 happen. (Native language.)

14 MR. ROBERTS: Thank you.

15 MS. SORRELS: Thank you for this
16 opportunity to comment. I'm Barbara Sorrels and I'm
17 with the Institute for Childhood Education.

18 Over the last ten years, I've done a great
19 deal of teaching and consulting with Native American
20 tribes all over the state of Oklahoma and more
21 specifically, Cherokee Nation. I teach a great deal
22 on attachment on child development issues and early
23 education. I wholeheartedly agree that no child
24 should be removed for your family without just cause
25 and I wholeheartedly agree that all attempts should be

1 made to keep a child within tribal families to
2 preserve the culture; however, we don't live in a
3 perfect world. And in the last three years, I've been
4 asked to testify in several cases, custody cases,
5 involving Native American children.

6 ICWA was created to insure the stability
7 and security of Native -- Native American children and
8 one of the things that we know from decades of
9 research is that security and stability is founded
10 upon a secure attachment relationship.

11 Adoption and foster care is traumatic for
12 all children because it involves a rupture of an
13 attachment relationship. One of the things that we
14 know from research is that every time a child is
15 removed from a -- an attachment relationship, that
16 child will lose about a year of development and
17 will -- the chances of that child ever reaching
18 permanency will be reduced by 32 percent.

19 In the cases in which I testified, active
20 attempts were made to follow ICWA and to find
21 compliant homes, but none were available. These
22 children were taken in by foster families who were
23 non-tribal, but yet were very agreeable to making
24 every effort to educate their children in tribal
25 customs and their history. The biological parents

1 were on board. The biological parents did not -- it
2 did not matter to them whether or not their children
3 were in a tribal home and were in an agreement with
4 the placement, but it was not contested until time
5 came to terminate rights and then the placement was
6 challenged. In a couple of cases, these children have
7 been in the home for two years and no child should go
8 to bed at night wondering if someone is going to come
9 and take me away.

10 I -- I -- I believe that we need to look
11 at ICWA laws and look at this issue of attachment
12 because attachment is never guaranteed. Even if you
13 take a child from a noncompliant home and put them in
14 a tribal home, there is no guarantee that an
15 attachment relationship will form. It's very evident
16 through the number of disruptions -- disruptions that
17 take place with adoption and with foster families.
18 Culture is mediated through an attachment
19 relationship. Children take on those values of the --
20 of those that they trust and love and know that have
21 their well-being at heart and it's never guaranteed.

22 And so I believe that, one, the rights of
23 the biological families should not be overlooked and
24 overridden by the wishes of the tribe. And I also
25 believe that the best interest of the child must be

1 taken into consideration and that includes looking at
2 the emotional impact of yet another move.

3 Thank you very much.

4 MR. ROBERTS: Thank you.

5 MS. COLEMAN: Good afternoon. My name is
6 Texanna Coleman. I am of the Apache Tribe of Oklahoma
7 and the Tonkawa Tribe of Oklahoma. I work for the
8 Iowa Tribe of Oklahoma as the Indian Child Welfare
9 Director. And this morning, I spoke on behalf of the
10 Iowa Tribe, but today, this afternoon, I'm going to
11 speak -- speak on behalf of my family and myself.

12 A little bit about my family. My parents
13 are grandparents raising their grandchildren, which is,
14 all too often, in families all across the state,
15 non-Native families, Native families. And I just
16 think about how fortunate we are to have our ICWA
17 workers from the tribe and our case workers from the
18 state in both cases compliant with ICWA because if
19 they hadn't, then, you know, we don't know where -- we
20 think -- we hate to think about it, but we don't know
21 where my nieces and nephews would be today. They
22 probably wouldn't be with us. They wouldn't be
23 together. And so I just -- I'm so thankful for the
24 adoption attorneys and the DHS workers and, in this
25 particular case, for keeping my family in mind for

1 kinship placement in an ICWA-compliant home.

2 However, not every Indian child is as
3 fortunate as my family has been. Some children never
4 have an opportunity to know their family or their
5 culture for various reasons and I think that these
6 regulations will promote proper interpretation of ICWA
7 as well as better compliance with state courts and
8 agencies.

9 I am in support of these regulations,
10 specifically the definitions of active efforts,
11 placement preference, early notice and identification,
12 and for the tribes to recognize who their members and
13 eligible members are. I think that it would be very
14 important to increase awareness and knowledge of ICWA,
15 especially with this early -- early notice and
16 identification because there are sometimes where
17 tribes are never notified that their child -- that
18 their -- a child in their tribe has been taken in to
19 state custody. And I think it's very important to let
20 tribes know so that way they can intervene early and,
21 you know, be able to speak on behalf of the tribe,
22 whether the tribe -- well, whether the child's case
23 stays in the state courts or tribal courts.

24 Again, I'm in support of these regulations
25 and thank you for the opportunity to first provide

1 comments.

2 MR. ROBERTS: Thank you. So I appreciate
3 everybody in -- in line here. We're going to get to
4 all of your comments, but we're going to take a very
5 short five-minute break, and I do mean five minutes
6 just to give the court reporter a break here. And
7 we'll reconvene at 3:12.

8 (Break was taken at 3:07 p.m.)

9 MR. ROBERTS: We will go ahead and start.
10 I think you were next.

11 MR. JOHNSON: Thank you. Good afternoon.
12 My name is Timothy Michaels Johnson. I'm an Assistant
13 District Attorney in Tulsa County. I have spent my
14 last three and half years of legal career working at
15 the juvenile bureau in Tulsa County.

16 The purpose of ICWA is the stability and
17 security of the tribe and I think that the -- that is
18 met primarily by the placement preferences of ICWA in
19 Section 1950. I would also point out that is the only
20 portion that allows for a good cause exception.

21 The reason I bring that up is because
22 while the guidelines now address the emergency removal
23 and what applies to remove a child for emergency
24 situation, they do not address the need of recognition
25 of aggravated circumstances to override the

1 requirement for active efforts and to reunite or
2 rehabilitate a family in which there has been
3 aggravated circumstances, such as sexual abuse or
4 heinous physical abuse. I do not believe that it can
5 ever be considered to be in the best interest of a
6 minor child, whether they are a member of an Indian
7 nation or not, to reunify that child with a child
8 molester simply because we provided active efforts and
9 they followed through on the surface in -- working
10 surfaces.

11 Additionally, I wanted to clarify my boss'
12 position with regard to the notice. I think there was
13 some concern that we were saying we shouldn't be
14 providing notice at all and that is not the -- what
15 our point is. We agree that notice needs to be
16 provided to the tribes. We're simply asking that
17 guidelines provide for an actual notice exception.
18 Meaning, if the tribe has actual notice of the
19 hearing, we are not required to spend those additional
20 funds to provide registered mail notice. That is --
21 simply that's the only request that we're making.

22 Thank you.

23 MR. ROBERTS: Thank you.

24 MS. MICHAEL: (Greeting in Native
25 language.) Good afternoon. My name is Micky Michael

1 and I'm a Delaware tribal council member. I'm the
2 secretary and the tribal council has sent me down here
3 today to let you know that we're in full support of
4 the new laws in the regulations. In fact, we would
5 like them expanded.

6 We come from a tribe that has very limited
7 resources and limited ICWA, but we would like to see
8 more in our -- come towards our -- our way.

9 We, last week, had to sign a
10 nonintervention letter because we did not have the
11 funding to be able to go and help this child. We --
12 that goes against every value that we had, but we have
13 to keep doing it because we don't have the resources
14 to do it. So we'd appreciate more help and more
15 funding come to us, but not just changing the rules.

16 The other thing I wanted to say is that
17 I'm a native dance professor. I'm the other half of
18 Standing Our Grounds for Veronica Brown and Veronica
19 was very near and dear to me. She held my hand the
20 first time she came back and went around the fire
21 stomp. I was the one that taught her her culture. I
22 was the one that made her can in her skirt and she was
23 drawn to it like you wouldn't believe. I have never
24 seen a little girl so drawn to her culture. And so
25 when I taught her, I knew that there was no question

1 in my mind that she belonged there. And when she
2 left, she was not only torn from her family, she was
3 torn from our community.

4 Today we still feel like we've lost a
5 loved one. There's a big empty hole, but we continue
6 on teaching language and culture to all kids, not just
7 Indian kids. We teach anyone who wants to learn.
8 They can come to our program and learn our language,
9 our culture and it's an open environment for them.

10 But this is what I came to say is that,
11 you know, Veronica is -- is a special place and that
12 she's not an isolated incident. She wants and is
13 hungry for her culture just like a lot of kids.

14 Thank you.

15 MR. ROBERTS: Thank you.

16 MR. SPANN: Good afternoon. My name is
17 Joe Spann. I am not an expert in any way, so I'm
18 sorry, I don't have a good resume, but I am a proud
19 member of the Cherokee tribe. And my grandma visits
20 us on holidays and she sits all the kids around in a
21 circle and she tells stories about our heritage and
22 where we come from and -- and what it means. And we
23 learn Cherokee words and letters and we -- the kids
24 rejoice and they just drink it all in that they are
25 Native Americans, too, and they're -- however, I --

1 I've watched situations go down where adoption
2 agencies have intentionally ignored ICWA. I don't
3 like that. I think that's wrong. I think you
4 traumatize a child when you do that. I think that the
5 early identification things, those sorts of things are
6 good, but it is because of my love of Cherokee
7 cultural that many of the other things that are in
8 these regulations, I can not support.

9 Whenever you say that the welfare and the
10 well -- and it's a philosophical issue. Okay. We
11 can -- on both sides of the issue, we can bring up
12 antidotes and stories that are terrifying because of
13 abuse that have been committed on both sides. But
14 whenever you state that the welfare of a child is of
15 secondary concern to the preservation of a culture,
16 you did not preserve that culture. You ruined it.
17 Whenever you place the value of a child below a
18 culture, you have just undermined one of the primary
19 and most beautiful values of that culture. The day my
20 culture as a Cherokee becomes a documented bloodline
21 and a little yellow card more than it does about love
22 and home and attachment is the day my culture starts
23 to die.

24 So when we draw these lines around it, we
25 draw battle lines and say, Unless you can show me your

1 bloodline as Cherokee, then you can't love my children
2 and culture stops there because we drew this battle
3 line; whereas, we could have said, You have loved my
4 child, why don't you be part of my culture. Let me
5 share our -- our culture with you. Let's find roads
6 where we can actually pass on the culture, so that the
7 Native American culture can be a force for good in the
8 broader American experience rather than saying the
9 only possible way we can preserve our culture is to
10 keep it within our documented bloodlines. That, to
11 mean, undermines the very values that our cultural
12 purports to value.

13 So thank you.

14 MR. ROBERTS: Thank you.

15 MS. MORRIS: (Greeting in Native
16 language.) Hello. My name is Vivian Morris. I am an
17 enrolled member of the Muscogee Creek Nation and
18 Alabama-Quassarte Tribal Town and I'm a descendent of
19 the Navajo and Seminole Nations.

20 I am providing testimony in support of a
21 proposed ICWA regulation to insure that native
22 children, like myself, have connections to their
23 tribal cultures. These proposed regulations will
24 assist legal interpretations to provide uniform
25 enforcement and direction to state courts and agencies

1 to promote the highest aspirations of ICWA to promote
2 and protect the well-being of Indian children.

