

No. 21-376, 21-377, 21-378, 21-380

IN THE
Supreme Court of the United States

DEB HAALAND, SECRETARY OF THE INTERIOR, ET AL.,
Petitioners,

v.

CHAD EVERETT BRACKEEN, ET AL.,
Respondents.

(Caption Continued on Inside Cover)

**On Writs of Certiorari to the United States
Court of Appeals for the Fifth Circuit**

**BRIEF OF *AMICI CURIAE* FORMER FOSTER
CHILDREN IN SUPPORT OF FEDERAL AND
TRIBAL DEFENDANTS**

Rebecca A. Patterson	Colin C. Hampson
Counsel of Record	Frank S. Holleman, IV
SONOSKY, CHAMBERS	SONOSKY, CHAMBERS,
SACHSE, MILLER &	SACHSE, ENDRESON &
MONKMAN, LLP	PERRY, LLP
510 L St., Suite 310	145 Willow St., Suite 200
Anchorage, AK 99501	Bonita, CA 91902
(907) 258-6377	(619) 267-1395
rebecca@sonosky.net	champson@sonoskysd.com

Counsel for Amici Curiae

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CHEROKEE NATION, ET AL.

Petitioners,

v.

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Respondents.

STATE OF TEXAS,

Petitioner,

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DEB HAALAND, SECRETARY OF THE INTERIOR, ET AL.

Respondents.

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INTEREST OF AMICI CURIAE¹

*Amici*² are members of federally recognized Indian tribes, who were “Indian children” as defined in the Indian Child Welfare Act (“ICWA”), 25 U.S.C. § 1903(4), and were either placed in foster care, preadoptive placements, or adoptive homes, or have themselves been family placements for siblings or relatives under ICWA. Some *amici* work in state or tribal child welfare programs. Others are involved in policy and volunteer work through organizations for foster youth and former foster youth. They learned about this case through that work and volunteered to share their stories with the Court. Other *amici* are not directly involved in such work but, upon learning about this case, wished to relay their experiences because of the importance of ICWA in their lives and to Indian country. In most cases, *amici*’s experiences with ICWA placements occurred in the last two decades. Although not all elements of their experiences with foster and adoptive placement were positive, *amici*’s life experiences demonstrate that ICWA was ultimately beneficial for them and remains beneficial for Indian children and Indian tribes. As *amici* relate here, ICWA

¹ No counsel for a party authored this brief in whole or part. No one other than *amici* made a monetary contribution to fund this brief’s preparation or submission. The parties have provided blanket consent to the filing of *amicus* briefs supporting Federal and Tribal Defendants.

² A full list of *amici* is provided in Appendix A to this brief. Some *amici* have withheld all or parts of their names to protect their privacy and safety.

allowed them or their foster or adoptive children to retain connections with their extended families and siblings, continue or improve connection with their tribal communities, and maintain a positive sense of self, which guides them in their adult lives.

Amici are extremely concerned by the arguments made by some of the Plaintiffs' *amici* that ICWA does not benefit Indian children. The true picture is vastly different than the sketch that Plaintiffs' *amici* offer. Accordingly, *amici* submit this brief to dispel misconceptions about Indian children's experiences with ICWA that could be engendered by the misleading and incomplete description made in other *amicus* briefs which urge the Court to strike down all or parts of ICWA.

As a result of their life experiences, which *amici* describe below, all *amici* strongly support the continued application of ICWA, its placement preferences for Indian children who are placed in foster, preadoptive, or adoptive placements and its provisions for tribal involvement in proceedings leading to such placements. And as *amici* further describe, their life experiences are consistent with evidence showing that tribal communities, like any other social or political communities, ensure their survival by relying on their children to learn and carry on their foundational elements: tribal customs, values, and traditions. *See* Br. of 489 Indian Tribes & 60 Tribal & Indian Orgs. as *Amici Curiae* in Supp. of Fed. & Tribal Defs. (Tribal Amici Br.), § II(A). When Indian children are removed from their families, that can disrupt the passing down of those fundamental parts of tribal community and individuals' tribal identity. ICWA mitigates that

disruption and protects the long-term survival of Indian tribes.

