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Dear Acting Assistant Attorney General Samuels and Deputy Assistant Attorney General Hill,

The undersigned American Indian and Alaska Native (AI/AN) organizations request that the Civil Rights Division of the Department of Justice commence a prompt investigation into the unlawful treatment of AI/AN children in the private adoption and public child welfare systems throughout the United States.

In 1978, Congress found that “an alarmingly high percentage of Indian families are broken up by the removal, often unwarranted, of their children from them by nontribal public and private agencies and that an alarmingly high percentage of such children are placed in non-Indian foster and adoptive homes and institutions.”<sup>i</sup> To offset cultural bias Congress found in state child welfare and private adoption systems and to ensure that AI/AN families receive due process in child custody proceedings, the Indian Child Welfare Act (ICWA) was enacted.<sup>ii</sup> The Act establishes minimum federal standards for child custody proceedings involving tribal members in state court, recognizes tribal jurisdiction over matters pertaining to child custody, and provides funding to tribal child welfare programs. ICWA recognizes and protects the right of AI/AN children to know, and remain connected to their parents, their families, their tribe, and their culture.

Undoubtedly, ICWA was landmark legislation that resulted in halting what was for some communities the wholesale removal of Indian children from their family, culture, and community. **There is no question, where ICWA is applied, it has been integral to keeping countless Native American families together.** ICWA is not just considered good practice for AI/AN children by experts and practitioners alike, but the principles and processes it embodies were recently described as the “gold standard” for child welfare practice generally.<sup>iii</sup>

Yet, despite all the protections provided by ICWA, each year thousands of parents, grandparents, aunts, uncles, and child advocates reach out to the National Indian Child Welfare Association (NICWA) desperate for help. Their rights under ICWA and the Constitution continue to be violated by state child welfare and private adoption systems. NICWA frequently hears stories of adoption agencies ignoring the tribal membership of children, of state attorneys failing to provide notice to a tribe when a child is taken into custody, of child welfare workers sometimes knowingly placing children outside ICWA’s placement preferences, and of judges denying tribal representatives a presence in the court room. NICWA also often hears stories of *Guardians ad Litem* scoffing at the importance of Native culture, state workers demeaning AI/AN parents and traditional ways of parenting, and attorneys using professional networks to encourage other attorneys to purposefully circumvent the “ridiculous” or “unnecessary” adoption requirements of ICWA.

Stories similar to these have just recently garnered media attention and brought a spotlight onto the injustices that AI/AN families have faced for decades in private adoptions and in state child welfare proceedings. Recent news stories have covered a variety of topics from the placement of AI/AN foster children in white homes when relatives are ready and able to care for the children and Native licensed foster care homes stand empty, to the secreting away of children across state lines without the proper authority for the purpose of avoiding ICWA in adoption proceedings, to the thwarting of fit biological fathers willing and able to parent their children in child welfare and private adoption proceedings.<sup>iv</sup>

These stories highlight patterns of behavior that are at best unethical and at worst unlawful. **Nonetheless, although these civil rights violations are well-known and commonplace, they continue to go unchecked and unexamined.** So long as this is the case, Native children and families will continue to be victims of the very systems designed to protect them.

Although there is limited data available on the experience of AI/AN children in state child welfare and private adoption systems, the data that is available reflect the unjust treatment described in the anecdotes above. AI/AN children are abused or neglected at nearly the same rate as their non-Native counterparts.<sup>v</sup> However, AI/AN children are *far more* likely to be removed and placed in foster homes—instead of receiving supportive and family preservation services offered to other families—than any other population in the child welfare system.<sup>vi</sup> In addition, the majority of AI/AN children who have been adopted out are living in non-Native homes,<sup>vii</sup> despite the fact that ICWA was passed 35 years ago.