3 I would like to share a little bit of my
4 story as a child that grew up in need of care.

5 In 2006, my mom was in a car accident,
6 which made her handicap. During her two-week hospital
7 stay, my siblings and I were at the hospital with her.
8 The entire time we were there, no one showed up. No
9 one from the state. No one from the Nations or
10 tribes. No one.

11 My great uncle had arrived later on and
12 took us in for what seemed like only hours. For
13 weeks, we were passed around staying with whoever.
14 Then my aunt had taken us in and I thought, finally,
15 someone had shown up for us.

16 The state worker that came to see us had
17 only asked if we were showering and nothing more. I
18 can only imagine because of the conditions of the home
19 that we were living in. She only came out twice and
20 during this time, any free moment I had, I spent
21 taking care of my mom.

22 At the age of 12, I learned to change
23 adult diapers and so on. After my younger brother had
24 been sent to a mental institution and my sister had
25 been physically abused, I got kicked out.

1 From there, I stayed two months -- or from
2 there, I stayed where I could so I could make it to
3 school. For two months, I did this until what I could
4 only assume was a transfer of my case from the
5 Chickasaw to the Muscogee courts.

6 I then stayed with my great uncle until I
7 sent myself to Riverside Indian School.

8 Throughout the many homes I came from,
9 I've been through many trials and tribulations. So
10 many Coushatta kids never made it through or passed,
11 but the one factor through it all that helped me
12 maintain my identity was my culture and my ceremonial
13 grounds. ICWA kept me safe.

14 Culture is an important stability factor
15 in my life. I followed the ICWA regulations that the
16 so-called existing Indian family doctrine may not be
17 considered as an exception when state courts are
18 applying ICWA. Too many children have been denied
19 participation in tribal culture, traditional dances
20 and ceremonies. Notice of ICWA status should always
21 be determined by the tribes, not by the state court or
22 in arbitrary considerations by contributions to Indian
23 charities or sub -- subscriptions to a tribal
24 newsletter.

25 My painful past exists because of the

1 inconsistencies between states, the Nations or tribes.
2 I've lived in shelters, I've been a hitchhiker and
3 I've been homeless. I've been many things, but today
4 I'm a Riverside Indian School Valedictorian and I'm a
5 Gates scholar and I'm a student at the University of
6 Oklahoma.

7 I stand here today because I don't want
8 other Coshatta kids to go through what I went
9 through.

10 ICWA implementation in state courts and
11 child welfare agencies need to be improved. As
12 Coshattas, we are products of resilience. No
13 Coshattas child should be vulnerable today. (Native
14 language).

15 Thank you.

16 MR. ROBERTS: Thank you very much.

17 MS. GIEBEL: My name is Valerie Giebel and
18 I'm an assistant at the Cherokee Nation and I am also
19 an attorney in Tulsa, Oklahoma. I come here today to
20 urge you that the guidelines that are currently in
21 place are not strong enough. The regulations are
22 necessary to fully implement the strong congressional
23 policy outlined in ICWA and to protect Indian children
24 and tribal nations. Without regulations, the court
25 and judges will continue to overreach and use their

1 personal feelings about how Indian an Indian child is.
2 Judges and courts will continue to ignore the current
3 guidelines by referring to them as not binding or
4 instructive only. Judges will continue to cite
5 children's blood quantum or blood percentage with
6 opinion referring to children's tribes as distant
7 ancestry or mere biology. This is particular of --
8 particularly upsetting when a child's tribe is not one
9 who uses blood quantum to define their own
10 citizenship. These statements are ignorant and have
11 no place in the legal system. Judges should not be
12 able to make personal determination of who qualifies
13 as an Indian child and who is subject to ICWA and they
14 can not continue to ignore the published guidelines.
15 This is why the regulations are necessary. They will
16 provide a strong measure of consistency in the overall
17 nationwide implementation of ICWA.

18 Thank you.

19 MR. ROBERTS: Thank you.

20 MS. THOMAS: My name is Katherine Thomas.
21 I'm a member of the Cherokee Nation of Oklahoma. I am
22 not here as an attorney or any personal case. I am
23 here -- I'm here as a mother. And I don't know how we
24 can not address the well-being of the children that
25 we're looking at. The demand is great. I've looked

1 at some of the figures and statistics on our native
2 children and the need for a home. And if we can find
3 a few, perhaps they're not Native, but if we can find
4 families that are loving and stable and opening their
5 hearts and love to these children, if it was my child,
6 and that's why I come here as a mother, I would have
7 to say I love my tribe, but I love my child, given
8 that opportunity of a home to bond with.

9 Siblings, so I come here to ask you to
10 review these laws and look to revise them to include
11 them. Don't take away the rights of our people, but
12 don't eliminate the well-being of the children and the
13 opportunity they may have to have a strong family
14 somewhere.

15 Thank you.

16 MR. ROBERTS: Thank you.

17 MS. LUMLEY-SAGE: My name is Mandi -- can
18 you hear me? I'm pretty short.

19 MR. ROBERTS: Yes.

20 MS. LUMLEY-SAGE: My name is Mandi
21 Lumley-Sage and I'm an enrolled member of the Yakama
22 Tribe where I grew up on the reservation. I'm the
23 daughter of a tribal fisherman, who in his 70s is
24 still fishing in the Columbia River with my brother.
25 It's a little crazy, actually.

1 So three of my brother's daughters died
2 one at a time in tribal foster care, called
3 non-Felicia [phonetically], on our tribe.

4 After the last child died, I realized that
5 something was terribly wrong. When my oldest son,
6 now, Andrew was born 15 years ago, a sibling, I was
7 willing to do whatever it took to take custody of him.
8 I could not handle the thought of another one of my
9 nieces and nephews die and denied a chance of life
10 without a home.

11 I've arranged my entire life around loving
12 them, protecting them and fighting for them so that
13 they have the best chance of life.

14 In our language, the same word for Aunty
15 is mother. I'm their mother. Through this, I have
16 been dealing with ICWA for 15 years. Their sibling
17 and half brother, Devon, was caught in the court
18 system and we were not told he was born until we found
19 him in the library archives. I fought for four years
20 for him to be removed in the same home that his
21 sister, Mandi, who was named after me, died in. He
22 came to our home.

23 ICWA not only allowed Devon to be placed
24 in a home where he was beaten, burned and sexually
25 violated, where he would have died there already.

1 This year ICWA could have cost Devon to
2 his life again. Due to tribal politics and court
3 confusion, the tribe essentially denied him a heart
4 surgery there that sentenced him back to the abusive
5 home he left five years ago. This home has no Indian
6 blood, no biological relationship, no ties to the
7 tribe except that the non-Indian foster mom hired one
8 of the five judges in the system to represent her.
9 Without public outcry, Devon may probably not be here
10 today.

11 I'm thankful for the current judge who
12 intervened. Through the social media campaign, Devon
13 was permitted his surgery and we're finally given the
14 right for Devon to grow up with his brother. He's 12
15 years old. It took 12 years for him to get permanency
16 in a safe home within his family, placed with sibling.

17 The damage that has been done to him is
18 irreversible. We thought we had an isolated situation
19 with the tribal judge, but we came to realize that not
20 only did we have a situation that dozens and dozens of
21 other families on our reservation, tribal members were
22 in desperate situations as well as worse.

23 People from tribes all over the country
24 have contacted us for help. Heartbreaking stories,
25 stories that are meant to keep secret in Indian

1 County. If these guidelines are accepted, the state
2 cannot intervene even to take lifesaving measures for
3 a child.

4 Last week my husband and I were in DC and
5 met with many people. I spoke with Christina Snyder,
6 the National Conference of American Indians, and she
7 stated that tribes have a legal right to all of this,
8 but that tribes do not have the capacity to care for
9 their children. I want clarify and say that some
10 tribes may have the capacity, but some tribes may not.
11 These laws will affect all tribal children, not just
12 the ones that do have the capacity to care for their
13 children. So their capacity is a separate issue, she
14 said.

15 My question regarding ICWA laws, fighting
16 for our rights and sacrificing the health and
17 wellbeing of our children because we cannot serve and
18 provide for them, as tribal people we have to put our
19 pride aside, not only should the best interests be
20 applied at every level of every court, each tribe
21 should be accountable for finding best interest as
22 well.

23 We are an American citizens with rights
24 and when forced to go to court where law does not
25 apply or we cannot get a fair trial, the government is

1 forcing us to a violation of our civil rights. These
2 children are voiceless and their jurisdiction when
3 handed to court systems not capable to care for them
4 are being denied, not just their civil, their human
5 rights as well.

6 I've come to realize sadly that many
7 tribal governments are demanding rights, demanding
8 funding and saying that you should have no
9 accountability for the lives of the children for the
10 sake of sovereignty. If our children are our future,
11 we must put their best interests before our rights.
12 It is wrong that some of them are gone and I'm very
13 sorry they're gone.

14 Taking them back now to start a life. To
15 take our children back is like saying that Africa
16 called and African names. These are the ones that had
17 African blood in them. These are ones we know for
18 sure. It's all in Africa's discretion. Then decide.
19 Let's pick up all the African-American kids at school
20 at lunchtime. Let's send them back to Africa.

21 Are these guidelines written for tribal
22 elders and leaders for rights to choose the tribal
23 sovereignty or are they written for tribal children's
24 best interest?

25 Linda Towal suggested that I write

1 recommendations to my comment. I believe that the
2 best interests of the child, not the tribal
3 governments must always apply. As a citizen of
4 America and an American Indian I want the right and
5 custody proceedings when I've my civil right and the
6 rights of the tribal child are violated to take back
7 to a federal court to intervene and take jurisdiction
8 and I want to be able as an American as well as a
9 Native American.

10 Checks and balances that funding and
11 resources handed down to the tribe is actually going
12 to the child intended and that the power of the tribe
13 should be restricted to honor the wishes of biological
14 parents in adoption and custody proceedings and as
15 well as the States. The tribe should not be able to
16 surpass the legal wishes of birth parents.

17 I have a constitutional right as a woman
18 and mother to choose what's best for my children and
19 to do that in privacy.

20 I request that these guidelines are
21 withdrawn on the basis of civil rights of children and
22 tribal members.

23 MR. ROBERTS: Thank you.

24 MS. McPERRYMAN: My name is Melody
25 McPerryman and I am a child welfare worker --

1 MR. ROBERTS: Hold on --

2 MS. McPERRYMAN: -- with the Muscogee
3 Creek Nation --

4 MR. ROBERTS: -- just one second.

5 Okay. Start again, ma'am.

6 MS. McPERRYMAN: Okay. Well, like I said,
7 my name is Melody McPerryman. I am a child welfare
8 worker for the Muscogee Creek Nation Tribe and I'm
9 also an enrolled member of the tribe, but I'm in
10 support of these guidelines, especially active efforts
11 because as a child welfare worker -- and I mainly work
12 with Tulsa County and I do work with other counties
13 here in Oklahoma and it -- it would really be nice if
14 the DHS, our state workers, would actually document in
15 detail the active efforts that we actually need to
16 establish as a tribe when termination or anything is
17 going to occur with a parent.

18 But as far as the -- the attachment and
19 bonding, as far as being a tribal worker, I have
20 noticed that, you know, sometimes in cases, you do see
21 some biases and a tribal family is -- it could be
22 anybody. I mean, they even work with extended
23 families. At least, if the foster parents were even
24 given visits to grandparents and cousins, I mean, a
25 tribal family is an extended family. It can be

1 anybody. It can be a relative. Any relative.