SUMMARY OF ARGUMENT

Amici's experiences demonstrate how ICWA serves the best interests of Indian children. In this brief *amici* explain, in their own words, why Indian children need to maintain their cultural identities and ties to their tribes. ICWA's preadoptive and foster care placement preferences recognize and meet this need by placing children first with family, second with families licensed by the tribe and Indian families licensed by other authorities, and third with an institution approved by an Indian tribe or operated by an Indian organization. Similarly, ICWA's adoptive placement preferences encourage placement first with family, second with another member of the Indian child's tribe, and third with other Indian families. In both cases, the placement preferences facilitate key cultural and political connections that might otherwise be disrupted or lost. In so doing, ICWA minimizes the negative long-term impacts of removing an individual Indian child from their community and increases opportunities for an Indian child to develop and maintain important political and cultural ties to the child's tribe.

ARGUMENT

I. ICWA Benefits Indian Children by Providing Them with the Opportunity to Develop and Strengthen their Tribal Identities and Relations in Child Welfare Proceedings.

A tribe, like any other political community, relies on both its current and future generations to maintain and teach its customs, values, traditions, and history. As the Montana Supreme Court put it:

Preservation of Indian culture is undoubtedly threatened and thereby thwarted as the size of any tribal community dwindles. In addition to its artifacts, language and history, the members of a tribe are its culture. Absent the next generation, any culture is lost and necessarily relegated, at best, to anthropological examination and categorization.

In re M.E.M., 635 P.2d 1313, 1316 (Mont. 1981). This Court, too, has acknowledged the importance of “a tribe’s ability to maintain itself as a culturally and politically distinct entity.” *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 72 (1978). A tribe’s ability to maintain itself in that manner necessarily requires, *inter alia*, that the tribe be able to pass down cultural knowledge and traditions and sustain political affinity beyond one generation.

ICWA, by design and in effect, provides the opportunity for Indian children to maintain connections to their community and their tribal identity and thereby supports the continued

existence and integrity of Indian tribes. It does so in large part through its placement preferences for foster, preadoptive, and adoptive placement of Indian children.³ *See* 25 U.S.C. § 1915. For foster placements, Indian children must first be placed with extended family members—who, even if non-Native, in many cases have personal, familial, or political connections to the Indian child’s tribe through their relationship with the Indian child or his or her Indian parents. *Id.* § 1915(b). Indian children must then be placed with a foster home licensed, approved, or specified by the Indian child’s tribe, then a licensed Indian foster home, and then an institution approved by an Indian tribe or operated by an Indian organization, *id.* In each case, these placements necessarily are connected to Indian tribes, or to members of tribal communities who are likely to acknowledge the importance of maintaining an Indian child’s tribal connections and to have knowledge and personal ties helpful for achieving that goal. ICWA also requires that adoptive placements be first with extended family

³ ICWA also does so through other provisions. *See, e.g.*, 25 U.S.C. § 1912(d) (requiring a showing that a party seeking foster care placement or termination of parental rights show “active efforts ... to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family” were made and were unsuccessful); *id.* § 1912(e)-(f) (applying heightened standard for foster care placement or termination of parental rights, requiring showing that “continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child”); *id.* § 1911(c) (guaranteeing Indian child’s tribe right to intervene in foster care or termination of parental rights proceedings involving Indian child).

members, then members of the Indian child's tribe, and then other Indian families. *Id.* § 1915(a). These placement preferences, too, help facilitate and maintain an Indian child's tribal identity and connection to their tribe. *See* Br. of Casey Family Programs, et al. as *Amici Curiae* in Supp. of Fed. & Tribal Defs. (Casey Br.), § B(2). By doing so, ICWA serves the best interests of Indian children and the adults they become.

As *amici* now describe, application of these provisions benefitted their lives. This is either because they were placed with family members who fostered their tribal identity or because they were placed with Indian foster or adoptive families who understood that it is important for an Indian child to maintain connections with their tribe.

A. ICWA correctly prioritizes the placement of Indian children in family placements.

Children do best when they remain with their families; in fact, reunification, when possible, is often the primary goal of child welfare laws and policies. *See* Br. of Nat'l Ass'n of Counsel for Children as *Amicus Curiae*, § I(C). This is why ICWA prioritizes foster and adoptive placements with extended family first. 25 U.S.C. § 1915(a)(1), (b)(i). As *amici's* experiences show, these placements benefit both Indian children and Indian tribes.