These pleas, media stories, and statistics come as no surprise. It is well known that there is minimal federal oversight over the implementation of, and compliance with, ICWA—a fact highlighted by a 2005 GAO report.<sup>viii</sup> **It is in this unregulated environment that research shows non-compliance with all the major provisions of ICWA can proliferate without consequence.**<sup>ix</sup>

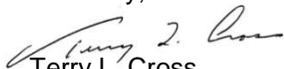
The United States, however, has an important and unique relationship with Indian nations; specifically, it “has a direct interest, as trustee, in protecting Indian children.”<sup>x</sup> This special relationship means that the United States has the responsibility to ensure the “protection and preservation”<sup>xi</sup> of Indian families as guaranteed by the mandates of ICWA. **It is the responsibility, therefore, of the Civil Rights Division of the Department of Justice to ensure these civil and constitutional rights are upheld.**

This fall, at the National Congress of American Indians annual conference, tribal leaders expressed their disgust with the way that state child welfare and private adoption systems treat AI/AN families and with the federal government’s poor oversight over a law so essential to the current well-being and future vitality of tribes and their citizens by passing resolution TUL-13-040, *In Support of a Department of Justice Investigation of ICWA Non-Compliance* (see addendum). This resolution recognizes that “no federal agency has taken action to formally examine ICWA non-compliance, which has allowed these issues to continue and worsen” and urges “the U.S. Department of Justice to launch a formal investigation of non-compliance with the Indian Child Welfare Act focusing on both involuntary and voluntary placements of AI/AN children to document the scope and frequency of non-compliance.”

**Non-compliance with ICWA harms children.** Attorneys, social workers, and judges cannot, and should not, ignore federal law and the civil rights of AI/AN children, parents, and families. When ICWA is not followed, the cultural bias and prejudice present in the child welfare system goes unchecked. When ICWA is not followed, AI/AN children’s connection to their families, their communities, and their culture is severed. When ICWA is not followed, AI/AN children are subject to familial disruption, cultural discontinuity, and extreme post-traumatic stress that is unwarranted and avoidable. When ICWA is not followed, tribes lose citizens; and with them the ability to keep their traditions, practices, and culture alive. Without federal oversight, patterns of non-compliance and poor implementation will continue.

For this reason, we as national Native organizations write to echo the resolution passed by tribal leaders at the NCAI annual conference. We respectfully request that the Civil Rights Division promptly investigate the widespread non-compliance with ICWA and the unlawful and biased practices pertaining to AI/AN children by state and private child welfare and adoption systems. Our children have waited far too long to have their rights acknowledged and protected by your enforcement of this vital law.

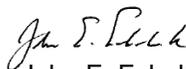
Sincerely,



Terry L. Cross  
Executive Director  
National Indian Child Welfare Association



Jacqueline Johnson Pata  
Executive Director  
National Congress of American Indians



John E. Echohawk  
Executive Director  
Native American Rights Fund



Jack Trope  
Executive Director  
Association on American Indian Affairs

<sup>i</sup> Indian Child Welfare Act of 1978, 25 U.S.C. § 1901(4) (2000). At that time studies showed that 25-35% of all AI/AN children were being removed from their homes. Of those children, 85% were placed in non-Native families' foster homes and 90% of nonrelative adoptions were to non-Native homes. H.R. REP. NO. 95-1386, at 9 (1978).

<sup>ii</sup> ICWA applies to unmarried children under 18 who are member of a federally-recognized tribe, or who are eligible for membership in a federally-recognized tribe and have a biological parent who is a member of a federally-recognized tribe. 25 U.S.C. § 1901(4) (2000). This unique political status is distinct from a racial identification. See, e.g., *Morton v. Mancari*, 417 U.S. 535 (1974).

<sup>iii</sup> Brief for Casey Family Programs et al. as Amici Curiae Supporting Respondents, *Adoptive Couple v. Baby Girl*, 570 U.S. \_\_\_\_ (2013) (No. 12-399) at 4.

<sup>iv</sup> See, e.g., Laura Sullivan & Amy Walters, *South Dakota Tribes Accuse State Of Violating Indian Welfare Act*, NAT'L PUB. RADIO (Feb. 6, 2013) <http://www.npr.org/2013/02/06/171310945/south-dakota-tribes-accuse-state-of-violating-indian-welfare-act>; Kevin Woster, *ICWA summit seeks more tribal authority in Native American child removal, placement*, Rapid City Journal (May 14, 2013), available at [http://rapidcityjournal.com/news/icwa-summit-seeks-more-tribal-authority-in-native-american-child/article\\_fc6e0878-c05e-5577-a492-2deaa7656f4e.html](http://rapidcityjournal.com/news/icwa-summit-seeks-more-tribal-authority-in-native-american-child/article_fc6e0878-c05e-5577-a492-2deaa7656f4e.html); Suzette Brewer, *Second Infant Whisked to South Carolina for Quickie Adoption*, Indian Country Today (Aug. 8, 2013), available at <http://indiancountrytodaymedianetwork.com/2013/08/13/sold-oklahoma-second-indian-infant-adopted-south-carolina-150856>; Dan Bewley, *Another Oklahoma Adoption Case Mirrors 'Baby Veronica' Case*, NewsOn6.com, (Aug 29, 2013), available at <http://www.newson6.com/story/23293465/another-oklahoma-adoption-case-bears-resemblance-to-baby-veronica-case>.