2 As a mother, I mean, I have my own
3 children. We are all enrolled members of the Creek
4 Nation. My children just knew they were Indians from
5 the very beginning as a child. That's how I knew it.
6 We're proud of our heritage. We knew we were Indians
7 when we were kids. We never knew that there was a
8 card to tell us we were Indians. So a lot of our
9 family members are proud to be a Native American and a
10 lot of our families have made mistakes and are in the
11 system and we are here to help -- help them correct
12 the conditions to get their children back.

13 When it comes to attachment and bonding,
14 sometimes I think that it is prevented -- parents are
15 prevented from attachment and bonding, which I think
16 Tulsa County has done really well. Judge Fransein,
17 especially with newborns, she is mandating Tulsa
18 County to at least give these parents three visits a
19 week and I wish that was across the board with all
20 counties in Oklahoma.

21 MR. ROBERTS: Thank you.

22 MR. APPLGATE: (Greeting in native
23 language) Hello, everybody. My name is Jerod
24 Applegate. I'm Cherokee. I'm here today in full
25 support of the regulation proposed by BIA and I'm here

1 on the Indian Child Welfare Act.

2 Specifically, I believe that the
3 regulation regarding transfer of a -- a case into
4 tribal court should -- the language of that regulation
5 should mirror that of the guideline and that guideline
6 itself says that this serves the best interest of the
7 child. That is presumed that by the law.

8 Also, the regulation for placement in the
9 same manner should mirror the language of the
10 guideline governing the placement preferences and
11 highlighting that the placement preferences are
12 presumed to be in the child's best interest.

13 Earlier there was a suggestion regarding
14 visitation and expanding the current regulation to
15 include a definition of parent/child visitation and --
16 and I -- I am in support of that also. I can't
17 remember if it was mentioned or not, but possibly
18 adding to that, sibling visitation when siblings are
19 not placed together.

20 I would like to see maybe the regulations,
21 as it goes to placement, address sibling placement,
22 where the siblings are to be placed together or a
23 regulation that discusses what would need to qualify
24 siblings separation under the BIA regulations.

25 I agree with the definition of the

1 extraordinary physical or emotional needs in regards
2 to the good cause finding. I think maybe that should
3 be applied as a -- as a definition across the board on
4 the regulations, not just in placement preferences,
5 but to define extraordinary physical or emotional
6 needs speaks to something that the child needs
7 specific care for as the regulation currently reads.
8 It's position in and the placement preferences perhaps
9 putting that as a definition at large or just having
10 it in a -- in a -- more that just placement preference
11 section because we do deal with children who have
12 extraordinary needs and it's -- it's -- it's not
13 always just prior and during placement, but also in
14 treatment of the child and throughout the life of the
15 case.

16 I really would like to see in the
17 regulations possibly an independent regulation written
18 to clarify that contrary to what the trend in recent
19 case law, both in Oklahoma and at the United States
20 Supreme Court, the Act was not written only to
21 maintain children within their cultural, but it
22 expressly states that it is the policy of the United
23 States to protect the children and to protect the --
24 promote the stability of Indian tribes. So I'd like
25 to see a regulation clarify that.

1 ICWA, as a whole, was written for tribes
2 to maintain our children, to reclaim our families and
3 to reestablish culture lost through adoption outside
4 the tribe, the era of boarding schools, forced
5 assimilation and relocation.

6 We have to understand that a lot of times
7 people talk about the Indian Child Welfare Act, they
8 talk about only the best interests of the child, but
9 then when we talk about the tribe, nine times out ten,
10 maybe more, the policy statement that it's the best
11 interest of the child and it's also for the stability
12 of the tribe. So it's twofold.

13 The -- the constitution does recognize
14 three sovereigns; the United States, the states
15 themselves, and the tribes. And so I think with these
16 regulations, we need to be looking at how -- how the
17 tribe can be on equal footing with the State. There's
18 not -- in our current State system here in Oklahoma,
19 there's no -- nobody who's questioning whether the
20 state has the right or the sovereignty to -- to do the
21 things that they are doing, but the tribe has to come
22 in and assert and request. And we have to establish
23 regulations.

24 The tribes were here before the states
25 existed. We cared for our children before the law

1 allowed us -- before the letter of the law was written
2 to allow us to, quote/unquote, allow.

3 And so I am really in support of these
4 regulations. I wholeheartedly support. I think it's
5 a great step forward in defining active efforts so
6 that state workers and agencies know what is an
7 affirmative step forward in redefining families and I
8 appreciate the work that you all are doing at the
9 Bureau of Indian Affairs. (Native language.)

10 MR. ROBERTS: Thank you.

11 MS. HUFF: My name is Brittni Huff and I'm
12 a member of the Cherokee Tribe. And I am speaking as
13 a foster parent as well as a foster care worker.

14 First of all, I want to thank you guys for
15 just being at the hearing.

16 Number one, I would like to ask you and
17 beg you to reconsider the emotional attachment and
18 bonding with the child and their best interests. How
19 many foster parents -- I'm sorry, I get emotional.
20 Until you have seen a child that is struggling with
21 that, you do not understand that impact that that has
22 on their life and that is setting them up for failure
23 the rest of their life for struggles.

24 At such a young age, when they have such a
25 secured attachment to a foster parent, I feel like

1 that should be really reconsidered because some
2 children -- my first placement, we were her fifth home
3 in eight days and that child was so traumatized. I
4 cannot even begin to describe to you the impact that
5 that had on her life and I really wish that there
6 would be more consideration for the fact of these are
7 our children. Do we want our children to be damaged
8 going forward or do we want them to have healthy
9 attachments and be secure.

10 And I would like to challenge you guys to
11 consider if there was children that were to be
12 adoptive in a non-tribal home, maybe we can implement
13 some kind of an agreement for them to continue on
14 their education and continue to be a part of the tribe
15 and to continue to learn about the tribe and of their
16 culture and heritage because I can tell you the
17 majority of my friends, whether it's African-American
18 kids, Indian children, they want to know more for the
19 sake of their children. I want to know everything I
20 can about my children that I'm about to adopt. I want
21 to know as much as I can about their birthday when you
22 share that with them and I do not think that other
23 foster parents would disagree. And I think that they
24 would be willing to probably know more than some other
25 tribal members that I know about the culture and that

1 they would challenge themselves to learn about that
2 for the children because their heart is for those
3 kids.

4 I don't oppose ICWA. I agree with ICWA
5 when it works. As a worker, my biggest concern is
6 there's not enough ICWA homes and I really hope with
7 everybody that's in here that's passionate about this
8 would consider being one because that's the problem.
9 The problem is we don't have enough ICWA homes willing
10 to take the children. And so then we're faced with
11 sticking them in other non-tribal homes and then
12 they're attaching and bonding to these other families.
13 And I feel like that's where the tribe builds
14 children. We, as a tribe, need to step up. So if
15 there's more homes so they can take the kids so we
16 don't have to placed them in a non-traditional home --
17 I mean, a non-tribal home because that's where the
18 problem of attachment comes in and the conflicts of
19 ICWA. So where if we had tribal homes, this wouldn't
20 even be an issue. And I just feel like that whenever
21 the tribe fails the children as far as having their
22 placement, we need to be open to allowing them to stay
23 where they're at that they've bonded and attached to.
24 And my -- my biggest concern is due to this. I have
25 seen a decrease in ICWA homes willing to take ICWA

1 children and that concerns me because now the children
2 are being affected because of the rules that are being
3 implemented that are harming them and ICWA families
4 can't continue to sit by and watch the children get
5 hurt because of this.

6 Thank you.

7 MR. ROBERTS: Thank you.

8 MR. KIRK: Good afternoon. I'm Todd Kirk.
9 I'm a child welfare supervisor for the Oklahoma
10 Department of Human Services. And while I acknowledge
11 the historical trauma and the abuse of power that was
12 promulgation by a dominant society upon the Native
13 American Nations and the need for ICWA and the
14 guidelines, I do have issue, particularly with Section
15 23.131, the termination of good cause to depart from
16 placement preferences.

17 In Item Number 3 of that section, it talks
18 about the extraordinary physical or emotional needs of
19 the child. And what I would say is too often our
20 children are caught up in the court system that is
21 very slow to act because of the need to put forth the
22 rights of the parents on a case. And oftentimes with
23 the workers that I supervise, their lack of
24 understanding of what active efforts actually looks
25 like, it delays getting to the point of termination on

1 a case even when we may be in agreement with our
2 tribal partners about that simply because of the
3 burden on the court system with the many cases that
4 they have. And in too many cases, I see children who
5 linger in non-ICWA compliant foster homes and then at
6 the point of termination, we -- we are forced to go
7 back and look for an adoptive home.

8 What I would ask is that perhaps some time
9 frames be implemented so that the tribes understand
10 that the -- that the clock is ticking in these
11 children's lives and that they are developing stronger
12 and stronger attachments. And so if they have a home,
13 I -- I've heard of cases where they have adoptive
14 homes that are waiting, but they don't want to step up
15 until such time as parental rights are terminated
16 because they don't want what we have in the past
17 termed and even now term "at risk placement". They
18 want a for sure adoptive placement. And I've seen the
19 damage that that does to the children.

20 Again, I acknowledge the desire and the
21 need for a native home and to continue that culture,
22 but it shouldn't be at expense of the child.

23 The other item that I would ask to be
24 considered as an exception would be placement with
25 siblings. If we have a non-ICWA home that has

1 placement of a non-Indian sibling to a -- to a native
2 child, my workers and I and the foster families and
3 the child are in fear that the Nation may come in and
4 remove that child once -- if termination does occur
5 for placement with a native family for the purposes of
6 adoption. And I'm going towards the adoption end, but
7 I've also seen it when the children are in foster care
8 placement. And I will acknowledge that there is, on
9 occasion, bias on the part of society at large. I
10 would also say that I've had conversations with
11 workers from the Nations who may say something or at
12 least imply to my workers that, we don't care about
13 the non-native child. That's not our problem. We're
14 concerned about our member. That non-native child is
15 a sibling to your member and -- and I agree with the
16 gentleman who said that it's a -- it's a dishonor to
17 his tribal heritage to disregard that.

18 So I thank you for your consideration and
19 I hope you take these things under consideration.

20 MR. ROBERTS: Thank you.

21 MS. POST: Good afternoon. My name is
22 Dynda Post. I am Cherokee. I've been a district
23 court judge for 25 years. Recently retired. Before
24 that, I was a District Attorney for six years. During
25 that entire time, I have practiced with juvenile law

1 and have practiced in the court where Indian Child
2 Welfare Act played a huge role.

3 For the record today, I would like to
4 observe that we have had, by my count, almost 250
5 people in this room. There are a lot of people in
6 line behind me. There are people up here. I know
7 others in the audience have wanted to comment.

8 I would urge you, Mr. Roberts, to extend
9 this somewhat so that this -- your final public
10 hearing can receive all of the comments from those who
11 wish to be heard today on this most important issue.

12 35 to 40 percent of the children in my
13 custody were subject to the Indian Child Welfare Act.
14 I am opposed to the regulation. They showed great
15 disrespect to the courts and they prevented the courts
16 from doing their job.

