

ICWA Messaging in the Current Media Landscape March 2016

Recently there have been an increasing number of media stories focused on children receiving preferred placements as required by the Indian Child Welfare Act. Here are key talking points about these cases and ICWA.

California/Choctaw Case

Our primary concern is for the well-being and safety of this child.

- It is never in a vulnerable child's best interest to expose her to the media spotlight, especially in such sensitive and private matters.
- We are disturbed that the privacy of this child has not been better protected.

The child has been placed with her extended family in Utah, who have sought to care for her since 2011.

- This child was never available for adoption by the Pages.
- The foster family has known since 2011 that the plan for this child was to place her with her extended family if reunification with her father was not possible.
- The foster family knew she was considered an Indian child under ICWA and that placement preferences would apply.
- They knew the law but chose to not follow it.

The child's Utah family has had consistent communication and visitation with the child since 2013. They were well known to her at the time they assumed her care.

- In 2013, after reunification with the father failed, the child was set to live with her Utah family, with a transition plan agreed to by the foster family.
- In the subsequent years that the Pages fought family placement, the child's Utah family continued their ongoing relationship with the child, and were well known to her at the time they assumed her care.

In being placed with her relatives, the child is also living with her sister. Preference for relative placement is considered in the best interest of *all* children, not just Native American children.

- Relative child placement preference is the law in 45 states.
- It is also federal law (under Title IV-E of the Social Security Act and ICWA)
- This is because research and best practice prove that children fare better when placed with relatives.
- The county child welfare agency, the child's parent, the minor's court-appointed attorney, and the child's tribe are all in agreement—family placement is in her best interest

The purpose of foster care is to provide *temporary* care for children while families get services and support to reunite with their children.

- It is not a platform for adoption when children have family members available to care for them.
- Preventing a child from living with her sibling and relatives contrary to court order—as was the case here—is not the role of foster parents.

Washington/Tulalip Case

Our primary concern is for the well-being and privacy of this child.

- It is never in a vulnerable child's best interest to expose her to the media spotlight, especially in such sensitive and private matters.
- We are disturbed that the privacy of this child has not be better protected.

While the birth mother relinquished her parental rights, the father never relinquished his and has a right to due process throughout the entire child welfare process.

General ICWA Talking Points

ICWA is not an antiquated law. ICWA is very much needed today to help vulnerable Native children and disempowered Native families.

Native families in crisis are not treated fairly in the courts and child welfare system.

- Disparate treatment of Native American children that denies them basic protections afforded to other children is rampant to this day.
- Native children are four times more likely than White children to be removed from their homes at the first encounter with courts.
- One of the most egregious examples of the lack of due process for Native families is occurring in South Dakota right now. A class action lawsuit there found Indian parents' rights were violated. In many cases, the decision to remove a child from his or her family came after a hearing that lasted only 90 seconds.

ICWA emphasis on relative placement has earned it the title of “The Gold Standard” of child welfare law for *all* children by 18 national non-Native child advocacy organizations, among them the Children's Defense Fund, Child Welfare League of America, Annie E. Casey Foundation, and Casey Family Programs.

Non-compliance with ICWA is rampant.

- Highly publicized, controversial cases arise because federal law was not followed in the first place, not because there is fault with the law itself.
- It is because of cases like these and widespread non-compliance, that we welcome the forthcoming BIA regulations that will strengthen ICWA.

Opponents of the Indian Child Welfare Act are deliberately misleading the public through media campaigns.

- Proponents of Indian child removal have consistently relied upon a campaign of misinformation to make the case that Native children need “saving” from their families and people.
- Scare tactics from ICWA opponents are designed to deliberately mislead the public about this law.
- The same opponents of ICWA continue to seek new venues to push forward their same arguments that ICWA is unconstitutional, hoping that they'll prevail somewhere. They haven't yet, but it doesn't keep them from enlisting families to their cause, often to the extreme detriment of the children involved.

The focus on the child's blood quantum demonstrates a gross misunderstanding of the law.

- ICWA is not a race based law.
- Children are eligible for the protections of ICWA if they are a citizen of a tribal nation or eligible for citizenship.
- The child involved in the California ICWA case is not “part-Choctaw”; she is a Choctaw citizen.
- Focusing on blood quantum is offensive. It is intended to deliberately mislead the public, using a race-based argument to incite emotions.
- The reality is that citizenship in a sovereign nation doesn't come in degrees.

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