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In The  
**Supreme Court of the United States**

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ADOPTIVE COUPLE,

*Petitioners,*

v.

BABY GIRL, A MINOR CHILD UNDER  
THE AGE OF FOURTEEN YEARS, *et al.*,

*Respondents.*

—◆—  
**On Writ Of Certiorari To The  
South Carolina Supreme Court**

—◆—  
**BRIEF OF AMICI CURIAE TANANA CHIEFS  
CONFERENCE, BRISTOL BAY NATIVE  
ASSOCIATION, ASSOCIATION OF VILLAGE  
COUNCIL PRESIDENTS, CENTRAL COUNCIL  
OF TLINGIT AND HAIDA INDIAN TRIBES OF  
ALASKA, ALEUTIAN PRIBILOF ISLANDS  
ASSOCIATION, NATIVE VILLAGE OF BARROW,  
AND THE ORUTSARAMIUT NATIVE COUNCIL  
IN SUPPORT OF RESPONDENTS**

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**INTEREST OF AMICI CURIAE<sup>1</sup>**

The Tanana Chiefs Conference, Inc. (TCC) is an inter-tribal non-profit consortium based in Fairbanks, Alaska. Fairbanks is the regional hub for the 15,623 Athabascan Indians who reside in or come from TCC's small rural village communities across Interior Alaska. TCC's 37 member Tribes have tribal courts and Indian Child Welfare Act (ICWA) workers who actively participate in ICWA proceedings in state and tribal court.

The Bristol Bay Native Association, Inc. (BBNA) is a tribal non-profit consortium controlled by 31 federally recognized Tribes composed of Athabascan Indians, Yupik Eskimos, and Aleuts. BBNA's primary mission is to provide educational, social, economic, and related services to the Native people of the Bristol Bay region of Southwest Alaska. BBNA employs Tribal Children's Service Workers, Youth Activities Coordinators, and ICWA Team Leaders who work closely with member Tribes on ICWA and Child In Need of Aid cases, a task that includes child protection casework and support for tribal courts.

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<sup>1</sup> All parties have consented to the filing of this brief, as provided by Rule 37.3(a). Letters of consent have been filed with the Clerk of the Court. No counsel for a party authored the brief in whole or in part and no such counsel or party made a monetary contribution to fund the preparation or submission of the brief. No persons other than amici curiae, their members, or their counsel, made a monetary contribution to its preparation or submission.

The Association of Village Council Presidents (AVCP) is an inter-tribal non-profit consortium based in Bethel, Alaska and controlled by 56 federally recognized Tribes. Bethel is the largest town in Southwest Alaska. AVCP provides services to mostly Yupik Eskimos who reside in small, isolated villages scattered throughout the Yukon-Kuskokwim Delta in an area that is approximately 59,000 square miles. The villages are not connected by road to one another, nor to the rest of Alaska. English is a second language for many tribal members, who continue to practice a centuries-old hunting, fishing, and gathering way of life, congregating at home village sites in the winter and moving to fish camps in the summer.

The Central Council of Tlingit and Haida Indian Tribes of Alaska (Central Council) is a federally recognized regional Tribe in Southeast Alaska, with over 28,000 tribal citizens. While some members live in Alaskan urban centers, many live a traditional subsistence lifestyle in the rural island communities dotted throughout the Inside Passage. Central Council has its own child welfare code, operates a tribal court, and serves tribal member children through its ICWA department.

The Aleutian Pribilof Islands Association (APIA) is an inter-tribal organization comprised of 13 federally recognized Tribes situated on the Aleutian Islands, which extend westward over 1,300 miles from the Alaska mainland, and on the Pribilof Islands which lie to the north. APIA's members are distributed over an area of approximately 100,000 square

miles. APIA provides a broad spectrum of services and actively represents its member Tribes and individual tribal members in child welfare matters.

The Native Village of Barrow (NVB) is a federally recognized Tribe on the North Slope of Alaska. NVB strives to protect Inupiat culture, traditions, and self-sufficiency by providing a wide variety of services for its tribal members. The NVB also has exclusive jurisdiction over Indian child custody proceedings involving Indian children who are enrolled or eligible for enrollment with the Tribe, and who are domiciled within the Native Village of Barrow.

The Orutsaramiut Native Council (ONC) is the federally recognized governing body for the Native Village of Bethel. ONC's mission is to promote the general welfare of tribal members, enhance independence and quality of life, encourage self-sufficiency, preserve cultural and traditional values of the Tribe, and to exercise tribal authority over resources through education, economic, and social development opportunities. ONC actively represents member children in ICWA cases.

Together, these Tribes and inter-tribal organizations provide child and family services to most of Alaska's 229 federally recognized Tribes. Such services include the provision of technical and legal assistance to aid tribal ICWA workers in state court ICWA proceedings. Their services also include tribal court training to assist tribal court judges in case management of ICWA proceedings.

Alaska amici and their member Tribes have a fundamental interest in protecting the application of ICWA to children who do not live on reservations. The majority of children who are the subject of foster care and pre-adoption proceedings in Alaska are Alaska Native and do not live on reservations.<sup>2</sup> If this Court accepts Petitioners' contention that a child's off-reservation status should be a determinative factor in ICWA's application, it will directly impact the State of Alaska, its 229 federally recognized Tribes, and tens of thousands of Alaska Native children.

Alaska amici and their member Tribes also have an interest in protecting the legal status quo in Alaska and the interpretations of ICWA rendered by the Alaska Supreme Court, one of the most expert state courts in the nation on ICWA issues. These interpretations have provided essential stability to children, parents, adoptive families, Tribes, and personnel from Alaska's Office of Children's Services.



## **SUMMARY OF THE ARGUMENT**

Congress passed the Indian Child Welfare Act of 1978 (ICWA), 92 Stat. 3069, 25 U.S.C. §§ 1901-1963,

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<sup>2</sup> *See, e.g.*, STATE OF ALASKA, DEP'T OF HEALTH & SOC. SERV'S, OFFICE OF CHILDREN'S SERV'S, PROVIDER/PLACEMENT RACE STATISTICS OF CHILDREN PLACED IN FOSTER HOMES ON OCTOBER 1, 2011, available at [http://dhss.alaska.gov/ocs/Documents/Statistics/pdf/201110\\_FstrPrvdrRc.pdf](http://dhss.alaska.gov/ocs/Documents/Statistics/pdf/201110_FstrPrvdrRc.pdf).

to ensure that all Indian children have the opportunity to maintain their cultural and traditional heritage, and to participate in the political life of their Tribes. The language of ICWA and its legislative history clearly indicate that Congress intended ICWA's protections to apply to Indian children regardless of whether they or their parents reside on a reservation. This intention is particularly important in Alaska, where, due to the State's unique history, the vast majority of Alaska Natives do not reside on reservations. It is crucial that all of ICWA's protections remain in full effect in Alaska, where the survival of Native tribal communities and culture is at risk due to the disproportionate placement of adopted Native children in non-Native homes.

This Court should reject Petitioners' argument that a determinative factor in ICWA's application is whether the child has a pre-existing connection to a Native family, or was in the custody of a Native parent, when the child or parent does not live on a reservation. This distinction has no basis in the text or history of the statute. The Court is encouraged to look to several decisions of the Alaska Supreme Court that provide guidance on ICWA's interpretation in the context of Alaska's unique history and cultural backdrop.

If adopted, Petitioners' interpretation would gut ICWA's application in Alaska, in direct contravention of Congress's intent. Without ICWA's powerful protections, the progress made by Alaska state officials and Tribes over the last thirty-five years would risk

reversal, exposing Alaska Native children to the precise psychological and emotional harm, and the weakening of Alaska Tribes, that Congress surely intended to prevent.



## ARGUMENT

### **I. The Historical and Cultural Landscape in Alaska Is Unique, and Any Narrowing of ICWA Will Be Detrimental to Alaska Native Children.**

Petitioners argue that unless a Native child has a pre-existing connection with her biological Native parent, ICWA simply does not apply in adoption proceedings involving a child not domiciled on a “reservation.” *See* Pet. Br. at 17; GAL Br. at 45-46. Petitioners’ proffered rationale for this argument is that the federal interests in promoting tribal sovereignty and maintaining Indians as tribal citizens are too attenuated when a child or her parents live off-reservation. Pet. Br. at 17; GAL Br. at 45-46, 54-55. Petitioners’ argument directly contradicts ICWA’s plain text.

Moreover, because Alaska Natives do not reside on ICWA “reservations,” Petitioners’ argument would severely undermine Congress’s goal of ensuring that ICWA protect all Alaska Natives. In passing ICWA, Congress was acutely aware of Alaska Natives’ unique historical, geographic, and cultural status, and expressly included Alaska Native Tribes in the

statutory text. Adopting Petitioners' argument would significantly undercut ICWA in a way Congress surely did not intend. A consideration of the legal status of Alaska Tribes and the congressional intent behind ICWA demonstrates the fallacy of Petitioner's proposal that an Alaska Native child, necessarily living outside any reservation, must have a pre-existing and physical custodial connection with a Native family or Native parent in order for ICWA to apply.

**A. As a Result of Alaska's Unique History, Alaska Natives Do Not Reside on "Reservations."**

Unique among the aboriginal Indian Tribes<sup>3</sup> in the United States, Alaska's 229 federally recognized Tribes do not reside on "reservations" as that term is used in ICWA. This arrangement results from Alaska's historical development, first as a territory of the United States and then as a State. Nonetheless, Alaska Natives have consistently enjoyed the same legal rights as all other Tribes in the United States, including with respect to ICWA's application. The historical progression of Alaska Natives' land and legal rights supports the conclusion that ICWA continues to apply fully to all Alaska Natives, including

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<sup>3</sup> "The term 'Indian tribe' means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe." 25 U.S.C. § 479a(2).

all Alaska Native children, regardless of their non-reservation status.

When the United States purchased Alaska from Russia through the 1867 Treaty of Cession, it established that Alaska Natives would be governed by the laws and regulations applicable to all other Native American Tribes.<sup>4</sup> Thus, long prior to Alaska's statehood, the whole body of federal Indian and statutory law applied to Alaska Native Tribes. See *In re Minook*, 2 Alaska 200, 220-21 (D. Alaska 1904); see also *Tee-Hit-Ton Indians v. U.S.*, 348 U.S. 272, 285 (1955) (noting "no distinction between . . . use of the land [by Alaska Natives] and that of the Indians of the Eastern United States").

With regard to Alaska Natives' aboriginal lands, the 1867 Treaty neither extinguished nor granted recognized title to any of the Tribes' lands, thereby preserving the status quo. See *Tee-Hit-Ton*, 348 U.S. at 278. Although the federal government occasionally designated reservations to protect tribal interests, tribal aboriginal land titles remained largely unaddressed until Alaska became a state nearly a century later. Alaska Statehood Act, Pub. L. No. 85-508, § 4, 72 Stat. 339, 340 (1958).

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<sup>4</sup> Treaty of Cession art. III, 15 Stat. 539, 542 (1867) ("The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.").

After Alaska became a State in 1959, Alaska Native land rights came into sharp focus. Although § 6 of the Alaska Statehood Act entitled the new State to choose some 103 million acres of federal land for state ownership, Alaska's selection of land used and occupied by Native Tribes produced immediate conflict, litigation, and voluminous tribal protests. *See* ROBERT D. ARNOLD, *ALASKA NATIVE LAND CLAIMS* 119 (1976). By 1961, Tribes had filed so many land protests that the federal government suspended virtually all dispositions of federal land pending congressional action. *Id.*

The settlement of aboriginal land claims resulted in the 1971 passage of the Alaska Native Claims Settlement Act (ANCSA), Pub. L. No. 92-203, 85 Stat. 688 (codified as amended at 43 U.S.C. §§ 1601-1629h (2006)). ANCSA reserved to Alaska Natives full title to over 44 million acres of land (including former reservations), extinguished aboriginal title to all other ceded lands, and placed those lands in the public domain.<sup>5</sup> 43 U.S.C. §§ 1603(b), 1605(a), 1611,

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<sup>5</sup> ANCSA left in place the federal government's trust responsibility by preserving Alaska Natives' eligibility to receive all the federal government's Indian trust services, 43 U.S.C. § 1618(b), a provision which, as amplified by § 1626, guarantees for Alaska Tribes precisely the same trust services that the federal government provides to the "Lower 48" Tribes in Indian country. These services include tribal government assistance, financial and employment assistance, educational support, family support, housing assistance, road maintenance and construction, and comprehensive health care. It is thus well established that, "Alaska Natives, including Indians, Eskimos,

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1613(h), 1615(b), 1615(d), 1618(b). ANCSA placed all of these settlement assets, including the land, under the exclusive control of unique Native corporations. 43 U.S.C. § 1602(j). Significantly for purposes of this case, ANCSA did not create reservations; to the contrary, it abolished all reservations which had existed prior to 1971. 43 U.S.C. § 1618(a).

