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

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

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

   Secondly, I want everyone to provide their
comments to us, the -- the panel here. I want to make
sure that we have a forum where everyone is respectful
to one another and so this isn't an opportunity to --
this is not an opportunity to argue points among each
other. Your comments should be directed at us. And I
don't want this to be a forum where folks are either clapping or criticizing other one's comments. I think we need to be respectful of everyone's comments here. I know that this is a very important issue to a lot of people and to all of you, so let's treat everyone with respect.

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

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

Finally, so -- so we're here to gather your comments and then what we will do once the comment period closes next week, we will review all of the comments. So we have a court reporter up here in the front and so when you -- when you come to one of those microphones to make a comment, please state your name very clearly and the organization you're with if
you're with an organization and please be kind to our court reporter and speak slowly so that she can get everything because what we will do with these transcripts is we'll put them on our website and make them available for everybody as part of the rule making process.

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

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

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

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

MS. ORTIZ: Good afternoon. My name is Hankin Ortiz. I'm Kiowa, Caddo and Comanche from Oklahoma and I'm the Deputy Bureau Director for the
Office of Indian Services for the Bureau of Indian Affairs.

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

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

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

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

ICWA is a strong federal policy that, where possible, that an Indian child remain in the Indian community.
In 1979, shortly after the Act was passed, the Department issued guidelines for state court implementation of ICWA and it also issued regulations on ICWA notice.

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

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

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

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

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

So in the proposed rule, we have added a number of definitions for active efforts, continued custody, and the physical danger or harm of a
voluntary placement. We've also revised several other definitions.

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

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

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

In terms of voluntary placements, the
The proposed rule also provides steps to contact the Tribe to provide notice or to verify membership.

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

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

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

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

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

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

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

It also has a provision that the state court must dismiss an action as soon as it determines that it lacks jurisdiction. For example, that the tribal court has jurisdiction.
The proposed rule also has provisions regarding notice, when is notice required, what proceeding those -- those provisions apply to, listed here, and how notice is provided, by registered mail with return receipt requested.

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

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

The proposed rule also has provisions regarding emergency removal. And that an emergency removal must be as short as possible. That the agency or state court must document whether removal or placement is proper and continues to be necessary to prevent imminent physical damage or harm to the child. Promptly hold a hearing to evaluate whether the removal is -- continues to be necessary and immediately terminate the placement or removal when the emergency ends.
Emergency removal provisions continued here. The agency must treat the child as an Indian child until contrary to termination. Conduct active efforts to prevent the breakup of the Indian family as early as possible before removal, if possible. Immediately take and document steps to confirm whether the child is an Indian child and verify tribal membership. Notification, again, and maintaining records that notice was provided.

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

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

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

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

The first factor is whether the case is at an advanced stage, the child contact -- the child and nature of the contacts with the tribe or reservation and the tribal court's perspective placement for the child. And these three factors cannot be considered for transfer under the -- as good cause not to transfer under this proposed rule.
Now, any petition for placement or termination of parental rights must demonstrate to the court that active efforts were made to avoid the needs to remove the child and that these active efforts were made before and until commencement of the proceeding and that the active efforts were unsuccessful. And the new -- the new provision in the proposed regulation is that the proposed regulation makes clear that these active efforts must be documented in detail in the court records and that there must be documentation that the resources of the extended family tribe, Indian Social Service agencies, and Indian -- and Indian caregivers were explored and used to the extent possible.

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

Now, this isn't new. This is in the
statute, but what is new is that the rule clarifies what is and what is not clear and convincing evidence.

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

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

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

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

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

MR. TAHSEQUAH: Excuse me. We have about 50 people who are waiting here and we're -- we're representing different tribes. We'd like to hear this, too, but you're not speaking loud enough for
them. Is there any way we can get the chairs in here?

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

MR. TAHSEQUAH: Thank you very much.

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

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

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

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

Voluntary -- voluntary proceedings,

disposition, and post-trial rights.

So in voluntary proceedings, the proposed
rule clarifies that the agency and the state court
must ask if the child is an Indian child, providing
the tribe with notice of a voluntary proceeding, and
notice of the right to intervene.

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

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

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

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

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

(Break was taken at 1:24 p.m.)
MS. JACKSON: Okay. So I had left off at disposition, that parents and Indian custodians -- oh, wait, no.

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

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

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

What it doesn't include is bonding and attachment from the placement or just the unavailability of the -- of a placement and determination that -- by the court that active efforts
were made.

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

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

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

The proposed rule clarifies -- and this is part of the ICWA already, so the part that I want to highlight is that States must provide BIA -- or States must, first of all, establish a single location for all records of voluntary and involuntary foster care, pre-adoptive placement and adoptive placement. That information will be available within seven days of request by the child's tribe or the Department of
Interior. The records must contain, at a minimum, the petitioners complaint, all specific orders in the proceeding, and record of placement determination, including findings in the court records and the social worker statement.

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

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

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

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

So we look forward to hearing from you.

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

One is please limit your initial comments to five minutes. I'm going to keep track of the time.
I'm going to try to be the timekeeper, so help me out with that. The reason I'm doing it is because we have a full house here and I want to make sure that everybody that wants to provide comment can do so.

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

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

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

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

So with that, I will open up the microphone to public comment.
MS. ROSS-NIMMO: Hello. My name is Chrissi Ross-Nimmo. I’m the mother of Indian children and a citizen of the Cherokee Nation. Also, Assistant Attorney General for Cherokee Nation.

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

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

On September 23rd, 2014, Veronica Brown was forcefully removed from her biological Cherokee -- Cherokee family and her tribe. After four long years of litigation, on September 20th, Cherokee Nation and Dusten Brown finally had, what we believed, a final agreement after a week-long mediation that would allow custody to the adoptive couple and continued and substantial visitation with Veronica’s father and her tribe. We signed documents at the courthouse and thought that we had concluded what was an extremely difficult case. We got a call an hour later from the judge saying the adoptive couple refused to sign the agreement and were ordered to return Monday morning.
That Saturday, in the Cherokee Nation, surrounded by her friends and family, Veronica Brown celebrated her fourth birthday complete with bounce house castle and cupcakes.

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

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

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

We asked for two hours to allow the family to say goodbye to her and pack her belongings. The
answer from the attorney for the adoptive couple was that we had one hour. So one hour, Veronica was told she was going to live with the Capobiancas. She packed two suitcases, one with clothes and one with -- one with birthday presents.

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

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

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

After only two years of living with her father, the Cherokee Nation -- in the heart of the Cherokee Nation, where she did a Pow Wow of the Stomp, where she had been given a name in a naming ceremony,
where she was attending a childcare facility run by
the Cherokee Nation and learning the Cherokee
language, where she proudly showed me her citizenship
photo ID, referred to it as her Indian card, and
identified herself as Cherokee, Veronica was being
handed off to non-relatives, non-Indian people simply
because they wanted her.

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

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

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

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

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

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

I briefly want to say that you will hear today people specifically commenting on best interests of Indian children and emotional attachment. Some of those very same people sit before the Oklahoma Supreme Court and the South Carolina Supreme Court and the media across this state and country and said, After two years of living with her father, Veronica's bond
to her dad didn't matter, Veronica's bond to her tribe
didn't matter, and her best interests didn't matter.

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

Thank you so much for your time.

(Audience claps.)

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

So we'll go with the next commentary.

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

I'm an Oklahoma licensed attorney. My
practice is concentrated in adoption. I served on the
Oklahoma Legislative Adoption Review Task Force with
lawmakers, laypersons, judges, tribal representatives, and others -- other attorneys. I volunteer for the Tulsa Lawyers for Children Representing Children.

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

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

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

The objection that I personally have to the regulations is not focused necessarily on the same reasons of those letters. Those letters are focused on the fact that there were no hearings held, public hearings, east of the Mississippi. And so those folks
are all from states that were not used for public
comment, which we understand. But over 20 of the most
populous states, also their citizens were not able to
come to the public meetings for that.

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

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

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

For that reason, I believe the proposed
regulations should be withdrawn.

Thank you for your time.

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

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

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

Our second concern as the Navajo Nation is the role of social workers determining who -- who complies under ICWA. We've learned from our local
workforce that social workers are now -- are now
deciding who's culturally -- Navajo culturally native.
And as a nation we reject the notion that a social --
that a social worker would have the ability and be
empowered to tell our -- our Navajo nation citizens
who -- who they are and who they represent.