Autumn Adams (Yakama) is the first member of her family to earn a bachelor's degree and the first member to attend law school. She currently acts as guardian for her two younger siblings. In her care,

one younger sibling graduated from high school and is planning to go to college, and the other is a freshman in high school. She explains: “Connection to culture has been a huge portion of my success.” Ms. Adams maintained that connection because of an ICWA foster care placement. As a child, Ms. Adams was removed from the custody of her mother and placed in foster care, first with her aunt, and then with her paternal grandmother, both on the Yakama Reservation and consistent with ICWA’s placement preferences. “My brother and I lived in a multigenerational home where my grandmother taught us the Yakama language, history and traditions. We visited every Sunday with our biological mother and extended family at the longhouse, which gave me a lot of comfort and a strong sense of belonging as I grew up. We helped take care of the longhouse and learned how to prepare traditional foods such as salmon, deer and elk, and to gather and clean traditional medicines for ceremonies. Through these experiences and expectations, I learned the value of hard work, determination and perseverance, which contributed to my success so far and that I will carry with me my entire life.”

Sunnese Granados (Little Traverse Band of Odawa) has experienced firsthand the benefit that placement with an Indian relative had for Indian children who are removed from their parents, first as a child who was placed with a relative before ICWA was enacted, and later as an adult who herself became the guardian of an Indian child per ICWA. “I am the oldest of seven kids, all were removed. I was the only one that stayed with my grandma. I

was raised on a reservation in Canada among other tribal people; when I was seven, I came [to the United States] to visit my mom in my tribal community I didn't move to my current tribal community until I was sixteen. Two siblings were adopted by non-Natives. They had the worst experience out of all of us.”

Her grandmother taught her traditional Odawa culture. “Growing up, grandma was an artist and beadworker so we would go to powwows and camps. She used to be a dancer but wasn't by the time she got me. She made me a traditional fancy outfit and I was a traditional dancer. I was taught ceremonies for healing by elders in my community, learning about sage and sweetgrass and cedar. Because I was raised by my grandma, I grew up knowing our cultural ways and traditions and spirituality.” These cultural ways and traditions include values such as faith, humility, accepting one's mistakes, and not engaging in self-criticism.

When Ms. Granados's youngest sister was four years old, the State removed her from their mother. “My grandparents were trying to adopt her but couldn't because of their age. ICWA came in so they contacted me. I was twenty-two at the time. Because of ICWA, I had the opportunity to adopt my sister and keep her in my family.” The State's placement of Ms. Granados's sister in an Odawa community gives her important support from their relatives and community. She explains,

My sister is a jingle dress dancer, that is a medicine dance, a healing dance. She is honoring a lot by dancing that style, and she

is aware of this. She has been told by her elders that she has capabilities and gifts. Those teachings would have been taken from her if she had not been placed with me.

When Ms. Granados's sister struggled with difficult issues of identity and depression, she and Ms. Granados sought counseling and also turned to elders and spiritual advisors in their community. Those elders' and advisors' knowledge and advice based in traditional Odawa culture and values has helped Ms. Granados and her sister work through these issues. "It is nice to have that community involvement, and the [Native] spirituality seems to help. Understand that our Native communities have experienced a lot of trauma . . . but there are still people out there that hang on to those traditions and try to make life better for those children."

J. Tillequots (Yakama) entered the child welfare system at age four, and she and her little brother and sister were eventually placed with their biological aunt. "Because I got to stay on the reservation, I was closer to family and very well connected to my people." She remembers, "I went to the longhouse [on the reservation]. I went root digging for feasts. I gained a sense of belonging." She says the "environment is beautiful, and it is part of who I am." She cannot imagine what it would have been like growing up off the reservation: "I would not have the cool experiences that I am having. . . . It made me who I am today." While the first placement on the reservation was difficult, "I would not change it. It is part of my journey." Today Ms. Tillequots is involved in the National Council for Foster Care ("NCFC") and does outreach regarding

available NCFRC services. “One of the great things I love from growing up in a small community on the rez is that I saw the needs of my people I can help the community. I go hard for the people of the Valley. I would not have known to bring it back to my people if I had not grown up in the community.”