In *Alaska v. Native Village of Venetie Tribal Government*, this Court held that ANCSA land conveyed to a Native corporation, even if subsequently reconveyed to a Tribe, did not constitute “Indian country,” a legal term defined in 18 U.S.C. § 1151. 522 U.S. 520, 532-34 (1998). Since ICWA defines “reservation” to mean, *inter alia*, “Indian country as defined in section 1151,” 25 U.S.C. § 1903(10), almost none of the land held by ANCSA corporations or Alaska Native Tribes is considered a “reservation” under ICWA. Although the non-reservation status of Alaska Native land was well-known to Congress (which, again, in ANCSA had abolished prior reservations), Congress nonetheless expressly *included* Alaska Native Tribes in ICWA’s definition of an “Indian tribe,” 25 U.S.C. § 1903(8). Indeed, acting pursuant to Congressional authorization, the Secretary of the Interior subsequently acknowledged that Alaska

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and Aleuts, have the same legal status as members of Indian tribes singled out as political entities in the commerce clause of the United States Constitution.” COHEN’S HANDBOOK OF FEDERAL INDIAN LAW § 4.07[3][a], at 326 (Nell Jessup Newton ed., 2012 ed.) (citations omitted).

Native Tribes “have the same governmental status as other federally acknowledged Indian tribes.” Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 58 Fed. Reg. 54,364, 54,366 (Oct. 21, 1993). Accordingly, it is well-established that the sovereign status of Alaska’s federally recognized Tribes operates independently of the existence of any reservation lands, and Alaska Tribes are accorded the same rights, privileges, and immunities enjoyed by other Native American Tribes.<sup>6</sup>

Today, Alaska consists of 570,641 square miles, making it the largest State in the Union and twice the size of Texas. U.S. CENSUS BUREAU, STATE & COUNTY QUICKFACTS (2010), <http://quickfacts.census.gov/qfd/states/02000.html>. As of the 2010 Census, Alaska’s population is 710,231, of whom almost 20% (or 138,312 people) are American Indian and Alaska

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<sup>6</sup> See Federally Recognized Indian Tribe List Act of 1994, Pub. L. No. 103-454, 108 Stat. 4791 (1994) (codified in part at 25 U.S.C. § 479a-1 & 25 U.S.C. §§ 1212-1215 (2006)); Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 58 Fed. Reg. at 54,366 (noting that Alaska Native Tribes “have the right, subject to general principles of Federal Indian law, to exercise the same inherent and delegated authorities available to other tribes”); Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs, 77 Fed. Reg. 47,868, 47,872 (Aug. 10, 2012); *John v. Baker*, 982 P.2d 738, 749 (Alaska 1999) (“[W]e hold that Alaska Native tribes, by virtue of their inherent powers as sovereign nations, do possess [non-territorial] authority [to resolve domestic disputes]”).

Native in full or in part. U.S. CENSUS BUREAU, PROFILE OF GENERAL POPULATION & HOUSING CHARACTERISTICS: DEMOGRAPHIC PROFILE DATA (2010), <http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml>. There are 229 federally recognized Tribes in Alaska,<sup>7</sup> constituting nearly half of the total 565 federal recognized Tribes in the United States. Forty-two percent of Alaska Natives live in small, remote rural communities that are accessible only by boat or small airplane. INST. FOR SOC. AND ECON. RESEARCH, ET AL., *Executive Summary to THE STATUS OF ALASKA NATIVES REPORT 2004*, Vol. 1, at 2 (2004), available at <http://www.iser.uaa.alaska.edu/Publications/statusaknatives2004-vol1.pdf>. Most of the lands in and around these village Tribes were conveyed by ANCSA. See 43 U.S.C. §§ 1601, 1613.<sup>8</sup> These communities continue to adhere to their tribal identity, cultures, traditions, and subsistence way of life, and continue to exercise political authority over their members.

However, the continued survival of Alaska Native culture is seriously impacted by the high adoption

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<sup>7</sup> Indian Entities Recognized and Eligible to Receive Services from the Bureau of Indian Affairs, 77 Fed. Reg. at 47,872; 25 U.S.C. §§ 479a-1(a), 479a(2) (authorizing the Secretary of the Interior to publish a list of recognized Tribes, including Alaska Native Tribes).

<sup>8</sup> See also STATE OF ALASKA, DEP'T OF FISH & GAME, ALASKA NATIVE CLAIM SETTLEMENT ACT (ANCSA) LAND CONVEYANCES, <http://www.adfg.alaska.gov/index.cfm?adfg=habitatoversight.ancsa> (last visited Mar. 22, 2013).

rate of Alaska Native children into non-Native families. The adoption rate of Alaska Native children is severely disproportionate to the adoption rate for the general population. Alaska Native children comprise 22% of all children in Alaska—yet they represent 62% of children who are in out-of-home care.<sup>9</sup> Worse yet, fully 61% of Alaska Native children in foster care will ultimately be placed in non-Native homes.<sup>10</sup> These trends are especially stark in the Anchorage region, Alaska’s largest urban center. Even though the child population in Anchorage is only 12% Alaska Native, here, too, 60% of children removed from their homes by the State are Native.<sup>11</sup> ICWA has been the driving force behind tracking these statistics, which assist state and tribal advocates in efforts to reduce these disproportionate statistics in accordance with the law. For this reason, ICWA’s continued application to all Alaska Native children is of vital importance.

### **B. In Enacting ICWA Congress Was Aware of the Unique Status of Alaska and Its Native Children.**

When Congress passed ICWA in 1978, just seven years after passage of ANCSA, it was acutely aware

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<sup>9</sup> W. & PAC. CHILD WELFARE IMPLEMENTATION CTR., DATA DASHBOARD WORKGROUP STATUS UPDATE, ALASKA CHILD WELFARE DISPROPORTIONALITY REDUCTION PROJECT 2 (Feb. 2013), App. X.

<sup>10</sup> *Id.* at 7, App. X.

<sup>11</sup> *Id.* at 13, App. X.

of Alaska Tribes' unique geographic, historical, and cultural status. After surveying the statutory language of ICWA, its legislative history, and the cultural context in which it passed, there can be no doubt that Congress intended ICWA to apply fully to the parents and children of Alaska Native Tribes despite their non-reservation status.

The clearest sign of Congress's intention that ICWA apply to Alaska Natives is found in the language of ICWA itself: as already noted, its definition of Tribe expressly includes Alaska Native Tribes. 25 U.S.C. § 1903(8). The congressional record also indicates that at the time of ICWA's passage, Congress was particularly focused on ensuring that the law would protect Alaska Native children. Alaska-specific statistics were presented to Congress and showed that, from 1973 to 1976, 1 out of every 29.6 Alaska Native children was adopted—a rate almost five times higher than non-Native children (1 out of 134.7 children). S. Rep. No. 95-597, 95th Cong., at 46 (1977). Of the Native children who were adopted, 93% were placed in non-Native families. *Id.* Similarly, Alaska Native children were three times more likely than non-Native children to be in foster care. *Id.* Congress was keenly aware that adoptions of Alaska Native children into non-Native homes, through state court proceedings, resulted in the removal of Native children from their Tribes and their Native cultures. Just as clearly, Congress intended ICWA's prophylactic procedural mechanisms to reach all such proceedings.

As was true for other Native American populations across the country, Congress noted the high rates of adoption and foster care placements of Alaska Native children were often attributable to the practice of separating children from their families and sending them to boarding schools or boarding homes—a practice that was “helping to destroy a generation of village children” and encouraging “self-defeating styles of behavior and attitudes, and grief of village parents, not only at their children’s leaving home, but also at their children’s personal disintegration away from home.” *Problems That American Indian Families Face in Raising Their Children and How These Problems are Affected by Federal Action or Inaction: Hearing Before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs*, 93rd Cong. 6 (1974) (opening statement of Sen. James Abourezk) (quoting abstracts of study entitled “A Long Way from Home” by Dr. Judith Kleinfeld).

Petitioners ask the Court to consider a Native child’s tribal-land residence as a determinative factor (albeit one subject to the flawed “Indian family exception” that they also fabricate without textual basis) in whether ICWA applies to that child’s custody arrangements and to the rights of the child’s Native parents and Tribe. Congress quite clearly chose not to create such a distinction. To be sure, Congress did distinguish between residence on- and off-reservation for purposes of ICWA’s tribal court

jurisdiction provisions.<sup>12</sup> But that is the only instance where this distinction was made, and Congress in all other respects was clear in not treating Native American children caught up in state court proceedings any differently whether they resided on or off a reservation. By urging the Court to imply into ICWA a tribal-land residence or domiciliary distinction, Petitioners therefore ask the Court to thwart Congress's main objective. ICWA was intended to bring *all* Native American children who were eligible for tribal membership under the statute's protection. Nothing in the statutory text or legislative record supports the notion that these protections would vary depending upon whether a case concerned on-reservation children versus off-reservation children. Petitioners are therefore urging the Court to ignore ICWA's statutory language, its legislative history, and the fact that Congress knew that Alaska Native Tribes had no tribal lands at the time of its passage, yet wished to protect the Alaska Tribes' future—their children. It would be bizarre for Congress to have explicitly included Alaska Tribes in one provision, only to implicitly exclude them via the tribal-land distinction urged by Petitioners.

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<sup>12</sup> See 25 U.S.C. § 1911(a) (“An Indian tribe shall have jurisdiction exclusive as to any State over any child custody proceeding involving an Indian child who resides or is domiciled *within the reservation* of such tribe, except where such jurisdiction is otherwise vested in the State by existing Federal law.”) (emphasis added).

As discussed below, Petitioners' effort to save a sliver of ICWA for Alaska—through the “existing Indian family” exception that has previously been rejected by the Alaska Supreme Court—suffers from the same fatal flaw as Petitioners' argument about ICWA's full application only to Native Americans who live on reservations: it has absolutely no basis in the text of the statute. That Petitioners are forced to graft multiple additions onto ICWA's text, in an effort to save some portion of the statute for Native Americans (including Alaska Natives) whom Congress clearly intended to protect, simply demonstrates the error in Petitioners' approach. Rather, the triggering mechanism for ICWA is and should continue to be based upon a child's membership or eligibility for membership in her Tribe, not on whether the child or parent has a pre-existing relationship with an Indian family or an Indian custodian. *See Hearings on S. 1214 before the Subcomm. on Indian Affairs and Public Lands of the H. Comm. on Interior and Insular Affairs, 95th Cong., 97 (1978).*

This Court should defer to Congress's intent in this field. Because of the unique historical relationship between Indian Tribes and the United States, *see Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831) (characterizing relationship as like a “ward to his guardian”),<sup>13</sup> this Court has consistently granted

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<sup>13</sup> *See also* 25 U.S.C. § 1901(2) (“Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of

(Continued on following page)

considerable deference to Congress in Indian affairs. *See, e.g., Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903) (holding tribal status is determined exclusively by the political branches of government); *United States v. Kagama*, 118 U.S. 375, 384 (1886) (recognizing that from the United States' relationship to the Tribes "arises the duty of protection"). As long as the special treatment of Tribes can be tied rationally to the fulfillment of Congress's unique obligation towards the Tribes, such legislative judgments will not be disturbed by this Court. *See Morton v. Mancari*, 417 U.S. 535, 555 (1974).

Accordingly, this Court should defer to Congress's stated intent that ICWA apply regardless of whether the child has a pre-existing relationship with an Indian family or was previously in the custody of a biological Native parent.

