

No. 25-1287

---

---

IN THE  
**Supreme Court of the United States**

---

NATHAN AND KELLIE REYELTS,  
*Petitioners,*

*v.*

KEITH ELLISON, ATTORNEY GENERAL OF MINNESOTA;  
FARIBAULT-MARTIN COUNTY HUMAN SERVICES; RED  
LAKE NATION; L.K., MOTHER; AND MCKENZIE BORTH,  
GUARDIAN AD LITEM,  
*Respondents.*

---

*On Petition for a Writ of Certiorari to the  
Supreme Court of Minnesota*

---

**BRIEF OF THE ACADEMY OF ADOPTION &  
ASSISTED REPRODUCTION ATTORNEYS  
AND THE NATIONAL COUNCIL FOR  
ADOPTION AS *AMICI CURIAE*  
IN SUPPORT OF PETITIONERS**

June 12, 2026     Sam Spiegelman  
*Counsel of Record*  
SPIEGELMAN LAW GROUP  
PO Box 1354  
New York, NY 10028  
201.314.9505  
[sam@spiegelmanlawgroup.com](mailto:sam@spiegelmanlawgroup.com)

*Counsel for Amici Curiae*

**TABLE OF CONTENTS**

**TABLE OF AUTHORITIES..... ii**

**INTEREST OF *AMICI CURIAE* ..... ii**

**INTRODUCTION AND SUMMARY OF ARGUMENT.....2**

**ARGUMENT .....3**

**I. RIGID APPLICATION OF ICWA CAUSES HARMS DIRECTLY ADVERSE TO THE LAW’S PURPOSE .....3**

**II. RESEARCH SHOWS THE POOR OUTCOMES NATIVE CHILDREN SUFFER WHEN COURTS RENDER UNDULY STRICT INTERPRETATIONS OF ICWA AND MIFPA ..... 9**

**III.IN VIEW OF THE RESEARCH LITERATURE, ICWA PLAINLY IMPLICATES THE EQUAL PROTECTION CLAUSE .....9**

**CONCLUSION..... 16**

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>Cases</b>	
<i>Adarand Constructors, Inc. v. Peña</i> , 515 U.S. 200 (1995).....	18
<i>Adoptive Couple v. Baby Girl</i> , 570 U.S. 637 (2013).....	11, 16, 17
<i>Frontiero v. Richardson</i> , 411 U.S. 677 (1973) .....	16
<i>Haaland v. Brackeen</i> , 599 U.S. 255 (2023).....	2, 8
<i>Miss. Choctaw Indians v. Holyfield</i> , 490 U.S. 30 (1989).....	3, 11
<i>Morton v. Mancari</i> , 417 U.S. 535 (1974) .....	17
<i>Palmore v. Sidoti</i> , 466 U.S. 429 (1984).....	18
<i>Rice v. Cayetano</i> , 528 U.S. 495 (2000) .....	17
<i>Students for Fair Admissions, Inc. v. President &amp; Fellows of Harvard Coll.</i> , 600 U.S. 181 (2023) .....	18
<i>United States v. Bryant</i> , 579 U.S. 140 (2016).....	16
<i>United States v. Carolene Prods. Co.</i> , 304 U.S. 144 (1938).....	17
<b>Statutes</b>	
25 U.S.C. §1902 .....	6
25 U.S.C. §1903(4).....	18
25 U.S.C. §1915 .....	8
25 U.S.C. §1915(a).....	9, 18
25 U.S.C. §1915(b).....	9
25 U.S.C. §1915(c) .....	6

25 U.S.C. §1916 .....	6
Minn. Stat. §§260.751 <i>et seq</i> .....	12
<b>Other Authorities</b>	
Charles H. Zeanah & Mary Margaret Gleason, <i>Annual Research Review: Attachment Disorders in Early Childhood—Clinical Presentation, Causes, Correlates, and Treatment</i> , 56 <i>J. Child Psych.</i> 207 (2015) .....	15
Christopher Wildeman & Natalia Emanuel, <i>Cumulative Risks of Foster Care Placement by Age 18 for U.S. Children, 2000–2011</i> , 9 <i>PLoS One</i> e92785 (2014) .....	6
Christopher Wildeman & Natalia Emanuel, <i>Cumulative Risks of Foster Care Placement By Age 18 for U.S. Children, 2000–2011</i> , 9 <i>PLOS One</i> e92785 (2014) .....	10
Darren Maguire et al., <i>A Systematic Review of the Impact of Placement Instability on Emotional and Behavioural Outcomes Among Children in Foster Care</i> , 17 <i>J. Child &amp; Adolescent Trauma</i> 641 (2024).....	15
David Fanshel, <i>Far From the Reservation: The Transracial Adoption of American Indian Children</i> (1972) .....	5
Deana Around Him, <i>American Indian and Alaska Native (AIAN) Children Are Overrepresented in Foster Care in States With the Largest Proportions of AIAN Children</i> , <i>Child Trends</i> (2022) .....	9
Frank R. Edwards et al., <i>American Indian and Alaska Native Overexposure to Foster Care and Family Surveillance in the US: A Quantitative</i>	