In the case of Lukas Angas (Nez Perce, Cayuse, Tlingit-Haida), ICWA’s procedures were followed belatedly, but he is certain compliance benefitted him. Mr. Angas was taken home from the hospital by a non-Native nurse. “I was adopted out of the hospital because nobody knew the law. My mom was fourteen, the doctors told her what to do, and she signed the papers while she was still on the table. One of the nurses adopted me and took me home. My family didn’t know, and nobody told them.” Later his family figured out what had happened “and went to court under ICWA.” But he says that “if the laws were known and adhered to by hospital staff and others, it would have saved me a lot of trauma.” A few years later, he was returned to his biological parents. If that had not happened, he believes he “would have had no connection to [his] culture. I would have felt out of place. There is a need for people to feel like they belong and that they have their own identity.” Culture “grounds you and gives you something greater.” It is what “empowers you,” and it is something he wants to instill in his own children. Mr. Angas has thought his “whole life about what would have happened if [he] didn’t end up back with his family, this whole connection to [his] culture would have been gone.”

KE and LE are siblings and enrolled members of the Navajo Nation. Contrary to ICWA’s placement

preferences, they were originally placed in foster care with an unrelated non-Native family for nearly a year. A Kentucky court then placed them with their grandmother in compliance with ICWA. While the siblings do not live on the Navajo Reservation, with their grandmother they have learned about and participated in Navajo culture and religion and have developed strong relationships with their family. KE says, “I learned a lot about our culture, about powwows, sun dance. [My grandmother] shows us about medicine people, which is really important in our culture. I appreciate being Native American and learning about what goes on behind dances.” KE further explains, “If I didn’t know a lot about my culture, I think it would change who I am. Growing up in our culture, I got to understand our Creator. . . . Our lives would have been very different if we had stayed with the foster family.” In addition to learning about Navajo religion, KE is learning the Navajo language from an uncle. Being with their Navajo family “very much impacts who you are. It helps you be connected to your culture. It shapes who you are. If we didn’t have the experiences we had growing up, we would be very different people. I am able to tell other people who we are as people. I was proud to know who I am. I can educate others about Native people.”

Similarly, LE says that “I feel very blessed that we ended up with our grandma. I am very much more happy.” As a result of placement with their grandmother, “I was able to develop relationships with both sides of my family. I have been able to learn the [Navajo] culture. We are very much in it. If we had remained in foster care that would not

have happened. I know where I came from. I know a lot about my culture, how to teach my kids and pass the culture down. I got to get really close with my grandma. I grew up knowing my brother and sister. It feels very very nice. . . . I was able to develop positive relationships with others because I was happy with my grandmother.”

B. When family placements are unavailable, Tribal placements are best situated to help Indian children retain cultural and political identities.

In some cases when an Indian child is removed from his or her parents, members of an Indian child’s extended family are not available or able to take custody. In such cases, ICWA prioritizes placements that are more likely to provide the Indian child the opportunity to maintain connections to his or her tribe and tribal culture, either because they are more likely to have direct connections to the tribal community, or because they are part of tribal communities and understand the importance of supporting and maintaining those connections to Indian children and all tribes.⁴ For foster placement, the next-preferred placements are placements approved, licensed, or specified by an Indian tribe, 25 U.S.C. § 1915(b)(ii), an Indian foster

⁴ See Maria Yellow Horse Brave Heart, et al., *Historical Trauma Among Indigenous Peoples of the Americas: Concepts, Research and Clinical Considerations*, 43 J. Psychoactive Drugs 282, 283 (2011) (“Despite the array of tribal cultural practices, many Indigenous Peoples share historical and contemporary experiences, intertribal organizations, and often congruent worldviews and values.”)

home, *id.* § 1915(b)(iii), or an institution that is either tribally approved or operated by an Indian organization, *id.* § 1915(b)(iv). For adoptive placement, the next-preferred placements are members of the Indian child's tribe, *id.* § 1915(a)(2), or other families that are members of a federally recognized Indian tribe or regional Alaska Native Corporation, *id.* § 1915(a)(3); *see id.* § 1903(3). These placements too provide invaluable opportunities for Indian children to develop ties to their tribes, as *amici*'s experiences show.