## **II. Alaska Courts Have Consistently Recognized That ICWA Is Meant to Promote Tribal Control Over Custody Decisions Involving Alaska Native Children.**

Tracking the congressional intent described in Section I, *supra*, the Alaska Supreme Court has consistently held that ICWA supports tribal control

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Indian tribes and their resources"); *Nagle v. U.S.*, 191 F. 141, 142 (9th Cir. 1911); *U.S. v. Cadzow*, 5 Alaska 125 (D. Alaska 1914); *U.S. v. Berrigan*, 2 Alaska 442 (D. Alaska 1905); *Johnson v. Pacific Coast S.S. Co.*, 2 Alaska 224, 241 (D. Alaska 1904).

over custody decisions involving all Alaska Native children. Given that court's specialized knowledge of conditions in Alaska, and its exceptional experience with ICWA matters, this Court should adopt its approach and confirm that ICWA grants broad protections to tribal interests in adoption proceedings involving Native children.

**A. Alaska Courts Recognize Tribal Interests in Alaska Native Children Outside Reservations.**

The Alaska Supreme Court has firmly rejected Petitioners' theory that the off-reservation status of an Indian child is a significant factor in whether ICWA applies to that child. Decisions of the Alaska Supreme Court, sustaining Alaska tribal interests in Native children outside reservations, are instructive in this regard.

As noted *supra* at 10, this Court in *Native Village of Venetie Tribal Government* held that ANCSA land was not "Indian country," even if subsequently transferred tribal ownership. 522 U.S. at 523. In the wake of *Venetie*, the Alaska Supreme Court in *John v. Baker* addressed the nature of Alaska tribal authority over tribal children in the absence of "Indian country." 982 P.2d 738, 754 (Alaska 1999). The court explained that "the nature of tribal sovereignty stems from two intertwined sources: tribal membership and tribal land." *Id.* (citing *U.S. v. Mazurie*, 419 U.S. 544, 557 (1975)). The court reasoned that jurisdiction

based on tribal membership exists irrespective of tribal land, holding that “federal tribes derive the power to adjudicate internal domestic matters, including child custody disputes over tribal children, from a source of sovereignty independent of the land they occupy.” *Id.*

Turning to ICWA in particular, the Alaska court reasoned that “ICWA’s goal was to increase tribal control over custody decisions involving tribal children. Congress viewed this increased control as vital to the continued sovereignty of the tribes.” *Id.* at 753. Indeed, the “adjudication of child custody disputes over member children is necessary ‘to protect tribal self-government or to control internal relations.’” *Id.* at 752 (quoting *Montana v. U.S.*, 450 U.S. 544, 564 (1981)). Subsequent Alaska Supreme Court decisions have reinforced this conclusion. *See Native Village of Tanana v. State*, 249 P.3d 734, 750 (Alaska 2011) (“Alaska Native tribes have inherent sovereign jurisdiction, concurrent with the State, to initiate ICWA-defined child custody proceedings”); *In re C.R.H.*, 29 P.3d 849, 852 (Alaska 2001) (recognizing that in enacting ICWA § 1911(b), Congress expressly authorized tribal transfer jurisdiction over ICWA custody cases from state court to tribal court).

Accordingly, even though Alaska Native Tribes do not inhabit reservations, they retain authority to adjudicate child custody disputes, an authority which operates irrespective of their “off-reservation” status.

## **B. Alaska Courts Have Rejected the “Existing Indian Family” Exception to ICWA.**

Petitioners seek to narrow ICWA’s application off-reservation by excluding its reach to children who do not satisfy the so-called “existing Indian family,” a doctrine made of whole cloth. That is, they would permit ICWA to apply off-reservation only in the case of a child who had been in the legal or physical custody of an Indian parent. Pet. Br. at 41.<sup>14</sup> The “existing Indian family” exception, however, finds no basis in the text of the statute and embodies a policy judgment that was rejected by Congress and has been rejected by the vast majority of state courts to address this issue.<sup>15</sup> The widespread rejection of this faulty tenet reinforces the conclusion that ICWA was

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<sup>14</sup> As Respondents have noted, Resp. Br. in Opposition at 14-16, Petitioners waived their argument on this issue at the South Carolina Supreme Court. Out of an abundance of caution, this brief addresses the issue anyway.

<sup>15</sup> Nineteen states have firmly rejected the Indian Family Exception, while only seven have adopted it. *See* Resp. Br. in Opposition at 16-17 nn.7-8. *See also* Lorie M. Graham, *The Past Never Vanishes: A Contextual Critique of the Existing Indian Family Doctrine*, 23 AM. INDIAN L. REV. 1, 40 (1998-99) (herein *after The Past Never Vanishes*) (noting that when Congress passed ICWA, “it was concerned about the coercive actions of states and their insensitivity to tribal cultural values and social norms. By relying on some judicially fashioned level of Indianness to try to manipulate their use of the existing Indian family exception, state courts have established a dangerous precedent that once again opens the door to cultural biases and misunderstandings”) (quotations and citations omitted).

intended to focus on the deprivation of a child from its Tribe; other distinctions, such as those based on the child's age, residence on Indian land, or custody status, are not supported by ICWA's language or purpose.

The Alaska Supreme Court was one of the earliest of the 19 States to reject the "existing Indian family" exception. *In re Adoption of T.N.F.*, 781 P.2d 973 (Alaska 1989); *see also A.B.M. v. M.H.*, 651 P.2d 1170, 1973 (Alaska 1982) (declining to create a judicial exception). In *T.N.F.*, the court noted that the exception had been consistently criticized by courts in other jurisdictions, and then explained that ICWA was not designed simply to protect the interests of individual Indian parents: "[r]eliance on a requirement that the Indian child be part of an Indian family for the Act to apply would undercut the interests of Indian tribes and Indian children themselves that Congress sought to protect through the notice, jurisdiction and other procedural protections set out in ICWA." *Id.* at 977.

In addition, the court expressed "serious policy reservations" about creating a judicial exception to ICWA in situations where a mother gave up her child shortly after her birth. *Id.* Noting that in such a scenario, the "existing Indian family" exception would deprive both the parent and the Tribe of ICWA's protections, the court underscored this "was exactly the type of scenario in which Congress sought to impose federal procedural safeguards in order to

protect the rights of the Indian parents and their tribe.” *Id.*

The court concluded that adopting an “existing Indian family” exception to ICWA “would be to enter onto a slippery slope which threatens to exclude *the very type of cases Congress had in mind when it adopted the Act.*” *Id.* at 978 (emphasis added). This conclusion reinforces the notion that ICWA protects the child’s and her Tribe’s rights, which exist regardless of whether the child was ever in the custody of an Indian parent.

**C. Alaska Courts Have Held That Because of the Tribal Interests at Stake, ICWA Imposes a Higher Threshold Before Parental Rights May Be Terminated.**

Petitioners also argue that the father in this case failed to adequately establish his paternity under state law, and for this reason cannot invoke ICWA to block the adoption of his Indian daughter. Pet. Br. at 24-28. Petitioners’ argument should be rejected by this Court, as it has been by the Alaska Supreme Court in similar circumstances. Petitioners’ interpretation of ICWA gives short-shrift to the tribal interests at stake and would result in an unworkable patchwork of state laws that would defeat ICWA’s universal protections.

In *Bruce L. v. W.E., H.E., & Connie J.*, a non-Native putative father of a child born out-of-wedlock

challenged the voluntary adoption of his Native child by an adoptive couple who had obtained the consent of the Native mother. 247 P.3d 966, 969 (Alaska 2011). As in the instant case, the adoptive parents in *Bruce L.* asserted that the father’s consent to the adoption was unnecessary because the father had not properly legitimated the child under the strict technicalities of state law.<sup>16</sup> *Id.* at 970-71. After surveying state case law on the subject, the Alaska Supreme Court concluded that in order “to qualify as an ICWA parent an unwed father does not need to comply perfectly with state laws for establishing paternity, so long as he has made reasonable efforts to acknowledge paternity.” *Id.* at 979. Applying this less stringent standard, the court held that if the child was a Native child, the father’s reasonable efforts to establish paternity were sufficient, and his failure to strictly comply with the technicalities of the state statutory scheme did not render ICWA inapplicable. *Id.* at 977-78.

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<sup>16</sup> See ALASKA STAT. § 25.23.050(a)(3) (incorporating ALASKA STAT. § 25.23.040(a)(2)) (providing consent to adoption is not required of a minor’s father if the father was not married to the mother at or after the time of conception or the father has not adopted or “otherwise legitimated the minor under” Alaska law). Although the father in *Bruce L.* had filed an acknowledgment of paternity and an affidavit of paternity in the underlying adoption case, those documents failed to technically legitimate the child under state law because the mother had not signed them. *Bruce L.*, 247 P.3d at 970.

This “reasonable efforts” test, which *Bruce L.* noted has also been adopted by Arizona, New Jersey, California, South Dakota, and Texas, *id.* at 978-79, and is a balanced approach consistent with this Court’s precedent and Congress’s intent to require a higher threshold before the rights of parents of Indian children can be terminated. *See* 25 U.S.C. § 1921 (“In any case where State or Federal law applicable to a child custody proceeding . . . provides a higher standard of protection to the rights of the parent . . . than the rights provided under [ICWA], the State or Federal court shall apply the State or Federal standard.”).

Here, had the adoptive couple in the case *sub judice* moved to Alaska, strict compliance with state paternity law would not have been required under *Bruce L.*, nor would the father have been required to show that he communicated meaningfully or provided care and support for the child for at least one year, as Alaska state law requires in non-ICWA cases. ALASKA STAT. § 25.23.050(a). Thus, if Petitioners’ argument were accepted, the father’s rights under ICWA would be protected in Alaska but not in some other States.

Congress could not have intended that a father be granted ICWA’s protections in one State but denied those same protections in another State. As this Court noted in *Mississippi Band of Choctaw Indians v. Holyfield*, in adopting ICWA Congress “intended a uniform federal law,” reasoning that “a statute under which different rules apply from time to time to the same child, simply as a result of his or her transport

from one State to another, cannot be what Congress had in mind.” 490 U.S. 30, 46-47 (1989). The same logic should apply here. Petitioners’ interpretation of ICWA would result in a lack of uniformity in the application of a critical federal statute—a result this Court should reject.

### **III. Important Progress in Alaska Tribal-State Relations Would Be Undermined If This Court Accepts Petitioners’ Arguments That ICWA Imposes Distinctions Based on Race and Residency on Tribal Lands.**

Petitioners’ claims that ICWA’s protections should be severely limited because they impose distinctions based on race and reservation status, Pet. Br. at 17, 44-47, are based on a misunderstanding of ICWA’s language and purpose. As discussed more fully in Cherokee Br. at 32-34, and as this Court has repeatedly held, distinctions like ICWA’s that depend on membership in a Native American Tribe are political distinctions, based on the sovereignty and particular history of the Tribes (including Alaska Native Tribes) and the United States. *See Mancari*, 417 U.S. 535; *U.S. v. Antelope*, 430 U.S. 641 (1977). Indeed, of paramount importance to Congress in enacting ICWA’s statutory scheme was to ensure that Indian children who are eligible to be members of a Tribe, and whose parent is a member of a Tribe, will remain connected to the Tribes of which they are members and citizens, thereby permitting and facilitating their participation in the privileges inherent in

tribal citizenship and to hold fast to their cultures, languages, values, and identities that form an integral part of their tribal connection. These factors are not race- or land-based.

By focusing ICWA on access to tribal citizenship, culture, and tradition, Congress sought to reduce the significant psychological challenges faced by Indian children adopted by non-Indian families. See S. Rep. No. 95-597, 95th Cong., at 1-2 (1977) (“The separation of Indian children from their natural parents . . . is socially and culturally undesirable. For the child, such separation can cause a loss of identity and self-esteem, and contributes to the unreasonably high rates among Indian children for dropouts, alcoholism and drug abuse, suicides, and crime.”); Solangel Maldonado, *Permanency v. Biology: Making the Case for Post-Adoption Contact*, 37 CAP. U. L. REV. 321, 333-36 (2008) (hereinafter *Permanency v. Biology*) (citing *Holyfield*, 490 U.S. at 33 & n.1); Carol Locust, *Split Feathers: Adult American Indians Who Were Placed in Non-Indian Families as Children*, ONTARIO ASS’N CHILD SOC’Y J., Oct. 2000 (hereinafter “*Split Feathers*”), App. 6-8.

Congress was right to emphasize the mental and cultural well-being of these children, as research shows that adoptees often struggle with their identities, leading to increased behavioral problems and feelings of shame, rejection, and low self-esteem. See Maldonado, *Permanency v. Biology*, *supra* at 326. These feelings are exacerbated in adopted Indian children who are effectively severed from their historical roots

and therefore never learn about their culture. See Irving N. Berlin, *Anglo Adoptions of Native Americans: Repercussions in Adolescence*, J. AM. ACAD. OF CHILD PSYCHIATRY, 1978, 17(2), at 387-88.