<i>Overview of Contemporary System Contact</i> , 149 Child. & Youth Servs. Rev. 106915 (2023) .....	14
Gene Demby, <i>The Ugly, Fascinating History of the Word “Racism”</i> , <i>NPR</i> , Jan. 6, 2014 .....	5
Gordon E. Limb et al., <i>An Empirical Examination of the Indian Child Welfare Act and Its Impact on Cultural and Familial Preservation for American Indian Children</i> , 28 <i>Child Abuse &amp; Neglect</i> 1279 (2004).....	8
Gov. Acc. Off. <i>Indian Child Welfare Act: Existing Information on Implementation Issues Could Be Used to Target Guidance and Assistance to States</i> , GAO-05-290 (2005) .....	7
Gov. Acc. Off., <i>Foster Care: Most Tribes Do Not Anticipate Challenges with Case Goal Changes, but HHS Could Further Promote Guardianship Assistance</i> , GAO-16-625 (2016) .....	7
H.R. Rep. No. 95-1386 (1978).....	3
Karen Balcom, <i>The Logic of Exchange: The Child Welfare League of America, the Adoption Resource Exchange Movement, and the Indian Adoption Project, 1958–1967</i> , 1 <i>Adoption &amp; Culture</i> 5 (2007).....	5
Margaret D. Jacobs, <i>A Generation Removed: The Fostering and Adoption of Indigenous Children in the Postwar World</i> (2014).....	4
Maude Archambault et al., <i>Validation of the Reactive Attachment Disorder and Disinhibited Social Engagement Disorder Assessment (RADA): A DSM- 5 Semistructured Interview</i> , 32 <i>Assessment</i> 839 (2025).....	15

Minn. Dep't of Children, Youth & Fams., <i>Out-of-Home Care and Permanency Report, 2023</i> (2025).....	12
Naomi Schaefer Riley, <i>Reconsidering Kinship Care</i> , 67 Nat'l Aff. 3 (2018).....	10
Nat'l Indian Child Welfare Ass'n, <i>Disproportionality in Child Welfare</i> (2021).....	12
Richard H. Pratt, <i>The Advantages of Mingling Indians with Whites</i> , in <i>Americanizing the American Indians: Writings by the "Friends of the Indian" 1880–1900</i> (Francis Paul Prucha ed., 1973).....	4
U.S. Census, <i>The American Indian and Alaska Native Population: 2010</i> (2012).....	7
Youngmin Yi, Frank R. Edwards & Christopher Wildeman, <i>The Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement for U.S. Children by Race/Ethnicity, 2011–2016</i> , 110 Am. J. Pub. H. 704 (2020).....	6

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

The **Academy of Adoption and Assisted Reproduction Attorneys** (the “Academy”) is a credentialed, nonprofit organization of attorneys, judges, and law professors throughout the United States and abroad who have distinguished themselves in, and are committed to the ethical practice of, adoption and assisted reproductive technology law. Our mission is to support the rights of families and to ensure appropriate consideration of all parties’ interests, including children, in adoption and assisted reproductive technology matters. Fellows of the Academy are legal thought leaders and are a highly vetted, experienced group. Collectively and individually, we are committed to the ethical practice of law, the protection of all parties, and the legal security of parental rights in adoption and ART. Academy Fellows frequently present as adoption experts to attorneys and the judiciary throughout the country, including on the Indian Child Welfare Act, 25 U.S.C. §§1901–1963 (“ICWA”).