Elaina Albers is descended from Hoopa, Yurok, Wiyot, and Karuk people, and a member of the Yurok Tribe. "I was in foster care since age five. Once I was placed in a non-Native home for one month . . . and I wanted to learn about and participate in ceremonies, so I did not stay with them as I was seen as rebellious. After one month with that first foster placement, I was placed in a Hoopa family for ages five to thirteen and then with a Karuk family in Portland. I was culturally connected with my traditions and grew as a Native individual. My foster families helped me connect to my other tribes as well. My foster families knew my biological parents' family tree. They knew how to reconnect me to where I come from. They helped me participate in ceremonies that helped me through adolescence. They helped me connect to my biological family. I was able to see where I came from and where I was going to go." She also explained, "My mom passed two years ago, but I was able to attend tribal ceremonies with my mom and to connect to my parents' families, uncles, and cousins. My biological mom supported my foster

family raising me. . . . This was important for my education and to understand which traditions it was important to follow. It was important for me to have the choice of being involved in the Native community. I am a new parent now, and I would prefer that my child be with a Native family if I am not available.”

Fawn Robinson (Susanville Rancheria) also had a positive experience through her placement with an Indian family pursuant to ICWA. At five months old, she was removed from her biological parents and placed with a foster family who adopted her five years later. Her brother was also placed with her adoptive family and was also adopted by them. Because she was placed in an Indian family, she was able to maintain connections with her other siblings and members of her family through attending powwows. Without ICWA, “I wouldn’t have had the opportunities I had.” Staying in an Indian family near her reservation “was very positive. I’m glad I got to know the people I did and meet the people I did; they gave me an identity.” This inspired her to keep working in the community to improve it. With her adoptive parents’ help, she graduated with five associate’s degrees, and is now working on a bachelor’s degree while working for her Tribe. “One of my goals for going to college was to be able to come back and impact my Tribe, and help and be part of something good here.” She “fully believe[s] in ICWA” and has “everything good to say about ICWA.” Indeed, Ms. Robinson is now the Chairman of her Tribe’s ICWA Committee, which oversees implementation of ICWA by her Tribe, and runs the Tribe’s program for teenagers. Some of the

teenagers in the Tribal programs she works on are currently in placements under ICWA, and “ICWA has impacted them in a good way” because it keeps their connection to the Tribe and a community whose members understand their unique experiences growing up as Indian people.

A Nevada court’s application of ICWA ensured that Allie Maldonado’s (Little Traverse Bay Bands of Odawa) foster son grows up with her near his mother’s Tribal community. “Thanks to ICWA, my son has grown up near the reservation participating in cultural activities his entire life, including traditional medicines and Snow Snake, a traditional tribal game. He is an avid fisherman and understands why we protect the waters. He understands his community and when he is old enough to vote, he will be able to meaningfully participate in his Tribal government. Because he grew up near his community, he is potentially the next generation of Tribal leadership.”

Dion Stump (Chippewa Cree) first entered the foster care system at age 10. Before her time in foster care she did not live on her Tribe’s reservation but was eventually placed with a foster family that lived on the reservation, where she went to school from ages ten to seventeen. “Before going into care . . . I didn’t participate too much in the culture.” But in foster care, “I went to school on the reservation, was taught about my cultural beliefs and learned a lot. We would have Native American week and eat traditional foods.” When she was seventeen, she was moved to a non-Indian foster family in Great Falls, Montana. “I wasn’t able to learn anything about tribal belief systems or Native Americans

there. I was able to stay with family members at the time, which helped keep me connected to everyone. That was the first time I realized how important my culture was . . . as I got older, I realized my Native American culture really means a lot to me and is part of my identity.” At age twenty, Ms. Stump fostered her two younger brothers, who had been removed and initially placed with non-Native foster families. “They weren’t placed with Native families, they should have been in the ICWA system to begin with. . . . When they first went into care, they were three to four years old and they never got to experience learning about culture. They went ten years without knowing anything about their culture.” In her care, Ms. Stump can change that. She and her younger brothers are learning to integrate culture at home and to reconnect with their tribal community, which gives them a “sense of belonging.”