These culturally isolated adopted Indian children—who suffer from what is often called “Split Feather Syndrome”—frequently experience a loss of identity and are at a greater risk of enduring long-term emotional and psychological problems.<sup>17</sup> Locust, *Split Feathers*, *supra* at App. 6-8. In one study, “Split Feather” adoptees reported abusing alcohol as a coping mechanism, the vast majority did not graduate from high school, and not a single adoptee described herself as a success. *Id.* at App. 15-18.

When “Split Feather” adoptees are actually able to culturally connect with their heritage, they often improve considerably. Many adoptees indicate that after connecting with their tribal roots, they experienced less alcohol and drug abuse, less depression, less violence, and greater overall happiness.<sup>18</sup> Locust,

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<sup>17</sup> For additional discussions of the Native identities of Native children who are raised in non-Native families, see Ronald M. Walters, *Goodbye to Good Bird: Considering the Use of Contact Agreements to Settle Contested Adoptions Arising Under the Indian Child Welfare Act*, 6 U. ST. THOMAS L.J. 270, 282-83 (2008); Jeannine Carriere, *Promising Practice for Maintaining Identities in First Nation Adoption*, FIRST PEOPLES CHILD & FAM. REV., January 2007, at 46, 54.

<sup>18</sup> In addition, studies have consistently shown that Indians often do want to connect to their traditions and history. See Stephanie Woodward, *Native Americans Expose Adoption Era and Repair Its Devastation*, INDIAN COUNTRY TODAY MEDIA (Continued on following page)

*Split Feathers*, *supra* at App. 18-21. As one adoptee explained, “[t]he weight of hurting, loneliness, anger and sorrow I carried all those years was dropped, and my soul could soar.” *Id.* at App. 20.

Studies show that the psychological damage of cultural separation begins at a very young age. Even those Indian children who are adopted in infancy have shown the adverse psychological effects of being raised in a non-Indian home. Indeed, research conducted by Dr. Joseph Westermeyer, a social psychiatrist who testified to Congress about ICWA, indicated that Indian children adopted in infancy endured cultural confusion that led to social and psychological problems. See *Mississippi Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 33 (1989) (citing *Indian Child Welfare Program: Hearings before the Subcomm. on Indian Affairs of the S. Comm. on Interior and Insular Affairs*, 93rd Cong., 46 (1974)); see also Solangel Malonado, *Race, Culture and Adoption: Lessons from Mississippi Band of Choctaw Indians v. Holyfield*, 17 COLUM. J. GENDER & L. 1, 7 (2008). There is no doubt that adoptive parents are often well-intentioned, but the studies above demonstrate that good intentions

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NETWORK (Dec. 6, 2011) <http://indiancountrytodaymedianetwork.com/article/native-americans-expose-the-adoption-era-and-repair-its-devastation-65966>. See also Andrea V.W. Wan, *The Indian Child Welfare Act and Inupiat Customs: A Case Study of Conflicting Values, with Suggestions for Change*, 21 ALASKA L. REV. 43, 66 (2004); Barbara Bennett Woodhouse, *Are You My Mother: Conceptualizing Children’s Identity Rights in Transracial Adoptions*, 2 DUKE J. GENDER L. & POL’Y 107, 110-11 (1995).

do not function as a substitute for actual interaction with the child's Tribe.<sup>19</sup>

Thus, one cannot lightly dismiss ICWA's important emphasis on an adopted Indian child's continued access to her Tribe, and the culture and traditions that are a part of her Tribe.<sup>20</sup> Petitioners misread ICWA by placing their focus on whether the child or parent lives on tribal land, or whether the child, adopted at birth, was in the custody of an Indian parent. But the culture and traditions protected by ICWA still exist even in the absence of tribal land and preexisting custody. Similarly, Petitioners are wrong to suggest that ICWA imposes improper race-based classifications. Participating in the life of one's Tribe, just like participating in the life of one's Nation, does not mean that an adoptee must be surrounded by people who look like her. Indeed, it is common for non-Indian families to live within tribal

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<sup>19</sup> As one Native adoptee said, her non-Indian adoptive parents were able to give her everything—"except my Native American identity." Locust, *Split Feathers*, *supra* at App. 21. See also Barbara Ann Atwood, Flashpoints Under the Indian Child Welfare Act: Toward a New Understanding of State Court Resistance, 51 EMORY L.J. 587, 665-67 (2002).

<sup>20</sup> See Graham, *The Past Never Vanishes*, *supra* at 40 (noting that Indian children have a unique relationship with their Tribe that is rooted in membership customs and laws that "serve the same overarching goals that family laws of individual states serve in 'protecting the best interest of a child.' Citizens of those states must abide by state law just as members of American Indian nations are similarly bound by tribal law and custom").

communities, and Tribes are supportive of these families as adoptive placements, particularly when these families connect their adopted children with their extended Indian relatives.<sup>21</sup>

Since its passage, ICWA has been the driving force behind Alaska's efforts to ensure that Native children are able to access and interact with their Tribes, their cultures, and their traditions. ICWA's requirement that state courts and child welfare agencies consider the cultural aspects of a child's custody placement has resulted in the development of productive working relationships between state and tribal workers in Alaska as they seek to achieve that goal.<sup>22</sup> If accepted, Petitioners' interpretation of ICWA

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<sup>21</sup> For example, a Cultural Connection Agreement form was developed by amici Central Council and is now widely used by Tribes around the state. App. 1-5.

<sup>22</sup> An illustrative example of the success of ICWA working groups in Alaska is the Tribal/State Collaboration Group (TSCG), which consists of state officials and tribal representatives from throughout Alaska who meet regularly to address issues affecting Alaska Natives. See MELISSA H. JOHNSON & MARY I. ARMSTRONG, W. & PAC. CHILD WELFARE IMPLEMENTATION CENTER, ALASKA CHILD WELFARE DISPROPORTIONALITY REDUCTION PROJECT MID-PROJECT ASSESSMENT REPORT (2012), App. 28-29. TSCG has expended significant effort to reduce the disproportionate representation of Alaska Native children in the Office of Children's Services system by developing Tribe-licensed foster care standards and in-home service models, *id.* at App. 33-34, 38-39, 40-42, and implementing advanced ICWA training for state and tribal child welfare workers, *id.* at App. 28-30.

would significantly undermine this progress to the detriment of Alaska's Native children.



## CONCLUSION

As this Court has noted, ICWA “seeks to protect the rights of the Indian child as an Indian and the rights of the Indian community and tribe in retaining its children in its society . . . by establishing ‘a Federal policy, that wherever possible, an Indian child should remain in the Indian community.’” *Holyfield*, 490 U.S. at 37 (quoting H.R. Rep. No. 95-1386, at 23 (1978)). This Court should reject Petitioners’ arguments and affirm these important legislative goals because “there can be no greater threat to essential tribal relations, and no greater infringement on the right of the tribe to govern themselves than to interfere with tribal control over the custody of their children.” *John*, 982 P.2d at 753 (citations, quotations, and alteration omitted). The

judgment of the Supreme Court of South Carolina should be affirmed.

Respectfully submitted,

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**CULTURAL CONNECTION AGREEMENT  
FOR \_\_\_\_\_ [name(s) of children]**

This Cultural Connection Agreement (hereinafter “Agreement”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_ [names of foster/adoptive parents] (hereinafter “adoptive parent(s)”), \_\_\_\_\_ [names of relinquishing parent], (hereinafter “biological parent(s)”), the \_\_\_\_\_ Tribe (hereinafter “the Tribe”), and the State of Alaska’s Office of Children’s Services (hereinafter “OCS”), regarding the placement and prospective adoption of \_\_\_\_\_ [name(s) child/children], dob \_\_\_\_\_, (hereinafter “the children”) with the adoptive parent(s). The terms of this Agreement are binding upon all parties and, if incorporated into the Court’s termination order, are subject to judicial enforcement pursuant to A.S. §§ 25.23.180(l) and 47.10.089(g).

WHEREAS, it has been determined that the children are members of the \_\_\_\_\_ Tribe, a federally recognized Indian Tribe. The biological parents, the adoptive parents and the Tribe maintain that it is in the children’s best interest to establish and maintain contact with their extended family and their Alaska Native culture.

WHEREAS, the adoptive parent(s), the biological parents, the Tribe and OCS are all committed to the goal of preparing the child(ren) to lead safe, healthy and successful lives. To achieve that end, the parties agree that the child(ren)’s emotional, social, mental,

cultural, spiritual and physical needs must all be met. The purpose of the Agreement is to address those needs.

### **AGREEMENT**

Now, therefore, the biological parents, the adoptive parents, the Tribe, and OCS all agree to the following:

1. The adoptive parents shall maintain regular contact with the children's extended family as described in paragraphs 3 and 4 below.
2. The adoptive parents shall support the children's cultural identity by doing the following:
  - a. Learn and teach the children about their \_\_\_\_\_ culture and heritage;
  - b. Involve the children in age-appropriate activities and programs, including but not limited to language classes, culture camp, and native dance classes, which foster awareness of their \_\_\_\_\_ heritage;
  - c. Encourage the children to participate and attend tribal events; and
  - d. Facilitate and encourage the children to participate in visits with their extended biological family.
3. The in-person visitation between the children and their relatives, including but not

App. 3

limited to \_\_\_\_\_ [names of relatives], shall consist of regular visits held at least \_\_\_\_\_ [state time frame, i.e. quarterly, monthly]. Additional visits may occur as deemed appropriate by the adoptive parents. The visits shall be initiated by \_\_\_\_\_ [name of person] by calling \_\_\_\_\_ [name of person] to schedule a mutually agreeable time and location. The adoptive parents shall keep biological relatives informed of their contact numbers. Relatives may not consume non-prescription drugs or alcohol during or within 24 hours of the visit. The relatives are responsible for the cost of any transportation outside of \_\_\_\_\_ [community child resides]. In addition to in-person contact, the adoptive parents shall facilitate age-appropriate contact with relatives by telephone, email, texting, letters, cards and gifts.

4. \_\_\_\_\_  
\_\_\_\_\_  
[Enter any other terms you wish to add to agreement.]
5. If conflicts with this Agreement arise, the adoptive parents, the biological parents, the Tribe, and OCS shall collaboratively discuss the conflict and, if necessary, amend the Agreement in writing.
6. Contingent upon the adoptive parents' compliance with the terms of this agreement, the Tribe and the biological parents agree to

waive the placement preference standards as set forth in the Indian Child Welfare Act (ICWA), consent to the placement of the children with the adoptive parents, and consent to the adoption of the children by the adoptive parents. In accordance with A.S. 47.10.089(d), the biological parents have exercised their right to retain certain privileges with respect to the children. Should the adoptive parents fail to honor these privileges or comply with the terms of the Agreement, the biological parents are entitled to seek judicial enforcement under A.S. § 25.23.180(1) and 47.10.089(g).

7. If approved, this Agreement shall be incorporated into the Court's termination order in Case No. \_\_\_\_\_ [CINA case number], with the recommendation that it be included in the children's subsequent adoption order pursuant to A.S. § 47.10.089(e).

IN WITNESS WHEREOF, the undersigned parties acknowledge the execution of this Agreement to be their voluntary act and wish:

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Foster Parent

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Foster Parent

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Mother

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Father

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Tribe Representative of \_\_\_\_\_

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Office of Children's Services

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Guardian ad Litem

\_\_\_\_\_

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**Split Feathers . . .**

**Adult American Indians Who Were Placed In  
Non-Indian Families As Children**

**By Carol Locust**

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The Indian Child Welfare Act (ICWA) of 1978 was designed specifically to stop the wholesale removal of Indian children from their families, which had contributed to the destruction of the traditional extended family structures and Indian community life for over a century. A follow-up study in 1980 by the Colorado Indian Law Review revealed that the Act only slowed the removal of children but did not stop it as the Act was intended to do. Tribal leaders called upon the Supreme Court to assure enforcement of the ICWA until amendments could be made to the Act to tighten loopholes through which many Indian children are still being snatched. At this writing, the amendments have not been made.