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

And from a personal standpoint, as an
Navajo mother, when I introduced myself and I said who
I was, those clans mean something. Those mean --
those give me -- back to me who I am as an identity.
That grounds me to the roots. My umbilical cord then
is connected to whom I am. And when we talk about
who's connected and how it increases bonds, it's
really through that clan system that's encompassed.
And we know through the federal policies, federal regulations has continued to disenfranchise the family, the breakdown of the native family and we're no -- and I will no longer tolerate such type of regulations or such type of -- of arguments.

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

So, thank you. (Native language.)

MR. ROBERTS: Thank you.


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

I was born in '78. The youngest of four
children, all of us in custody.

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

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

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

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

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

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

I would also like to acknowledge that I am very blessed because I did have people on all sides of the aisle, including my foster adopt parents and my foster adopt Indian parents. But casting stones isn't going to solve the problem, but the proposal is there. It supports ICWA and the reality is that ICWA encompasses hundreds of years of government-to-government relationships. And I can say that having walked the ICWA road on every case that
you want to bring up to me.

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

    MR. ROBERTS: Thank you.

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

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

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

    Our issue today is that although we qualify, we've done all kinds of background checks, I'm a government employee. My husband is a Vietnam
veteran. We're all respectable in the community, yet we challenge -- Oklahoma County will not allow us to have my son -- my husband's grandson.

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

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

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

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

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

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

When I first came forward as a foster
parent, it was for sibling groups and I made it quite
clear that I did not want to take on any children that
would be separated and it was done anyway. So I want
something in the provision to address those children
that have already been in the system and have these
wrongs done to them already. I want something to
address the children that are currently, right now, in
the system because I fear, not only with our grandson,
that maybe someone is fast forwarding something right
now having knowledge of this, that something can be
done to stop it and -- and make them subject to these
impending rules and regulations that are being
proposed today.

MR. ROBERTS: Thank you.

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

Thank you.

MR. ROBERTS: Thank you.

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

My grandsons and the children of my nieces
and nephews will probably not be enrolled because they -- the family does not want a possible situation down the road where if some child has to be placed in a foster home or up for adoption, or something else, that the tribe would interfere in a family decision.

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

Now, assuming, for the sake of this -- this discussion, that that delegation was made, still an agency does not have the authority to override an act of Congress or override a decision of the United States Supreme Court. And virtually everything that is proposed in these regulations has either been already rejected by Congress in the initial enactment of the law or during the discussions. There were five or six years, I think, where there were amendments that were proposed and they were voted down. And during those discussions, everything has already been considered and rejected by Congress.
There are several things that violate the rulings of the United States Supreme Court and an agency does not have the authority to make laws out of thin air and that's exactly what they're doing. The vein of the proposed regulations violate the original ICWA Act and it's never been amended.

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

The restrictions on the termination of parental rights on unwed fathers is completely contrary to the United States Supreme Court decisions. The -- the removal of bonding attachment -- bonding
and attachment consideration from the court is again completely against all child welfare laws and research that has been done over the years and I'm just amazed that the Bureau would -- would do such a thing like the -- I -- I -- I really don't think that the Bureau of Indian Affairs consulted with child welfare experts before these were written up because some of the things in here, I'm -- I'm just amazed that they're there. But I think these regulations ought to be withdrawn.

Thank you.

MR. ROBERTS: Thank you.

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

I don't know if this is true or not, but the experiences that I've had in and out of the courtroom in Kansas for Cherokee Nation demand that the new ICWA guide -- regulations need to be adopted into law so that our Cherokee families have a fighting
chance for reunification in an otherwise dominant society who often overlook those families who suffer from historic and continued generational trauma.

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

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

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

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

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

The word active denotes an energetic inertial pursuit rather than a moderate action taken within the system whose paradigm centers around the definitive word of reasonable.
The new BIA regulations provide a clear definition and a fresh paradigm shift into what active efforts are and provide a basic 15-points gap that could be understood and implemented with a little bit of thought and initiative. This paradigm shift can lead to not only one thing with regard to ICWA and how it bridges into the code of social work ethics.

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

Somewhere the court battle becomes murky with so-called expert witnesses who deem themselves to be self-proclaimed experts in the childrearing practices of the tribal culture they are providing testimony to. More often than not, they lack any insight needed for such testimony and rely on flawed and biased insight gathered from websites to make a paid interpretation. Their testimony can only lead to the demise of an Indian family without understanding it's holistic connection and reap local monetary assets of an already strapped judicial system.
The new ICWA guidelines define these.
Advanced expertise in the fundamental social and
cultural standards for family or organization and
childrearing practices in the child's tribe is
necessary to not only provide testimony to a judge
that is relying on this information for their
judicial opinion through the proceedings, but it is
also necessary in that it provides an insight into the
historic and generational trauma that is occurring in
the family ecosystem and how it should look once it is
healed.

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

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

MR. ROBERTS: Mr. Miller --

MR. MILLER: Yes, sir.

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

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

As a culturally distinct people with a unique domestic and sovereignty status, ICWA is needed as a broker between two sovereigns whose citizens may reside outside of their own borders, but have been taken into custody by the other sovereign and whose compact appears blurred by a lack of knowledge. It's important a beefed-up version of ICWA in effect clears the air as to how the sovereigns should act and also honors the unique sovereignty status that exist between the United States and it's 56 -- 567-odd indigenous governments.
I support the new BIA-proposed regulations as ICWA as they clarify the intended ICWA, minimize inconsistent interpretations and create uniformity.

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

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

I start out by saying I think it is appropriate that Ms. Nimmo started by speaking about the Baby Veronica case. Most of us are, you know, painfully aware of those unfortunate facts and I -- I think it's appropriate to start out with that because it's my position that these guidelines may be just an overreaction to that case. And what kept going through my mind was that bad facts make bad law and that ICWA -- ICWA may be in need of some changes, but that it's time to go back to the drawing board and take from our comments and, hopefully, rework what you're doing. But I do respect what your work is.
I participated in the conference call that was, I believe, on Tuesday and I wanted to kind of pickup on something that wasn't on the record in that call.

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

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

The -- I'll just hit the highlights of the -- the specific reasons that I'm in opposition of
it. First, I believe these overall will hurt women
and children. This is a state court issue that should
be allowed for the courts. These new regulations
would violate the due process rights of children,
specifically regarding the best interests and of the
attachment and bonding. The BIA, again, as another
colleague of mine stated on the authority to adopt
these regulations, this process has been flawed, in my
view. The input has not been there for -- from the --
I talk of the bonding, but psychologists, child
welfare experts, it seems as though it has been fairly
one-sided. There has not been any input on half of --
almost half of the United States.

And -- and, finally, I think I'll end it
with this portion, the fact that this violates women's
constitutional rights to privacy. And -- and I -- and
I will -- will harken back to you what one of your
tribal members stated when she said, A mother who
knows should make the decision for her children.
These would not only regulate and change foster
children, but it would also regulate and change
voluntary placement. So what that is going to do
is -- is prevent women who don't want her whole family
to know or the tribe to know, it's going to prevent
her from deciding adoption maybe what's in the best
interest of her child. She has a constitutional
right, as I -- I agree with the member that spoke
earlier that she has a right, a constitutional right,
to decide what is best for her child. And -- and what
we're doing is saying to her, Well, we're sorry,
because of your heritage or maybe even the father's
heritage, it may not even be hers because this would
apply to the child, not just her, she doesn't have
that right. That -- that her whole family is going to
know. The tribe is going to know and -- and, you
know, as a woman and a mother, I have a real concern
with that. For my clients who I work with that I see
on a daily basis that struggle and -- and have
heartbreak and heartache to decide what is best for
her children. Excuse me.

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

And I'll just wrap up by talking again
about the bonding and attachment because my work is
also with foster families and I have seen foster
parents and -- and been awakened by their research and
science and -- and understanding behind what
attachment does in that these kids we're talking about
have already suffered one attachment disruption
because they have been taken away from their biological setting. And what we're talking about doing is not, at least, considering -- I'm not saying it's always going to the -- the -- the end result may be different and it should be, but not considering the best interests of a child, to me is completely contrary to what ICWA was enacted for. It is to -- it is supposed to -- it is there to protect the children. And not being able to, at least, consider best interests, which I -- I believe then you can extend to the bonding and the -- the -- what would happen to a child for attachment. Attachment disruption is serious. It is a long permanent effect on a child's life. And I think that there may be circumstances where that's not always the most important or, you know, it's going to be different, but not -- not, at least, considering that is contrary to the goal of ICWA.