17 Judicial decision making involves fact
18 finding, it involves using court discretion to do what
19 is best for a child. I submit to you today that as to
20 the laws of the State of Oklahoma, which is all I know
21 about, these regulations, they're in opposition.

22 One statute alone that all district
23 courts, juvenile court judges have to address is the
24 individual best interest finding for a child. These
25 regulations prevent this.

1 Specifically addressing, and others have
2 gone through this, but I want to object specifically
3 to number one, Section 23.115 to 116 and 118. These
4 are good cause hearings. I've conducted many good
5 cause hearings and they are an important part of a
6 district court judge's job. This says the court may
7 not consider certain factors, for example, whether a
8 case is at an advanced stage. That is a backdoor
9 entrance into preventing a court from determining that
10 the child has bonded.

11 If the child has been in the state systems
12 and been in a non-tribal home for many, many, many,
13 many reasons, and I can tell stories here today as
14 well as everybody else, bonding is important. That
15 prevents a judge from determining bonding as an issue
16 on the good cause removal.

17 I honor the Indian Child Welfare Act. I
18 went to the training the BIA held, that the Cherokee
19 Nation held. I'm proud to be a member of that tribe
20 and I'm proud to be a judge who followed the Indian
21 Child Welfare Act as best I could, but I also followed
22 the law. These regulations, in their present form,
23 would prevent me, as a judge, from doing both.

24 Going on to Section 23.131, in conducting
25 a good cause hearing, you specifically, pardon me,

1 prevent a judge from considering and having as part of
2 the findings including a bond or attachment to their
3 present placement. I can not imagine what is a more
4 important good cause than to whom a child has bonded.

5 Going back to why we have the Indian Child
6 Welfare Act, it was legally necessary. It is still
7 legally necessary. It should be better followed.
8 There should be more trending. There should be more
9 Indian Child Welfare foster homes. There should be
10 more lawyers for children. There should be more
11 education for judges. You're proposing regulations
12 which, as I understood at the beginning of this
13 hearing, had had no input from judges, no input from
14 tribal court judges, no input from district court
15 judges, no input from the adoption attorneys, no input
16 from district attorneys. These are wrong. They are
17 premature. They are overreaching. They are hostile
18 to the children.

19 I close with the reason we have the Indian
20 Child Welfare Act, Congress enacted ICWA to protect
21 the best interests of Indian children and then we go
22 through this and half of what this says is preventing
23 the courts from doing their job. I presume you are
24 aware of this, but I want this record to point out,
25 tribal courts do not have to follow the Indian Child

1 Welfare Act, only the state courts. Why is that?

2 Children don't ask to be born. My great
3 grandmother did not speak English. She spoke Cherokee
4 only by choice. My grandfather was a honorable
5 Cherokee man. He never harmed a child. He never
6 spanked. He never hit. Children were precious and
7 sacred to my grandfather. It is part of our tribe's
8 position to take care of our children and these
9 regulations, I'm sad to say, do not do that.

10 Thank you.

11 MR. ROBERTS: Thank you.

12 MS. TUCKER: My name is Noel Tucker.

13 I'm a family adoption and third-party reproduction
14 attorney in Oklahoma. First of all, I want to thank
15 the Bureau for allowing public comments here and I
16 hope that you will enjoy taking all of these and
17 putting them to good use and good thought.

18 The -- the issue that I have observed here
19 today, and I read all comments that people have
20 submitted, comes down to a basic fundamental
21 disconnect on what is best interest. Is the best
22 interest promoting the sovereignty of the tribe in
23 tribal affiliation or is it from the perspective of
24 the child? I don't know that that bridge will ever be
25 crossed between these two sides. I -- I doubt that it

1 can.

2 I think Mr. Martin, wherever he is, summed it up very
3 succinctly when he said, The best interest of the
4 child is secondary to the preservation of tribal
5 culture. That is the crux of the issue here. And all
6 of these suggestions and all of the things that have
7 been commented on, that's really the issue that needs
8 to be looked at. And is there any gray area in those
9 two considering all of those comments to bridge that
10 gap, at least a little bit, and I certainly hope so.

11 For more than 20 years, I've represented
12 children as guardian ad litem, as well as doing family
13 adoption and third-party reproduction. I have a heart
14 and a focus for children and so, you know, my
15 perspective is that always is what's in the best
16 interest of the child. And that's what I really harp
17 on that. I teach that a lot.

18 Again, I don't see the best interest of
19 the child at all being promoted by the current set of
20 regulations. Not that it can't be, but the way
21 they're written now, I totally agree with the Judge.
22 Her perspective is spot on from those of us in trial
23 every day dealing with divorce, and adoption, and
24 custody issues that involve Indian child as well as
25 non-Indian children.

1 Everybody knows that there are abuses in
2 every agency, every profession, every organization.
3 Nobody is immune. And, in fact, to consider a
4 possibility, and I think these regulations do give an
5 out to, an Indian home could not be abusive because
6 we're not going to allow the state or anybody to come
7 in and protect that child and intervene if there is
8 such an emotional and physical abuse in that Indian
9 home, but we can have it in a non-Indian home.

10 Glaring differences like that really need to be
11 addressed. When you look at the abuses that everybody
12 agrees has, there are abuses in the application of
13 ICWA. I will absolutely support that. I am 110
14 percent behind Congress' original intent in
15 implementing ICWA. And I am one of those attorneys
16 that I will bend over backwards to get that notice
17 early and often because I have never had an adoption
18 undone and I'm not going to start now. I certainly
19 want that child to be where that child is going to be
20 from the beginning if at all possible. If there is an
21 Indian home that rightfully this child needs to be in
22 because there is a family member, a father typically,
23 that is made aware of this child and wants to be
24 involved in this child's life, well, let's make it
25 happen.

1 But more often than not, here is the
2 scenario and that is boy and girl get together. Boy
3 and girl make a little boy or girl. Boy goes off and
4 does his own thing. Girl, for the next nine months,
5 puts her life on hold, nurtures and cares physically
6 and emotionally for the child growing inside her. She
7 has the expense. She has the emotional. She has the
8 psychological expense of deciding, what am I going to
9 do with this child? Especially, if we are a minor.
10 Am I going to finish school? Am I going to care for
11 this child? Am I going to abort this child? Is this
12 a pregnancy to terminate. Do I place this child for
13 adoption? Do I give this child a better life than
14 what I have the ability to do? In the meantime, dad
15 is not involved at all and in most cases, hostile.
16 Not all cases, most cases that I've have come across,
17 are hostile. And then -- then the Indian Child
18 Welfare Act says, Well, I -- I don't care that you put
19 nine months into this. I don't care that you planned
20 for this child and you've made a great home and
21 environment for this child. But this father out here,
22 because he has Native American heritage or because you
23 have Native American heritage, even though neither one
24 of you have ever done anything within your tribe, it
25 doesn't make any difference, we're going to usurp your

1 first amendment right to the care, custody, control
2 and protection and planning for your child, which the
3 United States of Supreme Court in Troxel said, that
4 birth mom gets that right to decide what she's going
5 to do with that child if she decides she wants to
6 place it. That's not every situation, but look at
7 those situations. Where is it fair that this
8 mother -- that's the other thing that happens in this
9 regulation is we are not considering the interest of
10 the birth parent, or necessarily birth parents,
11 because it's not always the birth mother that's the
12 one that has the issue. It is sometimes the birth
13 father.

14 Regulations should not be a club to beat
15 people into submission. Let's look at these
16 regulations and see if we can find a way to enforce,
17 to penalize. Let's do something to assure that more
18 attorneys are practicing like I am, those notices are
19 happening and that you get the tribes involved.
20 That's important. Where it's not happening, find a
21 way in these regulations to address that issue so what
22 is intended and what really is happening versus the
23 abuses that are happening and we're trying to beat
24 everybody into submission by these regulations.

25 I hope those in this room can take comfort

1 with the fact that Baby Veronica is doing very well.
2 I was with her when we placed her in the car. She did
3 not cry on the way home. Yeah, she cried during the
4 conflict of getting her out of there. She knows her
5 daddy. She knows her family. She is given regular
6 understanding and information and training within her
7 tribal culture. She was very well adjusted. She is
8 very happy. She has that opportunity, even though
9 she's in a non-Cherokee tribe, she is getting that
10 culture and she is a very happy child.

11 And one of the things that offends me in
12 the comments earlier is that she was ripped away.
13 Excuse me, she was ripped away after two years of age
14 from the only home she knew. That was equally as
15 traumatic as returning to the only home she knew when
16 the Supreme Court stepped in and returned her to the
17 adoptive couple.

18 Thank you

19 MR. ROBERTS: Thank you.

20 MS. PRICE: Hi. My name is Deana Price
21 and I'm a member of the Cherokee tribe. I am an
22 adopted parent of two siblings, two kids, and I am
23 hoping to have one more.

24 I took on a newborn baby at two days old
25 straight from the hospital. I'd had her for almost

1 three years. She was born Cherokee and Cherokee --
2 when she was born, Cherokee already knew they were
3 going to work to terminate the mother's rights because
4 they had terminated the previous two. There's no dad
5 in the picture. Five or six men for sure are not the
6 dad. I think we stopped testing and no one in the
7 birth's mother family wants anything to do with the
8 baby. So they looked outside of the family to a
9 Cherokee home, which I am.

10 The birth mom, at about five or six months
11 later, changed tribes because Cherokee was coming
12 after her baby. So she gave up her Cherokee rights
13 and enrolled in Navajo. So I'm fighting Navajo and
14 Cherokee is not helping me. So I have a
15 three-year-old baby that has bonded with her six- and
16 seven-year-old sister and brother and her mother. And
17 my tribe is not fighting for me and you're allowing
18 the Navajo to come in because the new regulations will
19 allow another tribe to come in and take my baby.

20 So I oppose the new regulations.

21 MS. DUCKWORTH: My name is Patti Duckworth
22 and I am a foster and adoptive parent who's had -- I'm
23 sorry, that's kind of emotional -- who's had
24 experience fostering a Native American child. I
25 worked with Cherokee Nation for eight years. I

1 understand and respect the Cherokee Nation. I've been
2 in many cultural events with the then Former Chief
3 Chad Smith. So with all that being said, there's ways
4 to keep a child attached to the culture without being
5 in an ICWA-compliant home.

6 And the scene Ms. Nimmo described, the
7 four-year-old crying and being removed, is a scene you
8 get with any child being removed, not just a Native
9 American child when they're removed. Even when
10 they're removed from their unsafe environment, it's
11 traumatic because they're bonded. That's a common
12 theme, they're bonded and they're attached. And when
13 you remove them, it affects them.

14 So my perspective on this is you can't
15 have a specific restrictive guidelines for every
16 situation. Every situation should be handled
17 individually. Determine what's the best interest of
18 the child.

19 Some of the factors that should be
20 considered are bonding, the trauma the child has
21 already experienced, the psychological state of the
22 child, age of the child, their special needs, all
23 those things need to go into the decision, not just
24 the culture.

25 I'm not an expert on child psychology, but

1 there are many people trained in this field. There's
2 a large amount of data that can't be ignored on this
3 topic and I urge that we consider professionals in --
4 in relation where it talks about the order.