TM (Sac & Fox) saw the benefit of placing Indian children with Indian families through foster and adoptive placements. She was placed in foster care at age fourteen and went through many foster placements. “Native Americans are very spiritual people, very connected to their traditions and customs and dances,” but “if you’re disconnected from your culture, you’re going to feel disconnected and have a hard time knowing where you came from.” That was her experience. In foster care, “a lot of things were different in terms of the way we prayed and what we used . . . I eventually just stopped trying to pray or talk to Mother Earth the way I was taught to. . . . The big thing for me was having the cultural component taken away, I was

never able to attend any dances or ceremonies. Once I aged out, I was able to reconnect with the paternal side of my family and culture. . . . The community came together. Family and friends, out of respect for my dad, were willing to sew a dress for me, help me learn how to bead. It takes a lot of time and dedication from my elders and family to help me understand the way things were done and how. . . . I missed a time period from age fourteen until my early twenties, when I healed from my trauma and could feel safe and comfortable again.” She speaks from personal experience when she says “we need to keep kids connected and tribal kids need to stay with tribal families.”

Now TM works with children in foster care and is a foster and adoptive parent for Indian children who are citizens of her mother’s tribe. She advocates for the proper implementation of ICWA and shares her story as a speaker at conferences and events held by various organizations. In her view, as a result of the removal of tribes from their homelands and pre-ICWA federal policies that sent Indian children to government boarding schools, “everything we had and everything we held sacred was taken away from us.” ICWA now keeps children connected to their tribe—without ICWA, “it’s scary to think what would happen to my children if something happened to me or their dad.”

S. LaVallie (Ft. Belknap) was placed in foster care when she was only a year old, and was eventually placed two hours from her tribal community with a foster dad from the Little Shell and Chippewa Cree communities and a non-Native foster mom. There she joined her “three older brothers, who were

placed with the same foster family until they each aged out.” The siblings have an older sister too, but she was placed in another home, and they have never met or talked to her. She says the “greatest benefit of ICWA is that I am still connected to all three of my brothers.” While her foster dad was not a member of her Tribe, she was exposed to “tribal teachings” from his Tribe, “went to powwows,” and learned about other Native communities. Her foster father “wanted me to know my tribal people and knows it’s important and that connections to community are important.” Ms. LaVallie agrees that “Traditional knowledge, ceremonies, how the Tribe smudges and does a sweat”—are a “huge piece of who you are as a Native person.” Without specific connections to tribal culture, “it’s like you don’t know yourself and your spirit,” and it “takes a huge impact on you not knowing who you are.” Although “you can be proud to be Native, but there’s so much more that I don’t know of who I am.” She wanted to learn traditional jingle dancing and receive an Indian name, both of which are an important part of her Tribe’s culture. Fortunately, her foster family recognized this and encouraged her to reach out to her biological relatives to obtain the greater connection she sought. As a result, her biological aunt committed to talking with her tribal chiefs to get her a traditional Indian name.

C. Tribal participation in a foster child’s life pursuant to ICWA can benefit Indian foster children by maintaining cultural ties and providing an anchor.

Generally speaking, ICWA-preferred placements that improve an Indian child’s likelihood of

connection with their tribe provide benefits throughout the Indian child's life that can help them deal with adversity. Jesse Herrera, a member of the Kenaitze Indian Tribe, lives and works in Alaska. She is working toward a higher education degree and hopes to attend Georgetown University and then law school. Her connections to her Tribe, attributable to ICWA, put her in this position. She was born and raised in California. She says, "I don't identify clearly as Native Alaskan, but more with the Italian and Mexican sides of my family." However, when she was thirteen in foster care in California, "the judge asked me if I wanted to be in Alaska or in California. At my request, I was placed in Alaska with my adoptive mom, who was a tribal judge and now a state court judge. It was the best decision I ever made to move up here. I was in a bad situation in California, and I probably would have ended up living on the street. Here I'm connected to the other side of myself and my culture." Even before moving to Alaska, "every single year, the Tribe would fly me up to visit for one to two months each summer. It was fun to come up and share my grandfather's experiences. I had built up a wall because of my foster home experiences, but my tribal people stuck with me. The Tribe has been such a good help." Ms. Herrera's ICWA case worker has been with her since she was six years old and "is like a mother now." The Tribe continues to support her—and she continues to participate in tribal cultural activities.