Finally, I will just end, this time I mean it, with the fact that I have represented foster families who may not be enrollable or don't have the quantum to be enrolled or are not considered Indian in the legal sense or the tribe sense, but they have been the ones to embrace the culture and to -- I have clients that I love dearly that have had -- that had a
child for two and a half years. They wanted to remove
the child and we stated that the child should remain.
They drove down to the tribe in -- in Oklahoma,
visited the tribe, visited the Nation. They go to Pow
Wows every week. So I feel like, to me, that they did
embrace it and -- and -- and I feel like sometimes,
maybe not every time, but sometimes that would be,
yes, thank you, more than what the biological family
was going to do.

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

Thank you.

MR. ROBERTS: Thank you.

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

The Native American Rights Fund is the
National Indian Legal Defense Fund and since we were
organized 45 years ago, we've been involved in
thousands of cases on behalf of Indian people across
the country asserting their rights to sovereignty, the
right to their homelands, the right to their cultures,
their religions and some of these cases have -- have also involved the Indian Child Welfare Act.

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

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

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

So I fully support the adoption of the regulations.

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

Thank you to all of you.

MR. ROBERTS: Thank you.

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

Let me start out by thanking the panel and
everybody that's here today. I'm not here to speak
about the emotional implications behind these
guidelines or ICWA or the regulations in general.
Many other people have been speaking eloquently enough
about that.

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

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

And going in numerical order,
specifically, Section 23.111, the notice requirement
that states that specifically we have to send notice
to tribes and to parents in ICWA cases any time there
is a proceeding that deals with foster placement.
That is every proceeding. Every single proceeding
that we have deals with foster placement. Every court hearing deals with foster placement. That requirement would mean that we would have to send notice to tribes and to parents by registered mail for every single hearing. My rough calculations, based upon the numbers that have been compiled by Tulsa County's excellent court case managers, including that of Ms. Kim Rebsamen, who stands two people behind me, would mean that essentially there would be a $7,000 cost to send notice to every party in every -- in all of our ICWA cases as they currently stand.

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

What I would suggest to the panel is that actual notice be an exception to this rule. Many of the tribes that we have involved in these cases intervene and are regularly in court. They are recognized back by the judge in that case. They are aware of every proceeding that's going to take place.
Under that circumstance, it seems excessive, to say the least, that we would have to then send additional notices to them by registered mail.

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

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

The next sort of joint concerns with regard to 23.121 and 23.122, the -- the burden with regard to the expert testimony. Specifically you cite language that says that we must have expert testimony with regard to continued custody with a parent, being likely to result in serious physical damage or harm to
the child. And you cite that specifically for both continued custody and foster care, as well as termination of parental rights; however, the statute specifically says that it can be serious emotional or physical harm. So if we're going to have these guidelines, I think it's important that we cite specific language from the statute that actually applies.

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

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

A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs as they pertain to family
organization and childrearing practices. A member of another tribe who is recognized to be a qualified expert witness by the Indian child's tribe based on their knowledge of the delivery of child and family services to Indians and the Indian child's tribe. A layperson who is recognized by the Indian child's tribe as having substantial experience in the delivery of child and family services to Indians and knowledgeable of prevailing social and cultural standards of childrearing practices within -- within the Indian child's tribe and a professional person having substantial education and experience in the area of his or her specialty who can demonstrate knowledge of prevailing social and cultural standards and childrearing practices within the Indian child's tribe.

Now, in and of itself, I would not have any opposition to that being a qualified expert for ICWA cases; however, the specific expert testimony that they are to provide with regard to serious emotional or physical harm being caused to a child. My question would be, how is a person that is qualified specifically in these areas with knowledge of tribal customs pertaining to childrearing able to give expert testimony in relation to serious emotional
or physical harm befalling the child should they 
return to the care of the parent? Those seem --
seemingly are unrelated. Although, I will note that
many of the tribal officials that are in this room,
and I've worked closely with them, are also qualified
as experts in that area as they are social workers and
are familiar with what would cause emotional or
physical harm to a child if they were returned, and I
have no objection to those people giving expert
testimony in that area; however, this specific
guideline that requires that an expert witness under
ICWA be somebody that is familiar with childrearing
practices within the tribe seems to ignore the fact
that people outside of the tribe and that may be
unfamiliar with tribal customs could also be experts
with regard to that specific testimony that's required
for continued foster care or termination proceedings.

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

MR. ROBERTS: Okay. Thank you.

MR. FELTY: Thank you.

MS. STRETCH: Hello, I'm Lou Stretch. I'm
a Program Manager for the Cherokee Nation, but right
now I'm here under a different hat. I also am
president of the Oklahoma Indian Child Welfare
Association and as an association, we do support that there's a legal basis for this regulatory action.

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

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

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

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

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

Definition, continued custody, we would ask that -- we support the definition, but we're recommend you add the word, according to tribal custom or law, so that each specific tribe could have their input and what they recognize as domicile. We are dealing with a lot of cross-jurisdictional issues in
Indian County and so we believe those tribes should have that right.

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

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

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

USC 1911 was not meant to be defeated by the actions of individual members of the tribe because Congress was concerned not solely about the interests -- interests of Indian child and family, but
also about the impact of large numbers of Indian children being adopted by non-Indians or the tribes themselves. We think this clarification would protect the findings of the Federal Supreme Court.

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

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

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

MR. ROBERTS: Ms. Stretch, your --
MS. STRETCH:  My time is running out.

MR. ROBERTS:  Yes.

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

MR. ROBERTS:  Thank you.

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

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

We have had Maddy since she was three
months and now she's almost two. I have no idea what
I would do without her. She is my sister and I
would -- I want to be there for her when she starts
school and when she has problems or needs help with
her homework. I want to be her role model. One of
those people she looks up to. I say one of those
people she looks up too because the other person would
be Brandy.

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

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

Maddy calls me sissy and Brandy momma and
we're all she knows. What is she going to do if she
gets taken away? Scream for us when we won't be there. That's the point of this is for children to be safe, happy, and loved. That's exactly what she is and so much more.

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

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

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

I just want her to stay here with me and never leave. This is -- this has an impact on my schoolwork because this happening is all I think about. I have been -- I've had -- I have had times where all I do is cry or I'll be just fine and then
I'll burst into tears. What 13-year-old needs to worry about when their sister is going to be taken away when all I want to do is post a picture on -- on social media with her. But, no, I have to wait even longer to share how beautiful, funny, gorgeous my sister is. I don't want her to leave and she doesn't need to go anywhere.

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

MR. ROBERTS: Thank you.

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

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

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

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

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

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

My first day of kindergarten, I walked in
the room and I stood in line with the other Indian children from my school. I was devastated when I found out my teacher didn't have a copy of my CIB card. She told me I was not Indian and to take a seat. It affected me in a way that affected the rest of my life trying to prove to the world who I was.

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

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

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

I also want to state that ICWA was not about my race. It shows me about my status with an
Indian heritage and a member of a sovereign continuous nation. And the right for my government to continue through it's most precious assets is its children. 

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

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

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

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

And though we've always provided her with a safe and loving environment, there is still a
tremendous feeling that took place with her at the point she was able to resume communication with her parents. Her identity stems from the biological parents and it always will. I can't possibly put into words, although, I'm trying how necessary it is for a child to maintain their maintain their ties to the family.

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

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

I also want to address the fact that there are no current consequences for the violation of ICWA.
I say there is no consequences. There are no current consequences to the business that may be involved. We need some federal -- federal consequences, including fines.

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

I would ask that these regulations be enacted as soon as possible so that we can come together and gain a better understanding of ICWA.

(Native language.)

MR. ROBERTS: Thank you.

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

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

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

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

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

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

And that is all I have.

MR. ROBERTS: Great. Thank you.

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

MS. FERRILL: Hi, my name is Dawn Ferrill. I have a masters in social work. I've also been a foster mom for five years. My mother grew up on a Navajo reservation in Gallup, New Mexico. My house is
filled with Indian artifacts. I grew up with a love and respect for the Indian culture, even though myself am not Native American. Probably one of the reasons why I'm so sensitive to this issue.

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

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

We must never forget what has caused this mess for Little Veronica and hundreds of other children throughout the United States, the implementation of the Indian Child Welfare Act. Veronica should have never been removed from the loving home where she had lived since birth for over two years. It is wrong to apply ICWA to children who are multi-racial, like Veronica, who is barely one percent Cherokee Indian, who has never lived with an Indian parent or had never lived with an Indian parent at that point and who had never had ties with an Indian tribe.
It is wrong to tell birth parents that they must place the child only in an adoptive --
Indian adoptive home. Hundreds of Indian and part
Indian children throughout the United States have been
removed from loving homes after living with their
foster and adoptive families for many months and even
years. Why? Because the families that they are
living with are not Indian.