5 I have some of the same comments that the
6 others had about not ordering those, one of those is
7 not better than the other, but making those
8 professionals available, whether it be within the
9 first 30 days or when you're considering a move,
10 consult them and understand. They can tell you what's
11 best for the child, not a tribal member, not the
12 foster parents. They need to be involved in the
13 decision process. And -- and whatever gives them the
14 best chance at a successful life should be what's
15 considered for them above all other guidelines.

16 You can't predict the future of a child
17 unless you know what the situation is right now. You
18 know what they've experienced. You know where they
19 are right now in their state of mind and you need to
20 use that data to evaluate future appointments.

21 There's no data that supports that having a
22 child in an ICWA-compliant home gives them any more
23 exposure to Native American culture than in a
24 noncompliant home. You don't know. But I have a lot
25 of friends who are members of tribes who I may know

1 more about of the Cherokee language and culture than
2 they do.

3 If you traumatize a child earlier in their
4 life, it doesn't matter how good a home they go to, it
5 could be the best home in the world, you do not -- you
6 can not undo that damage. You cannot undo that damage
7 that you've done to them by moving them multiple
8 times.

9 You've taken them from the caregivers that
10 they call their home, their family, their dog, all of
11 those things matter to kids. So -- and so there are
12 ways to meet what I think the intent of ICWA was,
13 which is to maintain ties to the culture and to the
14 best interests of the children.

15 There's hundreds of Native American kids
16 in the child welfare system. There's number -- double
17 digit numbers coming in every month. Those kids need
18 an ICWA-compliant home. Put them there the first time
19 they come in. You don't have to talk about it, but
20 when you can't do that and they're in a place where
21 they've bonded and attached, don't go disrupt them.

22 If we need more ICWA homes and you find an
23 ICWA home, don't go after a child who is attached. Go
24 after somebody that needs to be attached. That solves
25 that. That addresses both people's goals and that's

1 not being practiced. We're harming our own Native
2 American kids. You're causing psychological and
3 emotional damage to them.

4 One thing I think that the guidelines
5 don't address is you -- you may have guidelines around
6 what the -- what's good cause and how it should be
7 followed, but the tribes are not applying them. Even
8 today with the guidelines, one of the reasons is good
9 cause or one to mediate is biological parents'
10 preference. That's not being followed consistently.
11 I have that. They're still challenged. So you need
12 something in here about how the tribes follow this to
13 make it consistent so that it works. And I -- I think
14 all of us would agree that when a child can be placed
15 with extended family member, do all of those best
16 efforts steps, is the best situation for them. They
17 stay in the family. I think we all agree to that.
18 When that can't happen and there's not an ICWA
19 placement, don't penalize the kids because the system
20 failed.

21 Thank you.

22 MR. ROBERTS: Thank you.

23 MS. WATTS: (Greeting in native language)

24 Hi, my name is Cara Cowan Watts. Hello, everyone. I
25 am on the Cherokee Nation Tribal Council for the past

1 12 years. I've had the honor and pleasure of serving
2 Rogers and Tulsa County within the 14 counties of the
3 Cherokee Nation. And for 41 years, I've been part of
4 Indian Country. And what is interesting to me about
5 today's comments is we are almost litigating in a
6 court of law and court of public opinion the Indian
7 Child Welfare Act and the very needed basis for it,
8 which is disturbing to me as a tribal leader. Because
9 what is clear to me in our community, it says, Indian
10 Child Welfare Act is still very much needed and it's
11 needed to be implemented. So thank you to the
12 Department of Interior, the Bureau of Indian Affairs
13 and Indian Child Welfare office -- Act offices for
14 being here today with us for more than the entire day
15 because the tribal leaders met this morning and us
16 here this afternoon. Because I applaud your new
17 regulations, your new rules. These are very much
18 needed in order to create a fair and consistent
19 environment.

20 Although I'm not an attorney, I'm an
21 engineer with multiple engineering degrees. They make
22 sense to me. There's a -- there's a clear consistent
23 checklist that people have to go through and document
24 before a child is removed from their family and our
25 family is the Cherokee Nation for me. I can't speak

1 on behalf of other tribes and I can only speak on
2 behalf of myself as a Cherokee Nation citizen and a
3 legislator in our body -- a legislative body, but it
4 is disturbing that we still have the wholesale theft
5 of our -- of our tribal children, somehow legal human
6 trafficking going on because state courts refuse to
7 comply with a known federal act. That is bothersome
8 to me. So without these kind of rules, which is a
9 step towards the right direction, I can't guarantee to
10 my families that we won't have another Baby Veronica
11 as other cases erupt around us. And that's
12 disturbing.

13 It is clear amongst my constituency that
14 they support this and they want to see these kind of
15 regulations consistently held for each and every
16 family regardless of the resources or lack of
17 resources they face. If it's -- because in the 12
18 years I've served, even in Rogers County, because of
19 inconsistency of how Indian Child Welfare Act was even
20 implemented, I had families run to tribal court or
21 move out of Rogers County even because Indian Child
22 Welfare Act was not being followed -- followed. And
23 because they were poor, they knew they were behind
24 unless they had the tribe's ability to implement an
25 Indian Child Welfare Act. And without consistency in

1 the state courts, which is what is great about your
2 rules, it gives us something to lean on, we can't
3 insure our families, and like it was brought up
4 earlier, the broader families for protecting our
5 children, which are a way of life, language and
6 culture.

7 Although, this isn't necessarily -- I'm
8 going to submit technical comments on your actual
9 regs, but I couldn't leave here today after hearing
10 some of these disturbing comments, even from some of
11 our tribal citizens, about what identity is.

12 First of all, I'm a citizen of the
13 Cherokee Nation. I'm also a citizen of the United
14 States, but I'm a resident of the State of Oklahoma.
15 It's about nationhood and sovereignty. There's a
16 reason why Russia has stopped adoptions. I mean, has
17 anyone thought about this? We are a nation. It
18 doesn't matter what your blood quantum is. It doesn't
19 matter if you speak Cherokee or not. Your citizenship
20 in our tribe is a whole thing. And I applaud the
21 regulations because you start addressing this issue,
22 which I'm still hearing here today in the Creek Nation
23 because we're sitting in the Creek, right? Okay. So
24 I -- I mean, it was appalling for me to hear some of
25 these things today and, again, I appreciate the

1 efforts of your office down to the Indian child
2 welfare workers and DHS workers who actually
3 understand Indian Child Welfare Act and try to
4 implement it, whether or not there's rules or not.

5 Thank you for your time today.

6 MR. ROBERTS: Thank you.

7 MS. CHALMERS: My name is Cathy Chalmers.
8 I'm a Cherokee citizen and also a bonding and
9 attachment therapist with 36 years of experience. I
10 helped co-found an international organization called
11 Attach that speaks to the treatment on trauma and
12 attachment in children.

13 I have witnessed numerous cases in my 36
14 years on both sides of -- of the table. I know that
15 systems have failed children, both Indian systems as
16 well as state systems. I have seen that in many
17 cases. I also know that in my 20 years of inpatient
18 treatment with children who have suffered from
19 attachment disorders, what that wreaks on not only the
20 individual, but the family as well as the community.
21 So I state all of that experience in terms of my
22 comments that I have for you today and I appreciate
23 you hearing us all.

24 I have concerns about the proposed Rule
25 23.131 that talks about the exemption of ordinary

1 bonding or attachment that may have occurred as a
2 result of a placement or the fact that a child has,
3 for an extended amount of time, been in another
4 placement that does not complied with ICWA.

5 I am fully in support of ICWA and think
6 that it needs to be followed. I've seen in many cases
7 where it has not been followed, but I believe that
8 the -- the regulations, as proposed, are much too
9 narrow and overarching in their scope. There is
10 nothing ordinary about bonding and attachment. It
11 sets the foundation for children and their ability to
12 trust and engage in trusting relationships and become
13 productive citizens for everyone's future.

14 So I would assert to you that this needs
15 to be removed because that is at the crux of all of us
16 and our ability to become fully-functioning adults.
17 Bonding and attachment does set that secure base for
18 how we become. It's the driver of all future
19 development on all levels and that's why I would say
20 it's important to consider the research that's been
21 done, particularly the neuroscience that has come out
22 in the 1990s until the present time which really
23 speaks to, regardless of what our race is, how we
24 construct as human beings. Those are the pieces that
25 we need to look at in considering a child's

1 development and why I would assert that that
2 particular proposed regulation be removed.

3 Much as some other people have stated, the
4 periods of time and advanced stage that the -- that
5 criteria, I think, also needs to be looked at.

6 Advanced stage, further along in development and
7 protectory a child goes, the further development
8 you're looking at. And I think that that -- to -- to
9 take that out as well as the portion about emotional
10 harm being not a criteria to be considered, is not in
11 anyone's best interest.

12 So I would hope that you would look at
13 those proposed regulations in that regard.

14 Thank you.

15 MR. ROBERTS: Thank you.

16 MS. JORDAN: My name is Courtney Jordan
17 and I am a citizen of the Cherokee Nation. I'm also a
18 tribal attorney here in Oklahoma. And I am going to
19 introduce one of my clients in just a moment, but with
20 his permission, I wanted to give a sincere and
21 heartfelt (native language) to all of my Cherokee
22 leaders who have stood up and stood up on behalf of
23 our children. It gives me great pride and great piece
24 of mind to know that my nieces and nephews and
25 cousins, if they're ever removed, my Nation will

1 protect them until they are told that they can no
2 longer do it.

3 So thank you, especially to Councilwoman
4 Watts for speaking on behalf of our Nation.

5 As I said, I'm a tribal attorney here in
6 Oklahoma. I am -- am honored and blessed to serve as
7 a tribal attorney for the Comanche Nation. I'm also
8 further honored to introduce -- or I want to bring
9 attention to Comanche Business Committee
10 Vice-Chairman, Matt Mesecke, and --

11 MR. MESECKE: Good afternoon.

12 MS. JORDAN: And I would also like to now
13 introduce Comanche Nation Business Committee
14 Secretary/Treasurer, Jerry Tahsequah, to speak on
15 behalf of the Comanche Nation.

16 MR. TAHSEQUAH: Good afternoon. And I
17 know it's late. I'm going to keep my statements
18 brief. I want to say this, and I'm sorry if I came in
19 late, and if you were startled when I came in and
20 asked for -- for more openings. Thank you so much.

21 I want to welcome back to Oklahoma one of
22 our Comanche members, Hankin Ortiz. Welcome home.

23 MS. ORTIZ: Thank you.

24 MR. TAHSEQUAH: Come and see us sometime.
25 We'll welcome you home.

1 You know, I come here with a heavy heart,
2 but also a happy heart. I know what it means to be a
3 citizen of a nation, a nation, not only the United
4 States, but the Comanche Nation. We are a proud
5 people. How many of you know that we are the only
6 tribe, our nation, in the -- in Oklahoma that hasn't
7 ended welfare court. We don't have -- we have --
8 we -- we don't even have a tribal court, but we have
9 an Indian Child Welfare Court.

10 I want to introduce our director of our
11 Indian Child Welfare, Carol Mitulo, and also Mr. Brian
12 Wattey, who is our case worker. He's also a police
13 officer who goes out in the middle of the evening, at
14 night, early in the morning to assist with our
15 children. And I have served as a case manager worker.
16 I was there for one year.

17 I retired from the University of Oklahoma
18 in 2008. I'm sorry if I sat down. I have a bone
19 disease and I -- I came back to serve our people and
20 our children. I understand the hurt that our families
21 have. I, too.