Founded in 1980, the **National Council for Adoption** (“NCFA”) is a nonprofit education and advocacy organization committed to the belief that every child deserves to thrive in a nurturing, permanent family. It works to meet the diverse needs of children, expectant and birth parents, adopted individuals, adoptive families, and all those touched by adoption through global advocacy, education,

---

<sup>1</sup> Pursuant to Rule 37, counsel for *amici* affirm that no counsel for any party authored this brief in whole or part, and no person or entity, other than *amici*, their members, or counsel, made any monetary contribution to its preparation or submission. All parties received timely notice of *amici*’s intention to file.

research, legislative action, and collaboration, all directed to improving the practice and ensuring that the best interests of children are at the center of adoptive placements.

This case interests *Amici* because of their decades-long commitment to ensuring that children in adoptive and foster care experience the best outcomes possible, and because the questions presented determine whether those outcomes may be subordinated to a categorical, ancestry-based placement hierarchy. *Amici* have studied, taught, and litigated ICWA and state equivalents for decades, and they submit this brief to provide the Court the empirical record bearing on how rigid application of the Act's placement preferences affects the children it was enacted to protect and likely violates their equal-protection rights in the process.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

The Indian Child Welfare Act ("ICWA") and the Minnesota Indian Family Preservation Act ("MIFPA") impose race-based rules that require protecting "Indian" children less than "non-Indian" children. When this Court declined to address the equal-protection challenge to ICWA in *Haaland v. Brackeen*, 599 U.S. 255, 294 n.10 (2023), it observed that non-"Indians" seeking to be an "Indian child's" permanent adoptive family would "[o]f course" have standing to bring that challenge in state court. Petitioners are those people.

Petitioners have done an excellent job of presenting their arguments. The purpose of this brief is to educate the Court on the broader social implications of this case. ICWA was enacted to end a

genuine and shameful practice: the mass removal of Native children from fit families and their placement, overwhelmingly, in non-Native homes and institutions. *Miss. Choctaw Indians v. Holyfield*, 490 U.S. 30, 32 (1989) (Congress enacted ICWA to address “rising concern in the mid-1970’s over the consequences to Indian children, Indian families, and Indian tribes of abusive child welfare practices that resulted in the separation of large numbers of Indian children from their families and tribes through adoption or foster care placement, usually in non-Indian homes.”).

*Amici* do not question that history or the interests Congress sought to vindicate. Quite the opposite. As longtime advocates for adopted and foster children, *Amici* recognize the myriad ways in which anti-Native sentiments have expressed themselves in the realm of family law. *See generally* H.R. Rep. No. 95-1386 (1978) (<https://perma.cc/YV43-GT9Y>). But that’s exactly it: a statute enacted to protect Native American children can injure those same children when it is applied as an inflexible, ancestry-based command rather than a rebuttable preference. When a court removes a thriving, securely attached infant from the only home she has known—not because that home is unsafe, and not because any individualized inquiry favors removal, but because a more highly ranked placement exists in the abstract—the law has ceased to serve the child.

## ARGUMENT

### I. RIGID APPLICATION OF ICWA CAUSES HARMS DIRECTLY ADVERSE TO THE LAW’S PURPOSE

Congress enacted ICWA in 1978 against the backdrop of centuries of colonial and then national

maltreatment of America's Native peoples. Among the most egregious conduct was the longstanding practice of removing Native American children from their families and placing them in non-Indian homes or assimilationist boarding schools. See Margaret D. Jacobs, *A Generation Removed: The Fostering and Adoption of Indigenous Children in the Postwar World* 1–20 (2014).

The Nation's first "Indian child welfare" policy was the boarding school. Beginning with the Carlisle Indian Industrial School in 1879—whose superintendent, Richard Henry Pratt, described its purpose as a campaign to "kill the Indian" in the child and "save the man"<sup>2</sup>—the federal government built a system that ultimately encompassed 408 federal Indian boarding schools across thirty-seven states and territories between 1819 and 1969. U.S. Dep't of the Interior, *Federal Indian Boarding School Initiative Investigative Report*, at 6 (2022) (<https://perma.cc/TYR2-MGB6>). Children were taken from their families, frequently by coercion: federal agents withheld rations and funding from families and tribes that resisted, and officials at times removed children outright. *Id.*

As the boarding schools gradually closed, removal continued through adoption. From 1958 to 1967, the

---

<sup>2</sup> Richard H. Pratt, *The Advantages of Mingling Indians with Whites*, in *Americanizing the American Indians: Writings by the "Friends of the Indian" 1880–1900*, at 260–61 (Francis Paul Prucha ed., 1973). Perhaps ironically, before his superintendency Pratt served as an officer in a "Buffalo Soldiers" regiment of freedmen after the Civil War and may have coined the term "racism" in opposition to postbellum segregation in the South. See Gene Demby, *The Ugly*, Fascinating History of the Word "Racism", *NPR*, Jan. 6, 2014 (<https://perma.cc/K3C9-ZW8M>).