The pilot study conducted by this investigator indicated that every Indian child placed in a non-Indian home for either foster care or adoption is placed at

great risk of long-term psychological damage as an adult. There is, however, a lack of sufficient research dedicated specifically to the investigation of this issue. Data supporting the statement of at risk adult American Indian adoptees come from the Congressional Hearings pursuant to the Indian Child Welfare Act (1978). Essentially, the issue of the adult Indian who was placed in a non-Indian home as a child has not been addressed.

The literature that does exist on adult Indians who have experienced out-of-culture placements as children, including the preliminary study conducted by this investigator on which this article is based, indicates that nineteen out of twenty Indian adoptees have psychological problems related to their placement in non-Indian homes.

The study determined that *there are unique factors of Indian children being placed in non-Indian homes, that create damaging effects in the later lives of the children.*

This study has revealed that

- placing American Indian children in foster/ adoptive non-Indian homes puts them at great risk for experiencing psychological trauma that leads to the development of long-term emotional and psychological problems in later life
- the cluster of long-term psychological liabilities exhibited by American Indian adults who experienced non-Indian placement as

children may be recognized as a syndrome (Syndrome: a set of symptoms, which occur together. From *Dorland's Medical Dictionary, 24th edition, 1965.*)

- the Split Feather Syndrome appears to be related to a reciprocal-possessive form of belongingness unique to survivors of cultures that have faced annihilation

The Split Feathers themselves have identified the following factors as major contributors to the development of the syndrome, in order of their importance

1. the loss of Indian identity
2. the loss of family, culture, heritage, language, spiritual beliefs, tribal affiliation and tribal ceremonial experiences
3. the experience of growing up being different
4. the experience of discrimination from the dominant culture
5. a cognitive difference in the way Indian children receive, process, integrate and apply new information – in short, a difference in learning style

Other contributing factors included physical, sexual and mental abuse from adoptive family members; loss of birth brothers and sisters; uncaring or abusive foster/adoptive families; not being told anything or being lied to about their adoption; not being given advanced notice of moves; too many moves; nobody to talk to; loss of personal property.

The following sections will explore the five major factors listed above that contribute to the development of the Split Feather Syndrome.

### **The Loss of Indian Identity**

The loss of American Indian identity appears to be one of the most important factors in the development of the Split Feather Syndrome. 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 belonging to one's real culture. Almost all of the respondents indicated a defiant, almost fierce pride in being an American Indian. When questioned about what the Indian identity was, the responses repeated most frequently were "I belong to that tribe;" "That is *my* tribe." The individual belonged to the tribe, and the tribe likewise belonged to him or her, a reciprocal possessiveness of cultural identity which may be found in members of other cultures who have undergone great grieving, such as the survivors of the Holocaust.

The belongingness of tribal identity also seemed to embody the reason for one's being "different," the roots of ancestral pride, the foundations of mystical beliefs and tenets and, as one respondent wrote, "the drums that thunder in my blood." The Indian identity, in those terms, meant much more than personal or family identity. It became the totality of the person's existence without which he or she was nothing.

### **The Loss of Family, Culture, Heritage, Language, Spiritual Beliefs, Tribal Affiliation And Tribal Ceremonial Experiences**

The reciprocal possessiveness of the factors listed above (loss of family, culture, heritage, etc.) indicated that Split Feathers not only felt a loss of these “possessions” because they were his or hers by birthright, but also that the individual was the “possession” of the things identified here. For example, not only did the individuals mourn the loss of their families, but they also mourned their families’ loss of them as well. The loss of their biological family, extended family, clan and tribe was an unending grief for the respondents, a grief that spawned deep-seated resentment and hatred for the adoption system.

Their biological relatives belonged to them, and they belonged to their relatives, a belongingness that connected the adoptees with relatives, clan members and tribal members. They could see in other Indians a reflection of themselves, a fact that satisfied the human need to be like those around them.

The loss of culture, heritage and language seemed to encompass the total lifestyle that the respondents had missed. One said, “I was supposed to have a naming ceremony when I was two years old, and I didn’t get it. I don’t have a name. How can I go back to my tribe if I don’t have a name?” Another wrote, “Somebody said that we could learn all we needed to learn about our culture and heritage from books and videos from our school. What a laugh! What we got

was a watered down, Indian-style-Sesame-Street version of what some white person thought all Indians were like.”

All of the Split Feathers said they read books, watched TV shows and saw movies about Indians when they were children. No matter what the plot of the story, they championed the Indians, even when John Wayne was on the winning side, even, the majority said, when the Indians were portrayed as brutal savages, drunks or dirty thieves. Their feeling toward real life Indians was not any different.

“They told me my parents were alcoholics and that I was lucky to be out of the home,” one respondent said. “But I don’t feel that way. Poor Mom, poor Dad, maybe I could have helped some way. I’ll never know. I never had the chance to find out.

***Nobody ever asked me if I wanted to stay or not, they just drove up one day and took me.  
My mother had this horrible, disbelieving look on her face. I never saw her again.”***

Despite the negative portrayal of Indian people in the media and in most non-Indian people’s minds, the respondents were proud to be Indian.

Many of them had been told horror stories about their birth families, which always ended with “aren’t you glad you came to live with us?” The fact was that most of the stories expounded on the negative aspects – rather than the positive aspects – of the biological

families and were twisted versions of the truth or were outright lies. None of the respondents said they were “glad” about their adoptive placement.

Tribal spirituality seemed to transcend the adoptive experience. All of the respondents regarded themselves as being spiritual, either in an organized church, a personal religious way or in their tribal belief system. Of the twenty respondents, Fourteen reported having extrasensory experiences from childhood, ranging from knowing about things before they happened, having dreams that came true, knowing what someone else was thinking and being able to communicate with animals. Seventeen of the respondents said they had actively sought more information about their tribal traditional beliefs, hoping to find explanations for the mystical experiences in their lives or learn more about their own tribal beliefs.

Most of the respondents viewed tribal ceremonial experiences as an integral part of spirituality. While eleven of the twenty had been able to experience at least one tribal ceremony, nine had not had the opportunity. Thirteen of the twenty had attended at least one Indian pow-wow or celebration, while seven had been denied the privilege but expressed optimism about attending one in the future. Four of them had taken part in sweats. One of the twenty said he was allowed to attend Indian celebrations as a child.

Re-entry into the culture took place after the Split Feathers had reclaimed their Indian identity. Sixteen of the twenty respondents said they were ignorant or

knew very little about traditional ceremonies that they'd missed over the years, although four of them knew about several of their tribal customs and traditions associated with ceremonies. All of them felt they had been robbed of the ceremonies that other tribal children were given but that they had never experienced. All twenty of them said they had several pieces of Indian art, such as jewelry, pottery, basketry or such that held a ceremonial meaning for them. One individual had been given a ceremonial eagle feather. Tribal affiliation – being enrolled in a tribe – was a serious subject for all twenty of the Split Feathers. Sixteen of them had had their enrollment cancelled when they were adopted into non-Indian homes. The names of four had remained on tribal rolls. At the time of this study, six of them had two sets of birth records, one of Indian ancestry bearing their birth names and family names, and another set bearing their adoptive names. The one respondent who had not yet found his Indian identity had been searching archival records for years trying to locate some clue to his tribal affiliation.

“Those pieces of paper – the adoption papers – took away my Indian rights,” another respondent wrote.

“Those papers took away my entitlement to my land settlement money, my right to live on tribal land, to vote in tribal elections, to apply for tribal scholarships, my right to be an Indian. My birthright was stolen from me. But they could not take away the fact that I was an Indian. I burned those papers. I hated them.”

## **Growing Up Being Different**

In describing what they meant by being “different”, the Split Feathers used such words as dark skin, black hair, dark eyes and “the Indian look”. Besides physical differences they also included having different philosophical concepts, even though most of them had been adopted too young to have learned any tribal philosophy. The fourteen respondents who said that they had extrasensory experiences felt that this ability made them even more different.

The differences made them feel alienated from other people. All of the Split Feathers said that they were extremely self-conscious. Some were painfully shy and withdrawn as children; others became belligerent and aggressive.

Being different also included the concepts that non-Indians had of them, e.g., Indians had certain traits (stoic, brave), behaved certain ways (never showed emotion, spoke very little), had certain knowledge inherent in their blood (when it was going to rain, herbal remedies). These imposed expectations were burdensome to most of the Split Feathers, who felt guilty because they could not fulfill them. One respondent said it made her feel like a “fake” Indian because she could not fit the stereotype of “Indian”. Nine of the twenty respondents said that they felt frustrated and angry because of the unfair expectations placed on them, while the opportunities to be all that was expected of them as “Indians” had been taken away.

***Although being different created major psychological problems for the Split Feathers, it was also a source of intense pride.***

One respondent wrote, "Being different was horrible, like being a freak. At the same time I was proud. Feeling horrible and proud about the same thing splits your brain apart. You hate what it does to you."

### **Experiencing Discrimination from the Dominant Culture**

All twenty of the respondents in the random sample experienced some degree of discrimination. Words used to describe the cause of discrimination were "being dark", "being Indian", and "not being white", discrimination came from adults as well as children and occurred within the adoptive families; from relatives and neighbours; and at schools, churches and social functions. The average age when "knowing I was different" began at three years of age; the average age when discrimination began to be a serious problem for the respondents was 11 years.

Puberty was a traumatic time for all the respondents when they learned that their limited acceptance in the non-Indian world did not include dating white youth. Thirteen of the 20 reported some amount of alienation from their adoptive families during this period, from hostility to acting out rage and running away. The estrangement increased as the adoptees reached young adulthood. "I asked a girl to dance

with me at a junior high party. Her brother dragged me outside and beat me up, told me no dirty Indian was going to get close to his sister,” one respondent wrote. Another respondent wrote that as a young girl she never got asked out on dates. Her adopted mother told her to “go find yourself an Indian.” That was the first time she realized that she was not being asked out because of her race.

Discrimination was also felt in the work force as well as in the social realm when “Split Feathers reached adulthood. Jobs often went to less qualified non Indians. Promotions were slow in coming, infrequent or denied. One respondent stated that he felt employers never really trusted him because he looked so “Indian” and that his appearance was against him in obtaining employment. Another wrote, “I had just gone through the alcohol rehab program. I was pleased that I had been sober for three months. In the program I had the opportunity to do a sweat, and I really hung on to that experience, to that little bit of the Indian world. Then I went to the state VR office to get help in finding a job. They told me to cut my hair. My long hair was the only part of me that I could claim as my heritage. I said I wouldn’t cut it. They said forget about working, no one would hire me looking like a wild Indian, only if I looked tame.”

**Cognitive Differences in the Way Indian Children Receive, Process, Integrate and Apply New Information (A Difference in Learning Style)**

Based on the Split Feather testimonies, it would appear that American Indians have a cognitive process different from non-Indians. While all 20 of them said that they felt that they were average or above in intelligence, half of them had spent time in remedial education programs in school. Five respondents had been labeled as Learning Disabled. Two were classified as “slow learners.” All of them had failed at least one grade in school. The reasons for academic problems were given in episodes. “I just couldn’t learn like all the other kids. The teacher talked too much, too many words. I learned better through my eyes.”

“When I was in the fifth grade I got punished in front of the whole class for not remembering the capital city of Wyoming. That’s when I decided to learn my own way, not theirs. I worked out my own strategy all by myself. My adopted family didn’t know what I was doing so they couldn’t help me . . . I kept thinking either there’s something wrong with my brain or theirs, because our brains don’t work the same way when it comes to learning. And since I was the only Indian in the class, I figured out that there was something wrong with my brain. It was frustrating; I hated school. I could learn okay, and fast outside school, but in my school lessons I had to do it their way, not mine. And I failed.”

Reading was the most difficult subject for the Split Feathers. Surprisingly, math was not that difficult. "Numbers are logical," said one respondent. The overall picture of the educational success of the Split Feather group was rather dismal, however. The inability to absorb information in the same manner as the other children engendered failure for them, and failure begat more failure, poor self-esteem and often either withdrawal or aggression. Frustrations in elementary school led to difficult junior high school years and early drop-out rates in high school. Of the 20 respondents, only five completed a high school degree. Of the other 15, one went into the military, three were in correctional facilities, four got married and the other seven entered the job market with little or varying degrees of success.

Later in their lives, six of them had either taken college courses or attended advanced training for job placement. None of them described themselves as a success. Although one respondent said he was "doing all right."