22 I come from a great warrior. My
23 grandfather was Quanah Parker. I don't use that as
24 a -- but he -- I don't use his name very often. I
25 don't -- not many people know that I'm a great

1 grandson. My mother's grandmother. But at this time,
2 I feel it's very important to let you know that my
3 grandfather, yes, he was a great warrior, a wonderful
4 statesman for our people, not only the Comanches, but
5 everyone. All the other tribes. He helped establish
6 many of the rules and regulations that we have now. I
7 want to continue that.

8 I have -- I have decided that I came back
9 to our people. I came out of retirement to help our
10 people in the political realm. I could have stayed
11 home. I could have stayed and had what I did, but no,
12 this is our people. Our culture. We are a proud
13 people and our children are very proud.

14 I have two grand kids. I -- if you want
15 to see their pictures. I will fight to the day I die
16 if they were -- if something was to happen to their
17 mother and father. They're both Comanches. If they
18 were to be taken away, as a grandfather, that would be
19 my true -- they would not. I would fight in every way
20 to keep them within our Indian culture.

21 I strongly support, and as former Chief
22 Chad Smith said, this is the least you can do. It's a
23 beginning. It's not, wait until it stops here. There
24 will be a future, who knows. I may be passed away,
25 but it is the least we can start with.

1 I want to read briefly Ms. Cowan -- I'm
2 sorry, is she here? She wanted me to address one
3 issue. Please mention custody by stop possession, it
4 is nine to ten times. I wanted to let you know that.
5 Now, I'm not going to read all of this. I just want
6 to read an excerpt.

7 The Comanche Nation is pleased to comment
8 to the notice of public rulemaking regarding the
9 regulations for states, courts and agencies in the
10 Indian Child custody proceedings. The Comanche Nation
11 applauds the Secretary at the BIA for their quick
12 responses to the pleas of tribal nations for revised
13 BIA, ICWA guidelines and for regulations to insure
14 implementation of guidelines.

15 This tremendous step -- I want to add, the
16 least, for ICWA enforcement is sincerely appreciated.

17 For the Comanche people, that is our --
18 the center of our community and children are sacred
19 gifts from the Creator. Not Congress, not the state,
20 from the Creator.

21 The Comanche Nation strongly supports
22 these regulations, but we also believe it necessary to
23 provide specific comments on a premise for the
24 proposed regulations. We are thoroughly pleased that
25 these regulations are fair at this point. At this

1 point.

2 We will be meeting -- I just received word
3 this morning, we will be going to Washington D.C. June
4 the 8th and 9th to meet with Congressman Tonko
5 [phonetically] and Senator Lefkowitz [phonetically].

6 My concern today is because as tribal
7 leaders, we wear so many hats and I -- we have -- we
8 applaud the efforts of -- of all the parents, all the
9 social workers, what you do. As tribal leaders, we
10 were ready for this on Thursday at a meeting in
11 Shawnee.

12 Now, my understanding is you want to take
13 individual statements; is that correct?

14 MR. ROBERTS: So we -- so everything that
15 you're saying today is being transcribed and then
16 anyone can send in written comments.

17 MR. TAHSEQUAH: But it's not a point
18 system or anything of that nature?

19 MR. ROBERTS: We're going to get to all
20 the comments. We're going to -- we don't weigh them
21 according to points or anything like that.

22 MR. TAHSEQUAH: That's wonderful because
23 at this time, I was under the understanding by people
24 that it was going to be how many people submitted and
25 all of this. We don't have the time as tribal

1 leaders. And I don't know if this was said this
2 morning, I'm sorry, I wasn't here this morning. We
3 had issues at home that we're dealing with and I'm
4 so -- I'm so glad that our -- that our Vice Chairman
5 was here this morning and our attorney. I was dealing
6 with issues at home, but we want -- we need to -- we
7 have just a few days to do this and to get all our CBC
8 together between now and then. I'm sorry, we have
9 agendas. Every tribe has agendas. Every case has
10 agendas, so please be diligent. If we have to do --
11 we'll get it done. We're Comanches. All of us are in
12 this here, we'll get it done if that's the way you
13 guys want it. If that's the way people want it.
14 We'll get it done, but it will make is so much simpler
15 if we just do it as a nation, as Indian people.

16 Thank you and be safe going home. Take
17 care of our children, foster parents, adoptive,
18 everyone. We're all in this together for the
19 children. It's not -- it's not just not -- it's
20 everyone. It's happening all over the world.

21 Thank you.

22 MR. ROBERTS: Thank you.

23 MS. FRANKLIN: Hi, my name is Samantha
24 Franklin and I'm the Oklahoma representative for the
25 American Adoption Congress, but I'm here just to speak

1 as an adult adoptee.

2 I appreciate you taking comments and going
3 across the nation and trying to implement the ICWA
4 guidelines. I personally don't know if I have any
5 Indian blood or not. I found my original -- or I was
6 able to get my original birth certificate and found my
7 birth family. And my -- my uncle says that there is
8 Cherokee within our family, but my mother forgot her
9 Indian card or anything.

10 But what I would like to say is that just
11 as a -- an adult adoptee, I think it's wonderful to
12 implement identify rights and family preservation from
13 the very beginning of a child's life. No matter what
14 our culture, no matter what our heritage, it's so
15 important for every human being to have that right to
16 know who we are, where we came from, our culture and
17 to not be separated from that if at all possible.

18 I've heard so many comments today about
19 best interests, about experts and I just want to
20 encourage you to please listen to the real experts
21 because what this comes down to is the fact that
22 people want to adopt children. They want children of
23 their own, but that should not negate the rights of a
24 child to remain with their family.

25 And until we take money away from this

1 whole system, child welfare and private adoptions, we
2 can't really get to the bottom of what the best -- the
3 best interest is because we're relying on people that
4 make their living off of this, this culture of child
5 welfare and adoption to define best interests, to
6 define attachment and bonding because there's a lot
7 more money in that than there is in basic human rights
8 of people. And no child should be unprotected.

9 And also when people talk about birth
10 parents having the right to make decisions, until we
11 totally remove the -- the money from the whole
12 situation, those birth parents sometimes don't have
13 the protection to know all the ramifications before
14 they make that decision.

15 I've heard so much about attachment and
16 bonding, you know, and how we can't take a child out
17 of their home that they have been attached to, but
18 until the court and the child welfare systems and the
19 private adoption industry is looking at the -- the
20 true human rights of children, then -- and -- and --
21 and we can define best interests as every child's
22 right is to be with their family and to be protected
23 from an industry and we start honoring a child and a
24 family's right to stay together, whether they're poor
25 or, you know, or vulnerable, then we -- then we -- we

1 should be having these discussions instead of this
2 one.

3 But I'm just so thankful this is the first
4 step in that and I think -- you know, I -- I -- I hope
5 that I do have, you know, Native American blood in me.
6 And I think how many people out there that -- that
7 adoptees will never know because of the -- the
8 situation. And I just appreciate that so much, what
9 you're doing.

10 I just also want to say that when we --
11 we -- when we're talking about attachment and bonding,
12 it goes way before birth and the first caretaker.
13 It -- it starts in the womb. And until every -- you
14 know, all the research is really brought forth to the
15 table that -- that a child attaches to its mother in
16 the womb and that first traumatic break is the most
17 important that we should try to prevent at all costs,
18 then, you know, if -- if a -- if courts will look at
19 that and realize that that should be our first goal
20 at -- at all times and -- and parents would realize
21 that, if they want a child of their own, you know,
22 that they can never legally -- they can legally erase
23 that child's identity, that child's family, that
24 child's heritage, but they can never erase it from
25 their heart. And those children grow up to be adults.

1 And when we don't -- we want to be more than just a --
2 a bright citizen. We want our rights and we -- we do
3 feel like products. We feel like property until
4 our -- you know, our identity rights are completely
5 recognized in the nation.

6 And until adoption is truly done for
7 children that need homes and it's done ethically and
8 without erasing a child's heritage or identity, so
9 thank you so much.

10 MR. ROBERTS: Thank you.

11 MR. SAGE: My name is Kevin Sage and I'm
12 just a white guy. A white guy who fell in love with a
13 beautiful Native American woman back there and now we
14 have five kids. And one of them is -- well, three of
15 them are enrolled members, as my wife is an enrolled
16 member, of a tribe in Washington state. And Desi is
17 one that came to our -- came in the headlines of this
18 last year.

19 And a little bit about Desi, he loves Star
20 Wars to the point that every night all of us have to
21 listen to him in Star Wars spaceship battles from his
22 room, (makes noise) through the walls so nobody can
23 fall asleep. He hates chores and he will do
24 everything to get out of them. And when he should be
25 raking leaves and instead he's running through the

1 yard wearing Obi-Wan Kenobi cape and our dog, Bill
2 Murray, is wearing a Luke Skywalker mask.

3 His sister, Mia, taught him to tie his
4 shoes and long division. His biological brother,
5 Josh, taught him how to use sticks as light sabers and
6 how to knock the pretty part off of flowers in the
7 yard. His oldest brother, Andrew, taught him how to
8 do a single-leg takedown in wrestling and how to fart
9 on demand. If you have teenage boys, then you know
10 what I'm talking about. I think on demand doesn't
11 describe it.

12 My wife taught Desi how to read and how to
13 pray. And from his neglect in the foster care before
14 her, taught him how to walk and go to the bathroom.

15 And when I asked him what he wanted to be
16 when he grew up, he said he wanted to be faster than
17 his older brother, Andrew. He now runs when I said he
18 couldn't -- couldn't walk.

19 Me, I taught him how to mow the lawn, how
20 to hammer a nail, how to apologize when you're wrong.
21 And Desi has taught me far more than any of that.
22 He's taught me compassion, how to show people that you
23 forgive them.

24 And one day, we were sitting on the back
25 porch and he started to talk about his time in foster

1 care. And he just asked me, he said, Dad, why did
2 they do that to me? And it was the hardest
3 conversation I've ever had with anybody because what
4 I -- I knew the details. I knew. Why did they do
5 this to me? Why did they put in a room and leave me
6 for days and neglect me and not feed me and beat me.
7 And take me, as a baby, underneath a laundry basket so
8 I don't crawl around and not care for me, not love me.

9 And my wife and I love Desi. We love all
10 of our children. And now, we just added another
11 member to the family, little Gideon.

12 And the way these guidelines are written,
13 my kids could be taken from me whether or not I've
14 only spent a few years as their dad or their entire
15 lives. And what's unfortunate is there are some
16 really great tribes out there and there are some
17 tribes that have some work to do in their regulations.

18 And, unfortunately, we have to deal with a
19 tribe who has shown great corruption, who has not
20 followed their own laws, who has not given proper
21 notice for trial, who has not invited people to their
22 own trials to speak and not given those standing in
23 courts. Who, after they gave Desi in placement to my
24 wife, continue to take money from the government for
25 him; although, my wife has never received a penny for

1 him. They're the same people that kept Desi in the
2 abusive foster home after multiple requests and the
3 state had to intervene to shut down the foster home.
4 But even after that, the same tribe that did not
5 vacate the guardianship that was given to the woman
6 running the foster home, so that when this last year
7 we requested the tribe that he receive heart surgery
8 and therapy to be able to deal with the severe trauma,
9 the tribe not only said no to the surgery and no to
10 the therapy, but said that he will be returned to the
11 tribe and will be returned to the same abusive foster
12 home from which he was removed.