II. ICWA is working as Congress intended, to prevent or lessen the long-term negative effects of removing Indian children from their families.

Indian people have experienced severe and negative effects from sustained efforts to erode Indian identities and connections to tribal cultural and political society. The above stories demonstrate both that ICWA, when implemented and applied correctly, helps protect the best interests of Indian children and families, and that ICWA is still necessary.

As Tribal *amici* describe in their brief filed in support of Tribal and Federal Defendants, there is a long and tragic history of cooperation between federal and state officials and private entities to remove Indian children from their communities in order to erode their connections to their tribes and their Indian identity. From the early 1800's through the 1970's, Indian children were frequently removed from their families and their tribal communities and forced to attend boarding schools. *See, e.g., In re G.J.A.*, 489 P.3d 631, 639-40 & n.14 (Wash. 2021). These boarding schools were designed to eradicate their tribal identities and assimilate Indian children into non-Native culture. Tribal Amici Br., § I(A). Indian children who were forced to attend boarding schools had markedly increased rates of chronic and terminal diseases later in life, as well as "increased risk for PTSD, depression, and unresolved grief," Bryan Newland, Ass't Sec'y-Indian Affairs, Dep't of Interior, *Federal Indian Board School Initiative Investigative Report* 88-89 (2022),

files/bsi_investigative_report_may_2022_508.pdf (citing Maria Yellow Horse Brave Heart, *The Historical Trauma Response Among Natives and Its Relationship with Substance Abuse: A Lakota Illustration*, 35 J. Psychoactive Drugs 1, 7-13 (2003)); and often suffered “a ‘prevailing sense of despair, loneliness, and isolation from family and community[.]’” *id.* (quoting Ursula Running Bear, et al., *Boarding School Attendance and Physical Health Status of Northern Plains Tribes*, 13 Applied Res. Qual. of Life 633 (2018)).

After the boarding school era ended, federal and state officials and private organizations continued to work together to remove Indian children and place them with non-Indian foster and adoptive families. These practices, which occurred well into the 1970s, were institutionalized in programs known as the Indian Adoption Project, which was active from 1958 to 1967, and the Adoptive Resource Exchange of North America (“ARENA”), which the Child Welfare League of America (“CWLA”) operated from 1966 until the early 1970s. As the Executive Director of CWLA acknowledged in a formal apology in 2001, “[w]hile adoption was not as wholesale as the infamous Indian schools, in terms of lost heritage, it was even more absolute.” See Shay Bilchik, Exec. Dir., Child Welfare League of Am., *Apology from Child Welfare League of America* (Apr. 24, 2001), https://theacademy.sdsu.edu/elearning/icwa-elearning-bias-media-context/story_content/external_files/ApologyCWLA.pdf. The Indian Adoption Project and ARENA would not have been possible without the willing involvement of state governments, and the programs

“actively encouraged states to continue and to expand the practice of ‘rescuing’ Native children from their own culture, from their very families.” *Id.*

These projects and policies contributed to the loss of Indian identity and culture. While these express and intentional practices ended, the strength of Tribal communities was still threatened by the widespread removal of Indian children through child custody proceedings. *See* Casey Br., § A(1). Today Indian children remain disproportionately more likely, nationwide and in most States, to be removed from their biological parents and placed in foster and adoptive care. *See, e.g.,* Casey Br., § A(3); Legislative Analyst’s Off., Cal. Legislature, *Initial Analysis and Key Questions: Racial Disproportionalities and Disparities in California’s Child Welfare System* 2 (2022), <https://lao.ca.gov/handouts/socservices/2022/CWS-Analysis-Questions-030922.pdf>; Me. Wabanaki-State Child Welfare Truth & Reconciliation Comm’n, *Beyond the Mandate: Continuing the Conversation* 21 (2015), https://d3n8a8pro7vhmx.cloudfront.net/mainewabanakireach/pages/17/attachments/original/1468974047/TRC-Report-Expanded_July2015.pdf?1468974047.