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

Ashlyn Towler from Oklahoma City is an
example. Both of her birth parents were in agreement
when they chose the Towlers to adopt her. When Ashlyn
was two years old, the Cherokee Nation was still fighting to take her away from the Towlers to place her in an Indian home. There was not concern for Ashlyn's best interest or any care of the decision that her birth parents had made.

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

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

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

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

Kent, also from Tulsa, spent over $30,000 in court costs to prevent the Cherokee Nation from taking their two-year-old foster boy who had lived
with them since birth. The child had already been
traumatized once by being taken away by the Cherokee
Nation and placed in an Indian home and later returned
to Kent's home because of the trauma, traumatic
situation of that child.

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

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

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

Thank you.
MR. ROBERTS: Thank you.

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

As an attorney, I have served as an elected state D.A. for eight years and also a tribal attorney and also served tribal court judges and CFR court judges over the years. Plus, currently, I'm the chief judge for the Pawnee Nation. In addition, I'm also the attorney for the tribal council of the Cherokee Nation and this week, they passed a resolution to support the BIA proposed ICWA rules and -- which are family culture, time frames and notice to tribes, which is a significant issue, and the best interests of the tribal children. And it is a benefit for our tribal communities and our tribes to have these and respect for the tribal courts because provisions referencing the tribal courts. And I would say also that our Principal Chief, Bill John Baker, and our Deputy Chief, S. Joe Crittenden, have both expressed their support of this. We had a Tribal Council member here today, Denise Taylor, who also was expressing her support.
But there is a point I would like to make about costs, which is when tribes are noticed, given notice by state courts or even out of state courts, that is a cost that tribes impact sometimes when they go to these hearings. And I don't know if we'll have very many tribes that say they complain about this cost because it is to the best interests of their tribal children to be able to respond in some way or another in sometimes going to these.

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

MR. ROBERTS: Thank you.

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

This is very important to me and I want to let you know that I am in support of this, the BIA regulations, not only as a doctorate in doing a lot of
research in the area of adoption, but also as a child therapist. I also have been an expert witness in attachment and adoption trial cases. And there's no question, no matter what anybody says and no matter what else happens, adoption is trauma, whether a child is placed from their home that they were born in or whether a child has been in a home for a while and then placed again, it's all trauma.

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

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

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

And I see trauma in my office. I work with foster parents. I work with adoptive parents. I work with birth parents and I work with children and
adult adoptees. I see what happens. I see the attachment issues and I see the bonding challenges and I do see the problem that we have with an extreme lack of education, particularly with people who are involved in doing adoptions as well as adoptive families and foster families and birth parents. They don't understand a lot of times what's happening.

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

Thank you.

MR. ROBERTS: Thank you.

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

I do think that after four decades from the time that ICWA was initially adopted and the guidelines were first published by the BIA, that it's not inappropriate at all to consider some updating to the guidelines; however, I do think in some areas,
specific areas, these proposed regulations go far beyond either the congressional intent or the guidelines that have been in place for nearly four decades.

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

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

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

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

Furthermore, I would encourage you -- I don't object to Number 4 in these new regulations,
23.1224, where you have a professional person who's knowledgeable about prevailing in social and cultural standards, but I could encourage to go back and take the definition from the previous standards or guidelines that includes a professional person having substantial education and experience in the area of his or her specialty as one who should be in the list.

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

One of the things that you have pointed out as an impetus for this updating of these provisions, these regulations, is the Attorney General's Advisory Committee findings about the impact of domestic violence on Native American children. And I think that one thing that would -- your current definitions of an expert include would be people like my wife, Debbie, who's worked as -- 38 years as a social worker with experience in child abuse and neglect or other people who have expertise in domestic violence and the effect of that on children. Unless they could demonstrate specific knowledge of the
social and cultural norms of the child's tribe, they
wouldn't meet the definitions. They would be excluded
as an expert witness.

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

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

MR. ROBERTS: Thank you.

MR. NOMARA: One thing I'll say in ending,
as someone who's worked in the area of adoption for 40
years and having done all of that for decades here in
Oklahoma where we are privileged to have so many
Native American tribes, I think it's incumbent on
anyone who works in the area of adoption or in the
area of adoption law to give the utmost respect to the
tribes and to their relationship with their children
and to the importance of understanding ICWA and
following it. I think it's an important law and one
that we need to recognize and support, but I do think in some areas, these proposed regulations go too far.

Thank you.

MR. ROBERTS: Thank you.

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

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

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

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

We went into his chambers and there it was decorated with all sorts of Indian stuff, paintings
and feathers and staffs. And he was a great Boy Scout advocate, too. And there was Eagle Scouts and we had a lot to talk about.

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

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

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

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

However, there was one dissenting judge and he said this, in reciting the -- referring to Section 1902 of the Indian Child Welfare Act. He said, Congress has thus imposed federal standards in
custody disputes involving Indian children, which overrides the otherwise traditional area of standing concerns precisely because the states have not been sensitive to the unique circumstances arising from the custody when Indian children is involved.

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

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

MR. ROBERTS: Thank you.

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

Over the last ten years, I've done a great deal of teaching and consulting with Native American tribes all over the state of Oklahoma and more specifically, Cherokee Nation. I teach a great deal on attachment on child development issues and early education. I wholeheartedly agree that no child should be removed for your family without just cause and I wholeheartedly agree that all attempts should be
made to keep a child within tribal families to
preserve the culture; however, we don't live in a
perfect world. And in the last three years, I've been
asked to testify in several cases, custody cases,
involving Native American children.

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

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

In the cases in which I testified, active
tries were made to follow ICWA and to find
compliant homes, but none were available. These
children were taken in by foster families who were
non-tribal, but yet were very agreeable to making
every effort to educate their children in tribal
customs and their history. The biological parents
were on board. The biological parents did not -- it did not matter to them whether or not their children were in a tribal home and were in an agreement with the placement, but it was not contested until time came to terminate rights and then the placement was challenged. In a couple of cases, these children have been in the home for two years and no child should go to bed at night wondering if someone is going to come and take me away.

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

And so I believe that, one, the rights of the biological families should not be overlooked and overridden by the wishes of the tribe. And I also believe that the best interest of the child must be
taken into consideration and that includes looking at
the emotional impact of yet another move.

    Thank you very much.

    MR. ROBERTS: Thank you.

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

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

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

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

Again, I'm in support of these regulations and thank you for the opportunity to first provide
MR. ROBERTS: Thank you. So I appreciate everybody in -- in line here. We're going to get to all of your comments, but we're going to take a very short five-minute break, and I do mean five minutes just to give the court reporter a break here. And we'll reconvene at 3:12.

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

MR. ROBERTS: We will go ahead and start.

I think you were next.

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

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

The reason I bring that up is because while the guidelines now address the emergency removal and what applies to remove a child for emergency situation, they do not address the need of recognition of aggravated circumstances to override the
requirement for active efforts and to reunite or rehabilitate a family in which there has been aggravated circumstances, such as sexual abuse or heinous physical abuse. I do not believe that it can ever be considered to be in the best interest of a minor child, whether they are a member of an Indian nation or not, to reunify that child with a child molester simply because we provided active efforts and they followed through on the surface in -- working surfaces.

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

Thank you.

MR. ROBERTS: Thank you.

MS. MICHAEL: (Greeting in Native language.) Good afternoon. My name is Micky Michael
and I'm a Delaware tribal council member. I'm the secretary and the tribal council has sent me down here today to let you know that we're in full support of the new laws in the regulations. In fact, we would like them expanded.

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

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

The other thing I wanted to say is that I'm a native dance professor. I'm the other half of Standing Our Grounds for Veronica Brown and Veronica was very near and dear to me. She held my hand the first time she came back and went around the fire stomp. I was the one that taught her her culture. I was the one that made her can in her skirt and she was drawn to it like you wouldn't believe. I have never seen a little girl so drawn to her culture. And so when I taught her, I knew that there was no question
in my mind that she belonged there. And when she
left, she was not only torn from her family, she was
torn from our community.

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

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

Thank you.

MR. ROBERTS: Thank you.

MR. SPANN: Good afternoon. My name is
Joe Spann. I am not an expert in any way, so I'm
sorry, I don't have a good resume, but I am a proud
member of the Cherokee tribe. And my grandma visits
us on holidays and she sits all the kids around in a
circle and she tells stories about our heritage and
where we come from and -- and what it means. And we
learn Cherokee words and letters and we -- the kids
rejoice and they just drink it all in that they are
Native Americans, too, and they're -- however, I --
I've watched situations go down where adoption agencies have intentionally ignored ICWA. I don't like that. I think that's wrong. I think you traumatize a child when you do that. I think that the early identification things, those sorts of things are good, but it is because of my love of Cherokee cultural that many of the other things that are in these regulations, I can not support.