Bureau of Indian Affairs and the Child Welfare League of America operated the “Indian Adoption Project,” an express effort to place Native children with non-Native—and overwhelmingly White—families across the country. *See generally* David Fanshel, *Far From the Reservation: The Transracial Adoption of American Indian Children* (1972).

The Project and its successor “exchange” placed hundreds of children directly and helped stimulate the adoption of thousands more, nearly all into homes with no connection to the children’s tribes or cultures. *See generally* Karen Balcom, *The Logic of Exchange: The Child Welfare League of America, the Adoption Resource Exchange Movement, and the Indian Adoption Project, 1958–1967*, 1 *Adoption & Culture* 5 (2007) (<https://muse.jhu.edu/article/782402>).

When adopting ICWA, Congress declared that “it is the policy of this Nation to protect the best interests of Indian children . . . .” 25 U.S.C. §1902 (emphasis added); *id.* §1915(c) (“[T]he preference of the Indian child or parent shall be considered” where appropriate (emphasis added)); *id.* §1916(a) (A petition for a return of custody shall not be granted if it “is not in the best interests of the child” (emphasis added)).

The results have been anything but ideal. Native children who enter foster care do not merely enter at higher rates; they fare worse once inside it, and the gap has not closed in the decades since ICWA took effect. Estimates place the lifetime risk that an Indian child will be removed to foster care before age eighteen at nearly *one in seven* (15.44%)—far above the rate for white children (4.86%) and indeed the highest among any census-based race classification. Christopher Wildeman & Natalia Emanuel, *Cumulative Risks of*

*Foster Care Placement by Age 18 for U.S. Children, 2000–2011*, 9 PLoS One e92785, at 5 (2014) (<https://perma.cc/2F7P-PMX2>). Between 2011 and 2016 the cumulative risk of maltreatment in foster care for Indian and Alaska Native children rose by roughly 18%, the largest increase of any racial or ethnic group over the period studied. Youngmin Yi, Frank R. Edwards & Christopher Wildeman, *The Cumulative Prevalence of Confirmed Maltreatment and Foster Care Placement for U.S. Children by Race/Ethnicity, 2011–2016*, 110 Am. J. Pub. H. 704, 704 (2020) (<https://perma.cc/54RR-5ZHE>).

The concentration is regional as well as national. In a 2005 report that remains the most exhaustive to date, the Government Accountability Office found severe overrepresentation in several states, five of which saw Native American children comprising *at least* a quarter of the entire foster-care population and up to 62% (in Alaska, whose overall Native population in the 2000 Census was 21.5%). Gov. Acc. Off. *Indian Child Welfare Act: Existing Information on Implementation Issues Could Be Used to Target Guidance and Assistance to States*, GAO-05-290, at 13 (2005) (<https://www.gao.gov/assets/gao-05-290.pdf>). Minnesota ranked sixth, with Indian children representing 15% of its overall foster population despite registered tribal members making up just 1.5% of its total population in 2000. *Id.*

In 2016, the GAO released a less comprehensive progress report that still found substantial disparities between Native American and non-Native rates of permanent placement. See Gov. Acc. Off., *Foster Care: Most Tribes Do Not Anticipate Challenges with Case Goal Changes, but HHS Could Further Promote*

*Guardianship Assistance*, GAO-16-625, at 5 (2016) (<https://www.gao.gov/assets/gao-16-625.pdf>).

The report noted that “[a]pproximately 20,000 of the 415,000 children in foster care at the end of fiscal year 2014 were identified as American Indian or Alaska Native alone or American Indian or Alaska Native in combination with one or more races”—roughly 4.82%, against an 1.7% (alone or in combination) of the total American population in 2010. See U.S. Census, *The American Indian and Alaska Native Population: 2010* (2012) (<https://perma.cc/C7Z8-VFRN>).

When reunification fails and adoption becomes the goal, Native children wait measurably longer than white children for permanent placements—an interval during which the child-development clock keeps running. The cumulative portrait is of a population that enters care more often, stays longer, and exits less securely than the children against whom ICWA’s framers measured them.