Removal to non-Indian families can have lasting negative consequences for children. In 2000, a study of the experiences of Indian children adopted into non-Indian families found that, as adults, those who were removed from Indian families or tribal settings identified “loss of Indian identity” and “loss of family, culture, heritage, language, spiritual beliefs, tribal affiliation, and tribal ceremonial experiences”

as primary contributors to negative psychological effects they experienced in adulthood. Carol Locust, *Split Feathers: Adult American Indians Who Were Placed in Non-Indian Families as Children*, Ontario Ass'n of Children's Aid Soc'ys (2000), http://www.nativecanadian.ca/Native_Reflections/split_feather_syndrome.htm. "The data indicate that the loss of the Indian identity is not the same as the loss of personal identity, although it included the personal aspect. Additionally, however, is the loss of one's belonging to his/her real culture. . . . The loss of their biological family, extended family, clan and tribe was an unending grief for the respondents [R]epatriation or reclamation of their tribal identity was described as a rebirth experience." *Id.* That is further evidenced by the firsthand experiences of *amici* shared above.

Further research confirms the importance of intergenerational teachings and learning among members of federally recognized tribes:

Relatedness within family and community systems is considered to be a standard marker of "Indianness." Participants described one example of how the natural flow of communication between tribal members often begins by sharing how one is related to family member (mother or father) and by tribe in order to establish connections across and within groups. Values such as respect, roles, humor, interdependence, and relationships with family, tribal community, and other cultures are learned intergenerationally.

....

Identity with one's culture is concerned with tribal affiliation and expressed as knowledge and participation with tribal heritage, history, traditions, activities, and ceremonies. For example, Fort Berthold Elders consider rites of passage or coming of age identity ceremonies concerned with "celebrating levels of competencies for males and females." For young Lakota boys, their "first fish" caught is ceremoniously offered to grandparents or other elders in the community and is a significant rite of passage marker. The importance of instilling cultural identity is the foundation of self-esteem according to Elders.

Claudia (We-La-La) Long, et al., *Assessing Cultural Life Skills of American Indian Youth*, 35 Child Youth Care Forum 289, 299-300 (2006); *see id.* at 295-96 (describing participants in study). Growing up with connections to a tribal community promotes development of this knowledge and connection to a tribal culture, while removal from a tribal community or family with connections to such a community makes their development more difficult.

Congress enacted ICWA to address the problems that were caused by the widespread removal of Indian children from their families. ICWA "protect[s] the best interests of Indian children and . . . promote[s] the stability and security of Indian tribes and families." 25 U.S.C. § 1902. Congress found that the assimilative practices and policies of federal, state, and private actors that separated

Indian children from their families ran counter to Indian children’s best interests and threatened tribes and tribal communities. *See id.* § 1901(4) (congressional finding that “an alarmingly high percentage of [Indian] children [removed from their parents] are placed in non-Indian foster and adoptive homes and institutions”); *see Adoptive Couple v. Baby Girl*, 570 U.S. 637, 649 (2013) (relying on Section 1901(4) to determine the “primary mischief the ICWA was designed to counteract”).

Now, several decades later, Congress’s solution is under attack. But as *amici*’s stories show, ICWA positively impacts Indian people’s lives. ICWA supports Indian children, and the Indian adults they become, and allows them to maintain their familial, cultural, religious, and tribal affiliations and connections. This ensures that Indian children placed in foster care, preadoptive placements, or adoptive homes have the opportunity to understand the vibrant cultures and communities that they come from. It secures the future of Indian tribes by supporting the continuation of tribal culture and society—and remains in the best interests of Indian children.

CONCLUSION

This Court should uphold ICWA and deny Plaintiffs' request to find ICWA unconstitutional.

Respectfully submitted,

REBECCA A. PATTERSON
Counsel of Record
SONOSKY, CHAMBERS, SACHSE,
MILLER & MONKMAN, LLP
510 L Street, Suite 310
Anchorage, AK 99501
(907) 258-6377
rebecca@sonosky.net

COLIN C. HAMPSON
FRANK S. HOLLEMAN, IV
SONOSKY, CHAMBERS, SACHSE,
ENDRESON & PERRY, LLP
145 Willow Street, Suite 200
Bonita, CA 91902

Counsel for Amici Curiae

APPENDIX

APPENDIX A
Amici Participant List

Autumn Adams
Elaina Albers
Lukas Angas
Sunnese Granados
Jesse Herrera
KE
S. LaVallie
LE
Allie Maldonado
Fawn Robinson
Dion Stump
J. Tillequots
TM