### **The Effects of Reclaimed Indian Identity on the Split Feathers**

For nineteen of the twenty individuals in this preliminary study (one had not yet found his tribe nor his tribal identity), repatriation or reclamation of their tribal identity was described as a rebirth experience. Although fear of not being accepted was a major personal problem, and threats of being disowned

came from adoptive parents, all of them said they were glad they had pursued their quests to find out who they were.

Descriptors used for the experience were

- “I felt whole for the first time in my life.”
- “Thank God I finally know who I am!”
- “I finally found what I am, what is part of me, what I am part of.”
- “I found the missing part of me and put it back in place. Now I can really be alive.”
- “I found where I really belonged, my place, my home, my true identity.”

When asked how they felt about rejoining a cultural group that was frequently described in degrading terms (drunk Indians, lazy, dirty, stupid) and against which there were many racist, bigoted and prejudiced people, not one of the Split Feathers said they would change their minds. From their responses, it appeared that social, economic and cultural labels had no impact whatever on their repatriation decisions. Most of them said they began helping their birth families and relatives as soon as they found out who they were. They received tribal teachings in return, a reciprocal process that satisfied the needs of the whole family.

Eighteen of the nineteen respondents who had reclaimed their Indian identity said their personal lives had changed dramatically for the better after the

reclamation. A good description of the change, written by one respondent, reads, “The weight of hurting, loneliness, anger and sorrow I carried all those years was dropped, and my soul could soar.” Another said, “It’s like I was blind, stumbling through life looking for myself, and now – now I can see.”

The respondents used the following statements to indicate the profound change in their psychological health, in order of how often the [sic] were repeated

- decrease in depressive feelings
- decrease in alcohol and drug abuse
- decrease in aggressive behaviours
- increase in self-esteem
- feelings of love, joy, generosity, sympathy, understanding
- feelings of finding a purpose in life
- increase in spiritual activities
- increase in days worked (working more regularly, finding a job, and getting a better job)

Other changes mentioned were

- spending more time with my own family
- spending leisure time constructively
- making a commitment to carry through with my responsibilities

- paying more attention to the needs of other people
- learning more about my tribe and my spiritual beliefs
- going back to school to get my GED
- taking care of myself
- looking at the sky instead of the dirt (dreaming dreams again)
- smiling a lot more often

### **About the author**

**Carol Locust is Training Director for the Native American Research and Training Center at the University of Arizona College of Medicine. Her work involves counselling and employment issues with people with disabilities. She also works with traditional medicine and ceremonies as a part of current healing practices. Carol is a member of the Eastern Band of Cherokee Nation.**

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### **In their own words . . .**

#### **What Split Feathers say**

“They gave me everything a child could ever ask for, except my Native American identity. All my years growing up in school I was cut down and made fun of because I was Indian. I was darker, had dark hair, and I was ‘different’. I grew up resenting who I was,

what I was; of course I kept all the shame to myself, therefore building resentment. I am waiting now for enrollment in my tribe and waiting to establish contact with my biological family. I wish I had grown up being proud – like I am proud today.”

“My foster mother was very abusive. She always said we were dirty because we were dark. She beat us often, made our noses bleed. But the worst thing she did was denying us our Indian heritage. Courts should never let anything like this happen. Indian children need to be with Indian families, not white families that are so different from Indian.”

“Adoption causes such intense inner pain that you do anything just to get away from it. No one understands you, you are different, and there’s no one to talk to. You withdraw into yourself, keep it all inside. That’s how I got into trouble with alcohol: it was pain medicine.”

I was adopted at age four, started school just before five, grew up in a middle class family that was okay. But I started having dreams about age five about being taken away (from the adoptive home), taken back to my family, by Indians. My family didn’t pay much attention to the Indian spirit within me, or to me, either. I communicated more with animals than I did people. In the sixth grade I started having problems with the other kids. Whites, Mexicans and others didn’t like me because of being Indian. I got into lots of fights and became a loner.”

“I am 72 years old. I was adopted into a white family at age one-and-a-half when my mother died. I realized I was different before I ever went to school. When I asked, my foster parents told me I was Indian, and from that day I identified with Indians, because that was what I was. I didn’t know who I was, and that heartache and anguish has been with me for nearly 70 years. I hope your study can help me find out who I am before I die. I don’t want to die not knowing my true identity. They (the government) sealed my birth certificate so I could never find my identity and never see my blood relatives. The pain of this is never ending.”

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**Alaska Child Welfare Disproportionality Reduction  
Project Mid-Project Assessment Report**

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August 9, 2012

**I. Introduction**

The Alaska Child Welfare Disproportionality Reduction Project is funded by the Children's Bureau as a four year implementation project that embraces cultural competence and interagency collaboration as its core operational framework. This project is a collaboration of 16 Alaska Title IV-B Tribal partners with the support of the Office of Children's Services (OCS), Alaska Department of Health and Social Services, and the Court Improvement Project (CIP). The project's primary objective is to significantly reduce disproportionality of Alaska Native children through practice and decision-making changes at the front end of the child welfare system. In doing so, the project seeks to implement changes in child welfare practice for Alaska Native children, youth, and families, with particular focus on key changes in initial safety assessments, the delivery of tribal in-home services and placement decisions. The project promotes the use of a family-centered, state-tribal bi-lateral,

collaborative approach in which OCS will rely more heavily on Tribes to participate in the initial decision making and service delivery. The project is also designed to build the capacity of the tribes to provide community-based services needed by identified families to prevent out-of-home placement whenever possible, and to promote Tribal placement settings when out-of-home placements are necessary.

As one of the projects funded under the Western and Pacific Implementation Center (WPIC), the Alaska Child Welfare Disproportionality Reduction Project is being evaluated by WPIC's evaluation partner, the University of South Florida (USF). This evaluation is guided by the Alaska project logic model and work plan, and WPIC's theory of systems change. The purpose is to assess the extent to which proposed project activities are completed and desired outcomes are achieved, as well as the technical assistance strategies that have helped to build implementation capacity. The data presented here covers the period from November 2010 up to June 2012. The report is intended to provide a mid-project evaluation and is structured around four evaluation components: 1) assessment of current capacity to implement systems change; 2) assessment of the process of implementing proposed system changes; 3) assessment of progress towards achieving proposed project outcomes; and 4) assessment of WPIC's technical assistance approach. These findings will be used for the purpose of evaluating changes that have occurred since the baseline assessment, as well as identifying

areas for quality improvement and next steps in moving the project forward. A final evaluation assessment will be conducted at the end of the project.

### ***Background***

Considerable challenges exist in Alaska to providing child welfare services to Native children and families. Over 250 Alaska Native Villages are spread across a huge geographical area twice the size of Texas, many of which are accessible only by sea or air. Tribal communities are affected by unpredictable and often harsh weather conditions, and encompass diverse cultural and linguistic regions. They have limited formal child welfare client support services and often have been thought to have insufficient resources to deal with complex child welfare issues. Consequently, hundreds of Alaska Native children are removed to nearby urban communities and placed in non-Native care with a poor prognosis for reunification or family permanency outcomes.

Alaska's unique history of recent statehood and the troubled relationship between the state and the Alaska Native Tribes have made solutions to child welfare issues applied in other states difficult to apply in Alaska. The state of Alaska and the Tribal governments differ strongly in their legal opinions about the limits and scope of authority on a broad range of issues including Tribal sovereignty, and the state has been highly resistant towards Tribal efforts to assert jurisdictional authority over child

welfare cases. These conditions hinder compliance with the Indian Child Welfare Act (ICWA), contribute to the disproportionate placement of Alaska Native children, and inhibit the expansion of Tribal services, including access to federal resources that Tribes are eligible to receive. The 2006 settlement of the Alaska Supreme Court Curyung Decision, however, requires the Office of Children's Services (OCS) to engage in improved ICWA compliance practice. Thus, current policy conditions, coupled with growing awareness at both the state and federal level of the overrepresentation of Alaska Native children, have provided new and additional motivation for the state to improve collaboration with Tribes.

Federal requirements for the implementation project grants specified that Tribes must have current approved Title IV-B plans in order to apply. This is true for most grant opportunities and federal resources, which means that Tribes must go through the process of obtaining IV-B status to be eligible for many funding sources. In Alaska there are a total of 16 Tribal entities meeting this qualification, who jointly applied for the current implementation project. The majority of these Tribal partners are regional non-profits, although some, including the lead on the project (Tlingit & Haida) are federally recognized Tribes. Regional non-profits are Tribal entities, and are designated to be the providers of social and child welfare services in their regions by Tribal resolutions. Each individual Tribe has a specific resolution with their regional non-profit, which specifies

the authority of the non-profit and the extent to which there is a government-to-government relationship in place.

Ongoing efforts to address disproportionality, improve services for Alaska Native children and families, and increase Tribal-state collaboration were underway prior to the establishment of the current implementation project. The Alaska Tribal Title IV-B partners in collaboration with the State of Alaska Office of Children's Services have collectively participated in a number of efforts to improve child welfare practice under the Tribal/State Collaboration Group (TSCG). The TSCG has been in existence since 1994, and includes representatives from Tribes, Native communities, and the Office of Children's Services. The group was established to collaborate on issues pertaining to Alaska Native and American Indian families and youth, with a focus on strengthening ICWA compliance, promoting healthy racial and ethnic identity, and developing strong working relationships between the state and Tribal entities. The group is led by co-chairs consisting of three Tribal partners and three top-level state administrators from OCS. Additionally, two subgroups of the TSCG are key contributors on the implementation project: the Tribal Caucus and the Tribal Foster Care Licensing Committee.

Over the years, the TSCG has made significant efforts to strengthen the partnership between the state and Tribes and improve the child welfare system for Alaska Native and American Indian families.

The group has had a number of important successes, and continues to work together to address disproportionality. To date, the TSCG has established Tribal Title IV-E Agreements with the State of Alaska, developed and implemented a Human Services training curriculum, developed and implemented advanced ICWA training for state and Tribal child welfare workers, created ICWA Specialist positions in every region of OCS, collaborated on a number of different workshops and trainings addressing issues of racism, historical trauma, and reinforcing positive racial/ethnic identity, including “Knowing Who You Are” trainings in partnership with Casey Family Programs, worked to develop Tribally licensed foster care standards, and established the Alaska Native Family Preservation unit, which focuses on the use of in-home services with Native families. (For more information, visit the TSCG website: <http://hss.state.ak.us/ocs/icwa/tscg/tscg.htm>.)

The current project through WPIC builds upon the previous successes of TSCG and represents the most recent collaborative effort to reduce the disproportionality of Alaska Native children in the child welfare system. The baseline assessment (Johnson & Armstrong, 2011) identified five key themes arising during the first year of project implementation:

- 1) *Tribal-state relations*. Concerns have been expressed repeatedly over the historical relationship between Alaska Native Tribes and the state child welfare system. Historical trauma, oppression, issues around Tribal

sovereignty, and mutual distrust between Tribal and state agencies all represent significant challenges in efforts to create a cohesive child welfare system for Alaska Native children and families. However, stakeholders on both sides also expressed widespread desire for improved collaboration and relationship-building.

- 2) *Responsibility and accountability.* Both Tribal and state stakeholders identified a lack of shared accountability for child welfare outcomes, although they provided distinct perspectives on the matter. State stakeholders perceived a need for Tribes to take on more personal responsibility, however, Tribal partners emphasized that in order to do so, the state must relinquish some of its power.
- 3) *Resources.* This is a key issue, particularly with regard to the desire for increasing tribal child welfare services. Tribes have limited funds and generally have to compete with the state and with other Tribal needs for resources. Thus, specific concerns were raised over the availability of sufficient resources as well as the use and distribution of resources.
- 4) *Roles.* Throughout the first year, there was a continued need for role clarification among the various project partners and organizations. This was particularly true since there had been changes occurring in project membership, changes in leadership positions within OCS, Tribes, and WPIC, new individuals joining the project, and some role

changes among those involved. Efforts had been made to clarify roles, but confusion continued, making this an ongoing issue during the first year.

- 5) *Culture*. This represents a key component of the implementation project. Alaska Native children and families need services that are culturally-appropriate, and there is a great need for culturally-sensitive service providers. Tribes would like the state to recognize that allowing Tribal organizations to provide services would be better for Alaska Native children and families, and will lead to more positive long-term outcomes.

