

ICWA Still Applies: Private Adoptions



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The Indian Child Welfare Act

- Applies to “child custody proceedings” involving an “Indian child”
 - termination of parental rights
 - adoptive placement

25 U.S.C. 1903(1)

- Keeps American Indian families together, preserves culture
- Protects Tribal integrity
- Trumps best interests of children
- Forces children to assume a heritage they do not know or want

The Importance of Where We Come From



- Introductions
- Creation Story
- Familial structure



The American Indian Experience



Disparities

- **Education**
 - Few high school graduations
 - Low enrollment in higher education
- **Health**
 - Higher rates of heart disease, unintentional injuries, diabetes, liver disease
- **Life Expectancy**
 - Shorter life expectancy
- **Social Economic Status**
 - Lower income
 - Higher rates of poverty

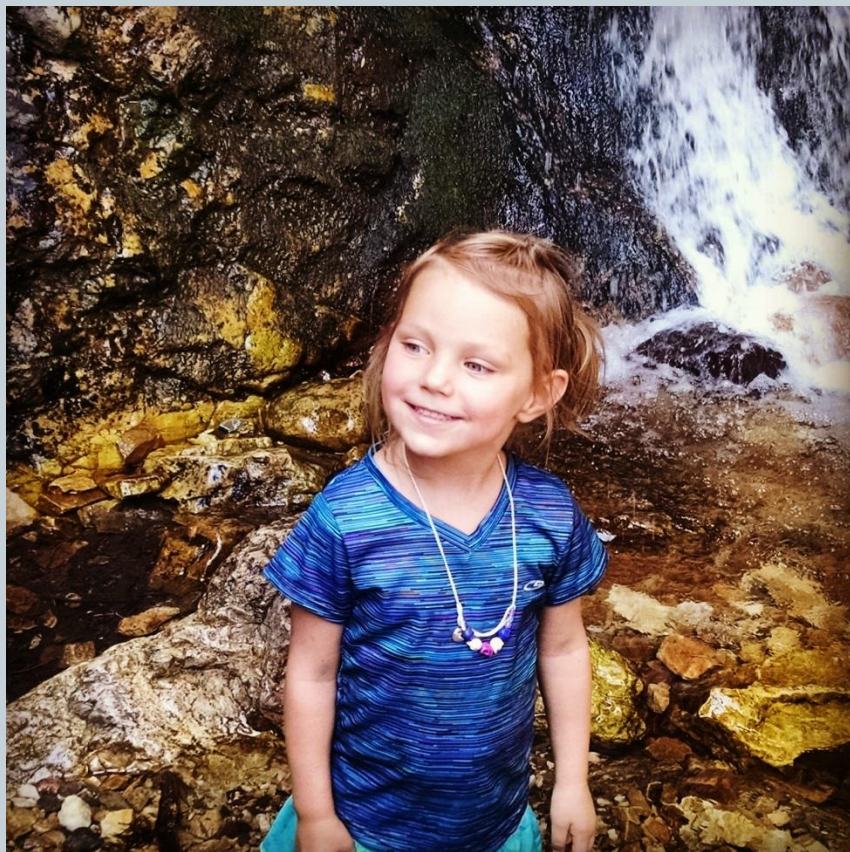
www.ihs.gov

www.niea.org

The American Indian Experience



Does ICWA Apply?



Indian Child:

any unmarried person who is under age eighteen and is either (a) a member of an Indian tribe or (b) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe

25 USC 1903



Basic ICWA provisions

- Placement of Indian Children (Section 1915)
 - Adoptive placement preferences absent good cause to the contrary:
 - 1) child's extended family;
 - 2) member of child's tribe; or
 - 3) other Indian families



ISSUES in ADOPTION PROCEEDINGS

- **Notice to Tribes (Section 1912(a))**
 - Notice of involuntary proceeding of foster care placement or termination of parental rights to parent, Indian custodial, and Tribe.
 - Agencies and State courts should provide the Indian tribe with notice of the voluntary child custody proceedings and their right to intervene; also provides guidance on how to contact tribe
 - Relevant caselaw



ISSUES in ADOPTION PROCEEDINGS

- **Father's Rights (Section 1912(a))**
 - Notice of involuntary proceeding of foster care placement or termination of parental rights to parent, Indian custodial, and Tribe.
 - Utah Paternity Statute (UCA 78B-15-101 et seq)
 - Relevant caselaw



ISSUES in ADOPTION PROCEEDINGS

- Withdrawal of parental consent (Section 1913)
 - Voluntary consent to foster care placement or termination of rights must be executed in writing, recorded before a judge and accompanied by presiding judge's certificate that terms and consequences of consent were fully explained to and understood by parent or custodian.
 - 10 days required after birth of child
 - Consent may be withdrawn for any reason prior to entry of a final decree of termination **or** adoption and child shall be returned



- **Withdrawal of parental consent (Section 1913 cont. and 1916)**
 - After entry of a final decree of adoption, the parent may withdraw consent upon grounds that consent was obtained through fraud or duress and may petition the court to vacate the decree of adoption
 - Whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parents voluntarily consent to the termination of their parental rights to the child, a parent may petition for return of custody and the court shall grant such petition
 - Relevant caselaw



ISSUES in ADOPTION PROCEEDINGS

- **Bonding**
 - Good cause to depart from the placement preferences does not include ordinary bonding or attachment that may have occurred as a result of a placement or the fact that the child has been in another placement that does not comply with ICWA.
 - Caselaw

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Thank you – Ahéhee

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