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

So when we draw these lines around it, we draw battle lines and say, Unless you can show me your
bloodline as Cherokee, then you can't love my children and culture stops there because we drew this battle line; whereas, we could have said, You have loved my child, why don't you be part of my culture. Let me share our -- our culture with you. Let's find roads where we can actually pass on the culture, so that the Native American culture can be a force for good in the broader American experience rather than saying the only possible way we can preserve our culture is to keep it within our documented bloodlines. That, to mean, undermines the very values that our cultural purports to value.

So thank you.

MR. ROBERTS: Thank you.

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

I am providing testimony in support of a proposed ICWA regulation to insure that native children, like myself, have connections to their tribal cultures. These proposed regulations will assist legal interpretations to provide uniform enforcement and direction to state courts and agencies
to promote the highest aspirations of ICWA to promote and protect the well-being of Indian children.

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

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

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

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

At the age of 12, I learned to change adult diapers and so on. After my younger brother had been sent to a mental institution and my sister had been physically abused, I got kicked out.
From there, I stayed two months -- or from there, I stayed where I could so I could make it to school. For two months, I did this until what I could only assume was a transfer of my case from the Chickasaw to the Muscogee courts.

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

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

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

My painful past exists because of the
inconsistencies between states, the Nations or tribes. I've lived in shelters, I've been a hitchhiker and I've been homeless. I've been many things, but today I'm a Riverside Indian School Valedictorian and I'm a Gates scholar and I'm a student at the University of Oklahoma.

I stand here today because I don't want other Couchatta kids to go through what I went through.

ICWA implementation in state courts and child welfare agencies need to be improved. As Couchattas, we are products of resilience. No Couchatta child should be vulnerable today. (Native language).

Thank you.

MR. ROBERTS: Thank you very much.

MS. GIEBEL: My name is Valerie Giebel and I'm an assistant at the Cherokee Nation and I am also an attorney in Tulsa, Oklahoma. I come here today to urge you that the guidelines that are currently in place are not strong enough. The regulations are necessary to fully implement the strong congressional policy outlined in ICWA and to protect Indian children and tribal nations. Without regulations, the court and judges will continue to overreach and use their
personal feelings about how Indian an Indian child is. Judges and courts will continue to ignore the current guidelines by referring to them as not binding or instructive only. Judges will continue to cite children's blood quantum or blood percentage with opinion referring to children's tribes as distant ancestry or mere biology. This is particular of -- particularly upsetting when a child's tribe is not one who uses blood quantums to define their own citizenship. These statements are ignorant and have no place in the legal system. Judges should not be able to make personal determination of who qualifies as an Indian child and who is subject to ICWA and they can not continue to ignore the published guidelines. This is why the regulations are necessary. They will provide a strong measure of consistency in the overall nationwide implementation of ICWA.

Thank you.

MR. ROBERTS: Thank you.

MS. THOMAS: My name is Katherine Thomas. I'm a member of the Cherokee Nation of Oklahoma. I am not here as an attorney or any personal case. I am here -- I'm here as a mother. And I don't know how we can not address the well-being of the children that we're looking at. The demand is great. I've looked
at some of the figures and statistics on our native children and the need for a home. And if we can find a few, perhaps they're not Native, but if we can find families that are loving and stable and opening their hearts and love to these children, if it was my child, and that's why I come here as a mother, I would have to say I love my tribe, but I love my child, given that opportunity of a home to bond with.

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

Thank you.

MR. ROBERTS: Thank you.

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

MR. ROBERTS: Yes.

MS. LUMLEY-SAGE: My name is Mandi Lumley-Sage and I'm an enrolled member of the Yakama Tribe where I grew up on the reservation. I'm the daughter of a tribal fisherman, who in his 70s is still fishing in the Columbia River with my brother. It's a little crazy, actually.
So three of my brother's daughters died
one at a time in tribal foster care, called
non-Felicia [phonetically], on our tribe.

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

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

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

ICWA not only allowed Devon to be placed
in a home where he was beaten, burned and sexually
violated, where he would have died there already.
This year ICWA could have cost Devon to
his life again. Due to tribal politics and court
confusion, the tribe essentially denied him a heart
surgery there that sentenced him back to the abusive
home he left five years ago. This home has no Indian
blood, no biological relationship, no ties to the
tribe except that the non-Indian foster mom hired one
of the five judges in the system to represent her.
Without public outcry, Devon may probably not be here
today.

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

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

People from tribes all over the country
have contacted us for help. Heartbreaking stories,
stories that are meant to keep secret in Indian
County. If these guidelines are accepted, the state cannot intervene even to take lifesaving measures for a child.

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

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

We are an American citizens with rights and when forced to go to court where law does not apply or we cannot get a fair trial, the government is
forcing us to a violation of our civil rights. These children are voiceless and their jurisdiction when handed to court systems not capable to care for them are being denied, not just their civil, their human rights as well.

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

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

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

Linda Towal suggested that I write
recommendations to my comment. I believe that the
best interests of the child, not the tribal
governments must always apply. As a citizen of
America and an American Indian I want the right and
custody proceedings when I've my civil right and the
rights of the tribal child are violated to take back
to a federal court to intervene and take jurisdiction
and I want to be able as an American as well as a
Native American.

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

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

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

MR. ROBERTS: Thank you.

MS. McPERRYMAN: My name is Melody
McPerryman and I am a child welfare worker --
MR. ROBERTS: Hold on --

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

MR. ROBERTS: -- just one second.
Okay. Start again, ma'am.

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

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

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

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

MR. ROBERTS: Thank you.

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

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

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

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

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

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

I really would like to see in the regulations possibly an independent regulation written to clarify that contrary to what the trend in recent case law, both in Oklahoma and at the United States Supreme Court, the Act was not written only to maintain children within their cultural, but it expressly states that it is the policy of the United States to protect the children and to protect the -- promote the stability of Indian tribes. So I'd like to see a regulation clarify that.
ICWA, as a whole, was written for tribes to maintain our children, to reclaim our families and to reestablish culture lost through adoption outside the tribe, the era of boarding schools, forced assimilation and relocation.

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

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

The tribes were here before the states existed. We cared for our children before the law
allowed us -- before the letter of the law was written to allow us to, quote/unquote, allow.

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

MR. ROBERTS: Thank you.

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

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

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

At such a young age, when they have such a secured attachment to a foster parent, I feel like
that should be really reconsidered because some
children -- my first placement, we were her fifth home
in eight days and that child was so traumatized. I
cannot even begin to describe to you the impact that
that had on her life and I really wish that there
would be more consideration for the fact of these are
our children. Do we want our children to be damaged
going forward or do we want them to have healthy
attachments and be secure.

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

I don't oppose ICWA. I agree with ICWA
when it works. As a worker, my biggest concern is
there's not enough ICWA homes and I really hope with
everybody that's in here that's passionate about this
would consider being one because that's the problem.
The problem is we don't have enough ICWA homes willing
to take the children. And so then we're faced with
sticking them in other non-tribal homes and then
they're attaching and bonding to these other families.
And I feel like that's where the tribe builds
children. We, as a tribe, need to step up. So if
there's more homes so they can take the kids so we
don't have to placed them in a non-traditional home --
I mean, a non-tribal home because that's where the
problem of attachment comes in and the conflicts of
ICWA. So where if we had tribal homes, this wouldn't
even be an issue. And I just feel like that whenever
the tribe fails the children as far as having their
placement, we need to be open to allowing them to stay
where they're at that they've bonded and attached to.
And my -- my biggest concern is due to this. I have
seen a decrease in ICWA homes willing to take ICWA
children and that concerns me because now the children
are being affected because of the rules that are being
implemented that are harming them and ICWA families
can't continue to sit by and watch the children get
hurt because of this.

    Thank you.

    MR. ROBERTS: Thank you.

    MR. KIRK: Good afternoon. I'm Todd Kirk.

I'm a child welfare supervisor for the Oklahoma
Department of Human Services. And while I acknowledge
the historical trauma and the abuse of power that was
promulgation by a dominant society upon the Native
American Nations and the need for ICWA and the
guidelines, I do have issue, particularly with Section
23.131, the termination of good cause to depart from
placement preferences.

    In Item Number 3 of that section, it talks
about the extraordinary physical or emotional needs of
the child. And what I would say is too often our
children are caught up in the court system that is
very slow to act because of the need to put forth the
rights of the parents on a case. And oftentimes with
the workers that I supervise, their lack of
understanding of what active efforts actually looks
like, it delays getting to the point of termination on
a case even when we may be in agreement with our
tribal partners about that simply because of the
burden on the court system with the many cases that
they have. And in too many cases, I see children who
linger in non-ICWA compliant foster homes and then at
the point of termination, we -- we are forced to go
back and look for an adoptive home.