Through interviews with project stakeholders, numerous challenges and limitations to the current system capacity were acknowledged; however, several core strengths were also identified. Participants described a shared vision and commitment to the systems change effort among a core leadership group of both tribal and OCS partners, efforts to be inclusive of various stakeholder groups (i.e. OCS leadership and front-line workers, non-IV-B Tribes, the Court Improvement Project, etc.), the availability of child welfare data through OCS, and a strong commitment to improving Tribal-State collaboration as key strengths that will support the implementation and sustainability of the project. Challenges, on the other hand, included lack of shared authority and accountability across OCS and the Tribes, differences in values between the Tribes and OCS, current practices and policies that are not culturally-sensitive or

aligned with the core project values, limited engagement of parents and youth in the project, a need for more consistent sharing and use of data, insufficient Tribal resources, and lack of a truly collaborative relationship between OCS and the Tribes, which was characterized by an overall failure to recognize Tribal sovereignty, outdated interagency agreements, and little sharing of resources. With regard to the technical assistance provided by WPIC, respondents felt that WPIC had been most helpful in the following areas: clarifying system change goals, facilitating a process of reconciliation and relationship-building between the State and Tribes, sharing various service models with project partners, providing peer learning opportunities (e.g. with Hawaii), and forming project workgroups with Tribal and State co-chairs. Challenges with WPIC's TA approach included lack of clarity about various WPIC partner roles, maintaining momentum in between on-site project meetings, and lack of a clear strategic plan to identify next steps and guide the project in moving forward.

\* \* \*

### **III. Project Implementation**

The Alaska project has been designed to implement an array of policy and practice changes to create a continuum of culturally-responsive services for Alaska Native children and families. A series of implementation goals have been established at the system, program/policy, and practice levels, which focus on the creation, implementation, and consistent

application of a State-Tribal bi-lateral differential response model. To carry out the various implementation tasks, several workgroups were established, with each taking responsibility for a different component of the project. These workgroups are as follows: the Linkages Workgroup, whose mission is to determine, design, and implement the OCS infrastructure needed for using Tribal in-home services as the preferred alternative to out-of-home placement; the Tribal In-Home Capacity Workgroup, whose mission is to assist each Tribe in designing, articulating, and implementing a self-determined in-home service model; the In-Home Services Program Design Workgroup, whose mission is to demonstrate a bi-lateral approach to in-home services in five sites through redesign of the Rural Social Service Grants; the Social Marketing Workgroup, whose mission is to influence the behavior of leaders and stakeholders positively to support elements of system change; and the Tribal Foster Care Workgroup, whose mission is to develop an implementation process that includes policies and procedures to effectively administer a Tribal foster care program. The In-Home Services Program Design group successfully completed their tasks by January 2012, and in its place two new workgroups were formed: the Tribal In-Home Implementation Workgroup, consisting of the five RSS grantee Tribes with the goal of addressing the skill sets needed to implement Tribal in-home service systems of care in collaboration with the State; and the Tribal In-Home Planning Workgroup, made up of the non-RSS grantee Tribes with a focus on funding in-home services

through reconfiguration of existing funds and developing or expanding capacity to develop in-home service systems of care. Information about progress towards implementation of each project goal and specific tasks and activities that have been completed is provided in the following sections.

### ***System Level***

#### *1. Promote positive State and Tribal collaborative relations*

Efforts to address this goal have been underway and ongoing from the beginning of project implementation, and will continue for the duration of the project. WPIC has worked with the pre-existing TSCG structure to improve upon the current Tribal-State relationship. Training and technical assistance provision have focused on building better communication processes and mechanisms, reconciling the lasting impact of racism and historical trauma, and teaching the use of collaborative problem-solving skills among a diverse group of partners. Workgroups have been structured with Tribal and State co-leads to further build and encourage collaborative relationships and leadership. Specific activities that have been completed to support Tribal-State collaborative leadership include:

- Training in *Truth and Reconciliation and Decolonizing Child Welfare*
- Facilitation of *Courageous Conversations*

- Leadership Summit – training and capacity building around collaborative problem-solving skills

2. *Enhance collaboration with State and Tribal courts*

Implementation work is just beginning to address this goal during the third year of project implementation. The Tribal Capacity Self-Assessment, completed during the second implementation year, identified a strong need for capacity building among Tribal child welfare case managers in the area of court skills, such as presenting in court and writing court reports. Additionally, WPIC has identified issues with the inclusion of Tribes in the court system: case decisions are made without the presence or participation of Tribal program staff. However, one indication that the State has recognized the issue and the need to work towards collaboration with Tribes, the Court Improvement Project has recently included Tribal representatives on an advisory board. Training and technical assistance to further improve collaboration with the courts has been scheduled for an August 2012 training institute, at which the NRC for Legal and Judicial Issues will be providing training for Tribal workers on participating in court hearings, presenting the Tribe's position on a case, acting as a witness, working with GALs, CASAs, and public defenders, and writing court reports. Judges and other court staff are also being invited to this event to

address their training and coaching needs for how to collaborate with Tribal programs.

*3. Establish sustainable policies, procedures, and protocols necessary to maintain State-Tribal bi-lateral family-centered differential response*

The Alaska Safety Assessment Model serves as the protocol for differential response. This is an OCS practice model that includes policies and procedures for assessing child risk and safety factors and determining the appropriateness of providing in-home services as an alternative to out-of-home placement. Under this model, Tribal in-home services have been articulated as the preferred alternative response for Alaska Native children and families, and a referral process has been established. A new Protective Capacity Assessment has also recently been developed as a protocol under this model, although this protocol is currently on hold. The Alaska Safety Assessment Model is implemented as official OCS policy and procedure, although practice issues still need to be addressed. Tribes are currently in the process of articulating their in-home service models, including policies and procedures for provision of in-home services, with safety at the core of the model. Additionally, as noted earlier in the report, all OCS policies are currently under review as a result of the Tanana decision, although any revisions to the model would presumably provide further support for the use of Tribal services.

***Program and Policy Level***

- 1. Build Tribal and State capacity to work collaboratively to meet child and family safety needs and avoid unnecessary placements*

The Alaska Safety Assessment Model provides a foundation for Tribal-State collaboration to ensure child and family safety through a culturally-responsive service system. WPIC liaisons have been providing consultation on-site with the Tribes individually on how to incorporate the model into their in-home service designs. A protocol for OCS referrals to tribal in-home services has been developed, and the Linkages workgroup is currently working on creating a resource directory of Tribal in-home services. The group has identified and created a matrix of in-home services currently being offered by Tribes and barriers to service provision. Overall, the policies to support Tribal-State collaboration are in place, with the majority of challenges arising at the local level around the lack of buy-in from front-line staff. Partners have agreed that the project needs to move towards addressing collaboration locally.

- 2. Build Tribal capacity to deliver effective child welfare services*

The Tribal Capacity Self-Assessment, completed during the second implementation year, identified the current capacities of Tribal programs and their interest in taking on greater child welfare roles and responsibilities. One area identified for capacity

building was the provision of foster care. Many Tribes lacked written policies for foster care, and most reported that they do not have an active foster care licensing program. The Tribal Foster Care Workgroup was established to address these capacity issues. The workgroup was successful in developing a set of standards, forms, policies, and procedures for providing Tribally-licensed foster care, which are in accordance with all federal guidelines. These standards are currently under review by OCS.

The assessment also indicated that Tribes were at varying levels of capacity to provide in-home services; some Tribes had developed written policies and procedures, some had articulated understandings verbally but not in writing, and some had no infrastructure for in-home services. All Tribes, however, indicated some need to further refine their policies and procedures. Agreement was reached among the project partners to use the five RSS grantee Tribes as pilot sites for the implementation of Tribal in-home services, due to their more developed infrastructures and availability of funds. The In-Home Services Program Design Workgroup redesigned the RSS grants for this purpose, and implementation work is now focused on the development of individually-tailored in-home service models for each Tribe. WPIC partners helped to develop an in-home services planning template to facilitate this process. The template includes the Alaska Safety Assessment Model as the core around which Tribal in-home services are provided, and weaves together OCS guiding principles

for safety with the Tribe's own definition of a safe child as the foundation for the provision of in-home services. WPIC liaisons have been providing on-site training and consultation individually to the Tribes on the use of the template for the development of their own individualized models. Additionally, the NRC for In-Home Services has provided on-site training on the elements of effective service models, and in conjunction with WPIC has also been providing technical assistance to the Tribes in developing their individual service models. To identify further training needs, the Tribal In-Home Capacity Workgroup developed an in-home service training needs survey, which was administered in the Fall of 2011. Development of the individualized service models, including quality assurance mechanisms, is still in process, although two Tribes have recently completed drafts. A challenge in this process is that each Tribe must get their model approved by their Tribal leaders or council before they can implement it.

\* \* \*

## **VI. Summary and Conclusions**

Both the successes and challenges described throughout this report have been important for the personal growth of project partners, as well as broader system growth. Through their experiences working together, partners identified two overarching lessons learned about implementing systems change. First, that building relationships is critical to achieving success. Partners have come to recognize the importance

of establishing and strengthening positive collaborative relationships across organizations:

“The relationship is key, both building and sustaining.”

“Building trust is critical before any change can happen.”

Only after engaging in an intensive process of recognizing and reconciling the traumas that have been inflicted in the past and engaging in open and honest dialog together have Tribal and State partners been able to move the project forward as a collaborative effort. The commitment to a shared set of systems change goals and greater trust in one another has helped the partners to achieve successes where they had previously made little progress. The second lesson learned, however, is that change is difficult and takes a long time. As one partner described, it is, “much more painfully slow than I thought it would be.” Another added that it is, “harder than it sounds, [and] takes much longer than you think.” Creating meaningful and sustainable systems change does not happen overnight; it takes time, effort, and dedication. This can be frustrating for those working to implement change, as evidenced in the stakeholder comments shared here and in previous sections of the report, however, this is another reason why the ongoing commitment and collaboration across partners is so important.

This report has provided a comprehensive, mid-point assessment of the Alaska implementation

project, with analysis centered around four key evaluation components: 1) capacity to implement systems change; 2) implementation of proposed system changes; 3) progress towards achieving desired project outcomes; and 4) assessment of WPIC's technical assistance approach. The findings described in the previous sections suggest significant changes and progress have occurred since the baseline assessment. Project stakeholders perceive considerable increases in their capacity to implement systems changes, and report noticeable improvements in Tribal-State collaboration at the leadership level. Great strides have also been made in the implementation process: Tribally-licensed foster care standards have been completed and submitted to OCS for review, and several Tribes have either completed or nearly completed drafts of their in-home service models. These are immense achievements for the project partners that demonstrate their commitment to systems change.

The accomplishments of the project to date are very encouraging, but the report also highlights the considerable amount of work remaining. Support and buy-in for the systems change effort has not yet penetrated down to the local level, where there is still considerable resistance towards Tribal services. At the higher political level, although there have been gains in support for the general project goals, concerns remain about the extent to which there is genuine support for Tribal sovereignty, and the Tribes continue to struggle with how to implement and sustain Tribal services without access to the funding

and resources that are available to the State. With just over a year left on the implementation grant from the Children's Bureau, furthermore, there are concerns about the fact that the Tribes have not finished developing their service models, leaving little time to actually implement them into practice. The pace at which implementation has progressed leaves questions as to how much can be accomplished in the remaining time, and whether any changes in child and family outcomes will be evident at the end of the project.

### ***Recommendations***

- Based on the findings described in this report, the following recommendations are proposed as next steps for moving the project forward:
- Build and strengthen community support and buy-in for the systems change goals at the local level, particularly commitment to collaboration with Tribal programs among regional OCS staff.
- Work with OCS to review/revise/adapt policies and procedures including the new Tribal foster care licensing standards to ensure they are in alignment with the systems change goals and recognize Tribal jurisdiction as required by the Tanana court decision, and identify areas where practice changes need to occur to bring into alignment.