Some portion of this disadvantage is not merely tolerated by the statutory scheme but produced by it. ICWA’s defenders often attribute poor outcomes to under-enforcement. A detailed review of open ICWA cases roughly two decades after enactment found that roughly 83% of Native American children in foster or pre-adoptive care had been placed in conformity with the Act’s preference hierarchy. See Gordon E. Limb et al., *An Empirical Examination of the Indian Child Welfare Act and Its Impact on Cultural and Familial Preservation for American Indian Children*, 28 *Child Abuse & Neglect* 1279, 1285 (2004) (<https://perma.cc/YM34-UF78>).

High fidelity to the preferences, in other words, has coincided with—not cured—disproportional adverse outcomes, including delays in permanent adoption. This is by design. Since ICWA narrows the field of permissible placements to a small, defined pool—extended family, then the child’s tribe, then unrelated Native families—it forbids departure absent an exceptionally high-standard good-cause showing that does not properly consider the bond a child has formed in a non-ICWA-preferred home. 25 U.S.C. §1915. When the preferred pool is shallow, as it often is, the predictable result is not a superior placement but a longer search and a child left waiting, or moved, while the overwrought placement process slowly unfolds. The preference regime thus burdens the same children twice: it makes them harder to place, and renders their placements more fragile.

Under ICWA, placement preferences are tiered—first to the child’s extended family, then to other members of the child’s tribe, and then to “other Indian families” *outside* of their tribe. Only after these options have been exhausted does ICWA permit a Native child to be placed in a non-Native home. 25 U.S.C. §1915(a)–(b); 25 C.F.R. §§23.129–23.132; *see Haaland v. Brackeen*, 599 U.S. 255, 264 (2023) (“Among other things, this law requires a state court to place an Indian child with an Indian caretaker, if one is available. That is so even if the child is already living with a non-Indian family and the state court thinks it in the child’s best interest to stay there.”). These rankings control even if the non-Native option would provide the child in a specific case the best chances of a positive outcome. 25 C.F.R. §23.132(d)–(e) (good cause to depart from the preferences may not rest on the bond a child has formed in a non-preferred home).

## II. RESEARCH SHOWS THE POOR OUTCOMES NATIVE AMERICAN CHILDREN SUFFER WHEN COURTS RENDER UNDULY STRICT INTERPRETATIONS OF ICWA AND MIFPA

Federal data confirm that Native American children remain dramatically overrepresented in out-of-home care and fare worse within it. *See generally* Deana Around Him, *American Indian and Alaska Native (AIAN) Children Are Overrepresented in Foster Care in States With the Largest Proportions of AIAN Children*, *Child Trends* (2022) (<https://perma.cc/UD4S-3MK2>). Native American children enter foster care at far higher rates than the child population as a whole—by one widely cited estimate, roughly one in seven Native children, compared with about one in seventeen children overall. Christopher Wildeman & Natalia Emanuel, *Cumulative Risks of Foster Care Placement By Age 18 for U.S. Children, 2000–2011*, 9 *PLOS One* e92785, at 1 (2014) (<https://perma.cc/K46F-WY2R>).

The Bureau of Indian Affairs has reported Native American children as represented in state foster care at more than two times their share of the population. The Department of Health and Human Services, summarizing the research in its most recent AFCARS rulemaking, found that Native children “are at greater risk than other children of being confirmed for maltreatment and placed in out-of-home care,” that “[t]hey stay in foster care longer,” and that they are less likely to reunify with their families. *Adoption and Foster Care Analysis and Reporting System*, 89 Fed. Reg. 13,652 (proposed Feb. 23, 2024) (<https://perma.cc/CD6A-5F8P>).

To the extent it secures early, stable placement with kin, ICWA (as well as other state and federal

policies directed at non-Native children) serves a child's best interest. But this is not a given—it would be strange if it were for any distinct cultural group. Naomi Schaefer Riley, who has been tracking ICWA failures for decades, noted several years before *Brackeen*, that despite the noble intentions behind kinship care—and its widespread acceptance—“many questions have been raised regarding its efficacy, along with proposals to curtail or improve upon it.” Naomi Schaefer Riley, *Reconsidering Kinship Care*, 67 Nat'l Aff. 3, 17 (2018) (<https://perma.cc/D7B8-DED7>).

The upshot is that without ICWA often standing in the way, far more Native foster children would be placed first with extended family who do not qualify for tribal membership versus placement in *any* tribal home (perhaps not even in the *child's* tribe), which would accord with the best-interests-of-the-child rule that guides the vast majority of federal and state policies related to foster care.