13 Now, with Gideon and with all of our kids,
14 these guidelines are giving power, not only to the
15 tribes that are honest and ethical, but you're also
16 giving it to tribes who have certain members within
17 their tribe, and I'm not pointing to any tribe, but
18 there are people in power that are not implementing
19 the best interest of kids. Not even implementing ICWA
20 in their tribe as stated by laws. They're not even
21 required to do it. And what I don't think a lot of
22 people, including perhaps the BIA does not know,
23 they're not following their own laws. They're
24 violating the Indian Civil Rights Act. They're
25 violating the civil rights of American citizens. Not

1 all tribes, but I strongly protest these guidelines
2 being implemented until proper effort is -- is made to
3 provide accountability to tribes to make -- insure
4 that -- like in this case with our tribe, that their
5 judges have an education beyond high school and that
6 they are licensed to practice law in some capacity,
7 which is not the case with some judges in some tribes
8 throughout this country. Which, again, is violation
9 of the Indian Civil Rights.

10 So it's kind of the cart before the horse.
11 And I -- I love Native American cultural. I would
12 love for my son to grow up, all of my sons to grow up
13 and relish in that part of it, but unfortunately, all
14 of my kids right now are terrified of that part of
15 their culture because that part is threatening to rip
16 them from our homes and these guidelines could give
17 them more power to do that.

18 Thank you.

19 MR. ROBERTS: Thank you.

20 MS. REYNOLDS: Hi. Oh, gosh, I don't need
21 this thing, really, but our names our Mark and Marilyn
22 Reynolds. I am a fifth generation registered
23 Chickasaw Nation. We're not attorneys or judges.
24 We're not paid by the Nation. We are a tribal
25 foster-adoptive home. We have been doing foster care

1 for approximately five years and right now we have
2 custody of a two-and-a-half-year-old little boy and a
3 four-month-old little girl.

4 And I'm really nervous because I'm usually
5 just a mom. I have a business, but I don't have to
6 stand up here and talk in front of all these people.

7 Approximately 13 months ago, my tribe
8 called us and asked if we would take in a little boy
9 from another tribe and we said yes. And he's been
10 with us ever since. About seven months after we had
11 had him, they were going to terminate on his mother
12 who was the non-Native American parent. And they
13 decided not to, which we're good with. I had actually
14 become friends with her and actually kind of loved
15 her, but she decided that she could not work the
16 program and asked us if she relinquished, if we would
17 be willing to keep him to do an open adoption. And we
18 said absolutely.

19 At the time, his dad was in prison. He
20 has been a career criminal for the last ten-plus
21 years. He started in Radar Juvenile Detention and he
22 has been in and out of our prisons, like I said, for
23 over ten years.

24 We believed at that point that they would
25 go on to try to terminate him, but unfortunately, in

1 January, the little boy's tribe called us and told us
2 that they would not be seeking termination, that they
3 wanted to wait until the father was released from
4 prison and then they wanted the little boy to live
5 with him.

6 Now, his parole date is not even until --
7 excuse me. His parole hearing is not even until July
8 of 2016. And we were very upset when we heard this.
9 We said, Wait. You know, at the time, he had a year
10 and a half before his parole hearing. And they said,
11 We don't care if it's three years or five years. We
12 want him to be with his father because his father
13 is -- that's where his Native American blood comes
14 from.

15 And for us to think about him being five-,
16 six-years-old after living with us for four or five
17 years, after living with our children for four or five
18 years, for somebody to come and pick him up and say,
19 Guess what, we're going to stick you with your dad
20 now. It's not fair to him. And I -- I -- you know,
21 we're very passionate about this child. He's
22 thriving.

23 Since we've had him, his nation has only
24 been to our home twice. He was there for
25 approximately 30 minutes and he was more worried about

1 if he was brushing his teeth than if he was thriving
2 or how he was doing.

3 You know, I love my Native American
4 cultural. I was raised in it. My great grandmother
5 was full blood and we spent many, many hours together.
6 And I think that that was vitally important to me, but
7 the thing that I -- that's most important is that we
8 take care of our children and their best interest is
9 put first.

10 His dad has been presented active efforts.
11 You know, our nation, when you put someone in prison,
12 they do their very best to make sure those people
13 don't come back. I think it's important for you guys
14 to look at all of these laws. That Native American
15 cultures never ever come before the best interest of a
16 child. You wouldn't put your cultures above your own
17 children, please don't put them above these children
18 that have no voice.

19 We urge you guys to please think about
20 these kids as individuals. I don't want you to think
21 of them as Chickasaw Nation members or Cherokee
22 members. I want you to think of them as children,
23 individuals, who if they're put in the right
24 placement, one of these days, they're going to grow up
25 and they're going to be happy, healthy individuals

1 that make proud nation members for you guys.

2 Thank you.

3 MR. ROBERTS: Thank you.

4 MS. TECUMSEH-WILLIAMS: Good afternoon.

5 My name is Carmin Tecumseh-Williams and I am a
6 full-blood Muscogee Creek, Seminole native woman. I
7 belong to the Alligator clan. My ceremonial grounds
8 are in Tulsa and the regulations we are -- I -- I
9 testified this morning on behalf of the Muscogee Creek
10 Nation Children and Family Service Administration.
11 And this afternoon I would like to -- to -- to speak
12 on -- on my own behalf along with my family as well.

13 This is a very personal thing for me. My
14 mother was adopted and I'm very thankful that,
15 according to placement preferences, that we do have in
16 place right now, that those were followed because not
17 only did it affect my mother, my mother's -- the
18 mother who adopted her was seen as a -- was seen as
19 family. That was her -- her biological father's
20 sister in Indian land. And -- and to go along with
21 that, my -- my mother was raised -- she was taken or
22 she was removed from her biological home with -- with
23 her adopted mother at the age of two. And my mother,
24 again I'm very thankful for the placement program, and
25 the reason for that is because it's not just -- it

1 wasn't just about my mom and it's not just about me
2 and knowing my culture and knowing where I -- you
3 know, who I am, but it's about my son and it will be
4 about my grandchildren. And they will be Alligator
5 clan and they will belong to the New Tulsa ceremonial
6 grounds because that's who we are. We are a whole.
7 We are Native people.

8 And I agree that -- I -- I -- I've been a
9 foster parent as well and I completely understand
10 where our foster parents and our adoptive parents come
11 from. I completely understand, but what we're asking
12 is from the very get-go that ICWA is followed. That's
13 what we are asking for. Not later on down the line
14 when placement preferences are -- are there, we're
15 asking that those placement preferences are being
16 followed.

17 Despite the guidelines promulgated and
18 progress made through tribal/state cooperation for the
19 past 35 years, a wide range of inconsistent
20 application exist. These proposed regulations
21 implement uniform best practices for all state and
22 child welfare agencies, adoption agencies and courts.

23 It's critical to have a nationwide policy
24 for all states to minimize their inconsistent
25 interpretations. The modifications will reduce

1 inconsistencies, create uniformity and lead to states
2 having consistent training on what ICWA is.

3 ICWA was critical in outlining the rights
4 of tribes and Indian families in describing the best
5 interests of Indian children and families and tribes.
6 ICWA is very important in insuring that tribes are
7 adequately informed about pending ICWA cases in state
8 court. ICWA clarifies the best interest of tribes,
9 which is protection of children and preservation of
10 culture.

11 Policy modifications are further
12 obligations of federal government under trust
13 relations to tribes. ICWA protects interests of
14 tribes in general. Any opposition is furtherance of
15 genocide of Indian families. The old idea that Indian
16 children are better learning Western values, this is
17 genocide by policy, camouflaged child trafficking and
18 cultural genocide.

19 Modifications also will reduced outcomes
20 we're seeing amongst children in the state foster
21 care. There has been progress in some places. Some
22 administrations have been supported, but leadership
23 changes, so there continues to be a wide range of
24 interpretation and implementation all the way from
25 leadership on down to line workers. This gives

1 standard guidance to all of those involved in ICWA
2 cases.

3 States and tribes have collaborated, but
4 there are still inconsistent interpretation and
5 implementation. And there's also the concern that
6 there still needs to be better accountability for
7 private attorneys involved in all of these cases.

8 It's time for a change and we fully
9 support the regulations.

10 Thank you.

11 MR. ROBERTS: Thank you.

12 MS. CHARBONNEAU: Good afternoon. My name
13 is Peggy Charbonneau. I am a Cherokee, Creek and
14 Seminole. I'm a mother. I'm a daughter. I'm a
15 grandmother. I'm a sister. I found out today, I'm an
16 Elder, so I am here to -- to just say that I -- I
17 truly, truly support the adoption of these BIA
18 regulations.

19 I want you to know a story that happened
20 to my family. I had a sister who placed her child for
21 adoption and wanted the Act to be followed. And when
22 the adoption agency gave papers to the adoptive
23 parents, they left off K for Creek and they -- her --
24 her parents did share with her that she was Native
25 American.

1 All of the years that this little girl
2 grew up, she thought she was a Cree Indian and so,
3 yes, they gave her books to read and let her have
4 knowledge about the tribe because they wanted to not
5 let her loose that identity; however, when it became
6 coming home time and she wanted to find her family,
7 she found out that she was not Cree Indian, that she
8 Creek. And it was very -- it was very difficult for
9 her knowing that she was Native American, knowing that
10 she was Indian, but she had been studying all the ways
11 of the Cree tribe instead of the Creek Indian.

12 Now, our family has embraced her at coming
13 home time. So many years have been lost, but this
14 child fits right into our family. It's -- it's --
15 it's just truly amazing, but it's all the more reason
16 why these rules must be adopted. It's crucial to the
17 lives of our children who are our tribe.

18 I want to just read a statement here.
19 I -- I have been in the field of social work for 35
20 years and I do believe it's very sad that we even have
21 to have an Indian Child Welfare Act, but we have to
22 have it because we were losing children and we still
23 lose them today. What the sad thing is is that the
24 same battles that we were fighting 35 years ago, we
25 are fighting today. All the more reason for these

1 regulations to be adopted.

2 I want to tell you that I certainly
3 support 23.22, defining active efforts to prevent the
4 breakup of Indian families and requiring that such
5 efforts begin immediately.

6 I support 23.103C, requiring that agencies
7 and courts ask in every proceeding whether a child is
8 Indian.

9 I support 23.108, recognition of a tribe's
10 exclusive authority to determine tribal membership.

11 I support 23.111, a notice to tribes in
12 voluntary cases.

13 I support 23.117, limiting the discretion
14 of state courts to deny a transfer of a case to tribal
15 court.

16 I support 23.128, 23.129, 23.130, 23.131,
17 emphasizing the need to follow the placement
18 preference and limiting the ability of agencies to
19 deviate from those preferences.

20 Today as I stand before you, I just -- I
21 want to tell you another strong reason that I feel
22 that these regulations must be adopted. We are
23 standing in a state that represents 39 tribal nations,
24 sovereign nations. The battles that we fought years
25 ago, the battles we're still fighting today -- and let

1 me tell you what we're faced with today. We've
2 already been told by attorneys at our DHS office,
3 well, these are just guidelines. We don't have to
4 follow guidelines. Those are the battles that we have
5 to fight.

6 I -- I just ask and implore the BIA to
7 adopt these regulations. We'd like to make this one
8 last statement from one of our sister tribes.