<sup>v</sup> CHILDREN'S BUREAU, U.S. DEP'T OF HEALTH & HUM. SVS, CHILD MALTREATMENT 2010 (2012), available at <http://archive.acf.hhs.gov/programs/cb/pubs/cm10/cm10.pdf>.

<sup>vi</sup> AI/AN children are three times more likely than their non-Native counterparts to be removed from their homes and placed in foster or institutional care (as opposed to receiving in-home supportive services) by the public child welfare system. HILL, R. B., CASEY-CSSP ALLIANCE FOR RACIAL EQUITY IN CHILD WELFARE, RACE MATTERS CONSORTIUM, AN ANALYSIS OF RACIAL/ETHNIC DISPROPORTIONALITY AND DISPARITY AT THE NATIONAL, STATE, AND COUNTY LEVELS 11-12 (2008), available at <http://www.cssp.org/publications/child-welfare/alliance/an-analysis-of-racial-ethnic-disproportionality-and-disparity-at-the-national-state-and-county-levels.pdf>.

<sup>vii</sup> Fifty-six percent of AI/AN children who are adopted are living in non-Native homes. Kreider, R.M., Nat'l Council for Adoption, *Interracial Adoptive Families and Their Children: 2008* in ADOPTION FACTBOOK V 109 (2011), available at <https://www.adoptioncouncil.org/publications/adoption-factbook.html>.

<sup>viii</sup> GOVERNMENT ACCOUNTABILITY OFFICE PUB. NO. GAO-05-290, INDIAN CHILD WELFARE ACT: EXISTING INFORMATION ON IMPLEMENTATION ISSUES COULD BE USED TO TARGET GUIDANCE AND ASSISTANCE TO STATE (2005), available at <http://www.gao.gov/new.items/d05290.pdf>.

<sup>ix</sup> See, e.g., BRENDA BELLONGER & DAWN MARIE RUBIO, NATIONAL CENTER FOR STATE COURTS & NORTH AMERICAN INDIAN LEGAL SERVICES, AN ANALYSIS OF COMPLIANCE WITH THE INDIAN CHILD WELFARE ACT IN SOUTH DAKOTA (2004); BROWN, LIMB, RIC MUNOZ, & CHEY CLIFFORD, NATIONAL INDIAN CHILD WELFARE ASSOCIATION, TITLE IV-B CHILD AND FAMILY SERVICE PLANS: AN EVALUATION OF SPECIFIC MEASURES TAKEN BY STATES TO COMPLY WITH THE INDIAN CHILD WELFARE ACT (2001); EDDIE BROWN, GORDON LIMB, TONI CHANCE & RIC MUNOZ, NATIONAL INDIAN CHLD WELFARE ASSOCIATION, THE INDIAN CHILD WELFARE ACT: AN EXAMINATION OF STATE COMPLIANCE IN ARIZONA (2002); B.J. JONES, JODIE GILLETTE, DEBORA PAINTE, & SUSAN PAULSON, NATIONAL INDIAN CHILD WELFARE ASSOCIATION, INDIAN CHILD WELFARE ACT: A PILOT STUDY OF COMPLIANCE IN NORTH DAKOTA (2000); Susan Waszak (2010) *Contemporary Hurdles in the Application of the Indian Child Welfare Act*. 34 AM. INDIAN CULTURE & RES. J 1, 121-135 (2010).

<sup>x</sup> 25 U.S.C. § 1901(3) (2000).

<sup>xi</sup> 25 U.S.C. § 1901(2) (2000).