Beyond in-tribe care, placement with “other members of the Native child's tribe,” or with an unrelated “other Indian famil[y]”—where the family belongs to a different tribe (*e.g.*, a Lakota child being placed in a Seminole home)—is still prioritized over “non-Indian” even though both present at least the same cultural discontinuity. See *Indian Entities Recognized By and Eligible To Receive Services From the United States Bureau of Indian Affairs*, 89 Fed. Reg. 99,899 (Dec. 11, 2024) (listing 574 distinct federally recognized Tribes, including 347 in the contiguous United States and 227 Alaska Native groups—Hawaiians and other Pacific Islanders falling under a separate categorization).

Preserving any child’s links to their heritage of course should factor into the best interests of the child—it should not, however, overwhelm them. After all, ICWA’s legislative history indicates it was intended to prevent the *unwarranted* removal of Native children. *See Adoptive Couple v. Baby Girl*, 570 U.S. 637, 649 (2013) (citing §1901(4) as noting that “an alarmingly high percentage of Indian families [were being] broken up by the *removal*, often unwarranted, of their children from them by nontribal public and private agencies”) (emphasis added by Court).

When “heritage” overtakes all other considerations, it betrays the very purpose of ICWA, which was to *balance* tribal prerogatives with individual needs. *Holyfield*, 490 U.S. at 49 (finding that “[t]he numerous prerogatives accorded the tribes through the ICWA’s substantive provisions . . . must, accordingly, be seen as a means of protecting not only the interests of individual Indian children and families,” “*but also*” that “of the tribes themselves”—*after* the best interests of the child).

Minnesota’s data places the state among the worst in successful Native foster placement. MIFPA, enacted in 1985, layers “protections” atop ICWA—on paper, some of the strongest in the country<sup>3</sup>—yet Minnesota exhibits among the most severe disproportionality in the country, with Native Americans comprising roughly 1.7% of the state’s total child population but nearly 27.2% of children in

---

<sup>3</sup> MIFPA extends ICWA’s protections—imposing, among other things, heightened notice, active-efforts, and qualified-expert-witness requirements—and was further strengthened in 2023. *See* Minn. Stat. §§260.751 *et seq.*

foster care. Nat'l Indian Child Welfare Ass'n, *Disproportionality in Child Welfare*, at 2 (2021) (<https://perma.cc/P7VF-UMSD>). State data show the gap persisting: in 2023, Native American children were approximately sixteen times more likely than white children to be in out-of-home care. Minn. Dep't of Children, Youth & Fams., *Out-of-Home Care and Permanency Report, 2023*, at 16 (2025) (66 versus four per 1,000). They also remain in care longer—roughly 32% of Native children stayed two years or more, compared with about 18% of white children. *Id.*

Reviewing the *Report* reveals a host of other issues in its statistical analysis and statutory compliance. As a threshold matter, the report cannot consistently answer the most basic question it purports to address—how many Native American children are in the Minnesota's foster care system—because it supplies two irreconcilable denominators: 1,909 American Indian and Alaska Native children counted by race alone (18.2% of the care population) and 3,945 counted as American Indian and Alaska Native children alone *or in combination with another race* (37.5%), a more-than-twofold divergence the report never explains, with its headline race tables using the narrower figure and its tribal-affiliation appendix tracking the broader one. The appendix itself (Table 28) is unusable for any population or placement analysis: the report concedes that more than one Tribal affiliation may be indicated for a child, so the tribe-by-tribe counts double-count individuals and cannot be summed against the report's own "All Tribes" total of 3,942. The arithmetic is unreliable even within a single table. In Table 26 (length of time in care by discharge reason), the report places 232 of 851 adoptions in the "more than 36 months" category but labels that share 10.1%, when 232 of 851 is 27.3%;

the consequence is that the adoption column's percentages sum to roughly 83% rather than 100%. These are not cosmetic defects—when the denominator for “Native children” can double and a flagship permanency table fails to sum to unity, every derivative rate built on the report is suspect.

Beyond the numbers, MIFPA requires that this annual report state the extent to which authorized child-placing agencies comply with the order of preference described in ICWA—the placement-preference hierarchy (extended family, then the child's own tribe, then other Indian families) that is the operative heart of both ICWA and MIFPA. The 2025 *Report* does not do this. It recites the §260.775 mandate verbatim in its Legislation section and then discloses not a single compliance figure: nowhere does it state what share of Native children were placed consistent with the statutory preferences—whether within their own tribe, with another tribe, or in non-Native homes.