9 People without culture, people without a
10 language, and people without ways will never
11 understand best interests for Indian children, nor
12 should they be allowed to define the best interests
13 for Indian child. (Native language.)

14 MR. ROBERTS: Thank you.

15 MS. WILSON: Osyio. I'm Sally Wilson.
16 I'm a Cherokee member of the Cherokee Nation. I'm
17 also a worker with Cherokee Nation Indian Child
18 Welfare.

19 I support and I celebrate the proposed
20 regulations to enforce the Indian Child Welfare Act.

21 In our tribe, we have a word (Native
22 language) which means, we belong to each other. Our
23 children believe that this tribe, our tribe, belongs
24 to them.

25 I've had the opportunity to talk to

1 numerous children and they tell me that. A young man
2 at a membership -- getting membership -- getting their
3 membership card, wanted to understand what these cards
4 meant. And his mother said, This means you belong to
5 your tribe. And the young man, being a ten-year-old
6 boy, you would think that would be enough. No, he
7 said, This tribe belongs to me.

8 As a Cherokee mother, I can attest to the
9 affects of the historical trauma, trauma of removal of
10 children from their tribes because my children's
11 father, my husband, was removed pre-ICWA and forced
12 into a boarding school. The historical trauma in
13 relationship that he had was with his family and his
14 children and his tribe affects us all today.

15 So I implore you to make these
16 regulations.

17 Thank you.

18 MR. ROBERTS: Thank you.

19 MS. COOPER-RUSSELL: If this panel would
20 allow me, I just have a few minutes of a statement. I
21 did testify earlier.

22 MR. ROBERTS: Can you just say your name
23 again, please?

24 MS. COOPER-RUSSELL: Oh, yes. I'm Diane
25 M.D. Cooper-Russell. I'm an enrolled member of the

1 Muscogee Creek Nation, also the Yuchi Tribe of
2 Oklahoma and also a decedent of the Cherokee Nation.

3 I decided I wanted to put in some of the
4 comments that I've heard from the 16 foster or adopt
5 children that I've kept through the years.

6 When I look into the mirror, who do I see?
7 If I don't feel like part of my current family, then
8 who could I be? I'm adopted you say? Did someone
9 give me to you or did you have to pay? Help me to
10 understand because I'm confused right now. You say
11 you love me, but please tell me how. Now, you tell me
12 I'm American Indian, what tribe and customs I ask?
13 And you say, you're not sure. But wait, you love me,
14 so explain the lore. I hear the beat of a drum from
15 deep within. The soars of eagles and echos of past
16 cries out to be heard. Again, I look into the mirror
17 and what do I see? Hopefully, someone of my ancestry
18 that helped create me.

19 Thank you very much and help our American
20 Indian children survive within their culture.

21 MR. ROBERTS: Thank you.

22 MR. RICE: My name is Julian Rice. I'm a
23 member of the United Keetoowah Band of Cherokee. I
24 used to serve as the Assistant Chief. I've also been
25 a judge. I'm now a law professor and I serve as the

1 tribal prosecutor in tribal --

2 MR. ROBERTS: Professor Rice, I don't
3 think that she can hear you. If you could take the
4 microphone off there and --

5 MR. RICE: Okay.

6 MR. ROBERTS: There you go.

7 MR. RICE: Will that work? I was there in
8 1978 and in '79 here in Oklahoma when this Act was
9 being implemented. I was there when three out of
10 four Indian children in this state were taken away
11 from their folks and put into foster care because
12 other people decided that they need -- that they gave
13 themselves a license to decide what was in the best
14 interest of our children.

15 I remember growing up seeing my playmates
16 taken away and not showing up anymore. I remember
17 when bonding and all of these other excuses were used
18 to say that these children were not doing well in the
19 Indian world, that their best interests was to be
20 raised in the white world. And there were a number of
21 formal programs at the state level and at the federal
22 level to make sure that that happened and that Indian
23 children's relationship with their Indian family was
24 severed. And it was all done in the name of the best
25 interests of our children.

1 I remember when this Act came down and
2 when we tried to implement it. And I simply want to
3 applaud the Interior Department, the Bureau of Indian
4 Affairs for these regulations that are long overdue
5 and much needed and clearly within the authority of
6 the Interior Department.

7 You know what this Act is about, and I've
8 heard a number of speakers and I've been sitting there
9 listening, a number of speakers have made statements
10 as if there was a disconnect or as if there were some
11 controversial conflict between the idea of the best
12 interests of Indian children and tribal courts and the
13 Indian Child Welfare Act. I submit that's not the
14 case.

15 The Indian Child Welfare Act, in that Act,
16 Congress decided that the best interests of Indian
17 children was for the tribe of that child to decide
18 that tribe's best -- or that child's best interest and
19 not the non-Indian court or non-Indian institution or
20 non-Indian adoptive placement system. That the best
21 interest of Indian children are served by having
22 Indian courts and Indian tribes make those decisions
23 as to what's in the best interest of that child. And
24 I see these regs as a step in the proper direction.
25 That, I think, is where we need to be.

1 There's no conflict. There's no
2 disconnect. It's a question of who decides the best
3 interest of our children for our children are the only
4 future that we have.

5 Thank you.

6 MR. ROBERTS: Thank you.

7 MR. TAHSEQUAH: I would like to make --

8 MR. ROBERTS: All right. We're -- we're
9 coming up on 5:00 here.

10 MR. TAHSEQUAH: That's fine. This will be
11 very fast and simple.

12 We welcome you to Oklahoma. We are not --
13 we should be -- this meeting should be in Oklahoma
14 City. We drove three hours last night, the Vice-Chair
15 and I, through thunderstorms to be here. We didn't
16 get here until 1:30, the tribal leaders. We have
17 other obligations, but we are here. And we -- also we
18 have our western part, our northern part. And I know
19 politics. I know. So let's -- if you have it again,
20 let's have it in Oklahoma City.

21 Thank you.

22 MR. ROBERTS: Thank you.

23 MS. WILSON: Emily Wilson, again. I'm of
24 the Cherokee Nation. And I wanted to add to my
25 comment that these proposed -- proposed regulations

1 help us uphold all political status and rights of each
2 Indian child. The child has their own independent set
3 of rights that cannot be waived by parents, guardians
4 or even the tribe. The child has a right to safety
5 and a right to thrive as a member of their tribal
6 community. They have a right to feel safe, to thrive.
7 They have a right to counsel, to a tribal advocate, to
8 an expert witness, to be an indigenous person, which
9 is a right to culture, family, siblings, extended
10 family, language, belief or system of religion,
11 political rights, the right not to be alienated from
12 any of this, to know who you are even after you've
13 been adopted, to value who you are, and your
14 self-esteem, to know you belong, to know your history,
15 to be connected to the indigenous roots, your tribe,
16 to citizenship, to be in a clan, to all records
17 before, during and after their adoption, to a just
18 system of justice, a court judge that is knowledgeable
19 of tribal traditions, values and laws, to be enrolled
20 with their tribe, to have a tribal custodian have
21 obligations to find information, also to sue for a
22 violation of ICWA, including malpractice on the part
23 of adoption attorneys. They also have the right to
24 cause of action even after their 18th birthday.

25 Section 23.133 gives minors three to five

1 years after they turn 18 to sue for violation of
2 rights under ICWA and have rights.

3 MR. BILBY: (Greeting in native language)
4 I'm a Cherokee Nation citizen and I'm also a social
5 worker for the Cherokee Nation. I am -- would like to
6 ask that the BIA to consider --

7 MR. ROBERTS: We didn't get your name.
8 I'm sorry.

9 MR. BILBY: Craig Bilby. I would like to
10 ask the BIA to consider and continue making these
11 guidelines and regulations. I would like to have --
12 reiterate that even in Oklahoma, with the Oklahoma
13 Indian Child Welfare Act, that these are guidelines
14 right now and that their application may be in
15 question as such as probably going to be with our
16 upcoming Oklahoma Supreme Court case.

17 Also, I would like to applaud the BIA
18 specifically in tackling the issue of existing Indian
19 Welfare Act. I have not been in one placement hearing
20 or situation where it's questioned the child's
21 nativeness and their nation. There is often a
22 tangible aspect of culture that's consistently asked
23 and questioned and it's much more than that. I've
24 never been criticized so much on my ability to explain
25 all of the abstract features of our culture, our

1 values and other things that you can not put into Pow
2 Wows or stomp dances. I often find issue with the
3 fact that children learn at a young age that --
4 especially in deprived cases, that I have experience
5 with it, they're trying to fight for their basic
6 needs.

7 So we're trying to get them in a stable
8 situation where they can regain culture, they can have
9 that harmony. There's a balance that's brought by the
10 values within the Cherokee culture.

11 I also appreciate the BIAs defining best
12 efforts. There's so much more in our hearings and
13 explaining to the some of the social workers who don't
14 understand what's required of them. I can appreciate
15 the outlining that the tribes define on membership.
16 There's oftentimes when there's -- there's simple
17 things such as children being born in ISS facility.
18 They may not have ICWA applied to them.

19 I also would like to ask that the sections
20 regarding the placement preferences become
21 regulations. I feel again without those that we're
22 not being heard and that we're giving these -- these
23 kids this opportunity for their culture and that by
24 simple causal -- or happenstance exposed to it, these
25 kids will learn it in an hour. These kids learn it by

1 being in the home and it may not be something outright
2 that they'll engage -- it won't be something outright
3 that they're taking with specific grounds with that.
4 There are certain values that they are passing on.
5 Whereas when we're Indians by accident, but that we
6 pass on to our children.

7 I also would like to push for the -- the
8 sections on good cause to be pushed as well. I can't
9 tell you how many times I've had periods extended
10 through the legal system and then the -- the use of --
11 of the bonding to prevent children from having the
12 right to their -- their culture and heritage in the
13 tribe.

14 And I -- I really just would ask that you
15 give us, as tribes, to have the determination to save
16 our children. We wouldn't try to intervene in how
17 other countries raise their kids and what they do and
18 say to determine them as -- as a tribal member. We
19 want the opportunity as well. (Native language.)

20 MR. ROBERTS: Thank you.

21 All right. Are there any additional
22 comments that folks want to make?

23 Okay. Well, it is after 5:00. I know
24 that there was a request during the public meeting to
25 extend the time, which we did. And just please let

1 the record reflect that we don't have any additional
2 comments.

3 I want to say thank you to everyone for
4 attending today and -- and remind everyone that
5 written comments are due next week. And you can send
6 them to the E-mail address or by mail, but they're due
7 May 19th.

8 Thank you all for participating today.

9 (Adjournment of meeting at 5:04 p.m.)

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C E R T I F I C A T E

STATE OF OKLAHOMA)
) **ss.**
COUNTY OF CREEK)

I, Tina Hale, Certified Shorthand Reporter within and for the State of Oklahoma, do hereby certify that the Tribal Consultation - Proposed Regulations For State Courts and Agencies in Indian Child Custody Proceedings - "ICWA Proposed Rule" (25 CFR 23) was by me taken in shorthand and thereafter transcribed; that the same was taken on the 14th day of May, 2015, in Tulsa, Oklahoma; that I am not an interest party for nor relative of any of said parties or otherwise interested in the event of said action.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of this 29th day of May, 2015.

Tina Hale, CSR, RPR
State of Oklahoma, CSR No. 1706