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

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

The other item that I would ask to be
considered as an exception would be placement with
siblings. If we have a non-ICWA home that has
placement of a non-Indian sibling to a -- to a native child, my workers and I and the foster families and the child are in fear that the Nation may come in and remove that child once -- if termination does occur for placement with a native family for the purposes of adoption. And I'm going towards the adoption end, but I've also seen it when the children are in foster care placement. And I will acknowledge that there is, on occasion, bias on the part of society at large. I would also say that I've had conversations with workers from the Nations who may say something or at least imply to my workers that, we don't care about the non-native child. That's not our problem. We're concerned about our member. That non-native child is a sibling to your member and -- and I agree with the gentleman who said that it's a -- it's a dishonor to his tribal heritage to disregard that.

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

MR. ROBERTS: Thank you.

MS. POST: Good afternoon. My name is Dynda Post. I am Cherokee. I've been a district court judge for 25 years. Recently retired. Before that, I was a District Attorney for six years. During that entire time, I have practiced with juvenile law
and have practiced in the court where Indian Child Welfare Act played a huge role.

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

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

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

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

One statute alone that all district courts, juvenile court judges have to address is the individual best interest finding for a child. These regulations prevent this.
Specifically addressing, and others have
gone through this, but I want to object specifically
to number one, Section 23.115 to 116 and 118. These
are good cause hearings. I've conducted many good
cause hearings and they are an important part of a
district court judge's job. This says the court may
not consider certain factors, for example, whether a
case is at an advanced stage. That is a backdoor
entrance into preventing a court from determining that
the child has bonded.

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

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

Going on to Section 23.131, in conducting
a good cause hearing, you specifically, pardon me,
prevent a judge from considering and having as part of
the findings including a bond or attachment to their
present placement. I can not imagine what is a more
important good cause than to whom a child has bonded.

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

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

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

Thank you.

MR. ROBERTS: Thank you.

MS. TUCKER: My name is Noel Tucker.

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

The -- the issue that I have observed here
today, and I read all comments that people have
submitted, comes down to a basic fundamental
disconnect on what is best interest. Is the best
interest promoting the sovereignty of the tribe in
tribal affiliation or is it from the perspective of
the child? I don't know that that bridge will ever be
crossed between these two sides. I -- I doubt that it
I think Mr. Martin, wherever he is, summed it up very succinctly when he said, The best interest of the child is secondary to the preservation of tribal culture. That is the crux of the issue here. And all of these suggestions and all of the things that have been commented on, that's really the issue that needs to be looked at. And is there any gray area in those two considering all of those comments to bridge that gap, at least a little bit, and I certainly hope so.

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

Again, I don't see the best interest of the child at all being promoted by the current set of regulations. Not that it can't be, but the way they're written now, I totally agree with the Judge. Her perspective is spot on from those of us in trial every day dealing with divorce, and adoption, and custody issues that involve Indian child as well as non-Indian children.
Everybody knows that there are abuses in every agency, every profession, every organization. Nobody is immune. And, in fact, to consider a possibility, and I think these regulations do give an out to, an Indian home could not be abusive because we're not going to allow the state or anybody to come in and protect that child and intervene if there is such an emotional and physical abuse in that Indian home, but we can have it in a non-Indian home.

Glaring differences like that really need to be addressed. When you look at the abuses that everybody agrees has, there are abuses in the application of ICWA. I will absolutely support that. I am 110 percent behind Congress' original intent in implementing ICWA. And I am one of those attorneys that I will bend over backwards to get that notice early and often because I have never had an adoption undone and I'm not going to start now. I certainly want that child to be where that child is going to be from the beginning if at all possible. If there is an Indian home that rightfully this child needs to be in because there is a family member, a father typically, that is made aware of this child and wants to be involved in this child's life, well, let's make it happen.
But more often than not, here is the scenario and that is boy and girl get together. Boy and girl make a little boy or girl. Boy goes off and does his own thing. Girl, for the next nine months, puts her life on hold, nurtures and cares physically and emotionally for the child growing inside her. She has the expense. She has the emotional. She has the psychological expense of deciding, what am I going to do with this child? Especially, if we are a minor. Am I going to finish school? Am I going to care for this child? Am I going to abort this child? Is this a pregnancy to terminate. Do I place this child for adoption? Do I give this child a better life than what I have the ability to do? In the meantime, dad is not involved at all and in most cases, hostile. Not all cases, most cases that I've have come across, are hostile. And then -- then the Indian Child Welfare Act says, Well, I -- I don't care that you put nine months into this. I don't care that you planned for this child and you've made a great home and environment for this child. But this father out here, because he has Native American heritage or because you have Native American heritage, even though neither one of you have ever done anything within your tribe, it doesn't make any difference, we're going to usurp your
first amendment right to the care, custody, control
and protection and planning for your child, which the
United States of Supreme Court in Troxel said, that
birth mom gets that right to decide what she's going
to do with that child if she decides she wants to
place it. That's not every situation, but look at
those situations. Where is it fair that this
mother -- that's the other thing that happens in this
regulation is we are not considering the interest of
the birth parent, or necessarily birth parents,
because it's not always the birth mother that's the
one that has the issue. It is sometimes the birth
father.

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

I hope those in this room can take comfort
with the fact that Baby Veronica is doing very well. I was with her when we placed her in the car. She did not cry on the way home. Yeah, she cried during the conflict of getting her out of there. She knows her daddy. She knows her family. She is given regular understanding and information and training within her tribal culture. She was very well adjusted. She is very happy. She has that opportunity, even though she's in a non-Cherokee tribe, she is getting that culture and she is a very happy child.

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

Thank you

MR. ROBERTS: Thank you.

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

I took on a newborn baby at two days old straight from the hospital. I'd had her for almost
three years. She was born Cherokee and Cherokee --
when she was born, Cherokee already knew they were
going to work to terminate the mother's rights because
they had terminated the previous two. There's no dad
in the picture. Five or six men for sure are not the
dad. I think we stopped testing and no one in the
birth's mother family wants anything to do with the
baby. So they looked outside of the family to a
Cherokee home, which I am.

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

So I oppose the new regulations.

MS. DUCKWORTH: My name is Patti Duckworth
and I am a foster and adoptive parent who's had -- I'm
sorry, that's kind of emotional -- who's had
experience fostering a Native American child. I
worked with Cherokee Nation for eight years. I
understand and respect the Cherokee Nation. I've been in many cultural events with the then Former Chief Chad Smith. So with all that being said, there's ways to keep a child attached to the culture without being in an ICWA-compliant home.

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

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

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

I'm not an expert on child psychology, but
there are many people trained in this field. There's a large amount of data that can't be ignored on this topic and I urge that we consider professionals in -- in relation where it talks about the order.

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

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

There's no data that supports that having a child in an ICWA-compliant home gives them any more exposure to Native American culture than in a noncompliant home. You don't know. But I have a lot of friends who are members of tribes who I may know
more about of the Cherokee language and culture than
they do.

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

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

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

If we need more ICWA homes and you find an
ICWA home, don't go after a child who is attached. Go
after somebody that needs to be attached. That solves
that. That addresses both people's goals and that's
not being practiced. We're harming our own Native American kids. You're causing psychological and emotional damage to them.

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

Thank you.

MR. ROBERTS: Thank you.

MS. WATTS: (Greeting in native language) Hi, my name is Cara Cowan Watts. Hello, everyone. I am on the Cherokee Nation Tribal Council for the past
12 years. I've had the honor and pleasure of serving Rogers and Tulsa County within the 14 counties of the Cherokee Nation. And for 41 years, I've been part of Indian Country. And what is interesting to me about today's comments is we are almost litigating in a court of law and court of public opinion the Indian Child Welfare Act and the very needed basis for it, which is disturbing to me as a tribal leader. Because what is clear to me in our community, it says, Indian Child Welfare Act is still very much needed and it's needed to be implemented. So thank you to the Department of Interior, the Bureau of Indian Affairs and Indian Child Welfare office -- Act offices for being here today with us for more than the entire day because the tribal leaders met this morning and us here this afternoon. Because I applaud your new regulations, your new rules. These are very much needed in order to create a fair and consistent environment.