The closest it comes is a relative-versus-non-relative setting breakdown (Table 16) that never links a child's race to the caregiver's tribe or Native status, and therefore measures kinship, not preference compliance. The gap is compounded by the inventory's incompleteness on its face: White Earth Nation, the Leech Lake Band of Ojibwe, and Red Lake Nation exercise data sovereignty as Initiative Tribes, with Red Lake reporting separately altogether, so a substantial share of the very Native children whose placements §260.775 directs the state to track are absent from, or only partially captured by, the state's own numbers.

That a state with heightened statutory preferences produces both the Nation's highest disproportionality

and longer stays—and does such a poor job documenting its program—underscores that the more rigid preference regimes have not, on the available evidence, yielded better outcomes for the children they govern. *See generally* Frank R. Edwards et al., *American Indian and Alaska Native Overexposure to Foster Care and Family Surveillance in the US: A Quantitative Overview of Contemporary System Contact*, 149 *Child. & Youth Servs. Rev.* 106915 (2023) (<https://perma.cc/AY28-VK7Z>).

The first three years of life are a critical period for forming secure attachments, and disruption during that window is strongly associated with reactive attachment disorder (“RAD”) and disinhibited social engagement disorder (“DSED”). *See generally* Charles H. Zeanah & Mary Margaret Gleason, *Annual Research Review: Attachment Disorders in Early Childhood—Clinical Presentation, Causes, Correlates, and Treatment*, 56 *J. Child Psych.* 207 (2015) (<https://pmc.ncbi.nlm.nih.gov/articles/PMC4342270/>). Whereas RAD or DSED affects roughly one percent of children in the general population, studies of foster populations have reported rates ranging from 19 to 38%, and repeated placement moves independently increase the risk of these and related disorders. Maude Archambault et al., *Validation of the Reactive Attachment Disorder and Disinhibited Social Engagement Disorder Assessment (RADA): A DSM-5 Semistructured Interview*, 32 *Assessment* 839, 841 (2025) (<https://perma.cc/53U3-WN3K>).

One recent systematic review found placement instability to be a consistent predictor of both internalized and externalized trauma, and post-traumatic symptoms among all children in foster care, synthesizing prior estimates that 36 to 61% of the

foster population exhibits clinically significant behavioral problems. Darren Maguire et al., *A Systematic Review of the Impact of Placement Instability on Emotional and Behavioural Outcomes Among Children in Foster Care*, 17 *J. Child & Adolescent Trauma* 641, 641 (2024) (<https://pubmed.ncbi.nlm.nih.gov/38938940/>).

The harm compounds over time: untreated attachment disorder is linked in adolescence to depression, self-injury, and suicidality, and large cohort studies report that children who leave care are several times more likely than their peers to experience adverse outcomes in adulthood.

These risks fall hardest on Native children, who—as the federal and Minnesota data above show—already endure longer stays and more frequent moves than other children. *Amici* are aware of no study isolating the prevalence of attachment disorder among Native children as a function of ICWA’s rigidity, and they do not claim one; the inference is structural. Rigid application of ICWA’s preferences operates precisely by displacing children from established placements—here, medically fragile infants removed from the only home they had known—and the developmental literature is uniform that such displacement, especially in the first years of life, inflicts lasting harm. A law that compels these moves in the name of the child’s heritage trades a concrete, present injury for a categorical and, on this record, unproven benefit.

### III. IN VIEW OF THE RESEARCH LITERATURE, ICWA PLAINLY IMPLICATES THE EQUAL PROTECTION CLAUSE

Petitioners seek the Court's review to determine, *i.a.*, whether ICWA, at least as-applied, violates the Equal Protection Clause of the Fourteenth Amendment. In *Adoptive Couple*, the Court acknowledged that ICWA and its state adjuncts raise serious "equal protection concerns." 570 U.S. at 656. The research assembled and analyzed in this brief strongly support Petitioners' argument that the rigid application of ICWA displayed in their case violates their and their former foster children's rights to equal protection under the law.

Equal protection concerns permeate ICWA and are not limited to one or two provisions thereof. As Petitioners note, "ICWA requires . . . a standard" for "the termination of the rights of an abusive parent . . . higher than that required for death-penalty convictions." Pet. Br. at 11 n.4. And before a federal court ever reaches this question, a case will first have to have gone through tribal courts, "where the Bill of Rights does not apply." *Id.* at 12 (citing *United States v. Bryant*, 579 U.S. 140, 149 (2016)). And this after the child's parents have already been deemed "Indian" under tribal rules, based on "biological ancestry alone"—"an immutable characteristic determined solely by the accident of birth." *Id.* at 13 (citing *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973)).