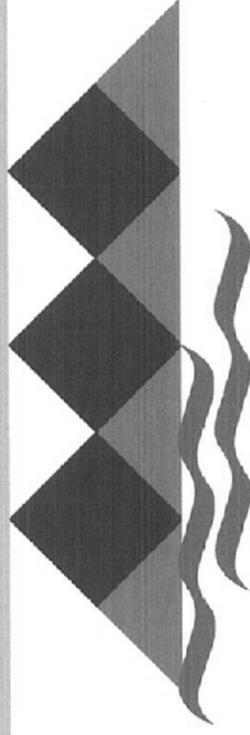
- Address cultural competency of OCS workers at the local level through training and coaching.
- Intensify work with the Tribes to complete the in-home service models and begin implementation, including development of quality assurance processes.
- Revise reporting procedures for Tribal in-home service programs to better capture the work that is happening and the impact that in-home services have on children and families.
- Identify additional training and technical assistance resources that could help to sustain the system changes after the implementation grant ends.
- Continue to refine and add to the disproportionality data indicators, especially in the area of child safety.

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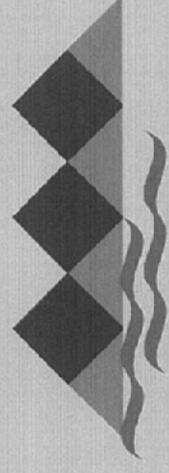
# Data Dashboard Workgroup Status Update

Alaska Child Welfare  
Disproportionality Reduction Project  
February 2013 Meeting



**Western and Pacific Child Welfare Implementation Center**  
*A Service of the Children's Bureau*  
*A Member of the Training and Technical Assistance Network*

# Defining Disproportionality



Western and Pacific Child Welfare Implementation Center

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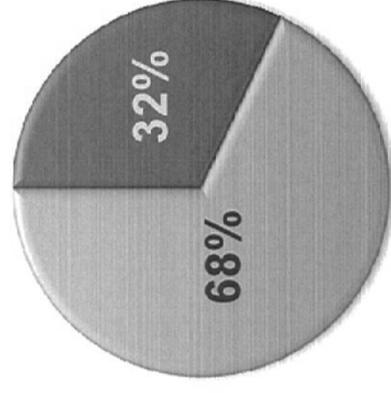
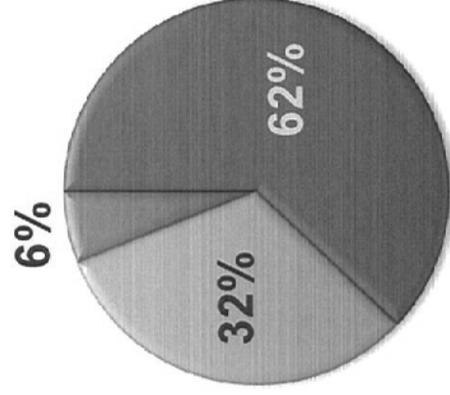
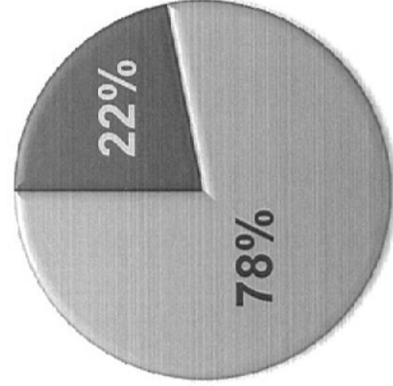
- The overrepresentation of Alaska Native children in the child welfare system when compared with their representation in the general population

■ Native ■ Non-Native ■ Undeter-mined

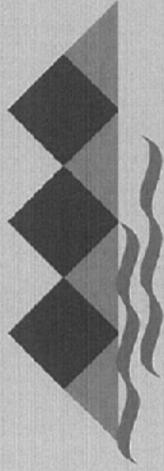
**Total Alaska Child  
Population (2011):  
188,245**

**Alaskan Children  
in OOH Care (2011):  
769**

**Alaskan Children  
in Poverty (2011):  
26,941**

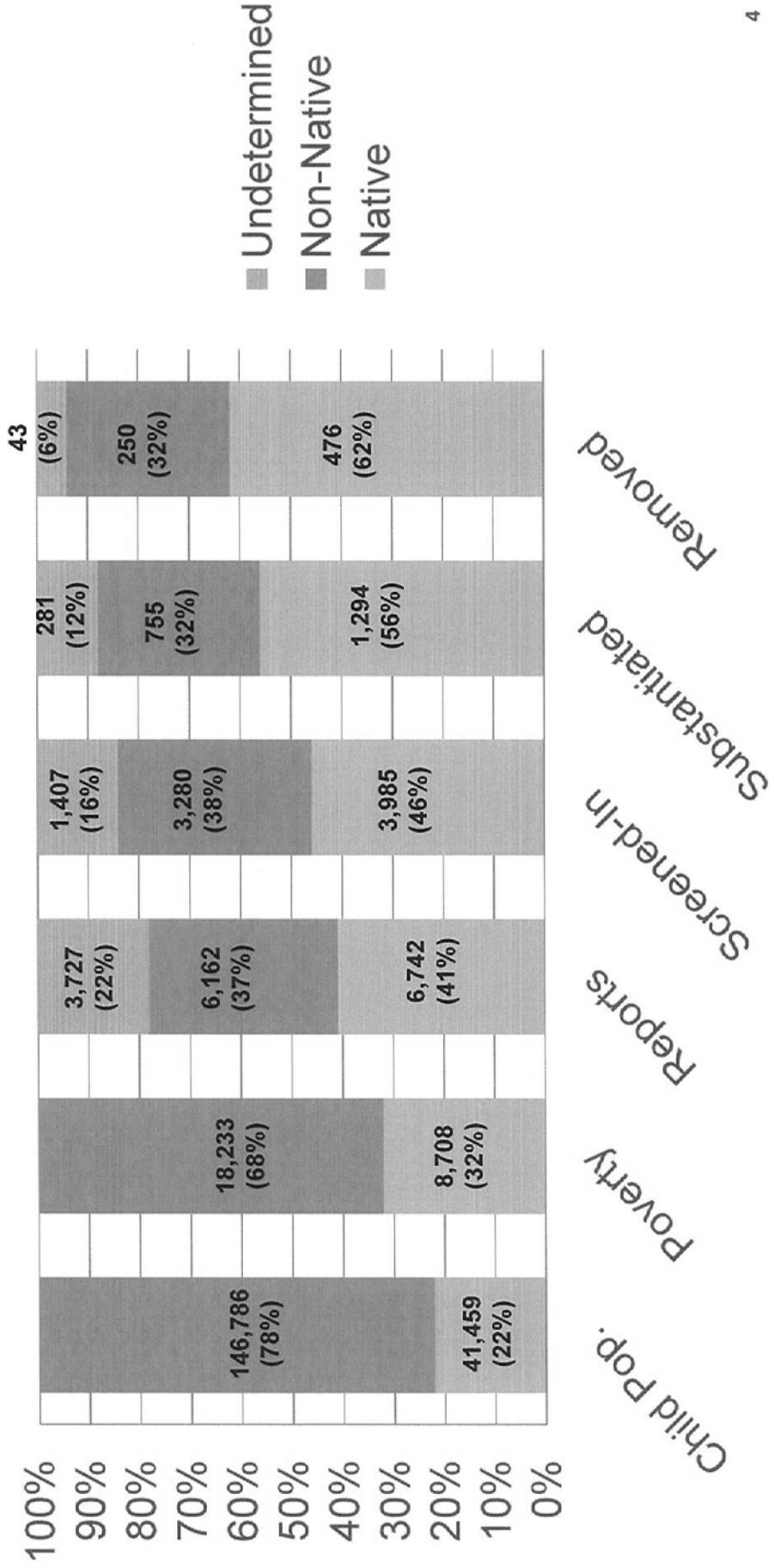


# Disproportionality at Key Points in the Alaska Child Welfare System

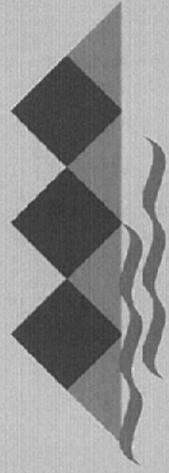


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## Disproportionality of Alaska Native Children (2011)

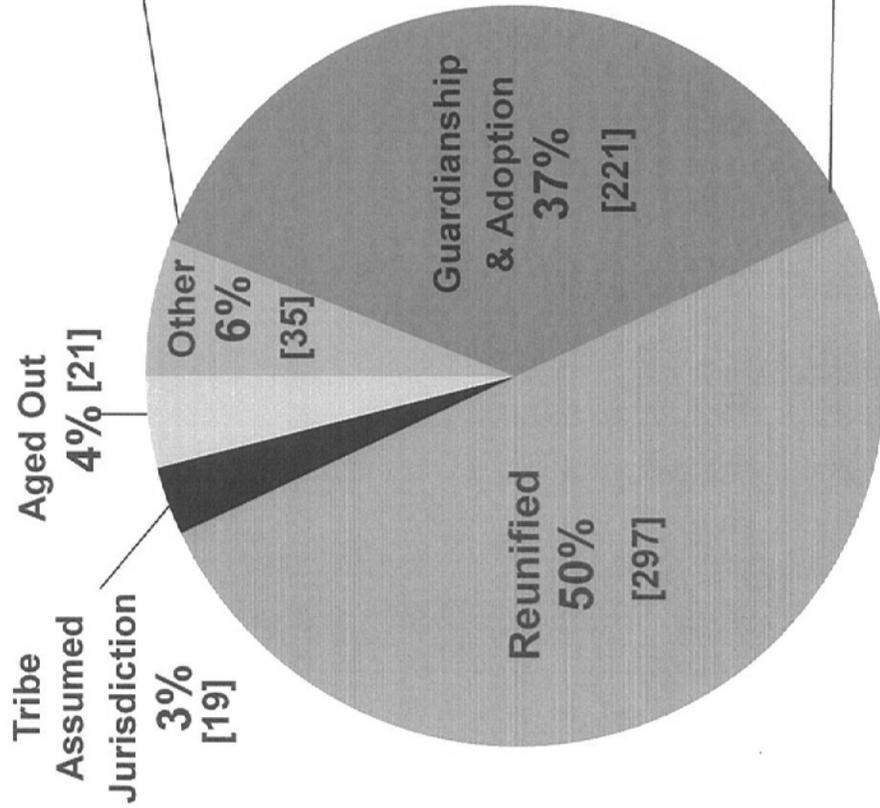


# Discharge Data for Alaska Native Children (2011)

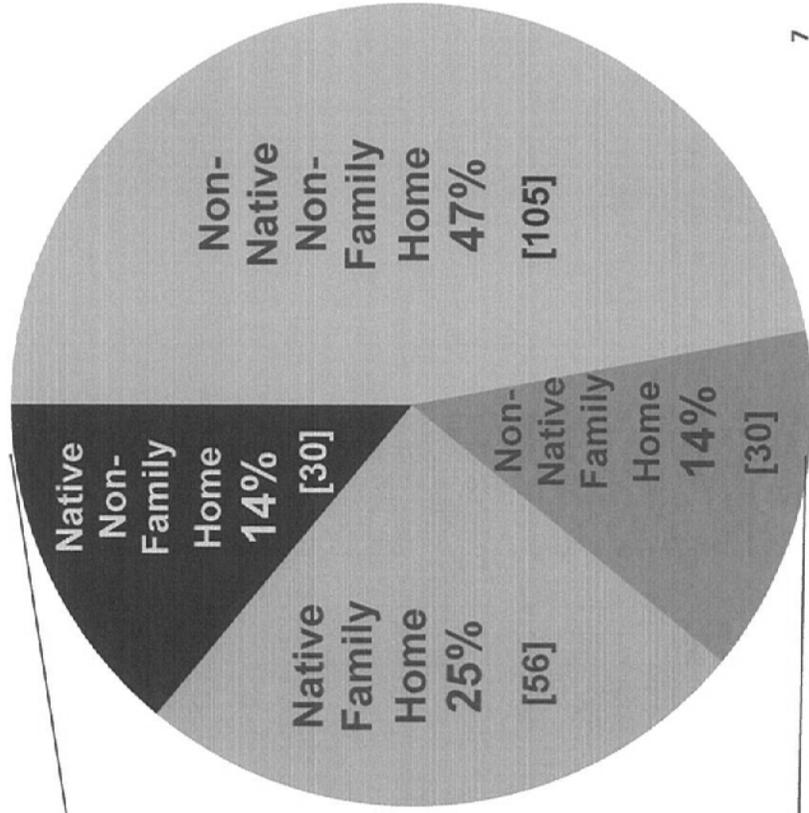


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## Native Children Discharged



## Relation to Adoption/Guardianship Family



# Anchorage Region (2011)



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