Although I'm not an attorney, I'm an engineer with multiple engineering degrees. They make sense to me. There's a -- there's a clear consistent checklist that people have to go through and document before a child is removed from their family and our family is the Cherokee Nation for me. I can't speak
on behalf of other tribes and I can only speak on
behalf of myself as a Cherokee Nation citizen and a
legislator in our body -- a legislative body, but it
is disturbing that we still have the wholesale theft
of our -- of our tribal children, somehow legal human
trafficking going on because state courts refuse to
comply with a known federal act. That is bothersome
to me. So without these kind of rules, which is a
step towards the right direction, I can't guarantee to
my families that we won't have another Baby Veronica
as other cases erupt around us. And that's
disturbing.

It is clear amongst my constituency that
they support this and they want to see these kind of
regulations consistently held for each and every
family regardless of the resources or lack of
resources they face. If it's -- because in the 12
years I've served, even in Rogers County, because of
inconsistency of how Indian Child Welfare Act was even
implemented, I had families run to tribal court or
move out of Rogers County even because Indian Child
Welfare Act was not being followed -- followed. And
because they were poor, they knew they were behind
unless they had the tribe's ability to implement an
Indian Child Welfare Act. And without consistency in
the state courts, which is what is great about your rules, it gives us something to lean on, we can't insure our families, and like it was brought up earlier, the broader families for protecting our children, which are a way of life, language and culture.

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

First of all, I'm a citizen of the Cherokee Nation. I'm also a citizen of the United States, but I'm a resident of the State of Oklahoma. It's about nationhood and sovereignty. There's a reason why Russia has stopped adoptions. I mean, has anyone thought about this? We are a nation. It doesn't matter what your blood quantum is. It doesn't matter if you speak Cherokee or not. Your citizenship in our tribe is a whole thing. And I applaud the regulations because you start addressing this issue, which I'm still hearing here today in the Creek Nation because we're sitting in the Creek, right? Okay. So I -- I mean, it was appalling for me to hear some of these things today and, again, I appreciate the
efforts of your office down to the Indian child
welfare workers and DHS workers who actually
understand Indian Child Welfare Act and try to
implement it, whether or not there's rules or not.

Thank you for your time today.

MR. ROBERTS: Thank you.

MS. CHALMERS: My name is Cathy Chalmers.

I'm a Cherokee citizen and also a bonding and
attachment therapist with 36 years of experience. I
helped co-found an international organization called
Attach that speaks to the treatment on trauma and
attachment in children.

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

I have concerns about the proposed Rule
23.131 that talks about the exemption of ordinary
bonding or attachment that may have occurred as a result of a placement or the fact that a child has, for an extended amount of time, been in another placement that does not complied with ICWA.

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

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

            Much as some other people have stated, the periods of time and advanced stage that the -- that criteria, I think, also needs to be looked at. Advanced stage, further along in development and protectory a child goes, the further development you're looking at. And I think that that -- to -- to take that out as well as the portion about emotional harm being not a criteria to be considered, is not in anyone's best interest.

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

            Thank you.

            MR. ROBERTS:  Thank you.

            MS. JORDAN:  My name is Courtney Jordan and I am a citizen of the Cherokee Nation. I'm also a tribal attorney here in Oklahoma. And I am going to introduce one of my clients in just a moment, but with his permission, I wanted to give a sincere and heartfelt (native language) to all of my Cherokee leaders who have stood up and stood up on behalf of our children. It gives me great pride and great piece of mind to know that my nieces and nephews and cousins, if they're ever removed, my Nation will
protect them until they are told that they can no
longer do it.

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

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

MR. MESECKE: Good afternoon.

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

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

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

MS. ORTIZ: Thank you.

MR. TAHSEQUAH: Come and see us sometime.

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

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

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

I come from a great warrior. My grandfather was Quanah Parker. I don't use that as a -- but he -- I don't use his name very often. I don't -- not many people know that I'm a great
grandson. My mother's grandmother. But at this time, I feel it's very important to let you know that my grandfather, yes, he was a great warrior, a wonderful statesman for our people, not only the Comanches, but everyone. All the other tribes. He helped establish many of the rules and regulations that we have now. I want to continue that.

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

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

I strongly support, and as former Chief Chad Smith said, this is the least you can do. It's a beginning. It's not, wait until it stops here. There will be a future, who knows. I may be passed away, but it is the least we can start with.
I want to read briefly Ms. Cowan -- I'm sorry, is she here? She wanted me to address one issue. Please mention custody by stop possession, it is nine to ten times. I wanted to let you know that. Now, I'm not going to read all of this. I just want to read an excerpt.

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

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

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

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

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

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

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

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

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

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

MR. TAHSEQUAH: That's wonderful because at this time, I was under the understanding by people that it was going to be how many people submitted and all of this. We don't have the time as tribal
leaders. And I don't know if this was said this
morning, I'm sorry, I wasn't here this morning. We
had issues at home that we're dealing with and I'm
so -- I'm so glad that our -- that our Vice Chairman
was here this morning and our attorney. I was dealing
with issues at home, but we want -- we need to -- we
have just a few days to do this and to get all our CBC
together between now and then. I'm sorry, we have
agendas. Every tribe has agendas. Every case has
agendas, so please be diligent. If we have to do --
we'll get it done. We're Comanches. All of us are in
this here, we'll get it done if that's the way you
guys want it. If that's the way people want it.
We'll get it done, but it will make is so much simpler
if we just do it as a nation, as Indian people.

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

    Thank you.

    MR. ROBERTS: Thank you.

    MS. FRANKLIN: Hi, my name is Samantha
Franklin and I'm the Oklahoma representative for the
American Adoption Congress, but I'm here just to speak
as an adult adoptee.

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

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

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

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

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

I've heard so much about attachment and bonding, you know, and how we can't take a child out of their home that they have been attached to, but until the court and the child welfare systems and the private adoption industry is looking at the -- the true human rights of children, then -- and -- and -- and we can define best interests as every child's right is to be with their family and to be protected from an industry and we start honoring a child and a family's right to stay together, whether they're poor or, you know, or vulnerable, then we -- then we -- we
should be having these discussions instead of this one.

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

I just also want to say that when we -- we -- when we're talking about attachment and bonding, it goes way before birth and the first caretaker. It -- it starts in the womb. And until every -- you know, all the research is really brought forth to the table that -- that a child attaches to its mother in the womb and that first traumatic break is the most important that we should try to prevent at all costs, then, you know, if -- if a -- if courts will look at that and realize that that should be our first goal at -- at all times and -- and parents would realize that, if they want a child of their own, you know, that they can never legally -- they can legally erase that child's identity, that child's family, that child's heritage, but they can never erase it from their heart. And those children grow up to be adults.
And when we don't -- we want to be more than just a -- a bright citizen. We want our rights and we -- we do feel like products. We feel like property until our -- you know, our identity rights are completely recognized in the nation.

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

MR. ROBERTS: Thank you.

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

And a little bit about Desi, he loves Star Wars to the point that every night all of us have to listen to him in Star Wars spaceship battles from his room, (makes noise) through the walls so nobody can fall asleep. He hates chores and he will do everything to get out of them. And when he should be raking leaves and instead he's running through the
yard wearing Obi-Wan Kenobi cape and our dog, Bill Murray, is wearing a Luke Skywalker mask.

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

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

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

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

And one day, we were sitting on the back porch and he started to talk about his time in foster
care. And he just asked me, he said, Dad, why did they do that to me? And it was the hardest conversation I've ever had with anybody because what I -- I knew the details. I knew. Why did they do this to me? Why did they put in a room and leave me for days and neglect me and not feed me and beat me. And take me, as a baby, underneath a laundry basket so I don't crawl around and not care for me, not love me.

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

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

And, unfortunately, we have to deal with a tribe who has shown great corruption, who has not followed their own laws, who has not given proper notice for trial, who has not invited people to their own trials to speak and not given those standing in courts. Who, after they gave Desi in placement to my wife, continue to take money from the government for him; although, my wife has never received a penny for
him. They're the same people that kept Desi in the
abusive foster home after multiple requests and the
state had to intervene to shut down the foster home.
But even after that, the same tribe that did not
vacate the guardianship that was given to the woman
running the foster home, so that when this last year
we requested the tribe that he receive heart surgery
and therapy to be able to deal with the severe trauma,
the tribe not only said no to the surgery and no to
the therapy, but said that he will be returned to the
tribe and will be returned to the same abusive foster
home from which he was removed.