The upshot is a statute that maintains parental rights until their incapacity is proven beyond a reasonable doubt (the standard for criminal conviction, not civil adjudication), without which the child cannot escape a rigid placement hierarchy that,

as here, “put[s] certain vulnerable children at a great disadvantage solely because an ancestor—even a remote one—was an Indian.” *Adoptive Couple*, 570 U.S. at 655.

In his *Brackeen* concurrence, Justice Gorsuch catalogued the litany of historical and ongoing wrongs perpetrated against Native Americans that continue to justify ICWA’s existence. But good intentions do not negate equal-protection concerns, and the Court has never accepted idealism as a substitute for constitutional compliance. This is especially the case when a statute purports to sort individuals according to their racial or ancestral characteristics. *See United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 n.4 (1938) (indicating a “more searching inquiry” when a statute places “special conditions” on certain classes).

ICWA’s definition of an “Indian child” does not stop at membership. It reaches any child who is merely “eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.” 25 U.S.C. §1903(4). Eligibility coupled with biological descent is not a political status the child has entered; it is an inheritance—and as to such a child the operative trigger is ancestry. In a related context this Court has recognized that “ancestry can be a proxy for race.” *Rice v. Cayetano*, 528 U.S. 495, 514 (2000); *cf. Morton v. Mancari*, 417 U.S. 535, 553 n.24 (1974) (upholding employment preference for tribal *members* because membership there is based on one’s “political, rather than racial” preferences—inapposite to ICWA’s purely biological classification). As discussed, this can lead to absurd results that belie any sort of compelling governmental interest in, say, facilitating a tribe’s preservation of its distinct cultural heritage. Under §1915(a), a Lakota infant can

be placed with a Seminole family hundreds of miles from her home reservation before she can be taken into the care of trusted family friends two towns over who so happen to be non-Indian. Clearly this would not help preserve her Lakota heritage any more than her placement with a White, Black, or Hispanic family would. What’s more, it does not even turn on a shared sovereignty between the child and the ICWA-preferred family—only on a racial classification the federal government has drawn and imposed on the arbitrary bifurcation of “Indian” and “non-Indian.”

Once a classification is understood to rest on race or ancestry, the standard of review is settled and exacting. “[A]ll racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227 (1995). That standard does not relax because the legislature acted from benevolence or because the burdened group is disadvantaged only incidentally; “[e]liminating racial discrimination means eliminating all of it.” *Students for Fair Adm’ns, Inc. v. Pres. & Fells. of Harv. Coll.*, 600 U.S. 181, 206 (2023). And it governs the precise setting this case presents. In *Palmore v. Sidoti*, 466 U.S. 429 (1984), the Court held that a custody decision resting on race is “subject to the most exacting scrutiny,” and it set aside a custody change grounded in race even though the trial court had invoked the child’s best interests. *Id.* at 432–34 (1984). “Private biases may be outside the reach of the law,” the Court explained, “but the law cannot, directly or indirectly, give them effect.” *Id.* at 433. ICWA presents the graver case: here the racial sorting is performed not by a private litigant whose prejudice the State merely ratified, but by the operative command of the statute itself.

A further feature distinguishes ICWA from the ordinary equal-protection case and deepens the constitutional difficulty. Classifications the Court has struck down typically advantage one racial group at another's expense. The rigid application of ICWA, meanwhile, burdens the very children it singles out. Once a tribe deems a child "Indian" by ancestry, they become limited to a far narrower band of placements, often kept from more securely attached homes on the strength of a categorical hierarchy instead of on factors that commonly inform the "best interests of the child" gold standard of placement. A law that disadvantages a class defined by ancestry, and disadvantages it precisely as members it purports to protect cannot escape strict scrutiny. Indeed, it is the paradigmatic case.

### CONCLUSION

For the foregoing reasons, and those set forth in the Petition, *amici* respectfully request the Court grant the petition for a writ of certiorari.

Respectfully submitted,

June 12, 2026

Sam Spiegelman  
*Counsel of Record*  
SPIEGELMAN LAW GROUP  
PO Box 1354  
New York, NY 10028  
201.314.9505  
[sam@spiegelmanlawgroup.com](mailto:sam@spiegelmanlawgroup.com)

*Counsel for Amici Curiae*