Now, with Gideon and with all of our kids,
these guidelines are giving power, not only to the
tribes that are honest and ethical, but you're also
giving it to tribes who have certain members within
their tribe, and I'm not pointing to any tribe, but
there are people in power that are not implementing
the best interest of kids. Not even implementing ICWA
in their tribe as stated by laws. They're not even
required to do it. And what I don't think a lot of
people, including perhaps the BIA does not know,
they're not following their own laws. They're
violating the Indian Civil Rights Act. They're
violating the civil rights of American citizens. Not
all tribes, but I strongly protest these guidelines being implemented until proper effort is -- is made to provide accountability to tribes to make -- insure that -- like in this case with our tribe, that their judges have an education beyond high school and that they are licensed to practice law in some capacity, which is not the case with some judges in some tribes throughout this country. Which, again, is violation of the Indian Civil Rights.

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

Thank you.

MR. ROBERTS: Thank you.

MS. REYNOLDS: Hi. Oh, gosh, I don't need this thing, really, but our names our Mark and Marilyn Reynolds. I am a fifth generation registered Chickasaw Nation. We're not attorneys or judges. We're not paid by the Nation. We are a tribal foster-adoptive home. We have been doing foster care
for approximately five years and right now we have
custody of a two-and-a-half-year-old little boy and a
four-month-old little girl.

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

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

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

We believed at that point that they would
go on to try to terminate him, but unfortunately, in
January, the little boy's tribe called us and told us that they would not be seeking termination, that they wanted to wait until the father was released from prison and then they wanted the little boy to live with him.

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

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

Since we've had him, his nation has only been to our home twice. He was there for approximately 30 minutes and he was more worried about
if he was brushing his teeth than if he was thriving
or how he was doing.

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

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

We urge you guys to please think about
these kids as individuals. I don't want you to think
of them as Chickasaw Nation members or Cherokee
members. I want you to think of them as children,
individuals, who if they're put in the right
placement, one of these days, they're going to grow up
and they're going to be happy, healthy individuals
that make proud nation members for you guys.

    Thank you.

    MR. ROBERTS: Thank you.

    MS. TECUMSEH-WILLIAMS: Good afternoon.

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

    This is a very personal thing for me. My
mother was adopted and I'm very thankful that,
according to placement preferences, that we do have in
place right now, that those were followed because not
only did it affect my mother, my mother's -- the
mother who adopted her was seen as a -- was seen as
family. That was her -- her biological father's
sister in Indian land. And -- and to go along with
that, my -- my mother was raised -- she was taken or
she was removed from her biological home with -- with
her adopted mother at the age of two. And my mother,
again I'm very thankful for the placement program, and
the reason for that is because it's not just -- it
wasn't just about my mom and it's not just about me
and knowing my culture and knowing where I -- you
know, who I am, but it's about my son and it will be
about my grandchildren. And they will be Alligator
clan and they will belong to the New Tulsa ceremonial
grounds because that's who we are. We are a whole.
We are Native people.

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

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

It's critical to have a nationwide policy
for all states to minimize their inconsistent
interpretations. The modifications will reduce
inconsistencies, create uniformity and lead to states having consistent training on what ICWA is.

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

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

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

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

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

Thank you.

MR. ROBERTS: Thank you.

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

I want you to know a story that happened to my family. I had a sister who placed her child for adoption and wanted the Act to be followed. And when the adoption agency gave papers to the adoptive parents, they left off K for Creek and they -- her -- her parents did share with her that she was Native American.
All of the years that this little girl grew up, she thought she was a Cree Indian and so, yes, they gave her books to read and let her have knowledge about the tribe because they wanted to not let her loose that identity; however, when it became coming home time and she wanted to find her family, she found out that she was not Cree Indian, that she Creek. And it was very -- it was very difficult for her knowing that she was Native American, knowing that she was Indian, but she had been studying all the ways of the Cree tribe instead of the Creek Indian.

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

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

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

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

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

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

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

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

Today as I stand before you, I just -- I want to tell you another strong reason that I feel that these regulations must be adopted. We are standing in a state that represents 39 tribal nations, sovereign nations. The battles that we fought years ago, the battles we're still fighting today -- and let
me tell you what we're faced with today. We've
already been told by attorneys at our DHS office,
well, these are just guidelines. We don't have to
follow guidelines. Those are the battles that we have
to fight.

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

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

MR. ROBERTS: Thank you.

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

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

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

I've had the opportunity to talk to
numerous children and they tell me that. A young man
at a membership -- getting membership -- getting their
membership card, wanted to understand what these cards
meant. And his mother said, This means you belong to
your tribe. And the young man, being a ten-year-old
boy, you would think that would be enough. No, he
said, This tribe belongs to me.

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

So I implore you to make these
regulations.

Thank you.

MR. ROBERTS: Thank you.

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

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

MS. COOPER-RUSSELL: Oh, yes. I'm Diane
M.D. Cooper-Russell. I'm an enrolled member of the
Muscogee Creek Nation, also the Yuchi Tribe of
Oklahoma and also a decedent of the Cherokee Nation.

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

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

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

MR. ROBERTS: Thank you.

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

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

MR. RICE: Okay.

MR. ROBERTS: There you go.

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

I remember growing up seeing my playmates taken away and not showing up anymore. I remember when bonding and all of these other excuses were used to say that these children were not doing well in the Indian world, that their best interests was to be raised in the white world. And there were a number of formal programs at the state level and at the federal level to make sure that that happened and that Indian children's relationship with their Indian family was severed. And it was all done in the name of the best interests of our children.
I remember when this Act came down and when we tried to implement it. And I simply want to applaud the Interior Department, the Bureau of Indian Affairs for these regulations that are long overdue and much needed and clearly within the authority of the Interior Department.

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

The Indian Child Welfare Act, in that Act, Congress decided that the best interests of Indian children was for the tribe of that child to decide that tribe's best -- or that child's best interest and not the non-Indian court or non-Indian institution or non-Indian adoptive placement system. That the best interest of Indian children are served by having Indian courts and Indian tribes make those decisions as to what's in the best interest of that child. And I see these regs as a step in the proper direction. That, I think, is where we need to be.
There's no conflict. There's no disconnect. It's a question of who decides the best interest of our children for our children are the only future that we have.

Thank you.

MR. ROBERTS: Thank you.

MR. TAHSEQUAH: I would like to make --

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

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

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

Thank you.

MR. ROBERTS: Thank you.

MS. WILSON: Emily Wilson, again. I'm of the Cherokee Nation. And I wanted to add to my comment that these proposed -- proposed regulations
help us uphold all political status and rights of each
Indian child. The child has their own independent set
of rights that cannot be waived by parents, guardians
or even the tribe. The child has a right to safety
and a right to thrive as a member of their tribal
community. They have a right to feel safe, to thrive.
They have a right to counsel, to a tribal advocate, to
an expert witness, to be an indigenous person, which
is a right to culture, family, siblings, extended
family, language, belief or system of religion,
political rights, the right not to be alienated from
any of this, to know who you are even after you've
been adopted, to value who you are, and your
self-esteem, to know you belong, to know your history,
to be connected to the indigenous roots, your tribe,
to citizenship, to be in a clan, to all records
before, during and after their adoption, to a just
system of justice, a court judge that is knowledgeable
of tribal traditions, values and laws, to be enrolled
with their tribe, to have a tribal custodian have
obligations to find information, also to sue for a
violation of ICWA, including malpractice on the part
of adoption attorneys. They also have the right to
cause of action even after their 18th birthday.

Section 23.133 gives minors three to five
years after they turn 18 to sue for violation of
rights under ICWA and have rights.

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

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

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

Also, I would like to applaud the BIA
specifically in tackling the issue of existing Indian
Welfare Act. I have not been in one placement hearing
or situation where it's questioned the child's
nativeness and their nation. There is often a
tangible aspect of culture that's consistently asked
and questioned and it's much more than that. I've
never been criticized so much on my ability to explain
all of the abstract features of our culture, our
values and other things that you can not put into Pow
Wows or stomp dances. I often find issue with the
fact that children learn at a young age that --
especially in deprived cases, that I have experience
with it, they're trying to fight for their basic
needs.

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

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

I also would like to ask that the sections
regarding the placement preferences become
regulations. I feel again without those that we're
not being heard and that we're giving these -- these
kids this opportunity for their culture and that by
simple causal -- or happenstance exposed to it, these
kids will learn it in an hour. These kids learn it by
being in the home and it may not be something outright
that they'll engage -- it won't be something outright
that they're taking with specific grounds with that.
There are certain values that they are passing on.
Whereas when we're Indians by accident, but that we
pass on to our children.

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

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

MR. ROBERTS: Thank you.

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

Okay. Well, it is after 5:00. I know
that there was a request during the public meeting to
extend the time, which we did. And just please let
the record reflect that we don't have any additional comments.

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

Thank you all for participating today.

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

STATE OF OKLAHOMA

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